



# INSIDE POLICY

THE MAGAZINE OF THE MACDONALD-LAURIER INSTITUTE

NOVEMBER 2014

## Canada's unfinished business



*How efforts to liberalize trade within Canada have failed and how to finally realize George Brown's vision that Confederation would make a "citizen of one, citizen of the whole"*



*With contributions from: Martha Hall Findlay, Anna Maria Magnifico, Ian Blue, Ailish Campbell and Brian Kingston, Monique Moreau and Brian Lee Crowley. Plus, Robin Sears profiles Saskatchewan Premier Brad Wall, a rare politician who's unafraid to think big.*

*Also in this issue: Stanley Hartt on whether Social Enterprise is an oxymoronic concept or the next big thing; Brian Lee Crowley says that the Ottawa shooting shows that treason isn't going away; Benjamin Perrin on how to avoid falling into the trap of "Lone-Wolf" terrorists*



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# Editor's message



In this special issue of *Inside Policy*, the focus of most of the commentary is on the Agreement on Internal Trade (AIT), an intergovernmental accord on trade within Canada. The goal of the AIT was to establish an open, efficient and stable domestic market by eliminating some of the many protectionist measures which had emerged over time.

Since the AIT was signed in 1994, Canada has negotiated over 40 international trade agreements, providing Canadian exporters preferential access to over 1.1 billion consumers worldwide. Despite clear evidence that such trade agreements have given domestic businesses a boost in the international marketplace – benefiting Canadian consumers and workers, concurrently – repeated efforts to modernize the outdated Agreement on Internal Trade have failed.

There are signs, however, that progress may finally be at hand. In early August, the leaders of seven national associations (i.e., Manufacturers & Exporters, Chamber of Commerce, Council of Chief Executives, Federation of Independent Business, Certified General Accountants, Dairy Processors and Restaurants Canada) released a discussion paper on Canada's economic union and urged first ministers to rework the AIT.

Describing the AIT as “anemic”, Saskatchewan premier Brad Wall (see profile by Robin Sears) has embraced the challenge. This past summer his western counterparts joined him in a call to remove obstacles to the free flow of trade. When Atlantic premiers voiced similar ambitions in advance of the August 2014 Council of the Federation meeting, expectations were raised further.

If the provinces fail to make progress, as he is certain they will, **Brian Lee Crowley** argues that the federal government has sufficient powers to act on its own, and it's about time it used them. While Industry Minister James Moore may share that view, he has given the provinces a chance to make progress, while insinuating a tougher stance might be needed. Though some provinces have bristled at the federal ‘intrusion’, advocates for enhanced internal trade hope Moore's moves will help spur progress. As Crowley argues in his piece, Canadians' economic rights are at stake and the provinces have had plenty of time to act. He hopes that the federal government, with its power over trade and commerce, will honour George Brown's promise, quoted on our cover, that Confederation would make a “citizen of one, citizen of the whole”.

With studies showing that barriers to free trade may cost the Canadian economy tens of billions of dollars annually, there is a lot at stake. In this issue, our expert contributors examine why the AIT has failed, what it is costing Canadians and how to begin to tear down the barriers to internal trade in Canada.

**Stanley Hartt** (on Social Enterprise), **Ben Perrin** (on security in the aftermath of the recent shootings) and **Brian Lee Crowley** (on treason) are also worthy reads, as always!

*James Anderson, Managing Editor*

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# Social Enterprise: oxymoronic concept or the next big thing?

*Stanley Hartt examines the concept of social finance and, more specifically, “social enterprise”, a relatively recent phenomenon that sees entities use the methods and disciplines of business and the power of the marketplace to advance their social, environmental and human justice agendas. Hartt notes that the UK has been refining its policies affecting such enterprises for a decade and suggests that “if we are to catch up to the lead of the UK, or be more welcoming to new concepts like the Australians, some fundamental changes to our thinking, and resulting amendments to our legislation, regulations and tax-assessing guidelines will be required.”*

## Stanley Hartt

**S**ir Ronald Cohen is a dapper Englishman with boundless energy. Born in Egypt, his family fled to the UK during the 1957 Suez crisis when he was twelve. He attended Oxford University and the Harvard Business School and did a stint at consulting firm McKinsey & Co. before becoming a legend of private equity investment as one of the founders of what is now known as Apax Partners. The list of companies which this independent global partnership has acquired or invested in is long and impressive. Ronnie remained the CEO of the firm until 2004.

But in the year 2000, he took on a new challenge: he became the Chair of the Social Investment Task Force established by the UK government with a mandate to “set out how entrepreneurial practices could be applied to obtain higher social and financial returns from social investment, to harness new talents and skills, to address economic regeneration and to unleash new sources of private and institutional investment”. The idea that charitable, not-for-profit and foundation activities should be confined to eleemosynary purposes and kept distinct from

gainful, business-like techniques, even in furtherance of their benevolent aims, was being challenged conceptually. The task force was to examine techniques to apply the tried and true methods of capitalist private enterprise to what had heretofore been seen as a world supported by the generosity of individuals and businesses as well as by the public purse but as antithetical to commercial pursuits.

The recommendations of the Task Force began the change in thinking which has since been fully endorsed and supported by successive United Kingdom governments. Beginning with his Bridges Ventures in 2002, an investor in sustainable growth projects which produce both financial returns and social and environmental benefits, Cohen went on to chair the Commission on Unclaimed Assets in 2005, which recommended that unclaimed funds in dormant bank accounts be directed to a social investment bank to provide seed capital and loan guarantees to charitable and voluntary sector projects.

Social Finance UK, founded in 2007 with a mission to create a social investment market, has developed the “social impact bond”, an outcomes-based investment in community social projects. Its pilot venture in 2010 was the Peterborough Prison bond, under which the Government will pay, out of the resulting savings in the costs of incarceration, a return to private sector investors which escalates according to the rate of reduction in recidivism of a defined population of paroled and released prisoners achieved by the plan’s managers.

In July 2011, Sir Ronald became the chairman of Big Society Capital (BSC), Britain’s first social investment bank. The role of the BSC is to provide socially orientated financial organisations with greater access to affordable capital, using an estimated £400 million in unclaimed dormant bank accounts and £200 million from the UK’s largest banks.

In 2011, a social finance organization was established in the US and, in 2012, in Israel. The Rockefeller Foundation granted Social Finance, Inc. \$500,000 to develop a social impact bond market in the United States. The Foundation published “The Power of Impact Investing”, in which its president, Judith Rodin, and Margot Brandenburg -- two of the foremost experts in the field -- explained what impact investing is and how it compares to philanthropy and traditional investments. Antony Bugg-Levine, a managing director at The Rockefeller Foundation, who also helped to develop the concept of impact investing, has written a book entitled, *Impact Investing: Transforming How We Make Money While Making a Difference*.

Australia was quick to pick up on this new concept, forming



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“Impact Investing Australia” and eliciting serious interest from asset managers in this growing field of investment.

As awareness of social finance spread internationally, reaching to Latin America and the EU, UK Prime Minister David Cameron announced, in his capacity as Chair of the G8 in June, 2013, the launch of a taskforce with a mandate to catalyse a global market for investments that intentionally deliver social benefit. He appointed Sir Ronald Cohen to chair this Social Impact Investment Taskforce composed of the G8 countries, the EU and Australia. Each member country was asked to report on the state of play in its home jurisdiction.

In Canada, a Canadian Task Force on Social Finance had already issued a report in 2010 entitled, *Mobilizing Private Capital for Public Good*. The taskforce, which included notables from the fields of charitable activities, the voluntary sector as well as business and politics (including former prime minister Paul Martin), was supported by substantial backing from the McConnell Foundation and MaRS. Its landmark examination of how Canada could benefit from adopting the techniques of social finance has led to continuous discussions in policy and charitable sector circles, and to the appointment, first by Hon. Diane Finley and, more recently, by Hon. Jason Kenney, of a Ministerial Advisory Council on Social Innovation. In order to produce Canada’s report on how adapting capital market incentives and techniques to charitable activities could provide much-needed resources to the voluntary sector and enhanced social outcomes, while easing the pressures on government to

increase direct granting support to social service entities, the government appointed a National Advisory Board.

The advisory board's submission, presented in London, England on September 15, 2014, was entitled, *Mobilizing Private Capital for Public Good: Priorities for Canada*. It found that our laws, as currently reflected in relation to taxation and securities, do not facilitate the emergence of a concept that mixes inputs from benevolent motivations with those of the marketplace. Our treatment of the deduction of charitable donations is extremely generous, as noted by Jack Mintz in a recent article in the Financial Post ("CRA has been charitable", October 15, 2014). "In 2013, the federal tax cost of charitable donation credit is projected to be \$2.2-billion", Mintz points out.

But that results from a mindset that has the creation of wealth in a parallel universe to the dispensing of it through generosity, human kindness and compassion, for a charitable purpose. The idea that the principles of hard-headed business can be adapted to and incorporated into the regular activities of a thing we call a "registered charity" or a "charitable foundation" or that profitable ventures can assist in achieving the objectives of a not-for-profit organization, seems oxymoronic.

Thus, if we are to catch up to the lead of the UK, or be more welcoming to new concepts like the Australians, some fundamental changes to our thinking, and resulting amendments to our legislation, regulations and tax-assessing guidelines will be required.

For example, a charity is supposed to provide benefits to the public at large, or to a substantial segment of the public. It may not provide a benefit to private individuals. So, if a charity were dedicated to providing skills training to the chronically unemployed, that would be okay, so long as the charity did not actually contact a series of specific employers, ask them what skilled jobs they were having trouble filling, and work with them to develop a program where these very skills could be delivered to the population being assisted, since if they do the latter, they are providing a benefit to a handful of employers, because the program would be producing workers who would be filling an

actual demand and become gainfully employed when the course is completed.

Similarly, charities lose their status if they engage in a business activity other than a "related business" which is run to the extent of 90% by volunteers or which is linked and subordinate to a charity's purpose. So a hospital can run a gift shop or a parking lot and apply the revenues to the hospital's budget. But a charity would run afoul of our laws if the commercial activity was more ambitious, even if the proceeds were all directed expressly to the good works for which the charity was founded. There is a very good reason for this: the concept of horizontal equity. Charities are not taxed and thus it would be unfair to a private sector, taxable enterprise to have to compete in its line of business head-on with a charity while the private entity paid income and

other taxes.

The report outlines a solution, suggesting a hybrid standard where business activities beyond those currently tolerated by our system would be taxed, subject to certain *de minimis* rules, but the charity would not be exposed to losing its registered status.

The report makes a series of other useful recommendations, all of which share the same flavour: if Canada wishes to play in the new world of social finance, there will have to be some fundamental changes in thinking and approach so that we can unite the two separate worlds of hard-nosed commerce and caring, giving and helping.

Another example is that a charity is not supposed to make a below-market rate investment, even if this would advance their charitable objectives. For example, if a charity were to invest in a bond issued by a not-for-profit corporation constructing low-income housing, and take a "first loss" position in order to stimulate and encourage investment by others in the project, this would be offside and treated as a gift to a "non-qualified donee". Canada would need to modify its rules to permit this social investment technique.

