

**FEDERALISM: THE CANADIAN EXPERIENCE  
1867-2007**

**Speech by Senator Noël A. Kinsella for the Faculty of International  
Relations at St. Petersburg State University, Russia**

Ladies and Gentlemen,

Allow me to express my gratitude for this opportunity to present to you as a member and representative of the Parliament of Canada. Despite the changing temperature, I have received a very warm welcome since my arrival in your country, and my reception here in St. Petersburg has been no different.

The topic of my presentation today is Canadian federalism. Being Canadian, I will offer a particular perspective on the nature of Canadian federalism. It is my hope that this presentation will generate a greater interest in, and understanding of, the Canadian system of governance, and the similarities that it shares with that of Russia.

Canadian-Russian relations have significantly evolved over the years and have entered a period of dynamic growth. Our partnership with the Russian Federation has particular importance for Canada, given our shared interests in the Arctic and northern environment and our complementary strengths in natural resource industries. Canada and the Russian Federation enjoy a diverse and productive relationship as large resource-rich northern countries, as well as G8 partners. Canada and the Russian Federation benefit from extensive cooperation on trade and investment, energy, democratic development and governance, security and counter-terrorism, northern issues, and cultural and academic exchanges.

As two countries with vast northern landscapes, abundant natural resources and multi-ethnic societies, Canada and the Russian Federation share a number of striking similarities. Canada, like the Russian Federation, is also a

federal nation. The year 2007 marks not only the 65<sup>th</sup> anniversary of the establishment of Canadian-Russian diplomatic relations, but also the 140<sup>th</sup> anniversary of the founding of Canada as a federal nation. With 140 years of federalism behind us, Canadians are familiar with the unique challenges – and significant benefits – of governing an ethnically and regionally diverse, and geographically vast nation using a federalist system.

Federalism is a form of government in which sovereign powers are constitutionally divided between a central government and semi-autonomous regional governments. In the words of Sir John A. Macdonald, Canada's first Prime Minister, federalism provides "a general government and legislature for general purposes with local governments and legislatures for local purposes." Through the division of powers, a measure of self-government is vested in national minorities, allowing them to protect and promote their culture, religion and language. Canada's federalism accords a significant degree of autonomous powers to national minorities, enabling them to determine their future according to their unique vision, while still being able to participate in the life and benefits of a large nation.

Canada, like the Russian Federation, has a very diverse population. The Aboriginal peoples, Canada's first inhabitants, have been in Canada for thousands of years. Moreover, over one-third of Canadians can trace their ancestry to France. Many of these people are concentrated in the province of Quebec, forming a powerful majority. However, over a million francophones live outside Quebec in minority linguistic communities spread across the country. Increasingly, Canadian society is also becoming a mirror of the global society, as we welcome immigration from all over the world.

A commitment to democratic pluralism has been with Canada from the beginning. Canada developed first as a colony of two empires, originally the French and later the British. It was established as a federation in 1867 in order

to accommodate the needs of diverse communities that were scattered over vast geographic distances. The federating provinces wished to unite in order to protect themselves against American economic and military dominance and to strengthen trade and commerce across far-flung regions. At the same time, each federating province already had a rich history, with deep differences in economic interest, language, religion, law and education. The province of Quebec, for example, which was settled predominantly by French-speaking Roman Catholics, wanted to retain autonomy over religion, culture, education and civil law. The solution to this was to create a federal nation, as a compromise between full integration and independent colonies.

Federalism combines diversity with unity. It allows a disparate array of people to achieve solidarity and harmony, while retaining a degree of independence. In a federalist nation, the constituent units cooperate for certain purposes – such as military defence, free internal trade and monetary currency – while retaining authority and power over more local matters. But after a federal nation has been created, the individual interests of the constituent units may conflict with the interests of other constituent units or the whole of the nation. This frequently creates ongoing tensions within a federation. Despite such tensions and the challenges that accompany them, Canada has blossomed and prospered under federalism. It is often said that this is because Canada's federalism is flexible: it is able to adapt to the changing needs of its constituent parts over time.

Justice Allen Linden of the Federal Court of Canada has written:

Federal systems all change over the years. Some develop and thrive. Others wither and die. The Canadian system, despite many trials and tribulations over the years, has endured and, in my view, thrives, despite the tensions and testiness that challenges it almost daily ... The secret of Canada's survival as a healthy federation is that ours is flexible federalism, one that is continually compromising, that is always willing to try things out, even when the problems seem insoluble at first.

