

# The Social Union Framework Agreement: Lost Opportunity or New Beginning?

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The Social Union Framework Agreement of 1999 has the potential to be the most far reaching reform in the workings of the federation since the changes associated with the *Constitution Act, 1982*. Whether it will in practice have the effect is still unknown. Successful implementation will require a sustained and intensive effort on the part of signatory governments to learn new behaviours. They will have to learn to work with additional constraints on their room for maneuver.<sup>1</sup> And while it might be presumed that governments had made that decision when they signed the Social Union Framework Agreement (SUFA), it is not yet clear that they are in fact conducting themselves in ways that reflect those commitments.

The SUFA was about 18 months old when this chapter was being finalized. SUFA is to be reviewed by the end of its third year by the participating governments. These governments should have therefore begun to think about how they might conduct such a review. This chapter focuses on the future prospects for SUFA as a way of helping to think about some of the challenges that such a review process will encounter.

## Key Elements in SUFA

SUFA is a political agreement between the federal government, nine provincial and two territorial governments about improving the social union for Canadians. Quebec decided not to sign the Agreement and is most unlikely to do unless it is renegotiated to fit more closely with Quebec's position. Nunavut is, however, planning to sign soon. SUFA does not change the constitutional powers of any governments. Nor is it legally binding. If governments do not fulfill their obligations, there is no recourse to the courts.

As for content of the Agreement, most commentators would concur that the SUFA is more about process — about how governments should relate to one another and to their citizens in the making of social policy — than it is about substantive new social policy commitments.<sup>2</sup> On the *process* side, SUFA calls for joint federal-provincial planning in social policy. It envisages a larger role for citizens and stakeholders in decision-making and enhanced accountability and transparency. It also sets some new ground rules for the federal use of its spending

power and lays out a few general provisions for dispute avoidance and resolution. On the *substantive* side, it re-affirms the existing mobility provisions of the Agreement on Internal Trade and extends them significantly. More generally, it commits governments to certain principles, including the five principles associated with Canada's public health insurance system. If implemented effectively, it offers the promise of better social policy (in the sense of more coherent and better-informed policy), more effective management of the federation and a better functioning democracy. The question that requires consideration, therefore, is whether it will fulfill these promises.

### The Outlook for SUFA

The 18 months since the signing of the Social Union Framework Agreement (SUFA) has been something less than a good inaugural period for this new and potentially very important intergovernmental arrangement. There are tensions between federal and provincial governments regarding the way in which the other order of government is behaving. At the provincial level, there are suspicions about the federal government's *bona fides*. Provincial officials point to inappropriate actions by the federal government in some cases, and lack of action in others, as evidence that Ottawa is not always living up to its commitments. For their part, some federal officials worry that provincial governments believe that all changed behaviours must rest with the federal government alone.

Notwithstanding these tensions, there is a large agenda of federal-provincial social discussions under way. And based on the limited information publicly available, it appears that many of these discussions, perhaps most, are being conducted in a fashion that reflects the SUFA call for

"mutual respect between orders of government and a willingness to work together to meet the needs of Canadians". Rather, the threat to the agreement is that this work is proceeding in an atmosphere in which strong *trust* relationships among governments, especially at the most senior levels, are still lacking. Both orders of government, but perhaps the provincial more than the federal, are apprehensive about unwelcome initiatives by the other without appropriate prior consultation.

SUFA was not intended to end federal-provincial conflict about social policy and the funding of social policy. Rather, it was and is, at least in part, about establishing the ground rules for both cooperation and conflict. There is no SUFA rule, for example, to prevent provincial premiers from putting public pressure on the federal government to increase its funding for health care or other social programs. Nor is there any rule that would preclude the federal government from speaking out politically against Alberta's proposals to allow a larger role for private clinics in the delivery of health care to Albertans. So the tensions being referred to here do not relate mainly to these particular federal-provincial disagreements. Indeed, these particular disputes may be as much or more a reflection of the underlying SUFA tensions that will be discussed below as they themselves are a problem for effective SUFA implementation.

