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Political Will, Child Care, and Canadian Federalism

Discussions about moving forward around child care too often seem to end up in squabbles between the federal and provincial governments around who has responsibility for what. The fundamental problem, however, is not the constitutional division of powers; it is political will. If there is the will, the constitution provides plenty of space for governments, either federal or provincial, to act — and the space to take the initiative independently of one another or together. This article outlines the scope for action on child care services available to federal and provincial governments within Canada's federal system of government.¹ It then considers some of the complications of the federal division of powers, particularly as they relate to the federal spending power, and concludes with some observations about how to deal with these complications.

The constitutional space for provinces to act

The scope for provincial action on child care services is unlimited under the federal division of powers. The provinces have exclusive legislative jurisdiction for social services by virtue of the *Constitution Act, 1867*. The language of that Act is archaic,

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reflecting mid-nineteenth century notions of the wellbeing of members of society as a matter “of a merely local or private nature”² to be taken care of by families and charities or, at most, locally-run workhouses. Under the division of powers, provinces were given *legislative* jurisdiction for “the establishment, maintenance, and management of hospitals, asylums, charities, and eleemosynary institutions in and for the province, other than marine hospitals”.³ However, courts interpreted provincial powers under the Act expansively at certain key points in the development of Canada’s social welfare system. The provincial legislatures were also given responsibility for “property and civil rights”,⁴ a term that encompassed at the time laws governing “private” relations of family and business⁵ but later expanded through court interpretation to cover social as well as private insurance and, more generally, the regulation of the employment relationship in all except federally regulated workplaces (eg. the federal public service, banks, inter provincial transportation, telephone and telecommunications). In addition, and importantly, the provinces have exclusive legislative responsibility for education, with a federal role in protecting the education rights of religious minorities.⁶

The fact that provinces have legislative jurisdiction for child care services whereas the federal government does not is significant. It means that the provinces have responsibility for legislating standards with respect to the quality of child care services, including for example the ratio of staff to children, health and safety standards, staff qualifications, and the educational content of programs. Under the constitution, the federal government cannot set standards that amount to regulating a social service under provincial jurisdiction. It can, however, attach conditions to money transferred to the provinces for social welfare services. As discussed more fully below, these conditions relate to the Canada-wide social citizenship responsibilities of the federal government.

The provinces also have the taxation powers necessary to raise revenue to fund social services. The original intent of the *Constitution Act, 1867*, was to give the Canadian government the authority to “raise money by any mode or system of taxation”⁷ [emphasis added]. The provinces were limited to the field of direct taxation, a term that refers to taxes collected directly from the person taxed. At that time, direct taxation primarily meant the prop-

erty tax, which now is the main source of revenue of municipal governments. However, today, the primary source of tax revenue is one not dreamed of in 1867: the income tax, both personal and corporate. This is a direct tax to which the provinces as well as the federal government have recourse. Sales tax is another important source of revenue and provinces long ago got around the problem of this being an indirect tax by deeming storekeepers agents of the provincial Minister of Revenue for purposes of collecting the tax. As a consequence, the provinces as well as the federal government have access to revenue from the major sources of taxation. Because some provinces have a wealthier tax base on which to draw than others, the federal government transfers money through equalization payments to the provinces whose capacity to raise tax revenue falls below the national average.

The provinces often complain that they cannot afford to pay for child care and other social services — a complaint that needs to be seen in the context of an historical fight between the federal and provincial governments over “tax room” and the neoliberal drive to cut income taxes. During the Second World War, the provinces agreed to temporarily allow the federal government to levy all the income taxes in order to finance the war effort, a measure referred to as “occupying tax room”. This set up an ongoing conflict in the post-war period between the two levels of government around tax room, with the provinces arguing that the federal government needs to vacate tax room to allow provinces a larger share of the income tax. Over the next half century the federal government responded by decreasing its share of the income tax pie and allowing provinces to increase theirs through the device of transferring tax points to the provinces. This allowed provinces greater access to revenue without being seen to raise taxes to gain it. That the problem is one of political will more than tax room was demonstrated in the 1990s when, at the height of concern about budget deficits, provinces engaged in “competitive tax cutting” inspired by neoliberal economics.⁸ When provinces began posting budget surpluses most did not put money into child care services.

