

FEDERAL-PROVINCIAL PROGRAM OVERLAP

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TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
NATURE, CAUSES AND CONSEQUENCES OF OVERLAP AND POSSIBLE WAYS OF ELIMINATING IT.....	1
A. Nature.....	1
B. Causes	2
C. Consequences	3
1. Financial Consequences.....	3
2. Consequences for Government Actions.....	3
3. Consequences for Clients.....	4
4. Political Consequences	4
D. Solutions to the Overlap Issue	4
REPORTS AND STUDIES ON THE OVERLAP ISSUE	5
A. Julien and Proulx Study (ÉNAP).....	5
B. Economic Council of Canada Report	8
C. The Nielsen Report.....	8
D. 1986 Regulatory Reform Strategy	9
E. Treasury Board Study	10
F. Government of Alberta Study	11
CONCLUSION	12
BIBLIOGRAPHY	13



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INTRODUCTION

The overlap of federal and provincial programs is not a new topic of discussion. As early as 1937, a Royal Commission of Inquiry (Rowell-Sirois) was directed to examine, among other things, the extent to which the public and the government are affected by overlapping programs and services. Some 55 years later, in February 1992, the Special Joint Committee on a Renewed Canada (Beaudoin-Dobbie) referred to the matter in its report and recommended "that the federal and provincial governments examine ways to eliminate overlap and duplication and make more efficient use of public resources" (p. 67).

In light of the difficult economic conditions being faced by Canadians, it is important that existing resources be used efficiently. If governments have to slash spending, they must do so in areas where their actions are likely to do the least damage. It is understandable that governments are interested in the gains to be made through the elimination of overlap; it is a good way of streamlining operations with a minimum amount of protest.

This paper, which is divided into two parts, will examine the issue of federal-provincial program overlap. Part one focuses on its nature, causes and consequences and on various ways of eliminating it. Part two examines several studies and reports on this issue and looks at some of the initiatives taken in response to their findings and recommendations.

NATURE, CAUSES AND CONSEQUENCES OF OVERLAP AND POSSIBLE WAYS OF ELIMINATING IT

A. Nature

The term "overlap" is often associated with the term "duplication." It is important that the distinction between the two be made clear. "Overlap" is the term used when a measure provided by one level of government partially covers the same area as a measure provided by

another level. The term "duplication" refers to measures that are superfluous or useless. It can be said that duplication is overlap carried to an extreme form. In fact, programs are rarely duplicated; for this to occur, both levels of government would have to provide the same service⁽¹⁾ to the same clients⁽²⁾ so that one level of government was providing the service unnecessarily. POWA, the federal Program for Older Worker Adjustment, which provides financial support to older workers who have lost their jobs, is one example of overlap. More than half of the provinces have programs similar to this one, but the federal and provincial programs are to varying degrees often complementary.

In several other cases, federal and provincial programs overlap. Energy efficiency and energy conservation incentive programs are a good example of overlap. Since the energy crisis, the federal as well as the provincial governments have introduced programs to encourage consumers to use one form of energy rather than another. The service (subsidies for using natural gas or electricity, for example) and the clients (different groups of owners) are more or less the same in this case and therefore program overlap occurs. Other programs may also at first glance appear to overlap. For instance, each province has an auditor general who performs the same function as the federal auditor general. However, while the "service" is the same, the clientele targeted is completely different; consequently, there is no overlap.

B. Causes

Since the Canadian federation has two levels of governments, overlap inevitably occurs. Governments have grown in size since 1867 and it has become difficult to establish clearly their respective areas of jurisdiction. Furthermore, there are a number of so-called grey areas. The environment is a good example. Various environmental activities can be the responsibility of both the federal and provincial governments, as this area of responsibility has not been clearly defined. Both levels of government regulate the control of toxic substances and the risk of overlap is consequently higher in this area. In fact, the risk of overlap automatically increases in any grey area. As a general rule, we can expect that the more clearly defined the area of responsibility, the slighter the risk of overlap. Postal services are one example of an area that comes under exclusive federal jurisdiction. The provinces do not provide an equivalent service. Exclusive jurisdiction

(1) The term is taken from a study carried out by the Treasury Board Secretariat and entitled *Federal-Provincial Overlap and Duplication, A Federal Program Perspective*, November 1991.