In fact not much of the SUFA tension — as opposed to the current controversy surrounding health policy and politics — is reflected in the public debates, if only because SUFA, as such, has virtually no public profile. Behind closed doors, however, the tension is more palpable. During the first half of the year 2000, a provincial minister declared that if the federal budget does not "deliver the

goods” on health care financing (and from a provincial perspective it did not), it will be difficult to breathe any life into SUFA. Officials from several provinces have stated that they see little evidence that key provisions of SUFA are being taken seriously by Ottawa. A federal minister has acknowledged that it is difficult to persuade cabinet colleagues to get used to operating within the SUFA framework. And federal officials have remarked that they see little likelihood that SUFA will ever become the kind of intergovernmental agreement that some provinces expect or at least desire.<sup>3</sup>

These anxieties do not mean that there is not a lot of intergovernmental discussion about social policy issues, from health care to children and disability. There are many phone calls and meetings between government ministers and officials (multilaterally and bilaterally). The question is whether this intergovernmental activity is being carried out in a manner that is consistent with SUFA requirements. And even where the behaviour is consistent, it is unclear whether this compliance is because of, independent of or in spite of SUFA. However, since there is little public record of these activities, it is hard for any outsider to have a full appreciation of events, let alone evaluate them.

Adding to the challenge in assessing the future prospects of SUFA is that some people believe that SUFA is to be judged mainly by *what* it achieves in terms of improved social policy — a view sometimes associated with the federal government.<sup>4</sup> But there is an alternative view, which is that SUFA is to be judged more by *how* governments behave, how they relate to one another — a view that appears more common among provincial governments. While SUFA is no doubt about both the *how* and the *what*, the fact

that the relative weights attached to these two criteria differ between federal and provincial governments is illustrative of a central theme of this paper. For if, in fact, there is tension in the social union it is because there are a *series of tensions* associated with the meaning of SUFA and its surrounding political and economic environment. The main body of this paper will therefore focus on these tensions as a partial report card on SUFA implementation. And it is implicit in these remarks that the effective implementation of SUFA will require considerable skill and goodwill by both orders of government in dealing with these tensions. In some cases, political compromise will be essential by one or more governments if SUFA is not to become irrelevant to the workings of the federation.

Nine tensions will be examined, grouped under four headings: the interpretation and nature of SUFA, the spending power, governance, and the paradox of building attempting to build a stronger Canada with one of the founding nations not at the table.

## **A. THE INTERPRETATION and NATURE of SUFA**

### **Tension 1: Federal and Provincial Governments Weight the Individual SUFA Commitments Differently**

One of the most fundamental tensions in SUFA is that the two orders of government attach markedly different degrees of importance to its different provisions. Provincial governments attach great weight to section 5, which provides some constraints on the federal government’s use of its spending power. They are perhaps equally concerned to have clear procedures for implementing the section 6 provisions relating to Dispute Avoidance

and Resolution. As for the federal government, its prime focus is on the Mobility provisions of Section 2 and the Accountability provisions of Section 3.

The reasons for the provincial priorities are straightforward. The provinces were motivated by the desire to ensure that the federal government would never again be able to de-stabilize provincial finances and programs to the extent that it did when it cut its transfers in association with the introduction of the Canada Health and Social Transfer (CHST). They also wanted to ensure that the federal government would be limited in its ability to introduce another Millennium Scholarship Fund, sometimes referred to as “unilateral boutique programs” by provincial critics. That is, provincial governments wanted to ensure that there were rules constraining the use of the federal spending power to introduce new social programs, whether through intergovernmental or direct transfers. They also sought stability in federal funding once such programs were in place. Moreover, recognizing that there could be differences of opinion between federal and provincial governments concerning appropriate behaviour under the provisions of SUFA, provinces wanted a clear and relatively formal set of rules for Dispute Avoidance and Resolution. In this respect, their wishes were analogous to the policies that the federal government pursues in matters related to international economic relations. In that forum, the federal government has long preferred a rules-based multilateral international trading system rather than a series of bilateral relationships where it would lack the power to deal with larger and more powerful trading partners, like our southern neighbour. In the same way, provinces prefer a rules-based multilateral approach for managing disputes with the much larger government in Ottawa.

As for the federal government, it was not the initiator of SUFA. But once it decided to come to the table, it established objectives of its own. These included affirming the legitimacy of the federal government in social policy and promoting the removal of barriers to mobility, both to strengthen the rights inherent in Canadian citizenship and to promote economic efficiency. And it concentrated on public accountability as a way of putting pressure on the provinces to meet their social policy obligations.

There is thus a tension in SUFA implementation associated with the different priorities of the two orders of government. While it might be argued, in response, that all agreements of this type entail compromises between different viewpoints, nonetheless, the vastly different priorities of the two orders of government constitute a major challenge to successful SUFA implementation. This difference is reflected at the moment, for example, in the strategy of provincial governments in pressing for firmer rules and procedures on dispute resolution, a position which Ottawa has been resisting. This example leads in turn to a second and related tension.