Because our securities laws do not contemplate the issuance of equity or fixed-income securities by charitable entities or foundations, the use of limited partnerships is often resorted to

*Charities are not taxed and thus it would be unfair to a private sector, taxable enterprise to have to compete in its line of business head-on with a charity while the private entity paid income and other taxes.*

as a way of facilitating a social investment for a public purpose. But because private foundations are prohibited from carrying on a business, and charities are discouraged from doing so by penalties, clarification is needed on this front to permit limited partnership investments by foundations and charities (a limited partner does not, by definition, participate in the management of the enterprise or venture).

In a second chapter, the report goes on to stress that governments can foster this emerging tool for achieving socially desirable outcomes by catalyzing opportunities for impact investing. In order to do this, some pump-priming initiative from government should be considered to kick-start private sector participation, such as a matching program paired with appropriate incentives, or the establishment of an outcomes payment fund.

In all, the report demonstrates how far we have to come to catch up to the decade-long evolution of social finance in the UK. And yet, there are glimmers on the horizon. Royal Bank of Canada has established the RBC Generator Fund, a \$10-million pool of capital for investment in businesses that tackle social and environmental challenges while generating a financial return. KPMG has shown leadership on the emergence of impact investing principles

among pension funds and other institutional investors.

Why would an investor dedicate a part of his/her or its portfolio to social impact investment? Well, the best businesses in our country already have elaborate and generous programs devoted to what is known as Corporate Social Responsibility. They are justly proud of directing part of their profits to helping the needy and communities. Why would they not embrace a concept that sees them doing as much, or even greater, good while earning a return, confident in the notion that the return arises out of the basic business principles of the efficient use of resources and the achievement of planned and predictable outcomes, leaving more resources to be allocated to even more good works? ✦

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# Resist the power of the vocal few

*While the benefits of open trade are well established, it's easy for the noisy minority who benefit from protectionism to drown out the best interests of the majority. Martha Hall Findlay calls on politicians to resist the calls of special interests and act for the benefit of the whole.*

## Martha Hall Findlay

*"It is the maxim of every prudent master of a family, never to attempt to make at home what it will cost him more to make than to buy... If a foreign country can supply us with a commodity cheaper than we ourselves can make it, better to buy it of them with some part of the produce of our own industry, employed in a way in which we have some advantage."*

– Adam Smith, 1776

Adam Smith's summary of the benefit of trade between countries applies to our Canadian provinces and territories, too. And after well more than 200 years it bears repeating now, as while certain provincial premiers are showing leadership in moving toward more open inter-provincial trade, others show signs of regressing into greater protectionism. Even as we work toward concluding free trade deals internationally, we're still stumbling at home.

Why is this so difficult? It's easy to point to political leadership (or the lack thereof), but political leadership is often easier said than done. Politicians by their nature respond to what is being said in the public realm -- and we as a society have allowed our public discourse to become too dominated by special interest groups.

The reality is that it is difficult for politicians (and their advisers) not to succumb to the pressure of the vocal few. The economic theories supporting free trade versus protectionism are widely accepted, but there are no special interest groups of economists loudly espousing them -- and when politicians are striving for re-election, practice doesn't always keep up with theory.

We need to remind our political leaders that theirs is a responsibility to the betterment of the whole; at the same time, we need to work at changing the public discourse to make doing so more politically palatable.

A simple example: If a construction company in Manitoba (or France, for that matter) has specific design and construction

expertise that allows it to build a new hospital more cost-effectively than the Ontario alternatives, then Ontario should be able -- indeed, encouraged -- to hire the company that can do the job best at the best price, regardless of where it comes from. The taxpayers of Ontario should be able to get the best new hospital for their money -- and put the money they save to other useful purposes that benefit the community.

Yet Ontario requires companies to have "local knowledge" in order to win contracts for long-term infrastructure projects. The concept was introduced by Dalton McGuinty just before he stepped down. His successor, Premier Kathleen Wynne, now with a majority mandate, has an opportunity to set her own path -- to join other provincial leaders, particularly those in BC, Alberta and Saskatchewan, in opening up inter-provincial trade, including access to this kind of work. Unfortunately, at time of writing,

*Tariffs, quotas, non-tariff barriers in the form of more subtle requirements (such as "local knowledge") in effect take resources away from the wider population in order to give to the much smaller number of owners and workers in the favoured industry.*

indications were that she would instead add to the restrictions.

Proponents of open trade are often painted by special interest groups as being unconcerned for the welfare of locals. Untrue. Tariffs, quotas, non-tariff barriers in the form of more subtle requirements (such as “local knowledge”) in effect take resources away from the wider population in order to give to the much smaller number of owners and workers in the favoured industry – in Ontario’s case a small number of established construction companies and the unions with which they have close ties.

This redistribution of wealth goes the wrong way. Protectionism takes from society as a whole, including those least able to afford it, and gives to a few. And although no one begrudges anyone a livelihood, the apparent benefit to the relatively few working in these enterprises is less than it may appear. Ontario “protection” will only encourage other provinces to “protect” their own – effectively restricting those Ontario companies (and their employees) from expanding. And study after study has shown that the cost to taxpayers of protecting or subsidizing jobs is always a multiple – sometimes a very large multiple – of the wages of the workers thus protected or subsidized.

It simply does not make economic sense, and indeed harms the larger community – yet politicians still succumb. Alan Blinder, Professor of Economics and Public Affairs at Princeton and author of *Hard Heads, Soft Hearts*<sup>1</sup> put it nicely: “Trade protection secures concentrated and highly visible gains for a small minority by imposing diffuse and almost invisible costs on a vast and unknowing majority. That makes protectionism at once economically graceless and politically fetching.”

So how do we get from good policy on opening up interprovincial trade to good political decisions?

Some are using nationalistic language of “We should do this for the country as a whole,” but a vague sense of patriotic selflessness simply won’t succeed. Ontario will not (and arguably should not) open up construction opportunities to non-Ontario enterprises simply because of some feel-good idea that Canadians should be more “Canadian” and spread the wealth around. We need to be loud and clear: the Ontario government should do so because it is in the best economic interests of Ontarians.

We must move the public discourse away from the easier to promote language of protection for a few, to the harder to articulate simply but hugely important language of greater prosperity for the whole. The language of “protection”, of “saving jobs”, of “encouraging local” all sounds good. It pulls at our heartstrings. Small groups can concentrate their messages and effectively create a wider perception of harm. The larger population suffers from



Construction of a children’s hospital in Saskatchewan.

(Photo courtesy the Office of Brad Wall)

protectionist policies, but the effect is more diffuse and harder to fit into easy, heartstring-pulling sound bites. Individuals may not be aware of the negative consequences of protectionism, and even those who do have no focused way to articulate their concern.

Taxpayers, consumers, voters – all should be actively, loudly calling on their governments to source the best infrastructure and the best services at the best prices, regardless of the source – particularly when public purses are increasingly under pressure.

We should be heartened by the leadership being shown by several premiers in this regard – and not just at the provincial or territorial level, but national leadership. Absent action on the part of the federal government to use its constitutional powers to move this forward, we need these provincial and territorial leaders to step up even more, and for those still hesitating, to come off the sidelines. After all, politicians are entrusted with a responsibility to do what’s best for the whole, not just a few, and we must hold them accountable for fulfilling that responsibility. ✦

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All photos: Courtesy of the Office of Brad Wall

## “We Need to Paint More Boldly!”

Brad Wall believes it is past time for more politicians of his generation to recapture the ability to think big.

*Robin Sears profiles Premier Wall, from his formative political years as a political staffer – where some hard lessons were learned during the Devine years – through to his remarkable successes as premier. Sears finds a dynamic man who embodies Saskatchewan’s “ambition gene” and who believes it’s past time for more politicians of his generation to recapture the ability to think big. Ranking Brad Wall as the province’s third greatest orator, behind Tommy Douglas and John Diefenbaker, Sears wonders whether Saskatchewan’s premier might one day deliver a Canadian first by succeeding as a party leader at the federal level.*

### **Robin V. Sears**

Saskatchewan *is* different.

An improbable province, the only one with no natural boundaries, created merely by invisible lines of latitude and longitude sketched on rough maps by bureaucrats a hundred years ago, flat for hundreds of miles in every direction until you near

Saskatoon; with a stagnant and aging population, Saskatchewan in recent years sometimes appeared to be on an irreversible slide to irrelevance.

And yet the fewer than three percent of Canadians who live in this tough landlocked terrain have always had big ambitions –

*Brad Wall's sensible low-key grassroots political style would be a tough sell in Alberta, but Ralph Klein would never have risen above local TV guy in Saskatchewan.*

big dreams from the post-Depression era on, that caused more sophisticated observers in larger places to snicker at the delusions of dirt-poor farmers.

The central Canadian media's lazy shorthand that Saskatchewan is one of "Canada's three Prairie provinces" is unhelpful and mostly wrong. It is a club they are members of merely by geography not by either shared history or culture. There aren't three Prairie provinces in any event, as the plains only form small parts of each. Manitobans are the quintessentially moderate and modest Canadians. Albertans swing wildly between boom and bust, between "normal" prairie protest – the United Farmers of Alberta had cousins in several provinces – and lunatic visions like Social Credit, between iconic statesmen like Peter Lougheed... and, well, Ralph.

Saskatchewan's big ambition could hardly be Manitoba modest, but its Ukrainian, Nordic and Celtic roots also meant it was never going to be Alberta boastful. It sometimes swung left and then right, but never to ridiculous. Brad Wall's sensible low-key grassroots political style would be a tough sell in Alberta, but Ralph Klein would never have risen above local TV guy in Saskatchewan.

Rescued from the brink of sovereign bankruptcy at the end of the Second World War, their short, loud and bellicose new premier insisted that they "Dream no small dreams!" Tommy Douglas, a bantam-weight boxer, and a figure of ridicule to many, helped inject this determination to aim high into the Saskatchewan DNA. His successor today carries the same mission, now bolstered by the province's half a century of success defying critics of their prairie pride.

Asked what it is in the water in Saskatchewan that has led generation after generation, leader after leader, to command national attention with big bold political dreams, Premier Brad Wall laughs. "Who knows," he muses, "Climate maybe, survival

in the tough early days, pride in our having done it..." He drifts off, before chuckling again at the memory of a favourite story he tells about his part of southern Saskatchewan, a parable that neatly captures his people's sense of irony and quiet confidence.

An English colonial bureaucrat, Colonel John Palliser was surveying the settlement potential of the vast prairie. Coming to what is now known as the "Palliser Triangle," his grim account to London was, "No one should have to live here..." Wall chuckles and says, "So now we name highways, schools and parks after the guy!"

This ease with over-reaching is part of Saskatchewan culture. It is amusing to imagine, for example, the astonishment that must have greeted the Tommy Douglas telegram to George Cadbury urging him to come to Regina to help advise his new social democratic government – the first ever elected in North America. Cadbury was the multi-millionaire heir to the chocolate fortune and a noted social democratic adviser to British Labour.

He'd probably never heard of Saskatchewan before the stunning result of the 1944 election. But he came.

Saskatchewan rallied leading surgeons and medical researchers to help establish the first publicly funded hospital system in North America. Pioneers in psychiatry and the use of psychedelic treatment came in the 50s. Timothy Leary won greater fame, but it was a group of Saskatchewan doctors led by an imported Brit, Humphry Osmond who did world-leading work on the use of psychedelic drugs to treat serious mental illness beginning in the early 50s. And the battle to create medicare in the 60s attracted doctors from across the Commonwealth.

