

# The OUNCIL of the FEDERATION

A first step towards a new era in intergovernmental relations in Canada

2<sup>nd</sup> Edition

Québec \*\*

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The Council of the Federation, initiated by Québec, is inspired by the view of politics that the best way to advance ideas and societies is through extending one's hand, not by turning one's back.

The Council paves the way for a new era of cooperation between the provinces and territories of the Canadian federation.

This permanent organization for exchange and dialogue will bring the relationships among Canada's federated partners into a renewed dynamic. This *internal diplomacy* will aim to build alliances based on common priorities; it will promote greater mutual understanding of the partners' particular hopes and needs; it will increase the influence of the provinces and territories on the evolution of Canada.

The Council of the Federation echoes the wishes of Quebecers and Canadians to see the different governments of this country work together to better respond to the needs of all.

By giving themselves a tool for common discussion and understanding, the premiers of the provinces and territories are making a personal commitment to cooperate, knowing that this requires greater effort than remaining divided, but with the conviction that the fruit it bears will be the fruit of prosperity.

The Premier of Québec

Jean Charest



For all societies, whether they be large or small, now is not the time for isolation or withdrawal. Instead, it is the time for interdependence and openness towards others.

It is in this spirit that the provinces and territories agreed to create the Council of the Federation. As a non-constitutional institution, the Council of the Federation is intended to encourage a new consensus between the provinces and territories, to reinforce their common position vis-à-vis the federal government and, most of all, to reinvigorate our federation so that it works better for the greater benefit of all Canadians.

The Council of the Federation is a new institution on the Canadian landscape. In essence, it is an instrument designed to foster improved and enhanced intergovernmental collaboration, which should undeniably reinforce the federative spirit within Canada.

With the Council of the Federation, the provinces and territories, as necessary partners within the Canadian federation, will become even more influential and significant. They will progressively develop their own vision of what Canada should become, and firmly consolidate their rightful place within our country.

The creation of the Council of the Federation represents an important milestone for the Québec government. This achievement, accomplished in such a short time by the provinces and territories, and at our government's own initiative, is an example of Québec's worth and effectiveness when it shows leadership and the will to reaffirm itself as a full-fledged partner in our federation.

With the Council of the Federation, the word "dialogue" will take on a new meaning. Major issues of concern to our fellow citizens will be tackled from a solution-seeking perspective rather from one that encourages confrontation and bickering.

This being said, Québec will continue to set its own policies and make its own choices. It will remain in full control of its future. The Council of the Federation will simply provide Québec with a new springboard from which it will better assert its own identity and advance its particular interests within our federation.

> Minister for Canadian Intergovernmental Affairs and Native Affairs

> > Benoît Pelletier

## Introduction

On December 5, 2003, the provincial and territorial premiers signed the Founding Agreement of the Council of the Federation. The goal of the premiers in creating this new institution is to consolidate and improve relations among the provinces and territories, thus signalling the start of a new era in

intergovernmental relations in Canada.

With the creation of the Council, the provinces and territories are taking an important step for the future of the Canadian federation. They are acquiring their own institution. This initiative is designed to allow them to exercise their

legitimate leadership as essential partners in setting the Canadian agenda.

It is worth remembering that, 137 years ago, the governments of the former British colonies north of the U.S. Republic deliberately agreed to join together as a state with a federative mode of governance. In choosing federalism, the new partners could preserve and promote their individual identity and autonomy while establishing a new order of government, one that would encourage

their development by pooling their resources and sharing risks and opportunities.

At the time, Canada was the first federal experiment in the British Empire. Today, over 40 per cent of the world's population lives in states that have chosen a federal

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regime. Many countries are planning to adopt this model while others have chosen some of its ideas and features. For conclude that

these reasons, we must the decision of the former colonies in 1867 was indeed a wise one.

While the federal formula still meets the Quebecers and other

needs of Canadians, the way it is applied in Canada does not always correspond to its basic principles and values. This is why it is essential to modernize its functioning.

## Towards a more efficient federalism in Canada

The federal formula, in its universal aspects, is characterized by its flexibility and its adaptability. It also relies on a number of values and principles, including:

# 1. Respect for the Constitution and the institutions established by it

Respect for the distribution of powers is essential to the balance of federative relations. The sovereignty of governments in their respective areas of jurisdiction is the foundation of any federal regime. It ensures a healthy, consensus-based intergovernmental dynamic that enables individual objectives to be pursued. Moreover, it preserves government accountability.