The constitutional space for the federal government to act

As indicated above, the federal division of responsibilities for social welfare in the *Constitution Act, 1867*, initially reflected an

understanding that the state's responsibility for the wellbeing of members of society was minimal. This notion was challenged by the industrialization and urbanization of society in the late nineteenth century and definitively put to rest by the Depression of the 1930s. By the turn of the twentieth century, provincial governments were increasingly drawn into regulating economic and social life. In the course of the twentieth century, the central Canadian state was more and more called upon to provide the resources and leadership necessary to ensure a basic standard of social security. The process was gradual, with the initial response being limited to addressing what was seen as an immediate and even temporary problem. Later, as a problem was recognized as ongoing, the response became institutionalized.

When the extent of the unemployment problem during the Depression overwhelmed the resources of some provinces, the federal government responded in an ad hoc fashion by providing money for "relief" for the unemployed. By 1940, society recognized that unemployment was a recurring problem of the capitalist business cycle and the constitution was formally amended to make unemployment insurance a federal legislative responsibility. The first federal-provincial cost shared program was the Old Age Security program of 1927, and the *Constitution Act, 1867*, was formally amended in 1951 to make pensions a joint responsibility of the federal and provincial governments.

At other times, the initial *ad hoc* response was later institutionalized through legislated federal-provincial cost-shared programs without leading to specific constitutional amendments. For example, federal support that originated as aid for certain categories of people in need, specifically blind and other disabled Canadians, was rolled into the comprehensive *Canada Assistance Plan (CAP)* in 1966. Similarly, Medicare brought together in one program federal support for provincial health care services.

All these programs began as an exercise of the "federal spending power"; that is, the capacity of the federal government to spend in the area of provincial legislative jurisdiction and to attach conditions to that spending. This allows a legislature to spend the money it has the constitutional authority to collect and manage, including spending in areas for which it does not have legislative jurisdiction. Some conditions attached to federal transfers to the provinces have been of an administrative

nature but others have been related to the realization of social rights. The five criteria of the Canada Health Act — public administration, comprehensiveness, universality, portability, and accessibility — embody a (limited) right to health care services. The conditions attached to the transfer to the provinces for income support under the Canada Assistance Plan provided a right to income support benefits based on need, irrespective of province of residence.

The federal spending power provides the way for the federal government to generalize to the rest of the country the social welfare innovations of one province, as happened with the hospital and physicians insurance of the Saskatchewan government. From this perspective, it can be seen as an instrument for the creation of a shared Canadian social citizenship.

The Constitution Act, 1982, gave formal recognition to the modern conception that the state has responsibility for the well-being of members of society and that this responsibility in Canada is shared between the federal and provincial governments. Section 36 (1) of that Act commits both the federal Parliament and provincial legislatures and the executive branch at each level to:

- promoting equal opportunities for the well-being of Canadians;
- furthering economic development to reduce disparity in opportunities; and
- providing essential public services of reasonable quality to all Canadians.

Section 36(2) constitutionalized an existing federal practice of providing grants-in-aid to the poorer provinces and acknowledged the social welfare purposes of the grants. Specifically, that section commits the federal Parliament and government (ie. the Cabinet) to “the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation”.

The federal spending power has been used with the specific purpose of encouraging the expansion of child care services during three specific periods: (1) during the Second World War for a

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brief period between 1942 and 1946; (2) under the *Canada Assistance Plan* for a thirty year period from 1966 to 1996; and (3) under the umbrella of the *Social Union Framework Agreement*, between 2000 and 2006. Each of these periods involved the federal government sharing the costs of child care services, during the first two through cost sharing arrangements whereby the federal government matched provincial spending and the third through a block grant from the federal to the provincial governments.

The first use of the federal spending power to promote child care services was initiated under a 1942 Order-in-Council (Cabinet decision with the force of law) that empowered the Minister of Labour to enter into agreements with the provinces to share the cost of services for the young children of mothers employed in defense industries. Ontario and Québec, the provinces in which defense production was concentrated, took advantage of the Dominion Provincial Wartime Day Nurseries Agreement, resulting in the creation of 2,500 spaces in Ontario and about 120 in Québec. Shortly after the war ended, the federal government discontinued its contribution to the provinces for child care services.