As part of this flexibility, Canada has been willing to allow for a certain level of “asymmetry” in its federalism. Asymmetrical federalism is a constitutional structure under which some of the constituent units have more extensive powers than others relative to the central government. It is a solution to the conflicts that arise when one or two constituent units experience significantly different needs from the others, as the result of ethnic, linguistic or cultural differences. Asymmetrical federalism allows for the structuring of policies in a way that is more respectful of the needs of each community within the federation. It allows for the existence of multi-nationalism within Canada. For instance, the French Civil Law system is constitutionally protected only in the province of Quebec, which was settled predominantly by French colonists. In the remaining provinces, settled predominantly by British colonists, the British common law system prevails. The Constitution also protected denominational schools in the provinces of Ontario and Quebec at the time of Confederation, in order to safeguard the rights of religious minorities in those provinces. The province of Quebec has recently given up the protection of denominational schools. Asymmetrical federalism has been especially important in Canada in order to promote the cultural self-determination of minority groups in areas such as language, religion, education, culture and legal traditions. It also ensures substantive, rather than merely formal, equality. Substantive equality differs from formal equality in that it recognizes that identical treatment can lead to discriminatory treatment. Formal equality can be used to impose uniformity and coercive assimilation, threatening the very existence of minority groups in a multi-ethnic society. At the same time, the Constitution contains many symmetrical provisions that allow differences to flourish. For instance, each federating province has an equal right to enact laws relating to property and civil rights in the province.

The principle of flexibility is also embodied in the rules that apply for amending the Constitution. These rules were introduced in 1982. Changes to most parts of the Constitution require ratification by the two Chambers of

Parliament and the legislative assemblies of two-thirds of the provinces containing at least fifty per cent of the population of Canada. The most novel feature of this formula is that while it does not give a constitutional veto to any province, it does permit up to three provinces to pass resolutions of dissent and “opt out” of a given amendment. Furthermore, where such an amendment relates to education or culture, dissenting provinces must be given the equivalent of any financial benefits accruing to the other provinces as a result of it. The right for the provinces to “opt-out” of Constitutional amendments is an example of flexible federalism in action. Different solutions may be necessary for different provinces.

In addition to demonstrating flexibility, Canadian federalism is also a particularly strong example of executive federalism. That is, major policy initiatives typically require agreement among the country’s political leaders, the prime minister of Canada and the provincial and territorial premiers. Federalism is viewed as a process of negotiation rather than a bare legal framework of rights and obligations. It has been noted that Canadian intergovernmental relations resemble a process of federal-provincial diplomacy, with a tradition of negotiated agreement among all participants. This is because under Canadian constitutional law, the federal and provincial governments are all legitimate governments with fields of jurisdiction that they have the right to occupy in fulfilling the duty to serve their citizens.

Canada’s federal system is built upon the principle of fully divided powers. The legislative powers conferred on the Federal Parliament and on the provinces are exclusive. This means that each level of government cannot encroach on the other. Federal powers serve as a check on provincial powers and vice versa. The most significant of the federal powers include defence, currency and monetary policy, and the regulation of trade and commerce. Provincial powers include civil and property rights, municipal affairs and taxation within the province. Over the past 140 years, Canada has emerged as a highly

decentralised federation, with strong and autonomous provincial and territorial governments. At the same time, the federal government has unique powers and responsibilities that are necessary for the federation to function effectively – for instance, ensuring fair internal trade and fiscal equalization across the provinces. In addition to this, policy fields that were never envisioned in the mid 19<sup>th</sup> century have become increasingly important today. The environment, culture, communications, regional development, industrial strategies, manpower and training, fitness and sports, tourism and science policy – these are all policy fields that are not mentioned in the sections of the Constitution that set out the respective powers of the federal and provincial levels of government. Thus, cooperation and compromise between the provincial and federal governments, and occasionally guidance from the courts, have been necessary to ensure a workable federalism.

Even though the division of powers within the constitution and constitutional practice gives the powers to conduct foreign policy to the crown in the form of the federal executive, the division of powers between the federal and provincial governments places limits as to the scope of the exercise of those powers. Specifically, it is the practice in Canada that the federal government cannot ratify an international treaty that affects an area of provincial jurisdiction without the written consent of all the provinces.

The first such case of this was when then-Prime Minister R. B. Bennett used the International Labour Organization conventions as part of his “New Deal” package of economic reforms to confront the Great Depression. As labour is a jurisdiction that under s. 92 of the Constitution Act of 1867 falls to the exclusive power of the provincial legislatures and the ILO was created by the Treaty of Versailles to which Canada acceded without seeking the consent of the provinces, the conventions of the ILO were ruled to have no effect by the Judicial Committee of the Privy Council, then Canada’s Supreme Court.