# 2. Respect for the constitutional role of each order of government

The federated governments, namely the provinces and territories, are, like the federal government, legitimate and essential players in intergovernmental affairs.

### 3. Respect for differences

In Canada, this principle is intrinsically linked to the historic choices made in 1867 of a federal form of government.

It is still vitally important to all the provinces and territories today.

### Values and principles:

- Respect for the Constitution and the institutions established by it
- Respect for the constitutional role of each order of government
- Respect for differences

Why do we now evoke these fundamental values and principles of federalism? Because the spirit of federalism must guide its concrete application. These values and principles have a vital role to play in intergovernmental relations, which in themselves constitute an important feature of the day-to-day functioning of federalism in Canada.

These values and principles underline the essential role of the provinces and territories in a federal regime.

The existence of the provinces and territories reflects the fundamental goals of federalism, namely respect for diversity and participation in the democratic process. They are at the very foundation of the federal form of government.

Early in the history of the Canadian federation, the London Privy Council's Judicial Committee emphasized, with regard to the Constitution Act, 1867, that:

The federal and provincial governments have a duty to find, together, the means to ensure Canada's progress.

The goal of the Act was not to merge the provinces into a single entity or to subordinate the provincial governments to a central authority, but to

create a federal government in which they would all be represented and to which would be assigned only the administration of business in which they had a common interest, with each province preserving its independence and its autonomy. (Liquidators of the Maritime Bank of Canada v. Receiver-General of New Brunswick, [1892] A.C. 437, p. 441-442).

Later, in 1981, the Supreme Court of Canada affirmed that:

The federal principle cannot be reconciled with a state of affairs where the modification of provincial legislative powers could be obtained by the unilateral action of the federal authorities. (Reference: Resolution to Amend the Constitution, [1981] 1 S.C.R. 753, p. 905-906).

And more recently, the Supreme Court expressed itself on the principle of federalism as follows:

The principle of federalism facilitates the pursuit of collective goals by cultural and linguistic minorities which form the majority within a particular province. This is the case in Québec, where the majority of the population is French-speaking, and which possesses a distinct culture. This is not merely the result of chance. The social and demographic reality of Québec explains the existence of the province of Québec as a political unit and indeed, was one of the essential reasons for establishing a federal structure for the Canadian union in 1867. (Reference re Secession of Québec, [1998] 2 S.C.R. 217, p. 252)

It is clear that the provinces and territories hold a central position which allows them to make a major contribution to federalism and tackle its challenges. The federal and provincial governments have a duty to find, together, the means to ensure Canada's progress. This is what Quebecers and other Canadians want.

Yet, in spite of the creation of numerous federal-provincial-territorial bodies and forums intended to facilitate relations between the two orders of government, there is growing dissatisfaction among the provinces and territories concerning how intergovernmental relations are handled. While in some sectors the provinces and territories manage to reach agreements with the federal government, both bilaterally and multilaterally, in other areas, many disputes remain unsolved, particularly in fields under provincial and territorial jurisdiction.

Furthermore, the federal government generally has a tendency to set the agenda of federal-provincial-territorial forums in order to impose its own priorities and its vision of policy development in various sectors.

Many federal initiatives totally bypass the provinces and territories, although their constitutional responsibilities in these areas are indisputable. This approach has the effect of weakening federalism, which should involve harmonious and productive government-to-government relations and respect for the responsibilities of each federative member.

In addition, the existence of a significant fiscal imbalance between Ottawa and the provinces has allowed the federal government to encroach on areas of provincial jurisdiction by invoking a spending power that, in its view, is in no way limited by the distribution of powers. Yet such a power appears nowhere in the Constitution. The surpluses generated by the federal government encourage it to attach conditions to its financial transfers to the provinces and territories that restrict their room to manoeuvre and power to act, that do not always respect their uniqueness, and that significantly reduce their responsibilities towards their own citizens.

Moreover, decisions made by the federal government in fields of provincial jurisdiction are often confusing to the public, which has difficulty determining which level of government is responsible for any particular sector of activity. Quebecers and other Canadians are entitled to know exactly who is responsible for what, where their taxes go and how they are spent.

