

# Capacity, voice and opportunity: advancing municipal engagement in Canadian federal relations

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## Abstract

*In Canada, municipalities are involved in an increasing number of policy areas, but they remain largely absent from the nation's system of intergovernmental relations. Municipal representatives do not attend First Ministers' meetings that gather the Prime Minister and heads of each province and territory. They are also largely excluded from intergovernmental councils or committees focused on specific policy areas. Nor do they participate in the negotiation of most intergovernmental agreements.*

*This paper explores how Canada's intergovernmental infrastructure could be reformed to include municipalities. It does so through an analysis of how other countries have made space for municipalities in their intergovernmental processes. After drawing five lessons from international experience, the paper concludes with four approaches to reforming intergovernmental relations in Canada: (1) ensure municipalities have the capacity, voice and structures to participate effectively in intergovernmental relations; (2) increase municipal involvement in provincial policy-making, including potentially through co-governed intergovernmental councils; (3) as far as possible, eliminate unfunded mandates (ie responsibilities devolved without adequate funding to discharge them) through, for example, provincial legislation or provincial–municipal intergovernmental agreements that require consultation on the fiscal impacts of draft legislation or regulation on municipalities; (4) strengthen trilateral (national/provincial/municipal) relations, including through location-specific or policy-specific agreements, and trilateral intergovernmental councils.*

**Keywords:** Intergovernmental relations, municipalities, federalism, Canada

## Introduction

Canada is a highly decentralised federation with a constitution that sets out a strict division of powers between orders of government. Local government is a designated responsibility of the provinces. Over time, however, jurisdictional boundaries have blurred. Today, many of the most prominent areas of

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public policy – climate change, healthcare, economic development, immigration, Indigenous reconciliation and more – require work across, and cooperation among, multiple orders of government.

The effect of this trend on municipalities is often overlooked, despite the fact that municipalities are involved in a greater number of policy areas than ever before. The particulars differ from province to province. Some municipalities are partners in immigrant settlement through deals with the federal government. Others help pay for and directly deliver social housing and long-term care. Furthermore, overall municipalities now own 60% of Canada’s public infrastructure, up from 30% in the early 1960s (Ness et al. 2021).

Given that context, this paper argues for rethinking the currently subordinated role of municipalities in Canadian intergovernmental relations. Poirier and Saunders described intergovernmental relations as “*the lifeblood of federalism in practice*” (2015a, p. 4). When multiple orders of government are responsible for different aspects of public policy, coordination and cooperation are fundamental to effective policy-making and service delivery. As Davide Vampa puts it, in federal systems “*rather than just looking at how authority is distributed at different levels, what really matters is how different territorial units interact [emphasis original]*” (Vampa 2021, p. 603).

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

Recently, there have been calls to clarify municipal responsibilities through a review of “*who does what*” (Hachard 2020); for Canadian municipalities to receive more powers or financial resources to meet their responsibilities (Kitchen and Slack 2016); and for municipalities to be entrenched in the constitution as an order of government (Institute on Municipal Finance and Governance 2020).

Even if these calls were to be heeded, the question of how orders of government engage with each other on a day-to-day basis will need to be addressed. As Gabriel Eidelman writes, Canada requires “*a new intergovernmental infrastructure that enables policy-makers at all levels to better understand the needs of our cities and city-regions, and respond with concerted action*” (Eidelman 2020, p. 1).

This paper explores what this infrastructure could look like by examining examples from countries around the world. Intergovernmental relations can take many forms. They can be categorised by their degree of formality, level of institutionalisation, their top-down or bottom-up structure, and other

features. Also, the concept ‘intergovernmental relations’ refers to two related but distinct phenomena: vertical relations between different orders of government, and horizontal relations within the same order of government. This paper focuses on vertical relations, beginning with the current state of intergovernmental relations in Canada and the municipal role within them. Next, it looks at international examples of intergovernmental structures and processes that create space for municipalities, focusing largely on federal countries. The paper concludes by drawing lessons from these examples for Canada and setting out potential approaches to intergovernmental relations reform.