The list of Saskatchewan firsts is almost embarrassingly long: Cobalt-60 medical treatment, debit cards, pioneering mining techniques for potash in the 70s and developing the richest uranium mines in the world in the 80s, and on and on. Each wave of innovation helped Saskatchewan buck the volatile price cycles for wheat and an array of agricultural exports. Delivering on these big dreams meant attracting dozens of top management teams and billions in investment to Saskatchewan year after year.

Premier Wall is proud to reel off his firsts, with special pride reserved for the launch of the world's first operating carbon capture, clean coal generator this year, a decade long struggle that was written off by experts from beginning to end. He has helped to transform the province from an economic might-have-been to a determined global player.

Brad Wall carries the Saskatchewan ambition gene, and says in some frustration that it is past time for more politicians of his generation to recapture the ability to think big. He puts it elegantly, "We need to paint more boldly."

Swift Current sits in the southwestern corner of the province, about 150 kilometres from both the U.S. and Alberta borders. Wall grew up there, worked there between political chapters, has represented it since 1999, and does the three hour drive to his home there from Regina at least weekly, sometimes daily. To describe him as a native son does not do justice to the depth of his roots. The town and the region have typically been a more conservative and Conservative part of Saskatchewan. So his political landing is not surprising.

He describes his political awakening as the night he came home to find his normally reticent Mennonite father cursing the prime minister on television. He sat down to find out what had

*Tommy Douglas, a bantam-weight boxer, and a figure of ridicule to many, helped inject this determination to aim high into the Saskatchewan DNA. His successor today carries the same mission, now bolstered by the province's half a century of success defying critics of their prairie pride.*

led to the angry outburst. He was not yet ten. It was in the days of Trudeau's Anti-Inflation Board, an interventionist policy not likely to appeal to a conservative Saskatchewan farmer. He got an earful, he recalls.

He maintains his deep local roots. His grade six teacher, Dave Spencer, "still a good friend" fanned the political spark in Wall. It was at Fairview P.S. He still lives around the corner from the local school with his wife Tami. A couple of years later it was a trip to Disneyland that introduced him to Lincoln and to powerful political oratory.

From that traditional beginning, Wall followed the well-trodden path of many political neophytes before him: high school student politics, more political battles while he was doing his degree in politics and public administration at the University of Saskatchewan in Saskatoon, a stint as a young staffer to obscure Tory backbench MP Jeff Wilson in Ottawa, then return home and to political activism in the community as the "Vice-Chair for Western Canada, The Alliance for the Future of Young Canadians," his role in a self-created group of young free-trade enthusiasts.

He was rudely pushed off his comfortable path to political glory while still in his twenties, however.

Wall had been recruited into the second term Grant Devine government as an assistant to Graham Taylor, a senior minister. His next stint, as an aide to former Mountie, Minister John Gerich, changed his life and temporarily ended his political career. It also helped him re-anchor a moral compass that had gotten perhaps a little wobbly.

Gerich was among those 13 Devine MLAs, ministers and staffers caught up in a series of expense and fraudulent claims scandals. He was sentenced to two years in jail, a stunning sentence and outcome by the standards of Canadian political scandals. Wall admitted years later he had participated in some activities as a young staffer of which he was not proud, including drinking taxpayer-paid booze on the job, and making crude comments about opponents.

As a loyal political staffer who had sweated blood for his government, as ambitious young activists are expected to do, he had a ringside seat for the self-destruction of the Devine regime, crippled by this welter of corruption accusations and bitterness. It was clearly wounding. He also reacted with horror at the debts and deficits that the Devine ministry left the province. That spring he had been rejected by his own hometown for the PC nomination. Nonetheless, he battled throughout the summer and fall in the hopeless Devine re-election campaign.

For a 26 year-old Mennonite from small town south Saskatchewan the whole experience must have been wrenching. Asked why he then took many years away from politics, Wall downplays the impact of those embarrassments and defeats. "I was disheartened a little, with politics, I suppose," he says slowly. "Grant Devine was very charismatic, I was committed to our government." After a pause he adds, "The charges, the scandal...they stayed with me. They were powerful lessons."

"You know, the government did many good things" he adds, "but they were all cast into shadow. I learned two important lessons: your political integrity is just white or black; there are

no shades of grey. You show that you know your probity is all... or,” and then doesn't deliver the gloomy conclusion. “And,” he concludes earnestly, “Deficits are like the Frito-Lay slogan, ‘Bet you can't stop at one!’ is right. You can't.”

That it was painful is perhaps best publicly revealed by the absence of any details of his Devine years in his official bio. His emotional recall of those painful months, now more than 20 years ago, is a further clue. But he is one of those political survivors who learns from the scars, and puts their lessons to good use. His tough stance on personal integrity for everyone in his government today, and his consistent fiscal discipline have become part of his brand.

Wall heralds the fiscal legacy of the Douglas and Blakeney years, and says he was embarrassed at the mess that Roy Romanow inherited from Devine as his successor. He quickly adds though, that the current Saskatchewan NDP has lost touch with “their own tradition of fiscal credibility, promising to spend billions in the last campaign.” It was an election that he clobbered them in, winning almost two out of three votes and 49 out of 58 seats in 2011. Despite a roller coaster of revenue totals since his first election as premier in 2007, Wall has delivered consistently balanced budgets.

Following Devine's humiliating defeat, Wall left Regina a chastened political player and retreated to his sanctuary, Swift Current. One would not want to have been Brad Wall, trying to explain the Devine disaster at the dinner table with his stern Mennonite dad that winter. But within days he showed up in the mayor's office and said he wanted to be named the city's Economic Development Director. He was already a charismatic personality, persuasive in private, a confident interview on television, and a compelling public speaker. He got the job.

Over the next seven years he pushed his city of fewer than 15,000 residents to the top of the small business attraction tables, winning the title of Saskatchewan “economic developer of the year.” He set up his own private consulting firm, after the collapse of a small business venture. But his determination to climb back on the political train never really faded. He stayed in touch with political friends and colleagues, played a backroom role in the creation of the Saskatchewan Party in 1997, out of the ashes of the Saskatchewan Liberal and Conservative forces, and won the Swift Current nomination in 1999.

In its first run, the new party almost ousted the Romanow government, winning 25 seats. But it was hobbled by the memory of the Devine debacle. Its leader Elwin Hermanson, a Full Gospel College graduate, was a farmer from the village of Beechy, and no match for Roy Romanow. In the next round, the NDP trapped Hermanson into conceding he might sell off the province's Crown

corporations – another reminder of the Devine years. He lost again and quit as leader within days.

Wall digested the lessons of these frustrating political chapters well. He had watched the Mulroney government snatch its 1988 victory from defeat as a former staffer – only to see it explode into bitter fragments over the next five years. He had seen Devine go from Conservative star premier to a has-been so disgraced he was prohibited from seeking a party nomination. And he had endured 13 frustrating years, observing his friends fumble in opposition in Regina. He was not going to repeat those mistakes.

He was chosen unanimously as the party's new leader in 2004. Within months he moved quickly to ensure that the party



*Brad Wall carries the Saskatchewan ambition gene, and says in some frustration that it is past time for more politicians of his generation to recapture the ability to think big.*

could re-assemble the original Devine base, of conservative small town and city supporters with frustrated Saskatchewan farmers. He dragged the new party away from its hard-core Reform Party roots, and from its rural base into a contender for the majority of Saskatchewan voters – city folks.

Gone were weird promises to create “boot camps” for meth addicts; in came more progressive policies on health, justice and youth unemployment. He issued detailed economic and social policy platforms and climbed steadily in popularity, leading the party to a 38 seat victory in 2007.

Saskatchewan has served up dozens of great politicians and public servants to Canada. Tommy Shoyama ran the Finance department in Ottawa in its glory years, Al Johnson was the president of the CBC during its last golden years, and Wayne Wouters has just stepped down as Clerk of the Privy Council, among many others. And then there are the political giants from

Jimmy Gardiner to Douglas, Blakeney, and Romanow.

But its list of great orators is surprisingly short: Douglas and Dief.

Premier Wall cannot yet be counted among the political giants, but his position as Saskatchewan's third greatest orator is already secure. Funny, with a sense of timing that would stand a late night TV host in good stead, Wall has wowed many a surprised crowd. From church basement groups to the Ottawa elite at the Public Policy Forum dinner, to the Bilderberg Conference last summer, Wall has developed his speaking chops well.

At the Forum dinner, to a tough audience of more than a thousand well-oiled politicians, bureaucrats, journalists and lobbyists, Wall brought the house down. In between serious respectful anecdotes about the dinner's honourees and famous guests, he slid a series of side-splitting one-liners and tales. He has that rare political gift of knowing how far to push an edgy joke, and how to use self-deprecation to win an audience's heart.

"We Mennonites," he began, apropos of nothing, causing a few eyebrows to rise, "well we have a reputation for... [long pause]...knowing the value of a dollar." Relief in the audience, he wasn't going to do an off-colour Ralph Klein joke. Another pause, and then, "We are also known for how seriously we are admonished from having sex standing up" -- nervous gasps -- "because it may lead to dancing." Nervous titters followed by gales of laughter.

Speaking to a business audience, he can reel off a tedious list of Saskatchewan farm export numbers, job creation stats, economic achievement brags, and then end by saying, "But, for me that just isn't good enough." Shifting gear he recites how badly Canada is doing in trade with India, China and Indonesia, using more anecdotes and stats to pound home his "big dreams" message. He pushed the Harper government hard on opening India and China to Saskatchewan uranium exports and says with evident pride that the first tanker load "arrived in Shanghai last fall." He has formed a personal Asian advisory council made up of prominent Canadians -- something that doesn't exist in Ottawa or Toronto.

He signalled his determination not be seen simply as a loyal Harperite in the boonies early on. He has openly clashed with his Ottawa cousins over Senate reform, drugs and drug pricing, and on the emotional tripwire of murdered and missing aboriginal women.

But it was a ham-fisted effort to acquire a huge chunk of Saskatchewan potash assets that pushed Wall onto the national stage and established his credentials as an opponent you want to tangle with very carefully. Late in the summer of 2010, a year before both Wall and Harper's next campaign rounds, an attempt

to buy the assets of the Potash Corporation of Saskatchewan by the Australian/UK mining giant BHP Billiton was leaked to international business media.

This was a big deal by any definition -- nearly \$40 billion dollars and control of the largest single chunk of potash production in the world. It was also astonishingly badly executed by the prospective acquirer. A global giant -- but one who should have known better, rooted as it was in a federal state whose regional politics are the closest to Canada's of any in the world -- BHP engaged British and American financial and legal advisers to lead the deal. They counselled that the deal was a slam-dunk if Ottawa approved, and Ottawa would have to. There was no need to worry about Saskatchewan's support.

This dim-brained understanding of Canadian political realities was resisted by the tier of Canadian lawyers and lobbyists later brought onto the deal team, but neither the client nor its big New York law firm were listening.

While the client should have known better, and could have behaved differently, in the end it was the foreign advisers who gave very bad advice and killed the deal.

Recall Wall's deep immersion in the history and political life of his highly political province. He was a teen political activist when Alan Blakeney engineered the takeover of the province's potash industry to wide acclaim. He was a proud young staffer when Grant Devine successfully privatized it. It is hard to over-estimate the political power that this fertilizer component has in Saskatchewan.