On numerous occasions, the provinces and territories have invited the federal government to collaborate with them on resolving major issues such as health care, on which they worked together to clearly define the extent of the problems. The provinces and territories proposed solutions that involved financial support from the federal government. But in spite of its considerable financial capability, the federal government's response has remained well below what the provinces and territories truly need.

The situation is the same with regard to post-secondary education and human resource development. The provinces and territories have clearly set out their priorities and needs. But, rather than responding to their most urgent requests, the federal government uses its budget surplus to unilaterally put forward programs that do not meet the priorities of the provinces and territories. The federal government sometimes forces the provinces and territories to adjust to its conditions, and in some cases, even compels them to provide additional funding for programs it has imposed.

Another example is the field of international relations where the federal government refuses to discuss the legitimate demand by the provinces and territories to reach an agreement on their participation in negotiating treaties that pertain to their own fields of jurisdiction.

All of this weakens Canadian federalism.

From these facts, it is clear that the provinces and territories must instil a new dynamic into the federation in order to re-balance the way it operates. The Council

Finding an appropriate balance among the partners of the federation is a prerequisite for its proper functioning.

will give back to the provinces and territories the influence and strength they need to become true partners in shaping the Canada of tomorrow. Finding an appropriate balance among the partners of the federation is a prerequisite for its proper functioning.

# Why a Council of the Federation now?

It is up to the

provinces and

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intergovernmental

affairs.

The creation of the Council of the Federation, made up of the provinces and

territories, is in keeping with the government of Québec's renewed commitment to actively contribute to the evolution of the Canadian federation. This commitment is now at the core of its intergovernmental policy, one priority of which is focusing on interprovincialism and shared approaches.

It is up to the provinces and territories, first and foremost, to change the dynamic and send a clear message of their will to restore balance to Canadian intergovernmental affairs.

Provincial and territorial governments must strengthen their leadership in their own areas of jurisdiction, particularly with regard to social policies. They must be involved in defining and working towards the common good. Cooperation and concerted efforts are essential to ensure the well being of their citizens.

Without replacing the bilateral relationships among the provinces and

> territories, the Council will help strengthen their dealings and make it easier to develop common, coherent and concerted strategies and positions. As well, the Council will become a preferred tool for agreements among the federative entities. The Council will also examine questions that go beyond the scope of individual

provincial and territorial governments. It will allow Québec to reassert its specificity and enable its partners to understand it better. By presenting shared visions and common orientations while retaining their autonomy, the provinces and territories will take a leadership role in influencing Canada's evolution.

## What is the role of the Council of the Federation?



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The Council of the Federation is a means for developing joint intergovernmental approaches. It will also enable the provinces and territories to acquire a strong voice in the evolution of the Canadian federation.

The recommended approach for implementing the Council of the Federation is based on two main concepts:

- Discussion and exchange. In this regard, the Council:
  - Constitutes a forum for discussion
  - Promotes the signing of formal cooperation agreements among the provinces and territories
  - Enables the exchange of information, points of view, knowledge and experience among the governments

- II. Dialogue and consensus-building. As a permanent body for intergovernmental cooperation and discussion, the role of the Council will be to:
  - Ensure collaboration among provincial and territorial governments with regard to policies and decisions in matters having federal-provincial-territorial implications
  - Develop a shared vision by focusing on more proactive actions
  - Identify avenues for consensus
  - Implement joint communication initiatives for the population's information and benefit
  - Conduct appropriate follow-up on specific files, orientations, and recommendations

### Two main concepts:

- Discussion and exchange
- Dialogue and consensus-building

The Council's main objective is to strengthen interprovincial cooperation and allow the provinces and territories to reestablish their predominant role regarding certain intergovernmental issues. Of course, this role is bound to evolve in the years to come. However, it will be important to proceed gradually, relying on the experience acquired over time in intergovernmental relations.

The principal mandates entrusted to the Council of the Federation are:

- The establishment of common positions in order to develop an integrated approach to relations with the federal government
- The analysis of federal measures, bills and legislation which will impact the provinces and territories
- The strengthening of intergovernmental forums

In short, the Council of the Federation will focus on gradually advancing provincial-territorial relations, with simplicity and flexibility, in order to make them more productive.