### **Tension 2: A Formal or an Informal Agreement**

A second tension in SUFA implementation reflects the differing views about the degree of formality implied by this agreement. It was noted immediately above that provincial governments attach considerable weight to having an effective dispute avoidance and settlement set of arrangements. From the perspective of at least some provinces, SUFA is an agreement between two sovereign orders of government (each with their own sphere of legislative competence) and there is a need for clear rules about when a dispute

has been triggered and how it is to be resolved. It is implicit in this approach that there is a need for consistency between sector departments in the way in which they interpret SUFA rules. It may also be implicit in this approach that the precedents created in interpreting the rules by one sector should be binding on all other social ministries. To achieve this kind of consistency and coherence in SUFA interpretation, therefore, requires an overarching coordinating body. For provinces, the Ministerial Council that is referred to in Section 6 of the SUFA is the appropriate body to play this role.

In any case, provincial governments have been developing administrative mechanisms to flesh out the provisions of section 6. They have invited federal officials to participate in that process but, as of mid-year 2000, Ottawa had declined to do so.

On the federal side, it appears that Ottawa is opposed to a formal and legalistic interpretation of SUFA. It believes that sector ministers should be responsible for dispute avoidance and resolution, not some overarching body. It wants to ensure that SUFA is flexible and does not get bogged down in the kinds of legalisms that might be associated with a binding international agreement. And in support of the federal view, section 6 does suggest that "sector ministers" are to play the lead role in this function. That section also assigns to the Ministerial Council the more mundane task of supporting sector ministers by "collecting information on effective ways of implementing the agreement and avoiding disputes and receiving reports from jurisdictions on progress on commitments under the SUFA".

Federal officials may believe that provinces are effectively trying to re-negotiate the agreement in their approach to

dispute settlement. Provinces deny this. In any case, the main point here is that there are important tensions between the federal government's view of the nature of SUFA and that held by at least some provinces.

### Tension 3: Balancing Intergovernmental Collaboration and Citizen Engagement

Mathew Mendesohn and John McLean have written on this subject recently.<sup>5</sup> The essence of their argument is that "SUFA dances back and forth between intergovernmental collaboration and public involvement without ever suggesting any practical way of resolving the contradictions between the two models."<sup>6</sup> The fact that SUFA recognizes the need to balance intergovernmental collaboration with ways of reducing of concerns about a democratic deficit is of course to its credit. There are also some indications that governments are making modest progress in respect of elements of this commitment. For example, in relation to both the children's agenda and disability issues, federal and provincial officials have jointly organized consultation mechanisms with stakeholder groups on what appears to be a more or less ongoing basis.<sup>7</sup> It is too soon to know how governments will act on other commitments, like reporting regularly to constituents on the performance of programs, sharing information about best practices and so forth. Until this kind of information is made widely available as part of SUFA implementation, the agreement is unlikely to have any profile with the public. And if it has no profile with the public, it is not likely to be a priority of political leaders. In the meantime, on the current evidence, it appears that much more attention is going to intergovernmental mechanisms than engaging the public.

## **B. TENSIONS LINKED to the SPENDING POWER**

### **Tension 4: SUFA: An Agreement for all Seasons?**

The events that gave rise to SUFA were associated with a period of severe fiscal restraint for governments. For the federal government, it may not have been difficult to agree to put some limits on its spending power when in fact it had little money to spend.

But is SUFA an agreement for all seasons? Can it survive prosperity and the improved fiscal stance of the federal government? Is Ottawa as ready to play by the SUFA rules now that it is running surpluses, as it was when it was poor? In this regard, it is well to recognize that the more left-wing members of the federal Liberal caucus have found their years in power since 1993 to be frustrating, as the government tacked to the right to deal with the huge federal budgetary deficit. Now that Ottawa is in surplus, for this group, the time is opportune to re-establish the Liberal Party's social credentials.