*In the days following the dramatic BHP bid, Wall demonstrated his keen awareness of its career-ending potential. Perhaps most revealing of his political skill, however, was his quiet outreach to non-Conservative and non-Saskatchewan elders for their counsel.*



To a community forever economically battered as an agricultural price taker, potash is almost as iconic as oil is to Alberta. It not only provides an important chunk of today's revenues and jobs; it is a guarantee for the future in a province that had never before had one. When PCS was created they offered regular mine tours to locals and important visitors. The pride and emotion on the faces of aging farmers as they bounced for miles underground in the mines' vast chambers spoke volumes.

In the days following the dramatic BHP bid, Wall demonstrated his keen awareness of its career-ending potential. Perhaps most revealing of his political skill, however, was his quiet outreach to non-Conservative and non-Saskatchewan elders for their counsel.

The media reaction to the bid had been universally positive, with an instant assurance from the politically bone-headed business media analysts that the deal "Had to be approved!" Harper's was a pro-business, free-trade government, Australia was a friendly investor, the world was watching, etc. In Saskatchewan, the NDP and others to the left of the Wall government screamed blue murder about squandering the province's patrimony.

Apart from not calling Premier Wall to give him a heads up about the coming transaction – an obligatory protocol in large M&A deals – BHP did not arrange a CEO visit to the province – another must-do - until nearly six weeks after their launch. But the death knell was its authors' "too cute by half" claims about its financial impacts on the province.

The Saskatchewan government's finance department has been famous for half a century as being among the smartest and toughest in the country. If there is one iron rule in the high stakes world of large M&A transactions it is that you don't tell fibs to government officials, especially ones that are not credible even in the telling. BHP had seriously understated the potential tax revenue loss of

the transaction to Saskatchewan in their briefing of officials.

None of this was publicly known and BHP and their government relations advocates kept up the drum beat for the deal's quick approval. Wall, meanwhile, made several key phone calls. He reached out to former NDP Premier Roy Romanow and bluntly and candidly ran down the challenges with him. Romanow was quick to offer to help, and reinforced Wall's instinctive caution about the magnitude of his decision.

He also called former Alberta premier, Peter Lougheed, one of Canada's few living genuine statesmen. Lougheed is one of the pioneers in Canadian politics to understand that resource extraction must deliver citizens their future economic security. With Alan Blakeney, he was among the most battle-scarred warriors, in fighting Ottawa politicians and Bay Street money men on the issue of "who gets what share" when resource revenues are surging.

Despite being separated by a generation, and from provinces with very different political cultures, Wall and Lougheed were perfectly aligned in how they saw both the political and economic challenge.

Playing the role of mentor, when Wall asked what factors should influence his decision, Lougheed said, "Brad, who owns the potash?" Like the smart under-study he has been since school days, Wall responded immediately, "Well, the people of Saskatchewan, Premier?" "That's right, Brad. You remember that when you're deciding and you'll be fine," the sage of Canadian resource revenue battles responded, "Don't forget that."

The battle raged for weeks, mostly behind the scenes in Ottawa, Toronto, Regina and Australia. The loyalty of the entirely Conservative federal Saskatchewan caucus was key. Wall signalled quietly that they should be careful to follow his lead. Some media pundits suggested that if the deal went ahead half of the 14 MPs



Premier Wall talking to the media after touring flood damage in Melville and Carnduff, Saskatchewan, July 2014.

would lose their seats in the looming 2011 campaign.

One of the products of his consultations with Lougheed and Romanow and others was the decision to retain powerful legal and financial analysts as advisers. The Toronto accounting firm asked to examine the deal had come back with a clear rebuttal of BHP's claims about revenue impact. Wall was reportedly furious.

Wall's initial reaction when being informed of the deal by BHP advisers had been at best ambivalent. His soundings had persuaded him increasingly that the transaction was fraught with political and fiscal risk for the province.

Wall stunned his staff and colleagues in one of their final pre-decision brainstorming sessions. As good staff and officials do, they had inferred where their boss wanted to land, and prepared a variety of options for getting there. They had a long list of conditions essential for Saskatchewan's approval of the deal. They laid a clear path to get to "yes" as safely as possible, politically. He listened carefully and then said, "And what if the answer is 'No?'" He chuckles at the memory of the consternation he caused.

Wall has never previously disclosed one fascinating 'might-have-been' that emerged during the battle. He knew that if he had the endorsement of veterans of previous battles over resource revenue, he would be impregnable politically. He also knew that Saskatchewan voters had strong views about the deal and wanted to be heard. And perhaps he wanted to use the transaction as a means of putting a Wall stamp on the second most powerful political issue in the Canadian federation: "Who controls resource

development, and who gets the largest share of the benefits?"

He asked Lougheed and Romanow if they would be willing to be a two-man commission, conducting hearings across the province, then quickly reporting on the specific deal issues and offering guidelines on similar transactions for the future. It would have been a political masterstroke, confounding the NDP, Ottawa and the deal-makers instantly. The two statesmen, one from each tribe, endorsing the Wall approach to this eternal struggle would have been untrumpable.

Sadly, hours before he was to announce the plan, the former Alberta premier informed Wall that his law firm was concerned about conflict if he agreed to the role. Romanow told him that a one-man commission would hardly be useful. The idea was dropped.

If it had gone ahead, a Lougheed-Romanow commission's recommendations on the essentials for acceptable foreign investment in the Canadian resource sector would have been powerful. Even today, as he recalls the stillborn plan, Wall's regret at not having been able to launch such a potentially game-changing gambit is clear.

From there the endgame emerged rapidly. Wall said no, Ottawa fell in line politically, and BHP withdrew. The outcome of this fascinating struggle has been deliciously ironic. BHP fired its CEO and their new team came back and made a successful investment in Saskatchewan potash. They have become poster boys for smart successful foreign investors. The Potash Corporation, having been

*Asked about that undeniable signal of Canadian federal political ambition, studying French, he claims that he has loved studying language since his school days – where he did pursue French for many years. He does not cite his more recent hours of immersion.*

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elevated to iconic status as symbols of all that was good about the Saskatchewan approach to resource development, tried to slide out of some of their commitments to investment, employment and community support, and landed in the doghouse. Wall has since brought them once again to heel.

Wall then went from triumph to triumph, winning a landslide victory in the 2011 campaign, decimating the NDP more thoroughly than any competitor in a generation. Any grumbles from the Harper inner circle about his ‘getting off the ranch’ politically were silenced despite his regular differences with Ottawa. He pushed hard on the importance of doing more in China. He travelled to India and South East Asia and began to regularly insert in his speeches how important those markets were to Saskatchewan prosperity. All of which has caused political insiders to muse increasingly publicly about what’s next for Premier Wall.

As any seasoned political pro would do, Wall instantly, but mildly dismisses speculation about higher office. “I have the best job in Canada,” he frequently claims. Asked about that undeniable signal of Canadian federal political ambition, studying French, he claims that he has loved studying language since his school days – where he did pursue French for many years. He does not cite his more recent hours of immersion.

One of the curses of Canadian politics that no one has been able to break, from Confederation days until now, is that premiers cannot make it to 24 Sussex. From Tommy Douglas to Bob Stanfield to Bob Rae, it is one of those strange rules of Canadian politics that voters will never endorse promotion from province to prime minister. It has no logic and it defies the practice of most democracies, where demonstrated government leadership experience is the key to higher office. Many of the most successful American presidents first demonstrated they knew how to manage

the public fisc at the state level. No one knows better the strains of our impossibly complex federal-provincial division of powers than a good premier.

Premier Wall will likely face his voters again in 2016, a few months after the next federal election. Even if he were to be re-elected in 2015, most observers believe that Stephen Harper is likely to hand over to a successor during the next Parliament. If he were to be defeated his departure would come much sooner. The Harper succession bench is deep. There are several capable and popular cabinet ministers already getting their leadership campaign ducks in a row.

But.

The Canadian Conservatives will face a serious family problem in choosing their next star. Many traditional Progressive Conservatives, in Quebec, Atlantic Canada and Ontario are increasingly grumpy about their marginalization by the Harperites. Party activists young and old know that the hard-edge, wedge politics so masterfully deployed during their decade of dominance in federal politics has also bequeathed a bitter legacy. The Conservatives cannot today be dismissed with the traditional slap as “the stupid party.” But the contemporary epithet is that they have become “the party of meanies” - a distinctly un-Canadian political brand identity.

Protecting the Western base, especially in the event of a defeat in 2015, will be an essential task for the next leader. Demonstrating for the first time since Brian Mulroney’s departure that the Conservatives understand and care about Quebec will be another. A strong national network based on many years of developing deep relationships with other premiers – even some like PEI Premier Robert Ghiz, from different clans – would be very helpful. A reputation for successful fiscal discipline and economic success, hardwired to a compassionate social justice record, would complete a powerful post-Harper package.

If that package came in the form of a powerful political orator, bilingual with a comfortable contemporary personal style, and an ability to tell funny compelling stories with the punch of a Jean Chrétien or a Tommy Douglas or a Brian Mulroney at their height, well....

So as a leader from the province of firsts, the community of Canadians always comfortable aiming high and dreaming big, maybe Brad Wall will be the one to break the curse... and deliver another Canadian first. ✱

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*Contributing writer* **Robin V. Sears**, a former national director of the NDP, is a principal of the Earncliffe Strategy Group.

# Reducing red tape will make it easier for small firms to conduct internal trade

*Monique Moreau, of the Canadian Federation of Independent Business, draws on a recent membership survey to comment on the effect of red tape on small businesses in Canada. Moreau suggests that reforms are long overdue and calls for a more ambitious target for concluding negotiations on the renewal of the Agreement on Internal Trade.*

## *Monique Moreau*

The expression “red tape” refers to any unnecessary or redundant regulation that hinders productivity. The origin of the expression can be traced as far back as the 16th century, when many official Vatican and royal court documents were sealed in red tape. This tradition of using red tape on official government correspondence continued throughout the ages, leading to an association between red tape and regulations. This association was then popularized by British satirists like Charles Dickens and Thomas Carlyle, who used “red tape” as a short-hand reference for unnecessary laws passed by the British Parliament. Red tape had by then become symbolic of over-regulation and bureaucracy in the government.

Today, the phrase evokes a variety of frustrations, including complying with rules that make no sense or deliver little benefit and much cost; wasting time waiting in line to get a form approved or on the telephone waiting for advice; wading through complicated language to try to figure out compliance obligations; filling out cumbersome, unnecessary paperwork; and suffering the uncertainty and delays that can come with waiting for permit or license approvals.

The CFIB regularly surveys our 109,000 small businesses members on their top priorities. Reducing red tape has consistently been their second highest priority: the only issue of higher concern is the total tax burden (see Figure 1). While reducing red tape has been a clear priority for business, until recently it has not been a priority for most governments in this country, likely because it has been invisible to most Canadians. However, red tape is clearly visible to businesses, which have to comply with a plethora of rules from multiple levels of government.