# What issues is the Council likely to examine?

Before the creation of the Council of the Federation, all intergovernmental

In this way, the Council, like the federal government, will contribute to the major courses of action that will forge the future of Canada as a whole.

forums had specific mandates concerning particular areas of governmental activity, such as health care and education. Only the Annual Premiers' Conference offered the provinces and

territories an opportunity to focus on the totality of intergovernmental issues.

As a new permanent provincial and territorial institution, the Council of the Federation replaces the Annual Premiers' Conference and goes much further. It will act on issues deemed to be of common interest and will develop greater provincial and territorial coordination. Thus the Council will be able to determine shared orientations on issues of mutual interest. particularly when they affect the budgetary, social and general policy priorities of all provinces and territories. In this way, the Council, like the federal government, will contribute to the major courses of action that will forge the future of Canada as a whole. Such a contribution is not only legitimate, it is necessary, and it is one that citizens across Canada want.

Moreover, the Council of the Federation may focus on matters that, by their very nature, concern only the provinces and territories, or that fall under the shared jurisdiction of the two orders of government. The work of the Council could thus focus on the following subjects:

### 1. Health care

In this area, the Council could assist provincial and territorial governments in improving their capacity for exchanging and sharing information, expertise and best practices. It could also help them exercise a stronger leadership role by providing a permanent and essential presence in the Canadian debate on the future of our health-care systems.

### 2. Education

The provinces and territories have been working since 1967 to pool their expertise via the Council of Ministers of Education. The work of the Council of the Federation could lead to an intensification of this collaboration.

### 3. Fiscal imbalance

There is currently a consensus among the provinces and territories on the existence of a serious fiscal imbalance in favour of

the federal government. This situation accentuates the federal government's propensity for intervening in provincial jurisdictions through direct and often unilateral initiatives by invoking an assumed spending power. What is more, the persistence of such an imbalance greatly damages the ability of provincial governments to exercise their own jurisdictions. In this area, the work of the Council of the Federation, supported by the Secretariat for Information and Cooperation on Fiscal Imbalance, will aim to consolidate the standpoint of the provinces and territories in order to present and defend a vision that would provide a solution to fiscal imbalance and the spending power claimed by the federal government.

### 4. Internal trade

Further trade liberalization among the provinces and territories would clearly contribute to Canada's economic development. The Council of the Federation intends to promote a better flow of goods, people, capital and services between the provinces and territories by improving the implementation of the Agreement on Internal Trade.

### 5. The challenges of globalization

With globalization, an increasing number of issues that normally come under provincial jurisdiction are being debated in large international forums. These debates lead to the development of international standards and the signing of treaties that directly affect the provinces' and territories' ability to act in fields in which the Constitution recognizes their exclusive jurisdiction. For this reason, the provinces and territories must be full and active participants in meeting the challenges of globalization. This means they must play a greater role on the international stage by participating in the negotiation of agreements related to their jurisdictions, without threatening the cohesiveness of Canada's foreign policy. In this regard, the Council of the Federation could prove to be a valuable arena for collaboration.

# What is the structure of the Council of the Federation?

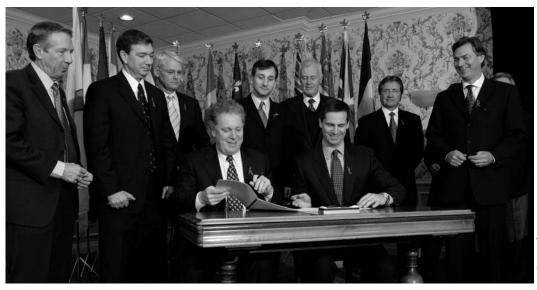


Photo : Bryan Simpson

The Council of the Federation comes under the executive branch, rather than

The Council is composed of and managed directly by the premiers of the ten provinces and three territories.

the legislative branch, of the provincial and territorial governments. Because of the leadership that it will bring to bear, the Council is composed of and managed directly by the premiers of the ten provinces and three territories.

The Council of the Federation is an institution distinct from existing forums.

However, its implementation must be seen as strengthening these intergovernmental bodies. In fact, as an umbrella organization, it will seek to improve the coordination of interprovincial collaboration. For example, it is responsible for the new Secretariat for Information and Cooperation on Fiscal Imbalance and the Premiers' Council on Canadian Health Awareness.

In order to play an effective coordinating role, one likely to give interprovincial cooperation added value in relation to existing forums, the Council has a permanent Secretariat located in Ottawa.