### **Municipalities and intergovernmental relations in Canada today**

In Canada, intergovernmental relations operate within the context of the country’s dualist federal structure. Canada’s constitution sets out distinct responsibilities for the provinces and federal government, and gives each of these orders of government the power to legislate and deliver on their responsibilities independently of each other.<sup>2</sup>

This structure contrasts with the administrative or cooperative model, seen in countries such as Austria and Germany, where powers are divided by function (who legislates and who delivers) rather than by policy area (Schnabel 2020). In such cases national governments adopt legislation and policies, while sub-national governments implement them (Gaudreault-DesBiens and Poirier 2017). Countries with this structure need effective intergovernmental relations to ensure coordination between those planning policy and those delivering it. For instance, Germany’s second chamber of the federal legislature, the *Bundesrat*, is made up of elected leaders from the 16 German *Länder* (states). Many federal laws require approval from the *Bundesrat* (Lhotta and von Blumenthal 2015).

In Canada, intergovernmental relations are characterised by their informality and lack of institutionalisation (Adam et al. 2015). No specific body exists to bring together representatives of the federal government and provinces at regular intervals. There is no formal representation of provincial governments at the federal level, such as through the Senate. Instead, relations are conducted by the provincial and federal executive branches, most prominently through First Ministers’ meetings at which the Prime Minister and heads of each province and territory gather. These meetings, however, are called at the behest of the Prime Minister and do not occur with any regularity.

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

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<sup>2</sup> As Poirier (2020, p. 90) notes, Canada’s dualist structure has been complicated by constitutional interpretations at the Supreme Court that push towards a vision of cooperative federalism. Nevertheless, “*the very structure of the federation remains undeniably dualist*”. See also Karazivan (2020).

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

Johanna Schnabel (2020) has counted about 35 intergovernmental councils in operation in Canada. Some councils are vertical, and bring the federal and provincial–territorial governments together; others are horizontal, and only the provinces participate. They are largely sectoral, meaning they are focused on particular policy areas, such as education or social policy (Gauvin and Papillon 2020).

Municipalities are largely absent from the system of intergovernmental relations described above. They do not attend First Ministers’ meetings and are largely excluded from sector-specific meetings. However, they do participate in a limited number of forums, such as the Intergovernmental Committee for Economic and Labour Force Development (ICE), which focuses on information-sharing and research related to issues in Toronto, and brings together officials (though not senior leaders) from all three orders of government (ICE Committee, n.d.). Individual municipalities and municipal associations are also sometimes invited to meetings with federal–provincial/territorial ministerial or deputy minister<sup>3</sup> tables (forums), at the invitation of the chair.

Municipalities also do not typically participate in the negotiation of intergovernmental agreements, although one exception was a series of trilateral agreements negotiated in the 1990s. Notably, municipalities were not at the table in 2018 for the negotiation of the CAD \$33 billion, ten-year, bilateral agreements for the Investing in Canada Infrastructure Programme (ICIP), even though a majority of funds would flow to municipalities and municipalities were a direct funding partner. Similarly, they were not formally included in talks that established the Safe Restart Agreement, which earmarked dedicated federal funding for transit and non-transit municipal operating revenue shortfalls caused by the COVID-19 crisis.

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

In this sense, municipalities exist in order to execute provincial policy and legislation. This resembles the administrative/cooperative federalism model described above, but with an important difference: municipalities implement provincial and federal policy but cannot directly affect provincial and federal decisions. Instead, they meet regularly with their provincial governments, either directly or through

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<sup>3</sup> In Canada, deputy ministers are appointed heads of departments in the public service, not elected officials.

municipal associations. They also regularly pass city council motions calling for provincial action in specific areas, or otherwise publicly advocate for policy changes.