Small business owners in Canada know that some regulations have positive impacts (e.g., supporting efficient and effective

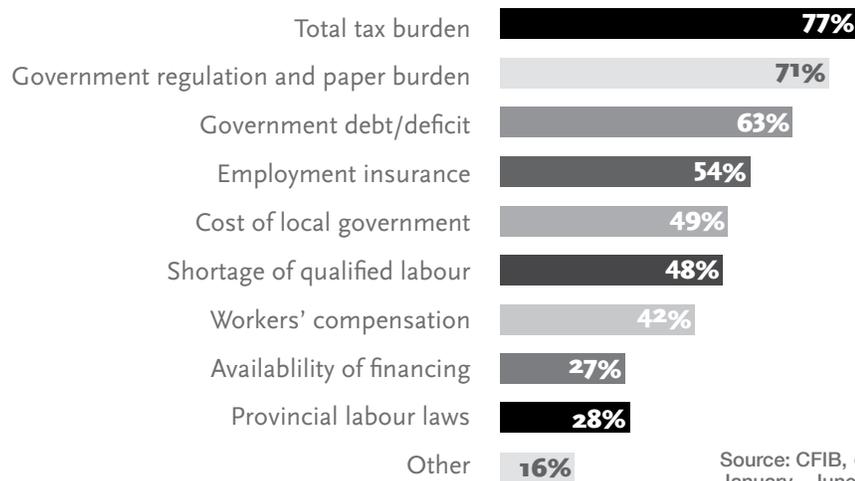
markets, providing business and consumer protection). They deal with these regulations daily and have no objection to rules that are needed and administered fairly. Too much regulation, however, can turn into something regressive and destructive: red tape.

Just as exporting to other countries is an important economic driver, it is vital that small businesses across the country have fair and open access to markets within Canada. While there is a tendency in academic and other circles to think primarily about prohibitive trade barriers, our members tell us that many of the barriers they face are “red tape” barriers such as the lack of mutual recognition of standards and certifications, the need to register separately with authorities in different jurisdictions, and the need to properly understand complex rules that differ in each jurisdiction. All present a productivity drain for small firms and damage our economic performance.

*Just as exporting to other countries is an important economic driver, it is vital that small businesses across the country have fair and open access to markets within Canada.*

(Figure 1)

## The most important issues facing Canadian small businesses



Source: CFIB, *Our Members' Opinions Survey*, January - June 2014, 22,469 responses.

Small businesses that have overcome significant barriers to trading across provincial barriers make up a vital and growing segment of the economy. It is vital that their needs are at the centre of discussions to update the Agreement on Internal Trade or any free trade deals between provinces and territories.

When it comes to internal trade, CFIB research shows that small businesses are most likely to trade with partners within their own region or a neighboring region. There are, however, some exceptions. Half of businesses from Newfoundland that trade do so with Alberta. Nearly half of Nova Scotia businesses are trading with Alberta. Over a third of businesses in Quebec are also trading with British Columbia and Alberta.

For those small businesses that do trade internally, regulatory and administrative barriers, in their various forms, are the most prominent barriers to trade, especially for the smallest of small businesses. The expenses associated with trade, whether it is shipping costs or paying for different permits and licenses were also a significant challenge for businesses currently trading.

While some small businesses do not trade because their product or service is simply not exportable, for others, trading outside of their own provinces is simply too expensive, taxation rules are too complex, and the paperwork is too burdensome. A good example is first aid kits, whose contents are different in every province, requiring business owners to purchase different kits within each province and first aid kit providers to comply with different regulations per province. Even a local microbrewery has

shared that it is easier to sell into the United States than into a neighbouring province. These are only some of the barriers faced by small business owners wishing to do business in a different province. Red tape gets in the way, so they do not trade at all, which is an outcome we need to change by renewing and rebuilding the Agreement on Internal Trade.

While the announcement of a steering committee to lead the renewal of the Agreement on Internal Trade was an encouraging first step, the 2016 target for concluding negotiations is not ambitious enough for Canadian businesses. To the detriment of the economy, progress on this file has been quite limited in most jurisdictions. Reforms are long overdue. It is imperative that the provinces move forward with meaningful action quickly. CFIB will soon be publishing a report containing the bigger picture about how small businesses in Canada are trading with each other, and who they are trading with. It will also reveal in greater detail what governments at all levels can do to remove restrictive red tape and encourage trade within Canada at a time when it might very well be easier to do trade internationally. We hope that our recommendations and the challenges experienced by small- and medium-sized businesses will help to inform constructive reforms that will reduce and remove trade barriers within Canada. ✦

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**Monique Moreau** is Director, National Affairs, at the Canadian Federation of Independent Business. CFIB represents 109,000 small- and medium-sized business owners in Canada.

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# What has gone wrong on interprovincial trade

*Distrust, competing regional loyalties and lack of national leadership all contributed to the failure of the Agreement on Internal Trade. Canadians need to maximize the potential for doing business among ourselves if we are to compete globally.*

***Anna Maria Magnifico***

I have no doubt most of the original drafters of the *Agreement on Internal Trade* (AIT) in 1994, not to mention the founders of Confederation, were strongly committed to the goal of creating a single, unified, open economic union within Canada which could better compete globally. At the time I was working outside Canada and was unaware of the AIT until recruited as its Executive Director in late 2004, tasked with implementing an agreement by First Ministers to liberalize interprovincial trade. But working with both Ontario and Manitoba offices in Europe, I learned first-hand of the various barriers in the Canadian economy through the eyes of foreign firms – savvy investors who do their homework and are aware of the multiplicity of laws, regulations and policies across Canada.

As an international trade jurist, I embraced the AIT and devoted all my talents and energy to making it succeed. I viewed the AIT as the very essence of the Canadian economic union with the aim of improving conditions for doing business within Canada and enabling both white collar and blue collar workers, once certified, to live and work in any part of the country – moreover, that freer movement of goods, services, capital and peoples results in more wealth generation and income distribution with a consequent sense of greater economic and social justice inside Canada. At the same time, I also understood that a single united open Canadian economy made for a strong competitive position in the global marketplace.

In my experience, the term “internal trade” remains unclear

to the public and often confused with international trade, so I much prefer and use the term “interprovincial trade”.

As a principal “insider” for nearly eight years, I maintain that however flawed the AIT, what has always been most needed is for all parties to respect their obligations under the existing accord, including enforcement of panel dispute reports.

Certain anomalies do exist: for instance, Nunavut is still not a signatory to the AIT – how a member of the Canadian political union is not a member of the economic union is strange to say the least, especially when Nunavut is very much at the international trade table.

Also, the consensus rule for decision-making is not based on true consensus – when parties interpret/practise consensus as unanimity, and not general agreement, small wonder decisions are almost impossible to reach.

The single party chairmanship of the Committee on Internal Trade (CIT) happened rather by accident at a CIT meeting in late 2004 – dual CIT chairmanship by the federal government and rotating provincial/territorial (PT) government should be restored to pre-2005 status.

Finally, there are far too many exclusions and party exceptions under the AIT.

That said, I recall early on in my tenure presenting to both the OECD/IMF that, ten years on, the AIT was alive and kicking: there had been some momentum of late – Premiers had launched a new dialogue among themselves and with the federal government, with a renewed commitment by all parties to improving interprovincial trade. There were more meetings/consultations/negotiations – with interprovincial trade on the rise. The higher profile of interprovincial trade in Canada was evident with the designation of the first two Ministers of Internal Trade (Canada/Quebec and later the New Brunswick Premier took on this title) – long-standing panel disputes were being resolved – the dispute resolution enforcement mechanism being strengthened – a new labour mobility chapter was nearing conclusion.

Given that parties are charged with removing barriers that affect business, labour and consumers, taking a best practice from the OECD, I introduced CIT ministerial consultations with key stakeholders in the AIT – a “no brainer” in my view, and although it took three years to persuade officials, it happened in 2007 with the Canadian Chamber of Commerce at the ministerial table. Ministers almost achieved an Energy Chapter – the great gap in the AIT (a blank page literally) – in 2007: only one party objected and even that party said it would not hold up agreement by the other twelve.

But then having taken a few steps forward, it became more and more apparent the commitment and co-operation required for the AIT to succeed withered away – underlying distrust, regional loyalties, even rivalries, not to mention personality clashes among officials surfaced. Deputy Ministers were not very engaged and Premiers/Ministers came and went – middle ranking officials were in charge of the dossier and aggressively asserted their local interests and personal ambitions – seemingly unaccountable.



*It became more and more apparent the commitment and co-operation required for the AIT to succeed withered away – underlying distrust, regional loyalties, even rivalries, not to mention personality clashes among officials surfaced.*

Bilateral accords started to emerge as a result of frustration over the pace of reform. There was a lack of national leadership, on the part of all governments to try to unite parties on the higher collective mission of a single united open Canadian economic market.

Parties started spinning wheels and reforms stalled, bogged down in minutiae and wrangling and unproductive, even acrimonious, marathon conference calls. So much time and precious resources were squandered in failing to make the AIT work in the national economic interest. Indeed I came to regard my post as a post in “international relations” given the rather “sovereign” attitudes and behaviour of virtually all provinces and territories (PTs), and asked myself almost daily: are we not one country?

It was even a struggle to maintain what had been envisioned as a permanent consultative process with external stakeholders at Ministerial meetings: Ministers liked the practice – officials not so much!

Complicating this picture was that parties became distracted

by various bilateral international trade negotiations launched by Ottawa. Many of the same officials, especially of smaller PTs had their energies stretched and diverted to international negotiations which had more allure – AIT played second fiddle.

In my view Provinces and Territories should *not* be at the international negotiating table despite a legitimate need to ensure their interests are fully considered. PTs are not nation-states. As a country we are in a stronger position at the negotiating table when we speak with a single voice – and a strong national government should and must be able to represent and balance regional interests. A relevant best practice is that of the European Union (EU) which developed a formula for negotiating international accords using a dual-headed delegation, representing the Commission as well as the rotating head of the EU Council. This approach translates into a joint federal/Premiers Council Chair delegation at international negotiations.

On the dispute resolution mechanism, despite the huge amount of time invested, it remains cumbersome and now perhaps overly legalized for what is essentially a political accord. It is also not so inclusive, favouring private persons such as associations or firms that have the financial means to file a complaint, versus the individual. Under my watch, the first case filed by an individual against a government went to panel. The individual was successful in his complaint, but his very right to file a complaint can be jeopardized due to lack of financial ability to pay the customary share of panel costs. This said, the enduring weakness of AIT dispute resolution is that, unlike federal quasi-judicial tribunals, panel decisions are not binding.

As to the revised chapter on labour mobility, who would think there could be thirteen different interpretations of a so-called common chapter? As one former Premier was fond of remarking: “a nurse is a nurse is a nurse” – well, not quite: while mutual recognition is the underlying principle, parties have posted a long list of exceptions at the behest of regulatory bodies. Surely the greatest priority at present has to be labour mobility given the chronic shortage of skilled workers across Canada. Some of our companies are underperforming because they cannot get workers in part due to the myriad of differing standards of our regulated professions and trades. Indeed, a former federal Labour Minister called for an “attitudinal adjustment” by many of the self-governing professions in this country.

As a consequence, today we have a deeply fragmented Canadian economic union and marketplace, and it has often been said that it is easier to do business in the EU than in Canada.

Trust has broken down and regional interests carry the day.

The patchwork of regional trade accords that now co-exist alongside the AIT undermine the national accord; they have not yet proved to serve as templates for reform toward a bolder national accord.

Today, Ottawa and the premiers are still talking past each other. The premiers’ communiqué from their meetings this past August speaks of comprehensive renewal of AIT with an update in six months and negotiations on the AIT to be concluded by March 2016. Such pronouncements however do not mask the ongoing interprovincial tension: for example, one province has warned it would retaliate against another on construction procurement bidding. Such language is not helpful – indeed there is a visible west/east divide on several issues (currently the Energy East Pipeline project), manifested also in AIT disputes brought by the west against the east.

