



True North In Canadian Public Policy

Commentary

October 2014

Internal Charade

THE PROVINCES ARE THE PROBLEM, NOT THE SOLUTION TO INTERNAL TRADE BARRIERS IN CANADA

This MLI *Commentary* is based on remarks delivered at symposium on trade and investment policy hosted by the University of Calgary School of Public Policy in Ottawa on September 15.

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 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

The author of this document has worked independently and is solely responsible for the views presented here. The opinions are not necessarily those of the Macdonald-Laurier Institute, its Directors or Supporters.

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. 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 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 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 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.

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.



About the Author

BRIAN LEE CROWLEY

Brian Lee Crowley has headed up the Macdonald-Laurier Institute (MLI) in Ottawa since its inception in March of 2010, coming to the role after a long and distinguished record in the think tank world. He was the founder of the Atlantic Institute for Market Studies (AIMS) in Halifax, one of the country's leading regional think tanks. He is a former Salvatori Fellow at the Heritage Foundation in Washington, DC and is a Senior Fellow at the Galen Institute in Washington. In addition, he advises several think tanks in Canada, France, and Nigeria.

Crowley has published numerous books, most recently *Northern Light: Lessons for America from Canada's Fiscal Fix*, which he co-authored with Robert P. Murphy and Niels Veldhuis and two bestsellers: *Fearful Symmetry: the fall and rise of Canada's founding values* (2009) and MLI's first book, *The Canadian Century; Moving Out of America's Shadow*, which he co-authored with Jason Clemens and Niels Veldhuis.

Crowley twice won the Sir Antony Fisher Award for excellence in think tank publications for his health care work and in 2011 accepted the award for a third time for MLI's book, *The Canadian Century*.

From 2006–08 Crowley was the Clifford Clark Visiting Economist with the federal Department of Finance. He has also headed the Atlantic Provinces Economic Council (APEC), and has taught politics, economics, and philosophy at various universities in Canada and Europe.

Crowley is a frequent commentator on political and economic issues across all media. He holds degrees from McGill and the London School of Economics, including a doctorate in political economy from the latter.

References

Blue, Ian. 2011. Free Trade within Canada: Say goodbye to Gold Seal. Macdonald-Laurier Institute. Available at <http://www.macdonaldlaurier.ca/files/pdf/Ian-Blue-Section-121-Free-Trade-within-Canada.pdf>.

Crowley, Brian Lee, Robert Knox, and John Robson. 2010. Citizen of One, Citizen of the Whole: How Ottawa can strengthen our nation by eliminating provincial trade barriers with a charter of economic rights. Macdonald-Laurier Institute. Available at <http://www.macdonaldlaurier.ca/CitizenOfOne/>.

Importation of Intoxicating Liquors Act R.S.C., 1985, c. 1-3.

Moore, James. 2014. *One Canada, One National Economy: Modernizing Internal Trade in Canada*. Canada.



MACDONALD-LAURIER INSTITUTE

True North in Canadian Public Policy

Critically Acclaimed, Award-Winning Institute

The Macdonald-Laurier Institute fills a gap in Canada's democratic infrastructure by focusing our work on the full range of issues that fall under Ottawa's jurisdiction.

- The Macdonald-Laurier Institute fills a gap in Canada's democratic infrastructure by focusing our work on the full range of issues that fall under Ottawa's jurisdiction.
- One of the top three new think tanks in the world according to the University of Pennsylvania.
- Cited by five present and former Canadian Prime Ministers, as well as by David Cameron, the British Prime Minister.
- First book, *The Canadian Century: Moving out of America's Shadow*, won the Sir Antony Fisher International Memorial Award in 2011.
- *Hill Times* says Brian Lee Crowley is one of the 100 most influential people in Ottawa.
- The *Wall Street Journal*, the *Economist*, the *Globe and Mail*, the *National Post* and many other leading national and international publications have quoted the Institute's work.



"The study by Brian Lee Crowley and Ken Coates is a 'home run'. The analysis by Douglas Bland will make many uncomfortable but it is a wake up call that must be read."