The Secretariat is responsible for supporting the provincial and territorial premiers in monitoring and achieving their objectives. This will enable them to quickly tackle problems that require their immediate attention.

The Council meets at least twice a year. The role of Chair is assumed by the premier of each province on a rotational basis, for a term of one year.

Where necessary, the Council can entrust specific tasks to a committee of Intergovernmental Affairs ministers, or other designated ministers.

Funding for the Council will be provided by the provinces and territories on a pro rata population basis.

Though strictly a provincialterritorial body, the Council of the Federation may hold special meetings at which the federal government may be invited to participate.

## **Conclusion**

Given the major socio-economic challenges facing governments, the provinces and territories must strengthen their cooperation and the cohesiveness of

their collective action. In addition, the fact that fiscal resources are poorly distributed between the two orders of government and that federal-provincialterritorial relations have deteriorated in recent vears, increases the need for dialogue. The provincial and territorial governments must be able to exert greater influence on Canada's evolution and initiate a new momentum in Canadian intergovernmental relations.

A better balance in intergovernmental relations will lead to constructive collaboration among governments, while respecting the roles and responsibilities of each government.

The Council of the Federation will help contribute to the emergence of a new dynamic. Its creation does not require any change to the Constitution. The powers of the provinces are in no way altered, and Québec remains in control of its own

destiny, its own strategies and its own decisions. The Council is, in fact, an additional lever enabling Québec to promote its specificity throughout the

Canadian scene.

The Québec government is thus taking an important step towards strengthening its internal diplomacy. It will nurture productive relations with its federative partners while continuing to assert its distinctiveness within Canada.

The Council aims to strengthen the mechanisms that the provinces and territories have developed over the years in order to improve the functioning of the federation by maximizing their chances of reaching their objectives. The goal is to build on what already exists and to ensure that

the Canadian federation will evolve while respecting the fundamental values and principles of federalism.

The Québec government is thus taking an important step towards strengthening its internal diplomacy. It will nurture productive relations with its federative partners while continuing to assert its distinctiveness within Canada. Québec already has a strong identity. Through its action within the Council of the Federation, it will emerge stronger still.

# COUNCIL OF THE FEDERATION FOUNDING AGREEMENT

December 5, 2003



























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### **PREAMBLE**

Premiers agreed to create a Council of the Federation, as part of their plan to play a leadership role in revitalizing the Canadian federation and building a more constructive and cooperative federal system. Premiers recognize that:

Canada was established as a federation in 1867.

Under the Constitution, Canada's two orders of government are of equal status, neither subordinate to the other, sovereign within their own areas of jurisdiction and accordingly, they should have adequate resources to meet their responsibilities.

Federalism is based on shared principles including respect for the constitution and the division of powers, while being aware that Quebec has not agreed to the Constitution Act, 1982, and accepting that there are differences among the provinces and territories and that governments may have different policy priorities and preferences.

There is a need to institute a new era of intergovernmental collaboration by promoting a constructive dialogue between the partners of the federation.

It is important to participate in the evolution of the federation and to demonstrate their commitment to leadership through institutional innovation.

The Council of the Federation will be an enduring and evolving institution that will be flexible, efficient and able to anticipate and act quickly to make Canada work better for Canadians.



























### CREATION AND COMPOSITION OF THE COUNCIL OF THE FEDERATION

- The Premiers of the provinces and territories hereby establish a Council of the Federation ("the Council"), whose common objectives, mandate, operations and organization are described in this agreement.
- 2. The governments of the ten provinces and of the three territories of Canada, as represented by their Premiers, are members of the Council.

### **OBJECTIVES**

- 3. The Council of the Federation is being established to address present and future challenges facing the federation in order to better meet the changing needs of Canadians by:
  - Strengthening interprovincial-territorial cooperation, forging closer ties between the members and contributing to the evolution of the Canadian federation;
  - b) Exercising leadership on national issues of importance to provinces and territories and in improving federal-provincial-territorial relations;
  - Promoting relations between governments which are based on respect for the constitution and recognition of the diversity within the federation; and
  - d) Working with the greatest respect for transparency and better communication with Canadians.

















