Likewise, in its proposal released in August, the federal government speaks of 2017 as target date for reform. Both sides appear to be competing to lead reform. Action plans/targets/timelines – I have seen this movie before.

As stated at the outset, interprovincial and international trade are interconnected. Global markets do present a wealth of opportunity but they are not without risk and Canadian business has shown a lack of entrepreneurial ambition in the past. The very least we must do is maximize our potential for doing business among ourselves if we are to survive and thrive as a single united economic union. We owe our citizens and taxpayers no less. We need to be open for business domestically and globally, and the “horse before the cart” ought to be interprovincial trade.

There is a new initiative at the moment in Canada for a New Partnership with the aboriginal community – likewise we need a New Economic Partnership between Ottawa and provincial and territorial governments. Industry Minister James Moore should seize the moment and host a federal-provincial-territorial meeting as soon as possible to launch negotiations which should be chaired by a non-partisan neutral official as was done for the original AIT negotiations.

The time for baby steps is long past in my view. We need some giant steps forward or Canada as a marketplace, only the combined size of the Benelux nations after all, risks falling even further behind. Time waits for no man – the global economy will not wait for Canada to get its economic act together. ✨

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Photo: www.canadapremiers.ca

Prince Edward Island Premier Robert Ghiz speaks to media at Canada's Premiers 2014 Summer Meeting, August 26-30, 2014 in Charlottetown, Prince Edward Island. From left to right: Manitoba Premier Greg Selinger, Nova Scotia Premier Stephen McNeil, Ontario Premier Kathleen Wynne, Premier Ghiz, Québec Premier Philippe Couillard.

# Internal Charade: The provinces are the problem, not the solution, to internal trade barriers in Canada

*Macdonald-Laurier Institute Managing Director Brian Lee Crowley writes that the premiers will never agree to genuine internal free trade. He calls for the creation of a federal charter of economic rights to, in the words of George Brown, one of Canada's founding fathers, "throw down all barriers between the provinces - to make a citizen of one, citizen of the whole."*

## **Brian Lee Crowley**

It all sounds so familiar. Industry Minister James Moore has indicated that the time is ripe to re-open talks with the provinces to sweep away barriers to trade within Canada. He has even published a document to this effect (2014). This is a laudable goal, since such barriers disfigure the Canadian economy and cost us, by my institute's estimates, roughly \$8–10 billion annually (Crowley, Knox, and Robson 2010).

In fact the real figure is almost certainly higher than that,

since one of the greatest costs of these barriers is the uncertainty they create. Even where barriers do not exist today, businesses making investments have to consider whether provinces might tomorrow throw up new barriers to their products and services or subsidize local competitors to nullify the advantage that investing in national-scale facilities might create.

Of course I don't agree that this is primarily an issue of forgone economic growth or lost productivity and it is certainly not a matter of mere federal-provincial relations. In truth the issue is

*Provinces that throw up trade barriers are thus not merely protecting local markets, but are undermining the promise of Confederation, namely that people could buy and sell goods and services and exercise their profession anywhere in the country.*

whether we will honour Canadians' rights to full citizenship in every part of the country, including the right to exercise your trade or profession, buy and sell goods and services, and otherwise be an "economic Canadian" as much as a linguistic, social, or cultural one. It is to this vital issue of national identity and individual rights that we give the unfortunate bureaucratic name of "internal barriers to trade".

If you ask Canadians what they think about these obstacles to full citizenship they often shake their heads over the foolishness of it all, as if it were self-evident that these barriers should not exist. And yet they do, and have done so since our young country first emerged in 1867. It is high time, therefore, that we stop impotently lamenting them and understand why they exist. Without such understanding we will never overthrow them.

The issue isn't the existence of the barriers. Almost every independent observer who has considered them agrees that they are an indefensible drag on the economy. The issue is what to do about them. And here Minister Moore is stepping right into the trap that has defeated all other efforts to fix internal trade.

That trap is to assume that since the provinces have created many of the barriers, the only way to get rid of them is to beg and cajole the provinces to act.

This is the strategy that got us the dead (or at least comatose) letter of the 1994 Agreement on Internal Trade (AIT). That agreement has been so ineffective that despite nearly two decades of effort, the energy chapter is still blank, provinces think nothing of simply flouting trade rulings that do not go their way, and

Nunavut isn't even a signatory.

The fundamental problem with which Ottawa finds it so hard to come to grips is that the provinces have little reason to want to eliminate barriers they have themselves created, whether in beer, wine, transport, electricity, or provincial regulatory enforcers. To do so they must offend powerful local constituencies that lobbied hard for the creation of the barriers, and convince local interests who have prospered under protectionism that they should welcome new competitors because it is good for national consumers. If you doubt the power of such obstacles you have only to see the way Ottawa flees before its own responsibility to tear down barriers that it has itself created, such as marketing boards, supply management, and the Importation of Intoxicating Liquors Act.

What Mr Moore's predecessors consistently failed to understand is that it is Ottawa's job, not the provinces', to eliminate such barriers. Indeed in common with all federations, that was the key logic behind the creation of a Canadian national government. As George Brown, one of the fathers of confederation remarked in a pro-Confederation speech in 1864, "The proposal now before us is to throw down all barriers between the provinces – to make a citizen of one, citizen of the whole."

Something similar happened in the United States when the original Articles of Confederation were replaced by the present constitution in 1789. One of the strongest impetuses for that change was the realisation that a union in which the constituent parts could throw up trade barriers against each other was doomed to failure. Federal units are perforce economic competitors.

The genius of federalism is to allow the creation of a unified national economic space while preserving local social and cultural communities. Unlike the constituent units, the national government derives little benefit from local protectionism, since whatever conduces to national prosperity benefits the national government. Thus the power to regulate trade and commerce is, along with the national defence power, almost universally regarded as the keystone power of federal governments throughout the world.

What makes it worthwhile for local communities to join a federation is at least partly the promise of higher prosperity made possible by larger national markets; but to realize that promise, you must create a nation-building federal government with the power and the will to give all citizens access to opportunity wherever it may be on the national territory.

Provinces that throw up trade barriers are thus not merely protecting local markets, but are undermining the promise of Confederation, namely that people could buy and sell goods and services and exercise their profession anywhere in the country.



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Internal barriers are an attack on the rights of Canadians as well as a bar to prosperity.

That's why I (and others) have been advocating for years that Ottawa abandon the failed strategy of making nice with the provinces in the hopes that they'll do the right thing (Crowley, Knox, and Robson 2010). They won't. It is time that Ottawa took its courage in both hands and used its legitimate power under the Constitution to create a charter of economic rights for Canadians

*It is time that Ottawa took its courage in both hands and used its legitimate power under the Constitution to create a charter of economic rights for Canadians that the courts can enforce. The provinces had their chance with the AIT and they blew it.*

that the courts can enforce. The provinces had their chance with the AIT and they blew it.

In fact since Minister Moore took up the cudgels on behalf of internal trade we have seen that the actions of the provinces have only confirmed everything I have just said about why we cannot look to them to dismantle trade barriers within Canada. Former prime minister Pierre Trudeau used to ask, "Who speaks for Canada?"

Based on their behaviour this past summer, the premiers have answered yet again "Not us."

Remember that protectionism taken on its own terms isn't illogical and trade barriers don't come out of nowhere. They universally arise from politicians' desire to placate powerful local interests at the expense of consumers. A barrier to importing wine or construction workers gives income to local wine producers and carpenters at the cost of higher prices for local consumers who buy those products.

Thus the totally foreseeable reaction of Ontario Premier Kathleen Wynne a couple of months ago to suggestions that internal trade barriers should be torn down: what about Ontario wine producers? And how can I let infrastructure spending in this province benefit construction firms and workers from elsewhere?

Protectionists never get the answer – which is that Ontario wine producers and construction workers will benefit from opportunities opened up in other provinces – because that is an economic answer when the question is a political one: how do I keep the support of powerful local interests who benefit from the status quo?

The premiers are not of one mind on the issue, of course. Saskatchewan Premier Brad Wall emerged as the leading spokesman for the free trading provinces, but his reaction to protectionism among some of his colleagues demonstrated why the provinces are ill-equipped to fix this problem. He threatened a trade war, erecting ever higher barriers to punish provinces who wouldn't play free trade ball. Shades of former prime minister R.B. Bennett's ill-advised promise to use tariffs to blast Canada's way into international markets. This kind of protectionist tit for tat was a key contributor to the Depression of the 1930s.

This may give you some insight into why protectionist provinces love the current approach to removing trade barriers, which reposes on two pillars. First is the idea that no sector is covered by free trade unless everybody agrees it is. That means that the most recalcitrant provinces are in the most powerful negotiating position. If you work by consensus, all you need to block progress is one naysayer.

The second pillar is that the provinces are the ones we should

*Australia during its great productivity push of the last quarter century made a concerted effort to identify and root out barriers to open competition in every industry in every part of the country, including in politically sensitive areas like supply management.*

expect to remove the barriers. That too benefits the recalcitrant premiers because Ottawa, the only government that does not benefit from local provincial preferences, is portrayed as an illegitimate interloper despite its constitutional power over trade and commerce.

Thus when Minister Moore made noises about a possible federal role in moving things along, the Ontario minister responsible for internal trade reacted with the usual stage-managed outrage. Ottawa had no business intruding in a provincial process that was working perfectly well, he fumed. At their annual August jamboree the premiers managed to cobble together a few words on internal trade that sounded vaguely like progress but reeked of yet more prevarication. I'd be willing to bet anything that even that was just a desperate move to prevent momentum moving to Ottawa on the internal trade file, an outcome that would fatally weaken the protectionists.

Of course Ottawa is where leadership on Canadians' economic rights of citizenship belongs. As I've already said it was in part to throw down these barriers that Ottawa was created in 1867. It is why federal governments are universally tasked with creating national economies in the face of local protectionism.

I've already noted one sterling example of a federation from which we might draw inspiration, and that is the United States. If we were looking for another, I'd nominate Australia.

No two countries are alike, of course, and one might argue that Australia's case is unique, or due to unusual circumstance not relevant to Canada, but that seems unlikely. Australia and

Canada have enough characteristics in common (parliamentary government, federalism, colonial history, stable politics and institutions, natural resource wealth, export markets shifting from the US to Asia) that our two countries traditionally look closely at each other's experiments to see how applicable they might be.

Australia during its great productivity push of the last quarter century made a concerted effort to identify and root out barriers to open competition in every industry in every part of the country, including in politically sensitive areas like supply management. Competition was promoted, not for its own sake, but precisely for the benefits it generated for consumers, who enjoyed lower prices, more choice, and a more efficient economy that in turn generated lots of jobs.

That last part was vital, as the new employment in efficient parts of the economy quickly soaked up the workers whose jobs in the old protected industries fell by the wayside. It was this relentless pressure to sweep away old barriers and restrictive practices that made consumers better off and raised Australians' standard of living, not a bunch of interfering bureaucrats armed with gimmicky consumer bills of rights.

As part of this effort Australia's states tried to negotiate away their barriers and finally admitted defeat, whereon the Commonwealth government was asked to do the job. Canberra spoke for Australia. Now it's Ottawa's turn.

Note that the apologists for the status quo reliably trot out a completely predictable diversion when we begin to focus in on the nub of the issue, which is Ottawa's long-term neglect of its constitutional power and moral duty to strike down these barriers.