Whether in fact the SUFA can survive prosperity is, of course, an unknowable question. Only the future will tell. But the initial indications give at least some grounds for hope. The 2000 federal budget contained no new unilateral federal spending measures in areas of exclusive provincial legislative competence. It appears that Minister Rock wishes to widen the scope of the Canada Health Act to include home care as part of a comprehensive public health insurance system. But it is equally clear that the federal government is willing to put additional federal funds into public health insurance only if a deal can be worked out with the provinces. In this case, there appears to be no suggestion of Ottawa acting on its own or with the support of a

few provinces only. This behaviour by the federal government is consistent with its SUFA obligations. Similarly, there has been an extensive federal-provincial dialogue surrounding a National Children's Agenda. Here too, the federal budget showed no additional initiative pending the resolution of outstanding issues between the two orders of government.<sup>8</sup> It is true that some provincial governments, perhaps all, consider that Minister Bradshaw's Homelessness announcement last December, which entailed additional federal expenditure commitment through its spending power, to be at least inconsistent with the spirit of SUFA. But in the wider scheme of things this was a relatively small initiative and a relatively small part of the social policy landscape. It is possible that if the federal government handled this file poorly, this reflected 'growing pains' — that it had as much to do with uncertainties about the nature of what the federal government owed to the provinces in terms of advance consultations as it did to bad intentions. On much larger files, ranging from health care to children to disability issues and the labour market, I am aware of no indications that the federal government has breached either the letter or the spirit of SUFA by undertaking new unilateral spending initiatives in areas of exclusive legislative competence.

What lies ahead? The period leading up to the next federal general election, likely in 2001, will be absolutely crucial in determining if SUFA can survive prosperity. This period will be crucial simply because the next federal budget will probably be the last one before that election. And if Ottawa can live within the spending power constraints of SUFA in the context of a large budgetary surplus in an election year, then the prospects of Ottawa playing by the rules in the longer run become much better. This would serve

as a strong signal to provincial governments.

If it turns out that Ottawa plays by the rules, this does by any means imply that the provinces will be satisfied. For as anyone who reads the newspapers knows, what the provinces mainly want from Ottawa is more money — effectively unconditional money — even if it is formally earmarked for health. This in turn leads to a related issue.

### Tension 5: The Provinces and the Federal Spending Power

This tension is the *apparent* contradiction within provincial governments about the extent to which they welcome federal cash transfers for social programs. On the one hand, the SUFA negotiations were provoked by a cutback in federal transfers to the provinces. The provinces seemed to be asking for more federal spending, not less. Indeed, to many observers, the final SUFA deal was only made possible when the federal government agreed to put more federal money into the CHST. In short, there *appears* to be a tension between the provincial determination to put limits on the federal spending power and the provincial determination to have more federal money transferred to them.

The provinces had a choice of holding out in February 1999 for stronger assurances from the federal government about revenue stability in federal transfers and for an opting out package that might have made it easier for Quebec to sign SUFA.<sup>9</sup> But the immediacy and lure of the additional federal cash transfers, in the face of serious financial strains among most of the provinces, led provincial governments to sign what is now SUFA. From all accounts, the Prime Minister gauged his counterparts well in offering just the right amounts of additional funds, at just the

right moment, in the negotiations to clinch the deal. So something of a case can be made that there was a tension between the provinces wanting to limit the federal spending power (and to maximize their freedom to manoeuvre within it), and wanting to receive more federal funds.

But this tension is more about appearance than reality. There is no really deep contradiction between the provinces declaring, on the one hand, that once a joint program has been created with federal funding through the federal spending power, they want assurances that this funding will be maintained; and, on the other hand, saying that the federal government must not create new social programs in areas of exclusive provincial legislative competence without first observing the constraints inherent in SUFA. Nonetheless, from the viewpoint of how provinces manage their communications, this is not always easy to explain to the public.

## C. TENSIONS RELATING to GOVERNANCE

### Tension 6: Politicians and Civil Servants

Although not observed on publicly to date, it is possible that there is also a tension between political leaders and civil servants with respect to SUFA implementation. Political leaders want to be able to deliver their message to the public, and act on it, with as few constraints as possible. They need to be sensitive to the realities of the four-year election cycle. If they are prepared to take political risks, they want the political rewards in a timely fashion. If they have made election promises, they want to be able to deliver on them. And in attempting to do so, they most certainly do not want to be held hostage by another government that has

a different ideology or a different set of priorities. If political leaders carry the political burden of levying taxes, they want the credit that goes with financing social programs.

Civil servants operate under a different set of influences. They are less affected by the electoral cycle. As they are likely to be in their positions for longer stretches than are their ministers, they may have the time and patience to try to sort out difficult problems. To be effective over the long run, they may have a self-interest in learning to work with their provincial or federal counterparts. They may also be more interested in good policy (whatever that means) than good politics. They may find a challenge in making complex systems work well.