(2) *Ibid.*

does not, however, guarantee that overlap will not occur. The area in question must not be too controversial either. For instance, although education comes under exclusive provincial jurisdiction, the federal government uses its spending power to establish programs in this field.

C. Consequences

When reports indicate that overlap and duplication must be eliminated, the question arises as to whether this should in fact be the case. To answer the question, the consequences of overlap must be known.

In their study entitled *Analyse des conséquences du chevauchement des programmes fédéraux et québécois*, Germain Julien and Marcel Proulx focus at considerable length on the consequences of federal-provincial program overlap. They identify four consequences which are explained below.

1. Financial Consequences

One of the financial consequences of overlap is the redundancy of various program activities, in particular administrative activities. For example, with respect to human resources, a streamlining operation carried out following the merger of two programs would certainly result in cost reductions. Inspection activities constitute another area in which savings are possible. Nevertheless, a merger is not always advisable since it can lead to more bureaucracy and, consequently, to a potentially costly drop in productivity.

Overlap can also generate a need for greater intergovernmental coordination for the sake of cohesiveness. The associated costs depend directly on the number of meetings required to achieve a consensus. These costs could be avoided if there were no overlap.

2. Consequences for Government Actions

The two levels of government do not always pursue the same goals or have the same priorities where very specific matters are concerned. Take, for example, the Great Whale Project. Quebec City and Ottawa disagree over the appropriateness of constructing hydroelectric plants. When the two levels of government take a different stand on an issue, the impact of their respective actions is considerably diminished. Moreover, situations fraught with competition and conflict lead to instances of overlap.

3. Consequences for Clients

Overlap represents a cost to clients since they must make an additional effort to secure the information they need to benefit from the services available from the two levels of government. For example, in the field of tourism, clients sometimes do not know which level of government to turn to for help. For business, the regulatory process can be a nightmare. Businesses need to be aware of the laws and regulations they have to comply with. Not only can they overlap, federal and provincial regulations can even prove to be contradictory. Furthermore, businesses must often attend to burdensome administrative tasks in order to obtain loans and subsidies. When such tasks require additional resources, businesses are ultimately forced to pass the costs on to the consumer by increasing the price of their products.

4. Political Consequences

Overlap directly influences the level of responsibility governments has to the public. Two schools of thought exist on this subject. Some feel that overlapping causes members of the public to have less control over their governments. When governments keep throwing the ball back into each other's court, it becomes more difficult for the public to single out the level of government that is at fault. Overlap can therefore reduce the level of government responsibility.

Others believe, however, that overlap has some positive aspects. They feel that the public interest is better served when there is federal-provincial overlap and that competition between the two levels of government enhances the quality of the services provided, as is the case in the private sector. Those who subscribe to this view also believe that the public can in such instances turn to the other level of government when the first cannot fully meet its needs. Proponents of this theory are of the opinion that some overlap is a sign of a healthy federative system.

D. Solutions to the Overlap Issue

After identifying instances of overlap in a given area and determining that this situation is undesirable, we must look at possible ways of eliminating it or at the very least reducing it. It is clear that the federal and provincial governments must agree on whether a given measure is relevant. In its report, the Beaudoin-Dobbie Committee recommended, among other things, two ways of rationalizing and harmonizing programs: administrative delegation and legislative delegation.

Governments already delegate administrative responsibilities. Government A transfers activities to government B (federal to provincial, or vice versa). The latter carries out the program as it sees fit, all the while complying with the standards set by government A. The most commonly known form of administrative delegation is federal government collection of personal and business income taxes on behalf of the provinces.

Legislative delegation would require a constitutional amendment. Under this formula, government A would delegate to government B responsibility for a particular area along with the latitude to legislate in this area. Delegation of limited responsibilities (for example, the authority to enact certain regulations) would also be an option. In such cases, government A would have the authority to repeal any legislation enacted by government B.

There are, in addition to these two options, federal-provincial agreements on a range of issues that have resulted from meetings between various committees and task forces. For example, the Federal-Provincial Advisory Committee on the *Canadian Environmental Protection Act* meets periodically to review a number of specific issues. Its objective is to ensure that regulatory initiatives are effective and that, among other things, an effort is being made to reduce overlap as much as possible.