### MANDATE OF THE COUNCIL

- 4. In pursuit of these Objectives, the Council will:
  - a) Serve as a forum where members can share and exchange viewpoints, information, knowledge and experiences;
  - b) Provide an integrated and coordinated approach to federal provincial territorial relations through the development of shared common analysis and positions, where appropriate;
  - c) Reinforce the work of sectoral intergovernmental forums by providing direction, when appropriate, on issues that are of concern to the Council;
  - d) Analyse actions or measures of the federal government that in the opinion of the members have a major impact on provinces and territories. This could include joint review and comment on bills and Acts of the Parliament of Canada, as is currently done by provinces and territories individually. One of the purposes of this analysis is to support productive discussions with the federal government on issues of importance to Canadians;
  - e) Develop a common vision of how intergovernmental relations should be conducted in keeping with the fundamental values and principles of federalism; and
  - f) Address any issue of priority which, in the opinion of the Members, requires the pooling of expertise, a greater dialogue between them or the coordination of their actions.

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### ORGANIZATION OF THE COUNCIL

### Representation on the Council

- 5. The Members shall be represented on the Council by their Premier. In exceptional circumstances a Premier may designate a minister as a substitute representative for a meeting of the Council.
- Notwithstanding the foregoing, no meeting of the Council can take place if the majority of the Members are not represented by their respective Premiers.

### Chair

- 7. The Premiers of the provinces shall take turns chairing the Council according to the rotation established by the Annual Premiers' Conference. The term of office of the Chair is one year. The Chair shall act on behalf of the Council according to the mandates received from it.
- 8. The Deputy Chair shall be the Premier who will chair the Council the following year.

### Meetings

- 9. There will be an Annual Meeting of the Council of the Federation each summer in the province of the incoming chair. In addition, there will be at least one other meeting to be held in a province or territory each year in a location to be determined by the Council.
- 10. The decisions of the Council will be reached by consensus, in accordance with the established practice of the Annual Premiers Conference.
- 11. The Council may decide from time to time to hold special meetings to which it may invite the Federal Government.



























### Committee of Ministers

12. From time to time, the Council may assign specific tasks to an ad hoc committee composed of Ministers responsible for intergovernmental relations or such other Minister designated by a Member. This Committee will be chaired by the minister of the province chairing the Council.

### Steering Committee

- 13. A Steering Committee will be established, composed of the Deputy Ministers responsible for intergovernmental relations or such other representative designated by a member. The Steering Committee will be chaired by the deputy minister of the province chairing the Council. The Steering Committee shall report to the Council.
- The Steering Committee shall assist the Council and support the Committee of Ministers in the performance of their respective mandates. It shall prepare the meetings of the Council and carry out the study, research and analysis mandates that it receives from the Council, including those envisaged under Article 4 (d), and shall establish and supervise the Secretariat.

### Secretariat

- 15. The Secretariat shall report to the Steering Committee which is also its Board of Directors. The head of the Secretariat is appointed by and reports to the Board of Directors. The Secretariat shall be located in Ottawa or such other location as may be determined by the Council.
- 16. The Secretariat shall assist the Steering Committee in the preparation for meetings of the Council and shall perform any task that the Steering Committee assigns to it.



























### **FUNDING**

17. The Secretariat shall be funded by the Members on a pro rata basis formula according to their respective populations.

#### OTHER BODIES

- 18. The Premiers' Council on Canadian Health Awareness is under the responsibility of the Council of the Federation.
- 19. The Secretariat for Information and Cooperation on Fiscal Imbalance is under the responsibility of the Council of the Federation.

### **FINAL PROVISIONS**

- 20. It is envisaged that the Council of the Federation will evolve, as required, to ensure its maximum effectiveness. This Agreement may be amended from time to time with the consent of all of its Members.
- 21. The objectives, mandate and organization of the Council shall be reviewed no later than 5 years after this Agreement comes into effect.
- 22. The Council shall take the steps necessary to ensure the performance of its mandate in French and English.
- 23. Nothing in this Agreement alters the legislative or other authority of the provincial legislatures or territorial legislatures or of the provincial or territorial governments or the rights of any of them with respect to the exercise of their legislative or other authorities under the Constitution of Canada.



























24. This Agreement shall come into effect on December 5, 2003. Signed at Charlottetown, 5th day of December, 2003, by the Premiers of the **Provinces and Territories** Ontario Québec Nova Scotia **New Brunswick** Manitoba Prince Edward Island Saskatchewan Newfoundland and Labrador Alberta

Yukon

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**Northwest Territories** 

Nunavut