

Stephen LeClair
Financial Accountability Officer of Ontario

Statement to the
Organizational for Economic Cooperation and Development (OECD)
8th Annual Meeting of Parliamentary Budget Officials and Independent Fiscal Institutions

April 12, 2016

Introduction

Good morning. My name is Stephen LeClair and I serve as Financial Accountability Officer in Ontario, which is Canada's largest province, home to over 40 percent of its population.

My mandate as Financial Accountability Officer is to provide the members of the Legislative Assembly of Ontario with the economic and financial analysis they need to perform their constitutional responsibility of scrutinizing the government's decisions. My office is Canada's only subnational independent fiscal institution and one of the few in the world.

Canada's division of powers

As I imagine many of you know, Canada is a federation, in which the Constitution formally divides power between the federal government and the provinces. The federal government is responsible, broadly speaking, for matters of national concern, including defence, foreign affairs, and the regulation of interprovincial and international trade.¹ For their part, the provinces are generally responsible for a wide range of matters, including education, health care, income security and natural resources.² Canada is considered among the most decentralized federations in the world.

Despite the seemingly strict division of powers between the federal government and the provinces, many areas of shared jurisdiction have been recognized in the nearly 150 years since Canada was created. Some of these areas of shared jurisdiction are explicitly provided for in the Constitution, including agriculture and immigration, while others, such as pensions, have been added through constitutional amendments.³

¹ *Constitution Act, 1867*, ss 91.

² *Constitution Act, 1867*, ss 92–93.

³ *Constitution Act, 1867*, ss 94A–95.

Others areas of shared jurisdiction have been recognized through judicial precedents, perhaps the most important of which has been the federal government's power to spend money in traditional areas of provincial jurisdiction.⁴ The federal government makes transfer payments to support health and income security programs administered by the provinces. The federal government also makes significant transfer payments directly to individuals, notably in the form of old age pensions and employment insurance payments.

The federal government has also made a constitutional commitment to make payments to ensure that the provinces "have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation".⁵ Through what are known as "equalization payments", the federal government redistributes money raised in one part of the country to others to address regional inequalities.

And other areas of shared jurisdiction still reflect political agreements reached between the federal government and the provinces. Although the federal government and provinces may not transfer an aspect of their jurisdiction to one another absent a constitutional amendment,⁶ their executives can and often do agree to provide assistance to one another.

By agreement, the federal government collects most personal and corporate income taxes, and administers the national pension system – the Canada Pension Plan, on behalf of nine of Canada's ten provinces. Quebec, Canada's second largest province, collects its own taxes and administers its own parallel pension system. As a result, policy decisions made at the national level, when it comes to the treatment of a particular form of income, for instance, affect the tax base at the provincial level.

In as decentralized a federation, it would not be feasible to have a single national independent fiscal institution, just as it would be impossible to have a single national supreme audit institution. In Canada, the federal government and the provinces each have their own Auditor General. However, given the number of shared areas of jurisdiction, it is important that the independent fiscal institutions be able to appreciate the impact that decisions made within those areas affect their level of government.

Independent fiscal institutions in a decentralized federation

Canada currently has two independent fiscal institutions – my office and the federal Parliamentary Budget Office, headed by Jean-Denis Fréchette. Several other Canadian provinces, including Quebec, British Columbia, Alberta, Nova Scotia and Saskatchewan, have considered creating independent fiscal institutions in recent years.

⁴ See e.g. *Winterhaven Stables Ltd v Canada (Attorney General)* (1988), 53 DLR (4th) 413 (ABCA).

⁵ *Constitution Act, 1982*, s 36(2).

⁶ *Constitution Act, 1982*, s 38. See also *Nova Scotia (Attorney General) v Canada (Attorney General)*, [1951] SCR 31.

As I mentioned earlier in my remarks, my mandate is to provide members of the Legislative Assembly of Ontario with economic and financial analysis. As Financial Accountability Officer, I can provide analysis on economic and financial questions both on my own initiative and at the request of members and the committees on which they serve. I can do so with respect to broad questions, by providing independent analysis on the state of the province's finances and trends in the provincial and national economies, as well as more specific questions concerning the economic and financial impact of the annual budget, legislation and other policies. I address these questions through both regular publications, including regular assessments of Ontario's economic and fiscal outlook, and one off reports, such as the report my office published last autumn on the partial privatization of Ontario's publicly-owned electricity distribution company.