FORMER CANADIAN PRIME MINISTER PAUL MARTIN ON MLI'S PROJECT ON ABORIGINAL PEOPLE AND THE NATURAL RESOURCE ECONOMY.

Ideas Change the World

Independent and non-partisan, the Macdonald-Laurier Institute is increasingly recognized as the thought leader on national issues in Canada, prodding governments, opinion leaders and the general public to accept nothing but the very best public policy solutions for the challenges Canada faces.



About the Macdonald-Laurier Institute

What Do We Do?

When you change how people think, you change what they want and how they act. That is why thought leadership is essential in every field. At MLI, we strip away the complexity that makes policy issues unintelligible and present them in a way that leads to action, to better quality policy decisions, to more effective government, and to a more focused pursuit of the national interest of all Canadians. MLI is the only non-partisan, independent national public policy think tank based in Ottawa that focuses on the full range of issues that fall under the jurisdiction of the federal government.

What Is in a Name?

The Macdonald-Laurier Institute exists not merely to burnish the splendid legacy of two towering figures in Canadian history – Sir John A. Macdonald and Sir Wilfrid Laurier – but to renew that legacy. A Tory and a Grit, an English speaker and a French speaker – these two men represent the very best of Canada's fine political tradition. As prime minister, each championed the values that led to Canada assuming her place as one of the world's leading democracies.

We will continue to vigorously uphold these values, the cornerstones of our nation.



Working for a Better Canada

Good policy doesn't just happen; it requires good ideas, hard work, and being in the right place at the right time. In other words, it requires MLI. We pride ourselves on independence, and accept no funding from the government for our research. If you value our work and if you believe in the possibility of a better Canada, consider making a tax-deductible donation. The Macdonald-Laurier Institute is a registered charity.

Our Issues

The Institute undertakes an impressive programme of thought leadership on public policy. Some of the issues we have tackled recently include:

- Getting the most out of our petroleum resources;
- Ensuring students have the skills employers need;
- Aboriginal people and the management of our natural resources;
- Controlling government debt at all levels;
- The vulnerability of Canada's critical infrastructure;
- Ottawa's regulation of foreign investment; and
- How to fix Canadian health care.



MACDONALD-LAURIER INSTITUTE

True North in Canadian Public Policy

CONTACT US: Macdonald-Laurier Institute
8 York Street, Suite 200
Ottawa, Ontario, Canada K1N 5S6

TELEPHONE: (613) 482-8327

WEBSITE: www.MacdonaldLaurier.ca

CONNECT WITH US:



Scan this QR code to get your copy of our iPhone app or to visit our mobile website



@MLInstitute



www.facebook.com/MacdonaldLaurierInstitute



www.youtube.com/MLInstitute

What people are saying about the Macdonald-Laurier Institute

I commend Brian Crowley and the team at MLI for your laudable work as one of the leading policy think tanks in our nation's capital. The Institute has distinguished itself as a thoughtful, empirically-based and non-partisan contributor to our national public discourse.

PRIME MINISTER STEPHEN HARPER

As the author Brian Lee Crowley has set out, there is a strong argument that the 21st Century could well be the Canadian Century.

BRITISH PRIME MINISTER DAVID CAMERON

In the global think tank world, MLI has emerged quite suddenly as the "disruptive" innovator, achieving a well-deserved profile in mere months that most of the established players in the field can only envy. In a medium where timely, relevant, and provocative commentary defines value, MLI has already set the bar for think tanks in Canada.

PETER NICHOLSON, FORMER SENIOR POLICY ADVISOR TO PRIME MINISTER PAUL MARTIN

I saw your paper on Senate reform [Beyond Scandal and Patronage] and liked it very much. It was a remarkable and coherent insight – so lacking in this partisan and anger-driven, data-free, ahistorical debate – and very welcome.

SENATOR HUGH SEGAL, NOVEMBER 25, 2013

Very much enjoyed your presentation this morning. It was first-rate and an excellent way of presenting the options which Canada faces during this period of "choice"... Best regards and keep up the good work.

PRESTON MANNING, PRESIDENT AND CEO, MANNING CENTRE FOR BUILDING DEMOCRACY