

To ensure that objectives of this Accord are being met, Ministers, through the CCME, will review progress, address issues, and administer the requirements of the various sub-agreements on a regular basis. To ensure transparency, progress reports will be shared between and among governments and will be made available to the public.

[T]he citizens of Canada have clearly stated in recent polls that they do not want any decrease in environmental quality. In fact, they want to see the quality of the environment improved but in a way that will not affect their jobs or the economy.

Regardless of the various measures included in the Accord and its sub-agreements to ensure an effective, efficient means in attaining the highest level of environmental quality within the context of sustainable development, there remains considerable opposition to the concept of a harmonization agreement on the part of environmental groups. The main concern relates to the possible devolution of federal powers to the provinces. There is much scepticism about the ability of the provinces to assume responsibility for environmental matters. In addition, there is concern that this Accord might lead environmental quality being set to the lowest common denominator.

With respect to the first point regarding the federal government giving up some of its power, there has been no indication to this effect. Quite to the contrary, in fact, the federal government, buoyed by the recent Supreme Court de-

cision in its favour, intends to extend its reach into additional areas currently covered by provincial jurisdiction. This trend is evident in the proposed new draft legislation on environmental protection.

With respect to provincial governments not assuming their responsibilities, the Accord and its sub-agreements deal specifically with this instance and mechanisms will be put in place to regularly review progress and deal with problems.

Finally, it is difficult to understand the concern the environmental groups have with respect to a lowering of environmental quality as a consequence of harmonization. First and foremost, the citizens of Canada have clearly stated in recent polls that they do not want any decrease in environmental quality. In fact, they want to see the quality of the environment improved but in a way that will not affect their jobs or the economy. Politicians would be foolish to mis-

read this message delivered by the population in general. The Accord clearly states that its objective is to enhance environmental protection; thus, it would be difficult to imagine the contrary.

In conclusion, the Harmonization Accord should be viewed in a positive and constructive sense, where various levels of government are working together to develop a better system to manage the environment. The Accord will provide Canada with an opportunity of meeting its key objectives of seeking a better environment and stimulating the economy by providing investors with a streamlined environmental regulatory regime, which will reduce costs, delays and, most importantly, uncertainty.



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THE CANADA-WIDE ACCORD: A THREAT TO NATIONAL STANDARDS

BY KATHRYN HARRISON

In November of 1996, the federal, provincial, and territorial governments unanimously agreed in principle to a Canada-Wide Accord on Environmental Harmonization. Indications are that this Accord and the first three sub-agreements (concerning standard setting, compliance monitoring, and environmental assessment) will be signed at the next meeting of the Canadian Council of Ministers of the Environment this January.

The Canada-Wide Accord

warrants scrutiny both for its implications for environmental protection in Canada and the precedents it could set for other policy fields. The environmental Accord is one of few concrete products of recent efforts to "renew the federation". Indeed, the degree of intergovernmental harmony achieved is quite remarkable in what only a few years ago was a hotly contested area of jurisdiction. However, intergovernmental harmony has come at a high price. It is worth noting at

the outset that we have seen much of this before. In the mid-1970s, the federal government signed bilateral harmonization agreements with seven provinces (all but Quebec, Newfoundland, and British Columbia). Not coincidentally, the first generation of Accords emerged under circumstances very similar to those of today, with environment departments facing the challenge of implementing new legislation in the face of waning public attention to the environment, threats to national unity, and declining budgets. The federal government then (as now) had few incentives to challenge provincial resource jurisdiction in the name of the environment, and provincial governments were happy to resume the lead.

Th[e] disappointing experience with the first generation of Accords is troubling as we embark on a second-generation Accord, which renews efforts to rationalize federal and provincial roles.

Like the new Canada-Wide Accord, the bilateral Accords of the mid-1970s sought to clarify federal and provincial roles in order to reduce over-

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lap and duplication. The solution was the so-called "single window" approach. The federal government would take the lead role in setting national standards in consultation with the provinces. The provinces in turn would adhere to national standards in issuing permits for individual sources, and enforce both their own and federal government's standards. In deference to this provincial role, the federal government agreed to leave enforcement to the provinces unless they failed to uphold national standards.

[F]ewer national standards are likely to emerge, and those that do may be weaker by virtue of the fact that every province will have a veto, including those seeking lax standards to protect vulnerable industries.

Unfortunately, neither the federal nor provincial governments lived up to their end of that bargain. The federal government issued few national standards. The signatory provinces did not consistently incorporate national standards in their permits, nor did they effectively enforce their own provincial standards. And despite widespread non-compliance with national standards, the federal government only rarely intervened.

This disappointing experience with the first generation of Accords is troubling as we embark on a second-generation Accord, which renews ef-

orts to rationalize federal and provincial roles. Although it is encouraging that the new Accord and Sub-agreements pay greater attention to accountability than did the original Accords, if anything, the Canada-Wide Accord makes it more difficult for the federal government to step in if a province fails to fulfill its obligations, or for a province to do so in the event of federal government failure. The responsibility for developing an alternative action plan is assigned collectively to the "concerned governments", rather than to the one other government with constitutional jurisdiction. Even more troubling are the ways in which the new Accord goes beyond the first-generation Accords. The original Accords provided that the federal government was to be primarily responsible for developing national standards. Under the new Accord, Canada-wide standards are to be developed by consensus among federal, provincial, and territorial governments. As a result, fewer national standards are likely to emerge, and those that do may be weaker by virtue of the fact that every province will have a veto, including those seeking lax standards to protect vulnerable industries.

Although the Accord leaves open the possibility that the division of federal and provincial responsibilities could vary from issue to issue and province to province, both the Standards and Inspection Sub-agreements clearly indicate that it will normally be the responsibility of the provinces to implement Canada-Wide standards. In practice, adherence to agreed upon standards will depend on the good will of each province. This approach failed last time, as the provinces' good inten-

tions apparently evaporated with their environment budgets and public attention. Having assumed that the provinces would take the lead, the federal government simply did not have the resources to take over the job itself.


A final concern is that the Standards Sub-agreement guarantees to each jurisdiction complete flexibility to adopt whatever approach it prefers to achieve an agreed upon environmental-quality goal. Thus a factory in one province may face an enforceable regulation, while an identical facility in

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another may face only an unenforceable guideline. In fact, it is by no means clear that the discharge limits contained in those regulations and guidelines would be the same. The primary focus of the Standards Sub-agreement is on developing uniform standards for ambient environmental quality, rather than uniform discharge or product standards. This distinction is not merely semantic. Consistent environmental quality standards will inevitably lead to inconsistent industrial discharge

standards, given different environmental conditions in different provinces. The Accord's primary emphasis on environmental quality standards represents a troubling departure from federal and provincial governments' historical emphasis on the need to harmonize industrial discharge standards to prevent a "race to the bottom".

The Canada-Wide Accord thus presents a risk not only to national standards, but to environmental protection generally. The provinces' track record in adhering to agreed upon national standards is not encouraging. And their task will be that much more challenging in the absence of consistent discharge standards or a commitment to enforceable regulations.

At first blush, the Canada-Wide Accord seems a promising example of what federal and provincial governments can accomplish short of constitutional amendment. Intergovernmental harmony has replaced the ugly spectacle of federal-provincial conflicts over the environment of the late 1980s and early 1990s. However, this renewed harmony may exact a high price in terms of environmental protection. Intergovernmental agreement should not be the end, at least not the only end, in itself. 

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