To be sure, the civil servants work for ministers. And senior civil servants will not remain senior civil servants for long if they are insensitive to political imperatives. But civil servants and politicians have different functions in our political system and hence different mindsets. And what is being suggested here is that it is easier for civil servants to accommodate to the constraints of SUFA than it is for political leaders. This too is another tension inherent in SUFA.

### Tension 7: Central Agencies and Line Ministries

Donald Savoie has written recently about the tensions between those who govern from the centre and the remaining parts of Canadian governments.<sup>10</sup> His thesis has important resonance for understanding the challenges to effective SUFA implementation. For in general, line ministries that deal with health, social services, income support, labour market programming and human capital development, whether at the provincial or

federal level, have a shared and overriding interest in doing a good job for their clientele — the citizens they serve. But, of course, they are not free agents. They are constrained by their finance ministries, influenced and occasionally overruled by their intergovernmental ministries and, of course, ultimately subject to the direction of their first ministers.

As noted earlier, from some perspectives SUFA is written to put sectoral ministers in the driver's seat. But the role of the federal finance ministry is also crucial to successful SUFA implementation. Thus, in the paragraph of section 4 that deals with "Reciprocal Notice and Consultation", the SUFA obligations that governments have endorsed are to be carried out in a "manner consistent with the principles of our system of parliamentary government and the budget-making process". How the federal finance ministry interprets these words is obviously important. Linked to this question is whether the SUFA heralds a new equilibrium between the federal finance ministry and the federal social departments in the making of social policy. In the 1990s, in particular, the federal finance ministry called the shots in Ottawa while the social ministries took a back seat.<sup>11</sup> Fundamental to the successful implementation of SUFA is successful implementation of section 4, entitled "Working in Partnership for Canadians". In this section there are clear commitments that governments will "undertake joint planning to share information on social trends, problems and priorities and to work together to identify priorities for joint action... collaborate on implementation of joint priorities when this would result in more effective and efficient service to Canadians". Successful implementation of this section will enhance the probability that there will be no undue surprises by the federal government in its

use of the federal spending power. It would also reduce the number of disputes likely to arise.

But it also requires that provincial governments have confidence that federal line ministries do indeed have the power to speak authoritatively for Ottawa within their areas of competence. In turn, this requires a more equal distribution of power within Ottawa between social and finance departments. To be clear on this point, this is not an issue of federal social ministries making financial commitments that go beyond their resources but having freedom to innovate within their share of the federal fiscal framework, all the while keeping the federal finance department 'in the loop'.

A similar issue may arise between provincial and federal line departments, on the one hand, and their respective intergovernmental ministries, on the other. Here too, line ministries can be 'hung out' by intergovernmental ministries that attach more weight to jurisdictional concerns, or old grievances, than building the social union. There is, of course, a legitimate role for intergovernmental ministries in ensuring that first ministers can retain an oversight of how the federation is being managed. But if the interventions of these ministries are the rule, rather than the exception, the machinery of joint planning may become clogged and the SUFA rendered less functional. In this regard, the federal government may have as much reason to worry about the role of provincial intergovernmental ministries as provincial governments have to worry about the federal finance ministry.<sup>12</sup> This is not to deny that intergovernmental ministries have a legitimate role. Indeed, they often work closely with their first ministers and in that sense speak for their governments

with considerable authority. It is simply that if they play a lead role too often, this is likely to be a symptom of the high politics of protecting jurisdiction as opposed to the bread and butter politics of advancing social policy.

Managing these tensions effectively will therefore be another essential for successful SUFA implementation.

### **Tension 8: The Lack of Transparency in an Agreement that makes Transparency a Priority**

In some ways this is an extension of the tension between intergovernmental collaboration and citizen engagement referred to above. However, it is discussed separately here because it has less to do with tensions within SUFA itself and more to do with the practical governance activities related to it. Section 3 of SUFA highlights the importance of "ensuring fair and transparent practices" in the management of social programs. SUFA itself was, as is well known, negotiated entirely behind closed doors. And virtually none of the activities taking place under the auspices of SUFA, as such, has a substantial public profile.<sup>13</sup>

It is not surprising that governments prefer to work in private. It is hard to strike intergovernmental deals when critics are sniping at governments from all sides. It is difficult to reach agreements when the public grandstanding of one or two participants can derail negotiations. In short, working in private is easier than working in public.