Under the *Canada Assistance Plan*, the federal government contributed 50% of the cost of provincial social assistance programs providing income support and certain welfare services to low income residents. Child care was listed as a qualifying welfare service under the CAP intergovernmental agreements. The federal transfer to the provinces covered half the actual expenditure of a province on child care services that were either directly operated by the province or operated by a municipality or a non governmental organization under provincial regulation. The province then channeled resources to child care services in one of two ways. The first involved subsidizing a number of spaces in a child care service for children of qualifying low income parents. The second method was for government to directly fund a child care service located in an area with a high proportion of low income people. Between 1966 and 1996, the *Canada Assistance Plan* was the primary vehicle for the expansion of child care services. In its 1995 budget, the federal government unilaterally announced the end to the *Canada Assistance Plan*, and with it the money specifically targeted to child care as a welfare service.

The *Social Union Framework Agreement* (SUFA), agreed to in 1997 by all provincial governments except Québec, served as an umbrella for a number of intergovernmental agreements related to health care and children. All the SUFA agreements involved the federal government pledging to provide funds and then negotiating with the provinces and territories the objectives or principles to govern the use of the funds and the procedures for reporting to the public on the results of the expenditure. The 2000 *Early Childhood Development Initiative* included as one of four key areas “strengthening early childhood development, learning and care” but did not lead to an expansion of child care services. Under pressure from child care advocates, the federal Liberal government announced that it would make available \$1.05 billion over five years specifically targeted to child care services and in 2003 negotiated the *Multilateral Framework on Early Learning and Child Care* with all the provinces except Québec. The *Multilateral Framework* governed federal money intended for investment in regulated early learning and child care programs for children under six and set out principles associated with effective approaches. These principles were identified (not very grammatically) as accessible; affordable, quality, inclusive and parental choice.

In the 2004 federal election, the Liberal party under Paul Martin included in its campaign platform a promise to spend \$5 billion over five years on child care services, specifically invoking the successful Québec model. Between the fall of that year and the first months of 2005, the federal government attempted to get provinces to endorse a multilateral agreement on the principles and procedures governing the expenditure of this money. When that effort failed, the federal government entered into bilateral agreements with each of the provinces to cover their share of the \$5 billion. By the time the government was defeated on a vote of confidence in December 2005, nine of the provinces had signed Agreements-in-Principle with the federal government and three (Ontario, Manitoba and Québec) had signed the final funding agreement.⁹ All the Agreements-in-Principle recognize a version of the QUAD principles put forward by the Liberals in the 2004 election: quality, universally inclusive, accessible and developmental. One of the first acts of Stephen Harper as Prime Minister was to announce the cancel-

lation of the child care agreements, giving the provinces the required one year notice.

Some issues

As the above discussion shows, both the provincial and federal governments have the tools under the constitutional division of powers to show leadership in moving the child care agenda forward. The powers of the provinces in the area of child care services are unrestricted constitutionally. There are more limits on the federal capacity to act because it does not have legislative authority with respect to social services, which means that it cannot establish a Canada-wide system of child care services through an act of Parliament; it has no authority to compel provinces to provide child care services; and it cannot regulate the services. It can, however, encourage the development of child care services by making money available to provinces and influence the ways these services develop by attaching conditions to that money. While the federal government cannot force a province to accept its offer of financial support, history shows that the provinces will accept money targeted to child care services when it is offered.

The federal division of powers is not an obstacle to progress on child care services where the political will exists — but it can pose problems when that will is lacking or goes missing after initial enthusiasm. A province that does not wish to move forward can always blame the federal government for inaction, just as a federal government can claim that provinces are unwilling to cooperate. However, once a province is committed to providing child care services, it has a much more difficult time withdrawing its commitment than the federal government does. The province is the level of government that delivers child care services or directly funds municipal governments and non-governmental organizations that do — and faces directly the wrath of parents and child care workers when services are cut. The federal government, on the other hand, is only a funder and much more removed from on-the-ground delivery. The provinces are therefore understandably wary of federal government initiatives introduced in response to immediate needs or public pressure but that may be ended when they no longer fit federal priorities.

All the federal child care initiatives discussed in the previous section were unilaterally ended by the federal government except for the *Multilateral Framework* which was simply allowed to lapse at the end of the five year term.