REPORTS AND STUDIES ON THE OVERLAP ISSUE

Few studies or reports have focused specifically on overlap. Most of the studies released to date have concentrated on overlap from the standpoint of program streamlining and harmonization. The first study to deal with overlap was that published by the Rowell-Sirois Commission in 1937. After numerous consultations, the Commission concluded that the degree of federal-provincial program overlap did not present any cause for concern. It found that government efficiency had a great deal to do with concern for reducing administrative waste. Forty years later, the Jules and Proulx (ÉNAP) study, and others that followed on its heels, reached vastly different conclusions.

A. Julien and Proulx Study (ÉNAP)

The 1978 study conducted by the *École nationale d'administration publique* (ENAP) was funded by the Quebec Department of Intergovernmental Affairs and focused on the overlap of programs between the federal government and the Government of Quebec. While the findings do

not necessarily apply to all provinces, they nonetheless paint a clear picture of the situation. After drawing up a list of programs and eliminating those having to do with internal management, Julien and Proulx grouped the remaining ones into 36 sectors. Program activities as such were divided into five categories (goods or equipment, services, financial assistance, regulations and control, and inventories and research).

The study considered 221 federal programs and 244 Quebec provincial programs. It was found that 197 of these programs overlapped to varying degrees. Table 1 shows the breakdown by sector based on the level of program overlap and constitutional areas of jurisdiction. As expected, overlap is greater in areas in which jurisdiction is not clearly defined. The same continues to hold true today. During the hearings of the Beaudoin-Dobbie committee, the issue of clarifying areas of jurisdiction was often discussed. It was even argued that a clear division of powers would unquestionably result in greater government efficiency.

TABLE 1

Breakdown by Sector According to the Level of Program Overlap and Constitutional Areas of Jurisdiction

Level of overlap	75% and over	Between 60% and 75%	Between 30% and 60%	Less than 30%
Exclusive jurisdiction of the federal government				-Postal services -Defence and Veterans Affairs
Shared jurisdiction with the balance tilted in favour of the federal government	-Fisheries	-Agriculture -Immigration	-Northern Affairs -Maritime, air and rail transportation -Communications	
Shared jurisdiction	-Secondary industries -Financial markets -Working conditions and labour relations -Public safety -Statistics	-Road and urban transportation	-Social services -Income security	-Justice
Shared jurisdiction with the balance tilted in favour of the provinces		-Health		
Exclusive provincial jurisdiction	-Wildlife -Education -Land management	-Water		-Forests -Municipal affairs
Non-specified jurisdiction	-Manpower and employment -Environmental health -Housing -Regional development	-Tourism -Language and culture -Recreation and sports -Intergovernmental affairs		-Science and technology

Taken from: Julien and Proulx, *Le chevauchement des programmes fédéraux et québécois* (1978).

Of the 36 sectors identified in the Julien and Proulx study, only two were found to be clear of any kind of overlap. The authors compared their findings to those of the Rowell-Sirois Commission and found evidence of overlap in 15 sectors, which included 22 of the programs examined in both instances. They concluded that maintaining the current degree of overlap would seriously compromise efforts to improve the management of government initiatives.

B. Economic Council of Canada Report

In 1978, Prime Minister Trudeau entrusted the Economic Council of Canada with the task of reviewing government regulations in certain sectors. Among other things, the study was to focus on the relevance and impact of regulations. The issue of program overlap was also to be examined in response to concerns raised by the provincial premiers. The Council proceeded to look at a number of sectors, notably telecommunications and occupational health and safety.

With respect to overlap, after examining the facts, the Council said that it had been encouraged to note how successful government departments and agencies had been in bringing some order to those areas of concern to them. The Council did, however, make recommendations for improvement in three areas.

The Council generally recommended that routine regulations and agreements be codified and made public at all levels of government. The aim of this recommendation was to ensure a clearer grasp and understanding of the scope of regulations.

The second recommendation pertained to products and development projects. The Council recommended that in instances where responsibility for a particular sector was shared between the federal government and the provinces, a single department should be assigned responsibility for coordinating the activities of participating departments. Businesses would thus waste less time than they already do when they have to deal with all of the departments involved.

Finally, the Council recommended that the federal and provincial governments make it a priority to establish a uniform series of standards for food products. This recommendation followed on the heels of a court ruling giving the provinces the right to set their own standards.