That is the dodge, "well, after all, how much are these barriers



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really worth? And they don't matter all that much so why pick a fight with the provinces that you may not win?" My view is that trying to fix a number on the cost of existing barriers doesn't just miss the point but it misunderstands the problem. Suppose it was possible to list every provincial rule that raised the price of everything from a bottle of beer to a lawyer to a haircut to an insurance policy, figure out how much every rule raised the price of each, then multiply the relevant dollar figure by the number of beers consumed, lawyers' hours billed, or haircuts or policies issued in that province in a year, and add it all together. To call that result the "total cost" would still undercount badly, even if you got every part of the exercise right.

For one thing, it would leave out the time and effort brewers, lawyers, stylists, and insurers waste filling out unnecessary forms full of baffling fine print. For another, it would omit the things people don't buy because they cost too much and the things entrepreneurs never even try to do because a successful new trans-provincial business might unleash a swarm of provincial bureaucrats determined to stop this assault on local businesses. And it certainly fails to capture the long-term harm: how can anyone claim to measure the cumulative impact of stopping a decade's worth of innovations and improvements before the first one can take place?

We'd also have to count all the regulatory bodies and enforcement mechanisms created in each province to oversee every profession, every insurance policy, every movement of a bottle of wine or beer, most of which we could dispense with if we had uniform national rules, or even just mutual recognition by each province of the others' rules.

Because of the complexity and the dynamic effects of barriers and potential barriers, it is frankly impossible to come up with an estimate of their costs that will not be subject to legitimate criticism by the friends of the status quo. That is why focusing on the methods of estimating the barriers' costs is a classic obfuscation.

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*Not every barrier to trade erected by the provinces can be dismantled by Ottawa...so if Ottawa wants to make a full frontal assault on these barriers, if it wants to vindicate the full economic rights of Canadian citizenship, it needs a carrot as well as a stick.*

No, we cannot stuff a comprehensive list of internal trade barriers and their exact costs into a big computer and get a precise figure out. Yet here is what we can state with confidence: such barriers exist, they leave us all far worse off materially, and the harm compounds with time. And that's enough to justify muscular action.

Now I recognise that not every barrier to trade erected by the provinces can be dismantled by Ottawa even if it uses its undoubted powers under the trade and commerce, under Section 121 of the Constitution, under the labour mobility provisions of the Charter, and under the general grant of power under Peace, Order and Good Government, formidable as these powers likely are. So if Ottawa wants to make a full frontal assault on these barriers, if it wants to vindicate the full economic rights of Canadian citizenship, it needs a carrot as well as a stick. This is where Postmedia columnist Andrew Coyne and I agree that it would be worthwhile for Ottawa to consider offering a shift of tax room to the provinces in exchange for their full participation in a national effort to remove the barriers.

Bottom line: as long as we look to the provinces to solve this problem we'll still be talking about it 100 years from now. It is not lack of political will that prevents a solution, but a failure to understand the incentives that govern the provinces' behaviour. In internal trade, the provinces are the problem and Ottawa is, by and large, the solution. ✪

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# Modernizing Agreement on Internal Trade will spur export growth

*Co-authors Campbell and Kingston, of the Canadian Council of Chief Executives, assert that Canada's patchwork of domestic rules and regulations makes it challenging for firms to expand. Suggesting that a Canadian marketplace free of internal barriers would lead to an increase in exports, they call for leadership from all levels of government to modernize the Agreement on Internal Trade (AIT).*

## ***Ailish Campbell and Brian Kingston***

Canada's long-term prosperity depends on our country's ability to sell goods and services around the globe. An extensive network of free-trade agreements, including the recently announced Canada-European Union Comprehensive Economic and Trade Agreement (CETA), ensures that our companies benefit from preferential access to the world's largest and richest markets. To take advantage of these trade agreements, however, we need companies with the scale and resources to pursue new markets.

The larger the company, the greater the likelihood that it sells outside Canada. In 2010, only one per cent of the small businesses in Canada were exporters. Among large firms, the proportion was 43 per cent. Companies with more than 500 employees represent only 0.2 per cent of Canadian businesses, yet they generate nearly two-thirds of our country's total exports.

How can we help more small and medium-sized enterprises (SMEs) grow into large, successful exporters? We could start by establishing a common Canadian marketplace that is free of

*Research shows that SMEs that trade across Canada – rather than focussing their activities on one province or region – tend to employ more workers, are more innovative and are more likely to export.*

internal barriers. Industry Canada research shows that SMEs that trade across Canada – rather than focussing their activities on one province or region – tend to employ more workers, are more innovative and are more likely to export<sup>1</sup>. Conversely, SMEs that don't do business across provincial boundaries are less likely to grow.

The link is clear. Growth-oriented SMEs trade both within Canada and abroad. We need to create an environment that encourages more fast-growing SMEs to become global champions on the scale of a Bombardier, SNC-Lavalin or Manulife, to name three examples. One of the keys to achieving this is to provide for the free movement of goods, service, people and capital within our own borders.

Canada's patchwork of domestic rules and regulations makes it challenging for firms to expand. How is a company to compete in the United States or Europe if it does not operate in a single market at home?

The outdated Agreement on Internal Trade (AIT) needs to be modernized to reflect the following five principles:

1. The AIT must be as ambitious and comprehensive as any trade agreement Canada has with a foreign country. One way to achieve this is to adopt the “negative list” approach embedded in CETA: all sectors of the economy would be covered by the agreement unless explicitly excluded.

2. The concept of mutual recognition should apply to the full scope of the agreement. Under this concept any product or service produced in one province or territory should be admitted

into the market of any other province or territory unless there is a justified reason for the exemption.

3. We should aim for the highest possible level of regulatory cooperation among provinces and territories. The “comply or explain” approach to regulation would accelerate work on achieving common standards. In addition, the AIT should include a formal mechanism to facilitate regulatory cooperation that allows businesses to participate.

4. The agreement must include an effective and efficient dispute-resolution mechanism. This could be achieved by adopting a domestic equivalent of investor-state dispute settlement and subjecting compliance panel and appellate panel reports and decisions to judicial review.

5. An effective governance structure should be established to manage the economic union and push forward with necessary reforms. Under the current consensus-based decision-making model, any one province or territory can veto or delay important amendments – a recipe for inaction.

While progress has been made in recent years in some areas, more ambition is needed. For example, efforts to strengthen labour mobility provisions have not eliminated significant differences in occupational standards and certification requirements. As a result, it is still harder than it should be for skilled workers to relocate to regions where they are needed. Achieving full labour mobility requires alignment of professional standards, something the provinces and territories have been slow to embrace.

Creating efficient capital markets is the final piece of the puzzle. Canada's antiquated approach to securities regulation is uncoordinated and subject to inconsistent interpretation and enforcement. A pan-Canadian securities regulator would boost competitiveness by eliminating duplication, reducing unnecessary red tape and compliance costs, and enhancing oversight. This would also encourage the growth of innovative SMEs by making it easier for them to access the capital needed to expand.

To succeed internationally, Canadian companies need a strong base of operations at home. Eliminating interprovincial trade restrictions will strengthen the economic union, improve competitiveness and fuel the growth of Canadian companies with the scale and resources to succeed abroad. The time is now for leadership from all levels of government. ✨

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<sup>1</sup> Andrea Pierce, “SME Profile: Interprovincial Trade”, Industry Canada, November 2013

# Rescuing Canada's beer and wine from constitutional abuse

*It shouldn't be up to a New Brunswick man on an ill-fated Quebec booze run to stand up to unconstitutional provincial liquor laws, writes Ian Blue.*

## Ian A. Blue

Pity Gerard Comeau of Tracadie-Sheila, New Brunswick. He was in Quebec one Saturday afternoon and happened to buy some beer and liquor at the SAQ. In an investigative *tour de force*, the RCMP, who just happened to be outside the SAQ, watched him put it in his car, followed him back across the New Brunswick border and charged him with contravening *s. 134(b)* of the New Brunswick *Liquor Control Act*, that is having or keeping liquor not purchased from the New Brunswick Liquor Corporation.

This incident should be of interest and concern to anyone impatient with the barriers against interprovincial liquor sales like *s. 134(b)* that every province has erected. They make no sense to consumers in an age of Internet commerce. Why cannot someone in New Brunswick buy beer and wine in Quebec or order a case of wine from British Columbia or Ontario?

At Mr. Comeau's upcoming trial, the court will likely be told that first, provincial liquor control and *s. 134(b)* are necessary for socially-responsible alcohol consumption, and to keep liquor from those under 18; and, second, that any purchase not from the liquor corporation is deemed an unacceptable loss of provincial revenue.

How could Mr. Comeau respond? He could counter that the social-responsibility rationale does not require restrictions on interprovincial sales, and that, as well, there is professional disagreement that they are necessary to protect provincial revenue<sup>1</sup>.

He also should make a more fundamental point. Restrictions on interprovincial sales of liquor like *s. 134(b)* and provincial liquor monopolies themselves are unconstitutional. Provincial

liquor monopolies are the children of the ninety-year-old federal *Importation of Intoxicating Liquors Act (IILA)* which requires any liquor entering a province to be sold to the provincial corporation<sup>2</sup>. In 1926, this federal law was seen as necessary because Canada's then highest court, the *Judicial Committee of the Privy Council*, had held not once, but twice, that provincial law could not affect *bona fide* transactions in liquor between a person in one province and a person in another<sup>3</sup>. That remains our law today.

He could also point out that the *IILA* itself was unfortunately built on legal quicksand. It ignored section 121 of the *Constitution Act, 1867 (s. 121)* which requires all articles of the growth, produce, or manufacture of any one of the provinces to be admitted free into each of the other provinces. Since wine, beer and liquor are articles of produce or manufacture, they should be admitted into a province free from trade barriers such as *s. 3* of the *IILA*.

He would show that the Supreme Court of Canada (SCC) created the conditions that allowed the *IILA* to be written. In 1921, it had delivered an expedient decision to save a bungled proclamation of a federal law<sup>4</sup>. In doing so it collaterally damaged *s. 121*, profoundly, by restricting it to protecting Canadians only against customs duties at provincial borders. This decision was demonstrably wrong on the *s. 121* point, and Mr. Comeau could observe that ordinary Canadians have been paying the price ever since<sup>5</sup>.

To advance this defence effectively, Mr. Comeau would have to argue that *s. 134 (b)* is a restriction on interprovincial trade in liquor that violates the wider interpretation of *s. 121*<sup>6</sup>

<sup>1</sup> See: Anindya Sen, *The Beer Store, Monopoly Profits and the Potential for Government Revenue: An Economic Analysis*; Anindya Sen, *An Economic Analysis of Increasing Competition in Retail Liquor Sales in Ontario, Part I of a Two-Part Study Conducted for the Ontario Convenience Store Association*; Anindya Sen, *An Empirical Analysis of Beer Price Differentials between Ontario and Quebec, Part II of a Two-Part Study Conducted for the Ontario Convenience Store Association*

<sup>2</sup> *Importation of Intoxicating Liquors Act, RSC 1985, c. I-3, s. 3*

<sup>3</sup> *Ontario v. Attorney General for the Dominion*, [1896] A.C. 348 (J.C.P.C.) (*Local Prohibitions*); *Attorney General of Manitoba v. Manitoba Licence Holders' Association*, 62. [1902] A.C. 73 (J.C.P.C.) (*Manitoba Licence Holders*)

<sup>4</sup> *Gold Seal Ltd. v. Alberta (Attorney General)* (1921), 62 S.C.R. 424

stemming from the analysis above. To attempt this defence would be to embark upon as daunting a quest, and face an opponent as formidable, as in myth or literature.