The Ontario government faced strong public pressure to continue funding child care services after the federal government withdrew its support for the wartime arrangements. It responded by introducing the *Ontario Day Nurseries Act* and continuing some provincial funding for child care services on a shared-cost basis with municipalities. The federal Conservative government under Brian Mulroney unilaterally capped the payments under the *Canada Assistance Plan* for the “have provinces” of Ontario, Alberta and British Columbia in 1989. In 1995 the Liberal government under Jean Chretien unilaterally slashed social transfers to the provinces and eliminated the *Canada Assistance Plan*. In 2006, another Conservative government under Stephen Harper unilaterally cancelled the agreements with the provinces which were the culmination of over a decade of intergovernmental work on a children’s agenda.

What these examples show is that the federal spending power has played a positive role in the expansion of child care services but it has also played a destabilizing one. Political economist Stephen McBride has used the term “negative spending power” to describe the neoliberal exercise of that power represented by the 1995 federal budget cuts to the social transfer and the elimination of the *Canada Assistance Plan*.¹⁰ That budget precipitated a dramatic rollback of social rights and yet the federal Liberal government managed to escape relatively unscathed by the public anger at the resulting cuts to services at the provincial level. Few Canadians beyond those actively involved in advocating for or studying social programs were aware of the negative federal contribution to the welfare state restructuring that ensued.

Accountability problems with the social transfer at the federal level are mirrored by accountability issues at the provincial level. Child care organizations have been particularly critical of the lack of transparency around how some provinces spend federal money that is supposed to be directed toward child care services. Governments at both levels share responsibility for this problem. The Auditor General of Canada has been strongly critical of the failure of successive federal governments to ensure

that money approved by Parliament for social programs such as health is actually spent for that purpose. Some of the responsibility lies with members of the House of Commons who do not demand that the Minister report in sufficient detail on what happens to money transferred to the provinces. In some cases, the legislative framework covering the federal transfer is too weak to provide for effective accountability, as has been the case with child care services since the elimination of the *Canada Assistance Plan*. For their part, the provinces argue that child care is within their legislative jurisdiction and they are accountable to their own legislatures (or electorate) and not the federal government for how they spend the money.

A politically significant complication around the federal spending power is the rejection by Québec of its legitimacy. All Québec governments irrespective of political orientation have maintained that education and social services are exclusively a provincial responsibility under the federal division of powers. This position is grounded in the understandings that underpinned the adoption of a federal structure of government during the process leading up to the *Constitution Act, 1867*. It was linked then and is today to the importance to national identity and cultural survival of institutions responsible for the wellbeing of members of society. The responsible institutions have evolved over time, from the family- and church-run schools and charities of the nineteenth century to the modern welfare state. However, for a cultural minority the importance of having jurisdiction over these institutions located in a legislature that it controls is as crucial today as it was when Canada was founded.

The opposition of Québec governments to federal social policy initiatives creates a political dynamic favourable to those who, for other reasons, do not want to see vigorous federal leadership. The central and as yet unresolved constitutional problem is that the Canadian constitution treats Québec as a province like the others, even while the House of Commons has recently acknowledged the national character of Québec society.

With these limitations of the federal spending power, why look to the federal government at all to provide leadership on child care services? Why not focus all the attention on the provincial level? After all, if Québec can do it why can't other provinces? One answer is that, leaving aside the wartime expe-

rience, the federal government has over 40 years of involvement in funding child care services. Until the Québec initiatives of the 1990s, federal funding is what encouraged the expansion of child care services, such as it was. When the demand for universal child care emerged in the 1970s, child care advocates and policy advisors were familiar with the federal role through the *Canada Assistance Plan*. The Royal Commission on the Status of Women in its 1970 report recommended that child care services be taken out of the welfare framework of that plan and placed in a National Day Care Act, as have subsequent reports. Throughout the 1980s and continuing until today, political parties running for federal office have pledged to increase the number of child care spaces.

Another important consideration is that the Québec child care initiative was very much a national project that had the support, at least initially, of the conservative nationalists concerned about the falling birth rate among Québec's francophone population as well as the same left liberal and social democratic forces that support government involvement in social services in the rest of Canada. In the rest of Canada, both "social" conservatives and neoliberal conservatives are opposed to an expanded government role in child care services, the first because of outdated notions of the family and the second because of their ideological commitment to market solutions. Child care advocates have tended to take a pragmatic approach to political mobilization, attempting to make advances with whichever level of government is most responsive at any given time to demands for the expansion of child care services. Focusing attention on only one level of government would mean abandoning an oft-proclaimed advantage of federalism: that it provides multiple points of pressure for organizations seeking social change.