The precedent created by the ILO conventions case affects the powers of Parliament of Canada to this day to practice its foreign policy powers, particularly with regards to human rights, which falls under the s.92 as an exclusive power of the provincial legislatures. In 1948, in the second to last vote before the unanimous passing of the Universal Declaration of Human Rights in the General Assembly, Canada abstained with then United Nations ambassador Lester B. Pearson citing s.92. After much discussion, Canada changed its vote and voted in favour of the UDHR. When the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social, and Cultural Rights*, were opened for signatures in 1966, Canada signed them almost immediately but sought the consent of the provinces before moving to ratify them in the Parliament of Canada. They received this written consent in 1976 and became a state party to the covenants in May of that year. The ratification of other treaties that deal with the powers of provincial legislatures has been held up due to reservations with the terms of the treaties. An example of this is the Organization of American States' *American Convention on Human Rights*, to which the provinces have multiple objections. In this respect, Canadian federalism is required to respect the jurisdictional boundaries as prescribed in the Canadian constitution, and, as above mentioned, this balance is struck through co-operation, compromise and dialogue between the federal government and the provinces concerning issues of jurisdiction and mutual concern.

Canadian federalism has proven to be enormously successful in providing its citizens with political, economic and social stability. Canada is a strong, unified and prosperous nation, declared by the UN to be one of the 10 best places in which to live worldwide. As a thriving federalist democracy, Canada is a country that embraces multiculturalism and diversity. It is a place where all people are invited into the "town square" to participate as full and equal members of society.

All people on Canadian soil are guaranteed the right to equal protection and benefit of the law under the *Canadian Charter of Rights and Freedoms*, which is part of our Constitution. Both levels of government, federal and provincial, must respect the Charter in enacting laws and making administrative decisions. The Canadian Constitution also provides for official language rights and minority language educational rights; recognizes aboriginal and treaty rights; and enshrines the commitment of both levels of government to promote equal opportunities for the well-being of all Canadians.

Perhaps most importantly, Canadian federalism is also built upon a truly democratic system of governance that incorporates three key principles. These are: (1) representation by population, or majority rule; (2) responsible government and the division of powers; and (3) the protection of regional and minority interests.

Ever since its inception in 1867, Canada has been a classical Parliamentary federation. The legislatures at both the federal and provincial levels are modelled on the British Westminster tradition. In the Westminster-based model of Parliamentary government, the Executive, comprised of the Prime Minister and the Cabinet, is incorporated into Parliament. However, the Executive branch retains a sphere of independence and authority from Parliament. The Judiciary, consisting of the highest court of the land, the Supreme Court of Canada, and all other courts, is the third branch of government. It is independent of Parliament and the Executive branch.

The *Constitution Act of 1867* establishes the federal Parliament, the legislative branch of government, consisting of the Queen as the formal head of State, represented by the Governor General; a lower chamber of elected representatives (the House of Commons); and an upper chamber of government-appointed representatives (the Senate). Both the House of Commons and the



Senate have distinct and important roles in federal governance. As Sir Winston Churchill once asserted:

It is difficult to find a powerful, successful, free democratic constitution of a great sovereign state which has adopted the single Chamber government.

All members of the House of Commons are elected, providing for the representation of the country's population. The seats in the House of Commons are distributed among the provinces, roughly according to population. However, to ensure a minimum level of representation from each province, no province can have fewer seats than it has members of the Senate. By convention, the leader of the political party with the largest number of seats in the House of Commons is appointed Prime Minister. Members of the Cabinet are selected by the Prime Minister, primarily from the elected members of that party.

The principle of responsible government means that the Prime Minister cannot govern without the consent of the elected House of Commons, which makes the Executive Branch accountable to the people. The Government must have the support of the House of Commons and retain its confidence in order to stay in power. If the government loses a vote on a major issue, including a budget or tax bill, or on any motion of non-confidence, it is expected to resign or ask the Governor-General to call a general election.

The seats in the upper chamber of Parliament, the Senate, are allocated to provide each region of the country with equal representation. Over half of the seats in the Senate are distributed to less populated parts of the country, complementing the representation-by-population basis of the House of Commons. The Senate's intended role is to safeguard regional, provincial and minority interests – again reflecting Canada's commitment to protecting diversity. The Senate is also intended, in the words of Sir John A. Macdonald, Canada's first Prime Minister, to provide "sober second thought" to legislation initiated in the House of Commons. Bills can be introduced in either the Senate or the

House of Commons, although the Senate cannot introduce Bills that raise or allocate public funds. To become law, a bill must be passed by both the House of Commons and the Senate, ensuring that both popular and minority views are taken into account in the legislative process.

I am proud to share with you today the Canadian vision of federation: one that is flexible; that respects the authority of both provincial and federal levels of government; that allows for asymmetry in order to safeguard the religion, language and culture of minority groups; and that is founded upon democracy and the rule of law. A multicultural federation is not only workable, but it can be a resounding success, provided the parties engage in a spirit of compromise and cooperation, with respect for human rights. It is my hope that Canada and the Russian Federation will continue to learn from each other in the years to come as we share the experience of federal governance.

Thank you.