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

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

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

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

In the early 2000s, the federal government conducted in-depth studies on urban policy and intergovernmental relations, establishing first the Caucus Task Force on Urban Issues and then the

External Advisory Committee on Cities and Communities (Berdahl 2006; External Advisory Committee on Cities and Communities 2006). In 2004, it created the Ministry of State for Infrastructure and Communities.

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

Throughout these shifts, the Federation of Canadian Municipalities (FCM) – a national association representing municipalities at the federal level – played a growing role, including in advocating for and setting up the Gas Tax Fund in 2004. Now called the Canada Community-Building Fund, it provides annual federal funding for local infrastructure projects (Lucas and Smith 2020). The funding flows through a provincial government, municipal association or, in the case of the City of Toronto, directly to the municipality. The federal government has also partnered directly with FCM to deliver other special-purpose funding to municipalities, including through the Green Municipal Fund, created in 2000.

Most recently, there have been federal–municipal meetings on housing, including an FCM-convened working group involving federal representatives and a February 2022 National Housing Supply Summit hosted by FCM and the Canada Mortgage and Housing Corporation (CMHC). These meetings may be signs of a changing landscape. The first two rounds of the Rapid Housing Initiative, a federal programme run by CMHC to support affordable housing, allocated two-fifths of its funding directly to municipalities, rather than through the provinces and territories.

Independently and through municipal associations, municipalities engage with provincial and federal governments regularly. On the whole, though, municipalities remain largely absent from formal intergovernmental forums, even though the issues addressed often impact them profoundly. While this situation is influenced by the structure of the Canadian federation, it is not determined by it. Models can be found elsewhere for more fully incorporating municipalities into a federal system.

### **Models for integrating municipalities into intergovernmental relations**

Intergovernmental relations differ across countries because of history, political culture, constitutional arrangements, and the structure of political parties. As a result, models that have emerged for structuring intergovernmental relations to include municipalities vary considerably.

In some cases, sub-national governments have direct lines into the legislative process or into executive decision-making structures of other orders of government. Many countries include municipalities in

intergovernmental councils and committees that bring together leaders of different orders of government. Others allow municipalities to be part of intergovernmental agreements, which are generally focused on specific policy areas or issues requiring cooperation across orders of government.<sup>4</sup>

Some national constitutions explicitly dictate the structure of the country's intergovernmental relations, and include a role for local governments. In some jurisdictions, federal–local relations are of particular importance or have developed independently of other intergovernmental arrangements. And finally, in most jurisdictions, fiscal relations – who pays for what and how funds are distributed between orders of government – have their own place in intergovernmental relations and create their own challenges.

This section explores these threads through the examples of five federal countries: South Africa, Switzerland, Austria, Brazil and Germany.<sup>5</sup>

### **South Africa**

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

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

The participation of local governments in intergovernmental relations is codified in South Africa's constitution, which recognises the local order as one of three ‘spheres’ of government and also codifies the principles of subsidiarity and cooperation. The latter includes a requirement that spheres of government “[inform] *one another of, and [consult] one another on, matters of common interest*” (Constitution of the Republic of South Africa 1996, Articles 41(1h), 151, 156(4)).<sup>6</sup> The constitution also requires the federal government to set out processes for intergovernmental relations in legislation;

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<sup>4</sup> The legal status of such agreements varies greatly between federations (Poirier and Saunders 2015b).

<sup>5</sup> For analysis of a larger set of countries, see Hachard (2022).

<sup>6</sup> The Swiss constitution contains a similar provision but mentions only the cantons (Federal Constitution of the Swiss Confederation 1999, Article 44).

and it obliges national and provincial parliaments “*to consult organized local government on legislation that affects the institutions or functions of local government*” (de Visser 2009, p. 275).