My mandate is limited to matters that fall within Ontario's jurisdiction, including the many areas over which it shares jurisdiction with the federal government.⁷ Federal transfers make up a significant proportion of Ontario's budget. Changes in federal policy affecting those areas of shared jurisdiction, such as a change to the formula for determining the level of transfer payments or to the personal income tax base, will affect the provincial bottom line. Likewise, changes to federal transfers to individuals, both through direct payments and indirectly in the form of tax expenditures, will have consequences for trends in the provincial economy, such as by affecting the rate of poverty after taxes and transfers.

As a result, I will need to provide my analysis of the impact of those sorts of changes on the province, but I can do so only from the perspective of Ontario's legislators. For his part, the federal Parliamentary Budget Officer, whose mandate largely parallels mine, provides Senators and Members of Parliament analysis from the federal perspective, focusing on the impact on the national economy and finances, rather than on any particular province.⁸

A related limitation on my ability to examine areas of shared jurisdiction is the scope of my access to information. I have a broad power to access information held by the Ontario government's ministries and agencies, without regard to whether it has been made public, but I cannot access information held by the federal government.⁹ As a result, I need to rely heavily on publicly available information when it comes to analyzing the impact of federal policy choices in areas of shared jurisdiction. Cuts to Canada's national statistical agency in recent years have greatly diminished the quantity and quality of data available federal and provincial public spending, including transfer payments.

I should also note that my enabling legislation prevents me from disclosing information I obtain from the Ontario government that might prejudice Ontario's intergovernmental relations.¹⁰ The Parliamentary Budget Officer is subject to a similar restriction.¹¹ Although my office does not disclose raw information, and instead,

⁷ *Financial Accountability Officer Act, 2013*, s 10(1)(3).

⁸ *Parliament of Canada Act*, s 79.2.

⁹ *Financial Accountability Officer Act, 2013*, s 12(1).

¹⁰ *Financial Accountability Officer Act, 2013*, s 13, citing *Freedom of Information and Protection of Privacy Act*, s 15(a).

¹¹ *Parliament of Canada Act*, s 79.4, citing *Access to Information Act*, s 14.

produces analysis based on that information, it is likely that the disclosure restrictions under which our offices operate would impede my ability to pursue formal joint projects with the federal Parliamentary Budget Officer.

That being said, I have benefited greatly from the informal assistance provided by the Parliamentary Budget Officer during my first year of operations. I look forward to continuing to work with his office and to share methods and review one another's published work.

Conclusion

My office was created because Ontario legislators felt they lacked access to impartial analysis informed by access to internal government information, which made it difficult to assess the plausibility of the government's economic and financial assumptions and impeded their ability to hold the government to account for the plans it made in light of those assumptions. Similar concerns at the federal level informed the creation of the Parliamentary Budget Office in 2006.

These concerns also exist in other Canadian provinces and, indeed, are often more significant in smaller provinces, so I expect that Ontario will not be the last province to create an independent fiscal institution. I welcome this possibility and look forward, as I am sure does the federal Parliamentary Budget Officer, to assisting legislators in other Canadian provinces considering what shape these institutions might take and should they choose to create them, to helping the new institutions establish themselves. I note that a similar trend is taking place in Australia, where New South Wales was the first state to create an independent fiscal institution, albeit only for purposes of costing election commitments, and Victoria is currently considering creating a full-fledged parliamentary budget office.

When it comes to what lessons my office's experience might offer for subnational independent fiscal institutions outside the Canadian context, it is likely too early to say. I would suggest that careful thought be given to the design of the mandate and power to access information in order to ensure that the subnational institutions are able to examine national policy issues as they impact their subnational jurisdiction, as even in a decentralized system, national decisions can have significant local consequences. I would also suggest that it is worth considering whether formal avenues of cooperation between the national and subnational independent fiscal institutions ought to be created.