Yet unless the public is brought much more fully into 'the know' with regard to SUFA, the agreement risks sinking under the weight of the many well-intentioned and hardworking intergovernmental social policy committees and sub-commit-

tees beavering away in private. It is true that many of them pre-date SUFA and would continue should that agreement disappear. But these committees are expected to conduct themselves according to SUFA's canons. If, however, the public has little awareness of what governments are doing, or failing to do, in relation to their SUFA commitments such as those on joint planning, public accountability and dispute avoidance and resolution, it will be easier for governments to ignore them when they are inconvenient for governments. Remaining detached from the public, SUFA risks never registering in the public's radar screen which, over time, will surely be its kiss of death.<sup>14</sup>

#### **D. TENSIONS RELATING to SUFA as CANADA BUILDING**

##### **Tension 9: Quebec's Non-Participation**

SUFA is about building a better Canada. It is about better social policy and a renewed partnership between the two orders of government. If successful, it will be a major cornerstone of political nation-building in Canada.

Without Quebec's participation, however, the gulf between Quebec and the rest of Canada will inevitably grow. While asymmetry has its place in the federation, and indeed more of it may be essential for the effective survival of the federation, Quebec's non-participation in SUFA is cause for great concern. SUFA may become the framework institution through which governments oversee the *sharing* processes of the federation. With Quebec outside the governance structure for those sharing arrangements, the actual sharing itself could over time be put in jeopardy. It will raise questions about whether Quebec should be excluded from

benefits that the federal government transfers to provinces or individuals as a result of SUFA processes or whether Québécois will get the same social benefits as governments and citizens elsewhere in Canada even though they have chosen not to sign SUFA.

The kinds of amendments to SUFA that might make it more attractive for the Government of Quebec to sign the agreement have been discussed elsewhere.<sup>15</sup> The proposal is to provide an explicit opting-out possibility in SUFA for jointly financed programs. (My view is that SUFA now has, *de facto*, more than the equivalent of the kind opting out contemplated by the Meech Lake and Charlottetown Accords, but the SUFA provision is implicit, not explicit.) Such a new provision would explicitly acknowledge that opting out is possible without making it a right. In effect, it would leave room for considering opting out on a case-by-case basis, which is consistent with practice during the years of building the post World War Two welfare state.

It is clearly dangerous for the Canadian federation if SUFA flourishes while Quebec remains outside. At the same time, Alain Noël declares that SUFA is also a "clear setback that isolates Quebec."<sup>16</sup> There is not, however, a contradiction between Noël's assessment and the argument here in the sense that SUFA could turn out to be a lose:lose proposition from the perspective of relations between Quebec and the rest of Canada. There is thus a major tension between the idea of SUFA as a nation-building instrument and the non-participation of the province that is the home of one of Canada's two official language groups and of one-fourth of its people.

## Connections Among the Tensions

The argument above is that there are a series of unresolved tensions respecting the Social Union Framework Agreement that threaten to undermine its successful implementation. Moreover, there are important connections between and among these tensions. Eliminating, or even reducing, some of these tensions will help to eliminate or reduce others. Take, for example, the tension around the broad interpretation of the agreement. As observed above, the provincial and federal governments assign decidedly different weights to the different provisions of the SUFA. So long as this situation prevails, it is also likely to be the case that provincial intergovernmental ministries will find it necessary to play a large role in SUFA implementation. They will not withdraw until they have confidence that there is greater consensus about the meaning of the agreement to its various signatories. Similarly, intergovernmental and other central agencies tend to operate with greater secrecy than do line ministries. So we would likely find more transparency in SUFA implementation with a greater role for line ministries and a lesser role for central agencies. Thus, if there was a greater measure of consensus about the nature of the SUFA, the role of central agencies would shrink and the amount of transparency might be expected to rise.<sup>17</sup> Of course, it might be argued that the flow of causality is in the opposite direction. If line social ministries played a larger role, there might be less disagreement about the meaning and nature of SUFA. However, this alternative logic is less compelling since the intergovernmental ministries are generally acting on behalf of their first ministers.

There are other links between these tensions. For instance, a better equilibrium between the federal finance and social

ministries might help to ensure that the federal government functions within the constraints of the federal spending power. And it might also minimize the cloak of federal budget secrecy as a channel for changing social policies and programs.