Nevertheless, South Africa’s intergovernmental relations have been criticised for how they centralise power and prioritise national concerns. Because the federal government sets the framework for intergovernmental relations and convenes intergovernmental meetings, it dominates at the table (Powell 2015).<sup>7</sup> Similarly, while the presence of subsidiarity in South Africa’s constitution means national and provincial governments are obliged to devolve responsibilities to local governments, they have been accused of doing so without adequate funding (de Visser 2009; Powell 2015). Provisions exist to protect municipalities from unfunded mandates (ie responsibilities devolved without adequate funding to discharge them), but experts have argued that such provisions are often poorly enforced (Steytler et al. 2012).

South Africa’s tendency towards centralisation was highlighted during the COVID-19 pandemic, when the federal government bypassed the Intergovernmental Committee on Disaster Management (which included representatives from federal, provincial and municipal governments) in favour of a newly instituted National Coronavirus Command Council (NCCC). Reuben Baatjies and Jaap de Visser (2020, p. 14) note that the creation of the NCCC ultimately meant that “*a dedicated, intergovernmental structure bringing together all three spheres of government to advise the Cabinet was replaced by an ad-hoc structure comprising exclusively of national government functionaries.*”

### **Switzerland**

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

Many Swiss cantonal constitutions allow local governments to propose new laws and constitutional amendments. Local governments can also challenge significant decisions taken by cantonal governments. In most cases, these processes require a group of local governments to act together,

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<sup>7</sup> Political realities matter here as well. The dominance of the African National Congress as a political party within all orders of governments has a centralising effect (Parker 2015).

although certain municipalities may initiate them unilaterally. In all cases, a canton-wide referendum is required as a final step: the voters of the canton have the final say. However, there have been only a handful of successful examples of the use of these initiatives (Mueller 2014).

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

Swiss municipalities also participate in the Tripartite Conference of Agglomerations, an intergovernmental council that includes representatives from the federal government, the association representing cantons, and two associations representing local governments (one for larger cities and the second for other municipalities). Created in 2001, the conference has increased coordination on urban planning and regional policy, including with the establishment of infrastructure plans and transit payment systems (Pfisterer 2015). However, research also indicates that municipal participation in the Tripartite Conference has not weakened the hold of the cantons over local governments (Ladner 2009; Pfisterer 2015).

### **Austria**

In Austria, a formal agreement between the federal government, the *Länder* (states) and municipal associations requires consultation “*if a draft law or a regulation of one entity imposes financial burdens on the other orders of government*” (Bussjäger 2015, p. 88). Violations of this ‘consultation mechanism’ can be taken to the Constitutional Court, although disputes are usually settled without a court case.

Municipalities also participate in the negotiation of ‘stability pacts’, which coordinate the budgetary policies of federal, *Land* and municipal governments over three- or four-year periods, as well as negotiations on financial equalisation (Kiefer and Schausberger 2009). The system functions on the principle that each government should finance its own tasks and receive sufficient resources to do so. However, this principle is complicated by exceptions, particularly in healthcare, that result in “*complex and opaque cost-shifting*” (Bussjäger 2015, p. 101). The complexity of the system has been one reason that experts have called for reforms.

The Austrian Conference on Spatial Planning, meanwhile, includes the federal government, the *Länder* and the two national municipal associations (the Austrian Association of Cities and Towns and the

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

The Austrian constitution also affords municipalities a role on a commission to oversee the pay of members of the two branches of the federal legislature, and recognises the two national municipal associations as representing the interests of municipalities (Kiefer and Schausberger 2009; Bussjäger 2015).<sup>8</sup>

### **Brazil**

The Brazilian constitution recognises municipal autonomy and prohibits federal or state governments from intervening in the internal affairs of municipalities (Constitution of Brazil 1988, Articles 1 and 29). It does not contain any direct provision for intergovernmental relations, but the recognition of municipalities has spurred increased federal–local relations, with states often being bypassed (Arretche 2015). Meanwhile, Article 182 of the constitution articulates provisions for urban planning that guarantee the wellbeing of a city’s residents. But Ran Hirschl (2020, p. 19) contends that:

*as well-intended as these constitutional and legal initiatives might have been, the political reality in Brazil at both the federal and the intergovernmental levels is such that the actual, on-the-ground effects of these reforms have depended largely on the political alignment of federal, state and megacity leaders.*

In 2003, the Ministry of Cities was created at the federal level to engage directly on issues of urban development, sanitation and transportation (Queiroz Ribeiro and Pinto 2009; Arretche 2015). A Council of Cities, chaired by the federal minister of cities and made up of representatives from civil society and all orders of government, provided input into policy at the Ministry. A Committee for Federal Articulation was also created that included representatives from the federal government and Brazil’s three national municipal associations to promote interaction between the two orders of government (Arretche 2015).

The Ministry was closed in 2019 by the federal government and the cities file was shifted to the Ministry of Regional Development (Scruggs 2019). The Council and Committee were disbanded in the same year as part of a larger effort to disband dozens of national councils (Walker et al. 2021).

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

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<sup>8</sup> One association – the Austrian Association of Municipalities – is an umbrella organisation for nine state-level organisations. The second – the Association of Cities and Towns – is made up of 255 members, including all towns with more than 10,000 inhabitants.

municipalities also participate in the Brazilian tripartite committee for health that includes five representatives from the National Council of Municipal Health Secretaries (Arretche 2015).

### **Germany**

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

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

Municipal participation in intergovernmental councils is limited, but a Council for Economic Development includes members from the federal government, the *Länder* and municipal governments. The council is an advisory group on the coordination of economic activity (Auel 2014).

### **Key lessons from international experience**

As these varied examples make clear, no one model for integrating municipalities into a country's intergovernmental structure is a recipe for guaranteed success, but the experience of other countries does suggest five lessons for Canadian governments and municipalities to consider.

#### ***A seat at the table does not end centralisation***

While intergovernmental councils can support constructive relationships among orders of government, typically the senior partner controls them by chairing the council, deciding when to call meetings, or setting the agenda. In her study of vertical intergovernmental councils in eight countries (most of which do not include local governments), Johanna Schnabel found that just over three-quarters are dominated by the federal government, giving the latter "*major leverage over 'joint' solutions so that they are less collaborative in character*" (Schnabel 2017, p. 12).

While Schnabel's analysis generally refers to federal–state relations, her findings are relevant to municipalities, which are at risk of being overshadowed at forums with other orders of government. They must avoid the dominance of two orders: if the federal government does not exert control, the state or provincial one often does, as is the case in Germany and Switzerland.

The design of vertical intergovernmental councils can address centralisation (see the Trilateral relations section below), and Schnabel (2020) notes that complementary measures can be helpful as well. In Switzerland, for instance, the federal government's constitutional and legal requirement to consult cantons (and municipalities) on its activities helps prevent federal dominance. Strong 'horizontal councils' (organisations at which sub-national governments meet to coordinate on policy-making and advocacy) and sub-national participation in federal decision-making are other safeguards against federal dominance. These safeguards can be helpful for municipalities to consider as they seek roles on intergovernmental councils. For instance, active municipal associations that advocate publicly with a strong, united voice can potentially give municipalities needed leverage at intergovernmental forums. Alternatively, securing other forms of participation in intergovernmental affairs could reduce the chances of municipalities being seen as merely minor players.

### ***Constitutional recognition is not a panacea***

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

### ***Fiscal relations need to be addressed explicitly***

In most cases, substantive intergovernmental relations do not lead to balanced fiscal relations. Legislation or processes to avoid unfunded mandates also do not guarantee results. In the end, the bulk of the problem resides in a mismatch between the devolution of power and responsibilities on the one hand, and fiscal resources on the other.