C. The Nielsen Report

In September 1984, Prime Minister Mulroney announced that he was setting up a ministerial task force to review all federal government programs with a view to making them simpler and more accessible. Nineteen study teams composed of public and private sector

individuals were formed and mandated to review 989 programs accounting for expenditures of \$92 billion. Study teams were to look at whether cases of program duplication existed between the two levels of governments and whether such programs could be merged, eliminated or transferred to another level of government. Teams were also to provide an overview of legislative measures and resources required to bring about the changes.

One of the study teams focused on regulatory programs. Although not specifically mentioned in the program review, appended to the report is a list of federal programs considered problematic in terms of provincial relations. The list was drawn up on the basis of consultations which the study teams held across Canada. Problems identified had to do either with jurisdiction or overlap, or with matters of information, policy and so forth. Of the 134 regulatory programs identified, 88 (66%) were categorized as problematic in at least one province or territory, while 27 (20%) were found to overlap. The Task Force observed the highest incidence of overlap in the case of environmental programs. However, the nature of the program overlap was not specifically discussed.

The study team reviewing regulatory programs concluded, among other things, that there was evidence of ongoing significant overlap and duplication between the two levels of government. It recommended that initiatives be adopted to improve the regulatory process. Specifically, it recommended that a study of overlap in the environmental sector be conducted. Moreover, the Task Force called for an immediate review of the overall burden imposed by the various levels of government. It concluded that Canadians were overregulated and that it was important to cut down on the number of regulatory levels.

To our knowledge, no study has been carried out to follow up on the impact of the Nielsen Report on program delivery. On the other hand, several of the recommendations were followed. For example, following the release of the report, the federal government moved to launch its regulatory reform strategy.

D. 1986 Regulatory Reform Strategy

In the spring of 1986, the government adopted a federal regulatory reform strategy. It called for all new regulations to be subject to economic and social cost analyses. The public would henceforth be informed and involved in the regulatory process. For one thing, the process would not take so long, and furthermore, the current regulatory process would be streamlined to improve efficiency. One of the 10 guidelines for reform deals directly with the issue of interest to

us here. In view of the existing regulatory burden and the need to eliminate needless duplication, cooperation with the provinces was deemed to be a government priority.

To prove how serious it was, the government moved in the summer of 1986 to create the Ministry of State for Privatization and Regulatory Affairs. Although each department continued to be responsible for its own regulations, the Office of Privatization and Regulatory Affairs was put in charge of promoting the government's regulatory objectives. With respect to program efficiency, considerable progress has been noted since the strategy's adoption. For example, the average timeframe for regulatory approval has decreased from nine to three months. According to the Office, better inspection and enforcement mechanisms have been developed and overlapping regulations have been eliminated.

Since 1987, the government has also released an annual Federal Regulatory Plan (FRP). This publication gives an overview of forthcoming regulations. In each instance, the purpose of the regulation is mentioned, along with the impact it will have. The FRP also includes a Regulatory Evaluation Plan.

In 1988, the Office published a paper listing all of the regulatory reviews and reforms undertaken by the different departments. In all, 77 initiatives were identified, more than half of which involved the fields of telecommunications, transportation and the environment. In 1991, the Office was disbanded and responsibility for regulatory affairs was assigned to Treasury Board. As far as we know, no report or paper has been released recently on initiatives in the area of federal-provincial overlap.

E. Treasury Board Study

For the purposes of conducting a study on federal-provincial program overlap and duplication, Treasury Board met with 225 individuals representing 130 agencies in April and September of 1991.

Four general findings emerged from the study. First, federal and provincial programs were found to overlap in many areas and, second, overlap could take several forms. At first glance, it would appear that 70% of all programs overlap. In each province, one-third of all programs seem to overlap federal programs.

To calculate the degree of overlap more accurately, Treasury Board did not take into account certain forms of overlap such as parallel programs, that is, programs which offer the same services, but to different clients (correctional services, for instance). Treasury Board did not take

into account either transfer programs where different services are offered to the same clients (the federal government's financial assistance to the health insurance program, for example). Once it discounted these categories, it concluded that only 45% of programs overlap directly.

The third finding emerged from the review of these 45%. Treasury Board found that, in large measure, governments were managing program overlap effectively. It noted that in several areas of shared responsibility, governments were working in different sectors with the ultimate objective of covering all responsibilities. The activities of the two levels of government were therefore complementary.

Finally, Treasury Board observed that there was room for improving program delivery through better federal-provincial harmonization. The role of respective government in program delivery needs to be emphasized. Treasury Board also identified instances in which federal and provincial regulatory programs are not in harmony. It found this to be the case in particular with regulations pertaining to the environment, bankruptcies, and product labelling and financial institutions.