## Conclusions

SUFA is potentially a major departure in Canadian social policy and in the management of the federation. Judging its effectiveness is difficult because, to date, virtually all of its activities are occurring behind closed doors. Evaluating it further complicated by uncertainty about how much weight is to be attached to the *what* of the social union as opposed to the *how*. Is it more important to judge SUFA on what it achieves or on how it achieves whatever it is that it does?

SUFA may be contributing to changes in both intragovernmental and intergovernmental behaviour. It is not possible for the outside observer to know and evaluate all that is happening and, indeed, that which should be happening but is not. What does seem clear though is that there are a series of tensions in the SUFA — tensions related to the nature of the agreement, the role of the spending power and of federal cash, governance structures and processes, and Canada-building without Quebec.

Some of these tensions are likely to remain for a long time. They cannot be eliminated but they should be recognized since, with recognition, it is easier for all partners to understand what is happening and to evaluate actions (and inactions) on their merit. For example, it is likely that there will always be a somewhat different perspective between ministers and their civil servants. This tension is not fatal to SUFA and is present in most areas of public policy. It is not much different than

the tension that comes from governments signing international agreements that constrain their future flexibility in acting. And it is often the civil servants with detailed knowledge of those agreements that have to advise the ministers on their room for maneuver. Over time, this is not dysfunctional to the governance process.

Other tensions need to be addressed within governments. For example, getting the right balance between the federal finance and social ministries is a matter for the Prime Minister to address. And getting the right balance between provincial intergovernmental and social ministries is for the premiers to get right. These are really not negotiable between governments but recognizing the significance of these decisions to SUFA is basic to making the agreement work.

In the short-term, a crucial issue is the need for both the federal and provincial governments to re-assess the meaning and nature of the agreement. Without some greater flexibility by both orders of government, a basic dispute about purpose will remain. And with that cleavage, central agencies will be too involved and transparency will continue to be noticeable by its absence. While on the one hand it is understandable, in this regard, that Ottawa should want to avoid the legalisms and formalities of an international agreement, it is at least equally understandable that provinces would want a clear understanding about the processes and procedures that would breathe life into the agreement. Failing some better understanding about these matters, the agreement will almost certainly fail.

If this hurdle can be overcome, it should be possible to begin to build trust among signatory governments. With *trust*, SUFA

will survive the periodic hurricanes that come from changing governments, prickly personalities and external shocks. Without trust, SUFA will be a footnote in Canadian history. Indeed, the successful management of all the tensions described in this paper is fundamental to building and sustaining the required *trust* relationships among signatory governments. And the starting for such a change is a better understanding among these governments about the obligations that they have imposed on themselves by signing SUFA.

The second big challenge is Quebec's non-participation. On this point, there may be a few scholars who see this as an example of the kind of asymmetry that is healthy for the federation. That view is not shared here. The scope of SUFA is huge. If it is effective, then it will over time become part of the unwritten constitution. And celebrating having Quebec outside this kind of pact as an example of flexible asymmetry is just too big a stretch. That SUFA should be flexible enough to allow for asymmetric implementation is a separate issue. But on SUFA itself, governments elsewhere in Canada should consider what kind of amendments are needed to make SUFA a tolerable if not an attractive document to a future Government of Quebec.<sup>18</sup> For the federal government, this may be especially difficult but the prospects of an effective overarching intergovernmental agreement on the *how* and the *what* of social policy without the participation of Quebec will surely widen the gap between that province and the rest of Canada.

About 70 per cent of federal spending is on social programs. For the provinces, the figure is even higher. Three-quarters of their expenditures are for social purposes. So it is many ways fitting that Canada should now have an overarching intergov-

ernmental agreement that deals with social policy. It is equally appropriate that the agreement should address the challenges to the democratic process associated with Canada's expansive executive federalism. What is not clear yet, however, is whether this agreement will stick or whether it will quietly fade as governments gradually choose to forget the factors that first caused them to sign it. In short, whether SUFA will turn out to be a lost opportunity or a new beginning for the federation remains to be seen. The three-year review should turn out to be a good indicator of which path the federation will follow.

## Notes

<sup>1</sup> As will be discussed below, SUFA is a political agreement, not a legal one. If a signatory government fails to respect its provisions, there are no formal sanctions. In this sense, it is not similar to an international agreement. Nonetheless, it is similar to some international agreements to the extent that signatory governments accept some constraints on their *de facto* freedom of action.

<sup>2</sup> See, for example, Greg Marchildon, "Reply to Ryan and Burelle: A step in the right direction," in *Inroads: A journal of opinion*, No. 9, 2000.