Deborah L. Wetzel and Lorena Viñuela's description of the situation in Brazil (2020, p. 212) captures the issue perfectly:

*The evolution of the Brazilian federal framework has translated into sizable vertical imbalances. While the 1988 Constitution devolved functions and increased transfers from the federal level to states and municipalities and from states to municipalities, it did not fully match expenditure responsibilities and revenues."*

**Collaboration should go beyond the highest levels**

While much of the attention in intergovernmental relations focuses on ‘peak-level’ forums that gather the heads of orders of government, a well-functioning intergovernmental system goes beyond this. Sectoral councils and committees are also useful, particularly for complex policy areas. It is not surprising to find them, for instance, in health and urban development. They also offer opportunities for municipal involvement in areas of particular impact. Such an approach is seen in Germany and Austria, for example.

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

Successful formal intergovernmental relations are also underpinned by informal collaboration, particularly among public servants. The behind-the-scenes work of administrators over long periods can increase trust and promote compromise (Lhotta and von Blumenthal 2015), while building relationships and a collaborative mentality that can outlive particular governments, and so foster a strong intergovernmental system regardless of political changes.

**Municipal capacity is of utmost importance**

In many countries, the collective capacity of municipalities and municipal associations was a key factor in their attaining a seat at the intergovernmental table. For example, while Australia is not discussed in this paper, municipalities there substantially increased their role in intergovernmental relations during the 1980s and 1990s due to the Australian Local Government Association’s ability to demonstrate the ‘added value’ of local government in key policy areas (Sansom 2010).

Collective municipal capacity is also required to take advantage of an increased role in intergovernmental relations. In South Africa:

*the success of local government’s representation on the national IGR [intergovernmental relations] forums depends... on the quality of organized local government’s input in these structures, which is an uncertain variable at best. Too often, SALGA has insufficient resources, capacity, or time to provide adequate input at such IGR forums (de Visser 2009, p. 289).*

**Ways forward for Canada**

The goals of an intergovernmental relations system can vary. For a federation with blurred lines of responsibility, cooperation and transparency may be most important. In federations with clear jurisdictional boundaries, maintaining the independence of sub-national units may be a priority. For

Canada, and from a municipal perspective, a reformed intergovernmental system should help achieve three key goals:

- First, it should give Canadian municipalities greater input into policies that affect them, recognising municipalities as democratically accountable governments able to implement public policy in their own right, and therefore a different kind of partner compared with other public institutions, business or civil society.
- Second, it should facilitate trilateral collaboration on key issues, recognising that many of Canada's pressing policy challenges are not suited to a neat division of labour.
- Third, it should not be merely a conduit for an increased profile for municipal governments. Its goal should be to improve policy-making for all residents by bringing together the strengths of the three orders of government.

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

### ***Municipal capacity and coordination***

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

Municipalities, particularly big cities, should continue to invest in intergovernmental capacity in their public services (Eidelman 2020). This investment in capacity would support greater engagement around the impact of local decisions and actions on national, regional and provincial challenges. Municipalities correctly argue that national and provincial policy issues often have an impact at the local level, and that municipalities are most connected to local residents. But it is also the case that local initiatives in areas such as land-use planning and housing development have provincial and national implications: for example, where and how a city grows have implications for climate change. Just as national and provincial governments should consider the local impact of their decisions, so should local governments consider how local actions affect efforts to address challenges that cross municipal boundaries.