First, the court would need to be persuaded that *s. 134 (b)* is a colourable attempt by the province to regulate interprovincial trade in liquor. There would be sufficient manoeuvring room that the Crown might escape that argument. Next the Court would need to accept the wider interpretation of *s. 121* and choose not to follow old precedent.

Persuading the court to arrive at these holdings is certainly doable but it would be a very expensive and demanding exercise, even if there was no opposition. But there would be opposition from the Liquor Corporation supported by other provincial corporations, and unfortunately they have limitless resources to fight this issue. Furthermore, if Mr. Comeau were to win, the matter would undoubtedly be appealed all the way to the SCC, and trying to predict what will happen there is entirely speculative.

If however Mr. Comeau does not challenge the constitutionality of *s. 134 (b)*, Canadians are going to continue to be prosecuted and persecuted unconstitutionally for interprovincial liquor purchases.

What should he do? Without big battalions, it is this writer's view that Mr. Comeau should not attempt to fight this charge constitutionally. It seems that paying the fine and getting on with life is the best route for him to follow even if it may not be the right thing to do. In theory, Mr. Comeau should be able to fight this charge in court but, given the resources liquor corporations can mobilize, neither he nor any other individual in Canada has the means to do so successfully.

Until an entity with resources that match those of the liquor corporations is prepared to step up and challenge the constitu-



Photo: Denis Beaumont, Shutterstock

tionality of these antiquated laws, they will be kept in place by the powerful interests that profit from them at the expense of every-day Canadians. These include large wineries and distillers who enjoy a free distribution system provided by the provincial corporations, labour unions which represent corporation employees, the employees themselves, and politicians who tax us through liquor mark-ups without seeking prior legislative approval<sup>7</sup>.

Only a major corporation or consortium of companies armed with a budget and a team of determined counsel will be able to reform Canada's liquor system. Until then, anyone who wants private beer and wine sales or hassle-free interprovincial liquor purchases may receive superficial interest from provincial officials and liquor corporation executives, but little more.

The current liquor regime in Canada suffers from constitutional abuse and needs to be rescued. ✱

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<sup>5</sup> I have told the story of why the SCC was so wrong elsewhere and do not need to repeat it again here. See: Ian A Blue, Q.C., *Free Trade within Canada: Say Goodbye to Gold Seal* (June 15, 2011) MLI; Ian A. Blue, *Long Overdue: A Reappraisal of Section 121 of the Constitution Act, 1867*, (2010), 33 Dalhousie Law Journal No. 2, 161; Ian Blue, *On The Rocks? Section 121 Of The Constitution Act, 1867, And The Constitutionality Of The Importation Of Intoxicating Liquors Act*, (2009) The Advocates Quarterly; Ian Blue, *On The Rocks; The Gold Seal Case: A Surprising Second Look* (2010) 36 The Advocates Quarterly 363;

<sup>6</sup> The wider interpretation of *s. 121* is based on the decision of Rand, J. in *Murphy v. CPR*, [1958] SCR 626 at 641. It is an interpretation of *s. 121* that that prohibits levying customs duties or charges or imposing any restriction that places fetters on, raises impediments to or limits the free flow of Canadian goods across Canada as if provincial boundaries did not exist, prohibits the regulation of the free flow of Canadian goods except in subsidiary features and prohibits the imposition of any obligation on the movement of Canadian goods that in its essence and purpose is related to a provincial boundary.

<sup>7</sup> As they are required to do constitutionally before taxing us. See: *Eurig Estate(Re)*, [1998] 2S.C.R.

# Let's not fall into terrorists' trap

*Benjamin Perrin*

For years, CSIS has been publicly warning us that “lone-wolf” terrorists are one of the biggest threats facing Canada. Since they act alone, driven by an extremist ideological cocktail, they are harder to detect, track, and predict than terrorist groups. These warnings tragically became reality last month. However, our laws are up to the task and we must resist the urge to overreact in the coming days.

The freedoms that Cpl. Nathan Cirillo died honouring at the National War Memorial are the same freedoms that will see us through this brutal awakening. The real threat of terrorism has always been, and will remain, not just the tragic loss of innocent life. That is but a means to an end for terrorists. Their real ambition is to use our fears to trade enhanced security for reduced freedom. They succeed not through their actions, but our reactions. Their goal is a world of authoritarian states – theirs an extremist Islamic state, ours a secular police state. How do we respond to their violence without falling into this trap?

Michael Joseph Zehaf-Bibeau who killed Cpl. Cirillo in Ottawa, and Martin (“Ahmad”) Couture-Rouleau who killed Warrant Officer Patrice Vincent in St-Jean-sur-Richelieu share much in common. Both are reportedly radicalized Canadian citizens who murdered servicemen and planned on travelling abroad. While Couture-Rouleau had his passport seized because authorities considered him to be a “high-risk traveler” who intended to go abroad to engage in terrorism, Zehaf-Bibeau had applied for one and was undergoing an RCMP background check. Both were freely roaming about Canada.

Zehaf-Bibeau and Couture-Rouleau may be home-grown lone-wolves, but they're not isolated cases. The RCMP has disclosed that up to 90 Canadian citizens are being monitored as part of 63 national security investigations. There's a dilemma with seizing their passports: while it stops them from engaging in terrorism abroad, they can simply answer the Islamic State's call to wage terrorism on our soil.

“For every individual that we prevent, every extremist that we prevent from going overseas to engage in extremist activity, is one more individual that we have to investigate closely because they're radicalized to the point that they want to leave,” noted Jeff Yaworski, a CSIS official to a Parliamentary committee.

When dealing with foreign nationals who are at-risk of engaging in terrorism, Canada has a security certificate regime that, since being amended, has been upheld by the Supreme Court of

Canada. It is being used today to keep suspected foreign terrorists detained in our prisons, subject to oversight by the courts. But, it doesn't apply to Canadian citizens.

After the Boston Marathon bombings, in 2013 Parliament created several new crimes including the offence of leaving Canada to engage in acts of terrorism, which would land terror tourists in jail for up to ten years. The *Criminal Code* also provides that where there's a reasonable fear that someone will commit a terrorism offence in Canada, they can be subject to strict conditions, including electronic monitoring, geographic restrictions on their movement, participating in de-radicalization programs, and weapons prohibitions. If such a person refuses to abide by the conditions, they can be imprisoned for up to twelve months. Every effort must be made to put potential home-grown terrorists under these orders or charge them, where the evidence warrants.

A potential major impediment, however, to using these tools is the Supreme Court of Canada decision earlier this year in *Canada (Citizenship and Immigration) v. Harkat*. In that case, the majority ruled that the identity of CSIS human sources is not to be routinely protected. The dissenting judges rightly warned that the majority decision could have a “profound chilling effect” on CSIS's ability to recruit informants, many of whom risk their lives to share vital information to protect us. Fortunately, Public Safety Minister Steven Blaney has recently announced plans to change this through proposed legislation, effectively reversing the majority decision in *Harkat*.

We should remember that we have well-designed terrorism offences that have already successfully prosecuted terrorists before they have been able to cause a massive loss of life as they had planned. Parliament has also renewed extraordinary powers allowing for preventative arrest and investigative hearings of suspected terrorists.

Canada has a robust set of laws to confront terrorism, including this new breed of home-grown, lone-wolf terrorist. The answer of how we respond to the tragic events of last month is about holding fast to our values and freedoms as we adapt and learn from these attacks, which we should be under no illusion are likely to test us again. ✱

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# Ottawa shooting shows that treason isn't going away

*In an Ottawa Citizen op-ed (October 24, 2014), Brian Lee Crowley argued that the events, which resulted in the death of Canadian Forces Cpl. Nathan Cirillo, show that “a tiny disloyal minority” continue to reject the freedoms that Canada stands for. (The text below is a slightly modified version of his op-ed.)*

## *Brian Lee Crowley*

**H**ow could a Canadian do this? That is a question on many minds in the wake of the two recent terror attacks in Ottawa and St-Jean.

But far from being inexplicable, such attacks are part of a phenomenon that every society is familiar with, including ones blessed with liberty, prosperity and the rule of law like Canada and other western democracies.

Treason, after all, is hardly a novel concept.

In the 20th century the west saw much treachery by its own citizens, often, but not exclusively, in the context of the Cold War.

Nor is it just the disaffected who betray their country. Too often it is the educated and privileged who actively seek to harm the society that nurtured them. Think of Burgess and McLean, the Cambridge-educated members of Britain's spy service, who ultimately defected to the Soviet Union after having damaged Britain's safety, caused the death of British agents and undermined the trans-Atlantic security relationship. The famous “Third Man”, the third traitor whose existence was unproven but long suspected, turned out to be Sir Anthony Blunt, a former Oxford don and curator of the Queen's art collection. Not exactly the downtrodden of the East End or Wigan Pier.

Then there were the communist-inspired Red Brigades in Italy, and the Red Army Faction in West Germany, both of which carried out horrific terror attacks against their compatriots. Ditto for many groups in the US, including the Symbionese Liberation Army and far-right Minutemen types, including Timothy McVeigh who bombed a federal building in Oklahoma, killing 168 and wounding hundreds more. And of course all four of the successful assassins of US presidents were themselves Americans.

The Cold War may have given rise to much treachery allegedly inspired by admiration for Communist ideals, but treason was not limited to that conflict. Local spies for Germany were hard at work in allied countries during the Second World War. During the long conflict between Britain and Ireland lots of English acted

against the interests of their home country, including author and civil servant Erskine Childers, executed by firing squad in 1922.

In our innocent and naïve Canadian way we think that we ought somehow to be immune to this, but why anyone would think this is rather mysterious.

How soon we forget the cowardly bombings and kidnappings carried out by the FLQ in Quebec in the late 1960s that resulted in the assassination of Quebec cabinet minister Pierre Laporte.

Before that we had our own issues of treason during the Cold War, including the famous scandal caused by the defection of Soviet embassy cipher clerk Igor Gouzenko with information on a major Canadian spy ring trying to steal nuclear secrets for the Soviet Union. Member of Parliament Fred Rose was imprisoned for his role in the ring, and a royal commission on espionage set up.

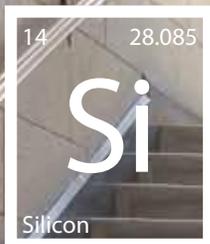
Our very first political assassination, that of Father of Confederation Darcy McGee in the streets of Ottawa, was carried out by a Canadian with Irish nationalist sympathies.

While most of us think Canada is the most blessed country on Earth, this view is vigorously rejected by a tiny disloyal minority. It used to be that they were mostly seduced by a utopian vision of an earthly communist paradise. Today the Canadians who hate what Canada stands for are more likely to be drawn from the ranks of a fringe of radicalized Muslims who believe that we are irredeemably ungodly and corrupt.

The solution in both cases is the same: a clear-eyed assessment of the dangers that we face and a commitment to preserve what the vast majority of Canadians love about this country. That means strong and unapologetic surveillance and police actions as well as personal vigilance against those who would do us harm. But it also means jealously guarding our freedom. It's a balance we have struck before in the face of domestic threat. We will do so again. ✦

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**Brian Lee Crowley** is the Managing Director of the Macdonald-Laurier Institute.



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