<sup>3</sup> The several remarks in this paragraph are based on my conversations with provincial and federal ministers and officials. They are, however, just examples of many comments of this kind that have been made in private.

<sup>4</sup> While my remarks here are based mainly on conversations with federal officials, this theme can also be found in Treasury Board Secretariat, "Analysis of the Social Union Initiative: Staff Working Paper," available at <http://www.tbs-sct.gc.ca/rma/cumunic/prr98/socune.html>.

<sup>5</sup> "SUFA's Double Vision: Citizen Engagement and Intergovernmental Collaboration," *Policy Options*, April 2000, pages 43-45.

<sup>6</sup> *Ibid.*, page 43.

<sup>7</sup> Even this statement has to be qualified. In a recent meeting the author had with federal and provincial officials and some representatives of the disability community, all the government officials and disability representatives agreed that there was a good working relationship at the stage of problem identification but that more effort was needed to keep the disability representatives "in the loop" once the intergovernmental negotiating process is launched.

<sup>8</sup> It appears that provincial governments may be holding back on an agreement on the Children's Agenda until they secure a better financial deal from Ottawa on health financing. It is also the case that Ottawa is holding back on further financial contributions to provincial health care until it is satisfied that provinces have effective plans to re-structure health care in a way that will meet the needs of Canadians. This kind of strategic bargaining is not inconsistent with SUFA.

<sup>9</sup> While many observers, myself included (*Policy Options*, volume 19, no. 9, 43-46) were skeptical that the Government of Quebec had any intention of signing SUFA, Alain Noël ("General Study of the Framework Agreement," *The Canadian Social Union Without Quebec*, Institute for Research on Public Policy, Montreal, 2000, pp 9-36) has pointed out that Quebec's position during the SUFA negotiations acknowledged a federal role in social policy and, in that sense, went quite far beyond traditional Quebec positions.

<sup>10</sup> *Governing From the Centre: the Concentration of Power in Canadian Politics*, Toronto, University of Toronto Press, 1999.

- <sup>11</sup> This was seen in the capping of the Canada Assistance Plan, the side-swiping and discrediting of Minister Axworthy's Social Security Reform and the creation of CHST.
- <sup>12</sup> For a similar concern about the role of provincial intergovernmental ministries see Susan Phillips with Havi Echenberg, "Moving Forward on the National Children's Agenda," a discussion paper prepared for the National Children's Alliance, March 2000.
- <sup>13</sup> To elaborate on this point, I am distinguishing between FPT relations on specific social policies and programs and FPT relations on the implementation of SUFA itself. The reference in the text has to do with SUFA implementation.
- <sup>14</sup> In this regard, Phillips and Echenberg have observed that this tension is itself linked to the tension about the relative role of central agencies and line social ministries. The latter are comfortable working with voluntary stakeholder groups who understand the situation in the community and on the front lines. In contrast, they argue that "central agency officials are usually more isolated from the outside" and prefer "in-camera discussions and closed deal making".
- <sup>15</sup> Harvey Lazar, "The Social Union Framework Agreement and Canadian Fiscal Federalism," in Harvey Lazar, ed. *Canada: The State of the Federation, 1999-2000: In Search of a New Mission Statement for Canadian Fiscal Federalism*, Kingston, Institute of Intergovernmental Relations, 2000.
- <sup>16</sup> "General Study of the Framework Agreement," in Alain Gagnon and Hugh Segal, ed., *The Canadian Social Union Without Quebec*, Montreal, Institute for Research on Public Policy, 2000.
- <sup>17</sup> The argument here is not that line social ministries are very open, only that they are less closed than central agencies. For a critique of openness of the FPT Health Ministers Conference, see Patricia O'Reilly, "The Federal/Provincial/Territorial Health Conference System," in Keith G. Banting, (ed.), *The Canadian Social Union: Case Studies from the Health Sector*, Kingston: Institute of Intergovernmental Relations, Queen's University, forthcoming, 2000. In contrast, Michael Prince ("Designing Disability Policy in Canada: The Nature and Impact of Federal Political Development," in Alan Puttee, (ed.), *The Canadian Social Union: Case Studies from the Health Sector*, Kingston: Institute of Intergovernmental Relations, Queen's University, forthcoming, 2000) has found, in relation to disability issues that FPT Ministers are relatively open.
- <sup>18</sup> For a specific proposal, see note 15 above.