F. Government of Alberta Study

In 1991, the Government of Alberta launched a study to measure the extent of overlap in the province. Provincial programs were divided into three areas: social programs, economic programs and natural resources. Twenty-three activities were divided into these categories. The amount of federal funding tied to each one of these activities was then identified.

Two interesting findings emerged from the study. First, 190 programs, accounting for \$4.3 billion, or 55% of federal expenditures, overlap, either directly or indirectly. Of this total amount, indirect overlap consisting largely of transfers to the province accounts for \$2 billion. Secondly, a total of 57 specific cases were examined.⁽³⁾ It was found that in 34 instances, federal regulations overlap provincial regulations and that in 23 cases, federal regulations hinder the province's ability to carry out its responsibilities. The authors of the study do point out, however, that in approximately 50% of the cases, the overlap is really complementary in nature.

The authors of the study concluded that the government must address the fundamental causes of overlap. In their view, striking a more equitable balance between revenues

(3) Nineteen cases relate to business and finance, whereas 16 relate to the ability to manage natural resources.

and spending power and clarifying respective areas of responsibility would go a long way toward rectifying the problem.

CONCLUSION

Recently, the federal government reiterated in the Beaudoin-Dobbie Report its desire to eliminate overlap. However, in actual fact, where do matters stand? Has any significant progress been made in this area? To answer this question, it is important first to distinguish between eliminating overlap and managing overlap.

We must first refer back to the causes of overlap. As noted, overlap often stems from a confusion about areas of responsibility. Economist Pierre Fortin submitted a brief to the Bélanger-Campeau Commission in which he estimated that the federal government wastes \$5 billion because of overlapping programs and services.⁽⁴⁾ According to Mr. Fortin, areas of responsibility should be defined as clearly as possible. If this were to happen, most instances of overlap would disappear on their own or at the very least, after a minimum of negotiations. It would then be possible to talk seriously about eliminating overlap.

If the federal and provincial governments continue to infringe upon each other's area of jurisdiction, some of the positive effects of competition between the two levels of government will be blurred, because governments will put the emphasis on the quantity of their initiatives, rather than on the quality. Governments have the means to encourage this kind of inefficiency. It therefore no longer becomes possible to eliminate overlap once and for all; at best, it can be managed through the use of different harmonization techniques. The process is a lengthy and costly one since each program must be covered by a special arrangement reached after a series of federal-provincial meetings.

Regulatory programs have often been the focus of agreements or reforms in recent years, as can be seen from a review of the studies conducted on the overlap issue. Unlike overlapping service programs, when regulatory programs overlap, those concerned must often bear the direct cost. Those affected are therefore more likely to complain, to identify or quantify the consequences. The very existence of certain regulations has therefore been called into question. Moreover, these reforms affect only a few areas, which is an important factor politically.

(4) This is based on the facts that overlap affects 60% of programs either directly or indirectly (according to Julien and Proulx) and that Ottawa and the provinces together spend more than \$225 billion.

Service programs are not likely, however, to solicit the same kind of reaction. Consider, for example, grants awarded to artists. The funds can come from either level of government. Since artists benefit from the situation, they do not complain about having to complete two forms. This type of program, which has few undesirable effects aside from the waste generated, will not soon be called into question unless the federal government decides to streamline the public service. And even then, reducing overlap would have to be one of the government's top priorities.

With the demise of the Charlottetown agreement, the objective of clarifying fields of jurisdiction could be relegated to the back burner for some time. Program harmonization or overlap "management" could conceivably be very popular initiatives in the coming months. The federal government is under pressure from all sides to cut its expenditures. It would be a very good tactic indeed to announce that it wanted to tackle the issue of overlapping programs. First, it would be demonstrating its desire to take concrete action and, second, it would be doing it in the name of fighting waste. Who could possibly object to such an approach?

If governments are increasingly concerned about overlap, what kind of concrete action can we expect from them? To some extent, better management of overlap. Even if this could be achieved, however, it would solve only part of the problem. If, as it is argued, governments believe overlap can be eliminated only through clarification of the areas of jurisdiction, we are likely to be talking about the issue for some time to come. This is not to deny that considerable progress has been made in this area, but rather to ask whether there is the political will to translate oft-spoken words into action.

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