How can the more than 3,700 municipalities in Canada best be represented at the intergovernmental table? In the countries described above, municipal associations tend to speak for municipalities in intergovernmental discussions. Following that model, it is reasonable to imagine that FCM would play

a significant role at trilateral meetings, while provincial associations would play a role in provincial–municipal relations.<sup>9</sup>

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

Increased regional coordination and, ideally, new regional governance structures can also unify the municipal voice and make it easier to engage municipalities in ongoing, formal discussions, particularly in the context of provincial–municipal relations. At the federal level, they can help ensure that a group of large cities represents the views of the whole economic region, rather than only its biggest city.<sup>10</sup>

Implementing these structures, however, may require wholesale changes to municipal governance and, in Canada, enactment through provincial legislation. As a result, encouraging intermunicipal cooperation on a more limited scale, as is the case in Switzerland, Austria and Brazil, could be more feasible in the short term. This approach is also potentially more nimble. In Brazil, regional municipal organisations, called consortia, sometimes include states or the federal government as partners as well (de Visser 2009). One might imagine municipalities in a region creating an organisation with a mandate to represent them in intergovernmental bodies.

Finally, increasing horizontal coordination among municipalities and municipal associations, not just in a region but across provinces and the country, is important. As Johanna Schnabel notes, horizontal councils of provinces and states have proven successful at preventing federal incursion into sub-national jurisdictions, but that outcome “*depends on their ability to make the constituent units coordinate their policy making*” (Schnabel 2020, p. 267).

### ***Closer provincial–municipal relations***

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

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<sup>9</sup> The relationship between provincial organisations and national organisations, and ensuring that each feeds into the other, is important to ensure priorities and interests are aligned. In Canada, the presidents of provincial and territorial municipal associations sit on the FCM's national board of directors.

<sup>10</sup> Formal two-tier regional governance structures like those in British Columbia are a model to consider (Taylor 2020).

Nevertheless, there are two concerns with the current state of municipal–provincial relations. First, there is a power imbalance. Municipalities in some cases require provincial approval for even relatively minor decisions, such as changing traffic speed limits.<sup>11</sup> Provinces can also override municipal decisions or circumvent municipalities, as has been seen with the Ontario government’s unilateral changes to municipal ward boundaries or its use of ministerial zoning orders that bypass municipal planning processes.

A second issue is the limited scope of municipal involvement in provincial policy-making. The notion that one can delineate the range of issues that impact municipalities and silo them in one ministry is increasingly hard to defend. Increased enrolments in local universities and institutes of further education puts pressure on housing (Moffatt 2021). Climate change plans require municipal implementation and enforcement. Public health policies need to be implemented at the local level. Transit and transportation infrastructure often require joint funding and, at the very least, cooperation to ensure that construction proceeds smoothly. Given the broad scope of what can be considered urban policy, municipal involvement in provincial policy-making should occur both more often *and* more widely across government than it does now.

This involvement could take place through a formal, institutionalised council for provincial–municipal relations – one that supplements current issues-based, informal relations. South Africa’s extended cabinet offers a potential model to follow. Applied at the provincial level in Canada, such a system would acknowledge the intertwined roles of municipal and provincial governments and the fact that complementary strategies need to address issues like housing, homelessness, mental health and mobility.<sup>12</sup>

A series of sectoral councils could also be a starting point. In Ontario, a 2022 housing summit between the province and the mayors of Ontario’s larger municipalities could be the beginning of a permanent forum on housing policy, supported by a dedicated secretariat (Hachard and Slack 2022).

Switzerland’s example, meanwhile, suggests that a preponderance of vertical councils may be neither necessary nor desirable. In Swiss federal–cantonal relations, intergovernmental cooperation is achieved largely through two mechanisms: highly institutionalised horizontal councils at the cantonal level that solidify the cantonal voice, and a federal commitment to consultation with cantons as equals (entrenched in the constitution and reinforced by the fact that cantons are in charge of delivering much federal policy). Given the important role Canadian municipalities play in delivering provincial policies, this approach is worth considering. One option would be to allow municipalities to propose provincial

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<sup>11</sup> This is the case in Nova Scotia (Buckmaster 2021).