Yet another reason for looking to the federal as well as the provincial governments has to do with the sense of social solidarity and social citizenship in Canada outside of Québec. This has both emotional and practical dimensions. Canadians outside of Québec see the federal government as their national government and see major federal social policy initiatives, particularly Medicare, as part of their national identity. This is very much reflected in Section 36 of the *Constitution Act, 1982*, which sees promoting equal opportunity and providing essential public serv-

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ices of reasonable quality to all Canadians as shared federal provincial responsibilities. At a practical level, this means that during federal elections political parties, even right-wing ones, campaign on promises to protect and expand social programs. The very right-wing Conservative party under Stephen Harper had to pledge to protect Medicare and advanced the so-called Universal Child Care Benefit and Child Care Spaces Initiative to counter the appeal of the Liberal and NDP child care promises.

Under international law, the government of Canada is responsible for ensuring that obligations accepted under human rights treaties are respected. It cannot use the excuse of internal constitutional arrangements to escape this responsibility. Canada is committed to the provision of child care services under both the United Nations Convention on the *Elimination of All Forms of Discrimination against Women* (CEDAW) and the *Convention on the Rights of the Child*.¹² The recent review of Canada's compliance with CEDAW expressed concern about the lack of affordable child care spaces.¹³ It is clear, then, that the federal government has a responsibility under both Canada's constitution and the international human rights treaties that this country has ratified to use the tools available to it to generalize social rights on a country-wide basis. With respect to child care and other social services, the two main instruments the Canadian Parliament has to carry out this responsibility are the federal spending power and equalization payments.

Some observations

The revamping of Canada's constitutional division of powers to modernize and simplify the social program provisions and accommodate the national character of Québec society is, to say the least, highly unlikely in the near future. Canadians therefore have to continue to exercise their well-honed capacity for "creative muddling along" within the existing federal framework. This requires accepting that Canada will not have a national system of child care services in the way that might be possible in a country with a unitary rather than federal system of government and one without our national complexity. Instead, we can strive to achieve a national network of child care services based on ten provincial and several territorial systems linked together by common standards related to access, affordability and quali-

ty. Such a network would parallel Canada's network of provincial and territorial systems of health care services that operate within the framework of the criteria of the *Canada Health Act*. There will undoubtedly be important differences in the way child care services are organized and delivered, probably much greater than the differences we see with health care. For example, some provinces will build a system based on government funded nongovernmental organizations; others may choose to expand their education system to incorporate child care services.

In advocating for standards to link together the various provincial systems, it is important not to call on the federal government to do more than it can do constitutionally or politically. Without cooperation from the provinces, the federal government has no authority to oblige them to provide child care services. Therefore child care advocates will need to do what they have always done: put political pressure on provincial governments to assume their responsibilities for child care, thereby creating a reason for them to *want* to accept federal funds. Similarly, federal legislation can require that provinces *establish* standards with respect to criteria such as quality, access and affordability as a condition for receiving the federal transfer, but cannot specify what those standards *are*. While constitutionally the federal government retains the possibility of punishing provinces that do not respect national standards governing the social transfer by withholding funds, politically the time has passed when the federal government can effectively use its spending power to discipline uncooperative provincial governments. New strategies for ensuring accountability of governments at both levels need to be found.

The Social Union Framework Agreement attempted to address the transparency problem related to federal social transfers through the requirement of annual public reports. However, public reporting turned out to be an ineffective tool, with the reports often taking the form of promotional brochures praising governmental initiatives.¹⁴ An interesting innovation that falls within the category of "creative muddling through" was the requirement in the 2005 federal-provincial Agreements-in-Principle that provinces establish a provincial Action Plan to cover the five years of federal funding. The innovation was picked up in a more ambitious form in Bill C-303, the private

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members' bill introduced in the thirty-ninth Parliament by the NDP and supported by both the Liberal and Bloc members of the House of Commons standing committee charged with considering it. Section 5(1)(c) of the proposed legislation made the establishment of a provincial "plan for providing comprehensive early learning and child care services that are of a high quality, universal and accessible" a condition to be met before the Minister of Finance could authorize a transfer to a province for child care services.¹⁵

Under certain conditions an Action Plan could provide a way to make more transparent the expenditure by provinces of federal funds directed to child care services. The Plan would need to show that the funds were being used for the purposes agreed upon with the federal government but the specifics of how these purposes would be realized would be up to the province. For this instrument to serve that purpose the development of the Plan and its ongoing monitoring would need to involve child care experts and the broader public. The Plan should be incorporated into the legislative agenda of the provincial government so that the opposition parties could also play their intended role of keeping the party in office accountable for its realization.