<sup>12</sup> The decisions of South Africa’s extended cabinet have the same force as cabinet decisions. Although such an outcome could be a long-term goal for extended cabinets in Canadian provinces, it is likely too ambitious to start. Instead, extended cabinets could be more consultative in the beginning, producing recommendations for action.

laws, as is the case in Switzerland; another would be a more robust and enforceable provincial requirement than currently exists to consult municipalities on matters that impact them. Good (2019, p. 25) argues that to be truly effective “*a commitment to consult... must be legislated with a clear constraint on the future legislative process, and the process would need to be ‘doubly entrenched’*” – that is with a requirement for further consultation before any future changes. In such cases, municipal capacity and an effective collective voice would be particularly important.

### ***Unfunded mandate reform***

Strong intergovernmental collaboration may still leave governments tasked with responsibilities they cannot sustainably afford. In Canada, the situation is complicated by pre-existing imbalances in the responsibilities and financial position of municipalities. These have been created in some cases by explicit transferring of responsibilities from provinces (or possibly the federal government) to municipalities without requisite funding, as was the case in Ontario in the late 1990s. In other cases, implicit ‘downloading’ has occurred when federally or provincially driven policies created new costs for municipalities. In British Columbia, recent reports from the Union of Municipalities and from City of Vancouver staff have noted the pressure municipalities face to deliver on areas of provincial responsibility, such as housing and childcare, and to fill in gaps in service levels related to challenges such as homelessness and the opioid crisis (City of Vancouver 2021; UBCM 2021).

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

### ***Trilateral relations***

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

It is true that direct federal–municipal relations have grown over time. And while this should be encouraged, if only to promote understanding and build relationships between the orders of government, removing provincial governments from the equation is counter-productive in the long run. It is hard to imagine a policy issue that the federal government and municipalities can collaborate on that would

not, eventually, require provincial involvement and cooperation – or, in the case of Québec, formal provincial consent.

Strengthening trilateral relations can occur through further site-specific or policy-specific accords modelled on the earlier UDAs. While considered successful experiments in governance within Canada and internationally, those agreements did not spread, even in Canada. Today, they could be helpful in policy areas such as economic development or mental health and addictions (Bradford 2020).

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

A general trilateral council, meanwhile, would offer an opportunity for all three orders of government to discuss emerging issues and promote, to the extent possible, coordination on shared challenges. The council could be achieved through a reform of the structure of First Ministers’ meetings. Alternatively, a formal consultative mechanism could be established by which municipal governments and the provinces could input into federal decision-making (Berdahl 2006).<sup>13</sup>

In all cases regular meetings are essential to normalise collaboration, create a ready-made space for gathering leaders in case of emergency, and move steadily towards greater institutionalisation. As Schnabel notes, intergovernmental councils can safeguard a federal system’s stability, but they are most effective when they “*meet frequently, have a permanent secretariat, follow pre-defined rules of operation, and [are] supported by several committees and working groups*” (Schnabel 2020, p. 5). Finally, to guard against federal or provincial dominance, intergovernmental councils could be co-chaired by different orders of government or have the role of the chair rotate among members (Schnabel 2020).

Of course, current federal–provincial intergovernmental relations do not always have the characteristics described above. First Ministers’ meetings occur only at the behest of the federal government, and several years may pass without one being called. Some prime ministers have convened First Ministers’ meetings regularly, while others have eschewed them and focused on more limited bilateral relations with individual provinces. The role of Indigenous governments has also changed over the years and

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<sup>13</sup> Addressing the questions of municipal capacity and coordination would be particularly important to ensure an effective municipal voice at trilateral councils.

requires further attention as part of efforts to establish nation-to-nation relations. In other words, there is more work to be done than simply ensuring the inclusion of municipalities, but any strengthening of federal–provincial cooperation should also encompass a role for local governments.

### **Conclusion: building a culture of cooperation**

Previous research has highlighted the challenges municipalities face in Canada’s federal system (Hachard 2020). Many stem from a lack of clarity about municipal roles and responsibilities, which in the 21st century are substantially different from those that existed when the Canadian constitution was written in 1867.

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

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

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

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

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