Bill C-303 included a proposal directed at addressing some of the accountability problems at the federal level as well. Section 10 of the bill called for an Advisory Council appointed by the government from a list that the appropriate House of Commons standing committee would prepare of candidates broadly representative of individuals and organizations involved in early learning and child care. This Advisory Council was envisaged as having the power to report to any standing committee of either the House of Commons or the Senate or to the Minister, with any such reports being included in the annual report of the Minister to Parliament. Child care advocates might see similar Advisory Councils with a direct link to the legislature as a useful innovation at the provincial level as well.

In creating an understanding of and support for a federal role, strong emphasis needs to be placed on the social citizenship responsibilities of the Canadian government based on ensuring a shared set of social rights. The conditions attached to the federal social transfer should be related clearly to either the realization of social rights or the democratic accountability of gov-

ernments to the electorate or their elected representatives. The social citizenship responsibilities of the Canadian government are laid out in section 36 the *Constitution Act, 1982*, and are assumed voluntarily by it in signing international human rights treaties. Since the neoliberal era came to Canada in earnest shortly after the adoption of that 1982 constitutional amendment, progressive Canadians have not made enough of the recognition (detailed in section 36) of the shared commitments of governments to promote equal opportunities for the well-being of Canadians and to provide essential public services of reasonable quality to all Canadians; or of the constitutional link between equalization payments and the objective of providing comparable levels of public services to Canadians irrespective of their province of residence.

The suggestions endorsed here for provincial Action Plans, public participation (perhaps through Advisory Councils) and reporting to provincial legislatures would locate at the provincial level more monitoring of how the federal social transfer is used. It could also provide the information the responsible federal Minister requires to fulfill his or her constitutional duty of accountability to the House of Commons for the expenditure of public funds according to purposes approved by Parliament. A focus on the social citizenship role of the federal social transfer might also clarify its specific contribution to social welfare.

It would, however, be unrealistic to think that any of this would lessen Québec concerns about federal interference in social welfare. In line with the tradition of creative muddling along, Bill C-303 specifically recognized the “unique nature of the jurisdiction of the government of Québec with regard to the education and development of children in Québec society”. Because of this uniqueness, the Bill made provision for Québec to opt out of the federal conditions, should it choose to do so, without losing its share of the federal transfer. It was this Québec exemption that allowed the Bloc Québec members of the House of Commons to join with the NDP and Liberal opposition in supporting the Bill.

Concluding thoughts

The lesson of this overview of the division of powers is that where there is a political will there is a constitutional way for

governments at both the federal and provincial levels to show leadership on child care services. The main task for child care advocates is to continue to mobilize the already existing widespread public support for a significant expansion of child care services. Attempts by governments to use constitutional arguments to excuse their inaction can be countered by pointing to federal initiatives in the past and the current program of the Québec government. In place of complex arguments about the federal spending power, those seeking progress on child care should focus on the social citizenship responsibilities of the federal government. The Canadian government must be challenged to use its available constitutional powers to maintain and further the fundamental social rights that are integral to a shared social citizenship. At the same time, the provinces must be called upon to use the full scope of their constitutional powers. The ideal is for governments in Canada to work together. However, if cooperation proves too difficult, they have the constitutional space to take action independently of one another, the federal government by using its spending power to encourage provincial initiatives and provincial governments by proceeding on their own to build a system as Québec did.

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ENDNOTES

¹ The arguments developed in this article draw on the analysis of the federal division of powers developed more fully in my chapter “Federalism and Social Reproduction”, in Kate Bezanson and Meg Luxton, (eds.), *Social Reproduction: Feminist Political Economy Challenges Neo-Liberalism*. (Montreal/Kingston: McGill-Queen's University Press, 2006).

² *Constitution Act, 1867*, section 16. *Hereafter*; *CA, 1867*.

³ *CA, 1867*, Section 7.

⁴ *CA, 1867*, Section 13.