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## **Asymmetric decentralization of the administration of public safety in the Canadian federal political system**

*Abstract:* Canada's federal political system has to reconcile differences over the balance between shared rule and self-rule concerning two bedrock principles of the constitutional government: the rule of law and democratic oversight of the exercise of the power of the state to ensure that it is not usurped. The hallmark of the administration of multilevel security governance in Canada is horizontal and vertical differentiation of diverse territorial and non-territorial community values, preferences, interests and values has given rise to the asymmetric decentralization. This article maps the historical and constitutional roots, and then draws on examples in a survey of its institutional structure across three levels of government. It concludes by discussing the governance challenges that shared sovereignty and mismatched jurisdictional authorities pose for the effective and efficient provision of public safety in Canada.

*Sommaire :* Le système politique fédéral canadien doit réconcilier des différences au sujet de l'équilibre entre le partage du pouvoir et l'autonomie concernant deux principes fondamentaux du gouvernement constitutionnel : la primauté du droit et la surveillance démocratique de l'exercice du pouvoir de l'État afin de veiller à ce qu'il ne soit pas usurpé. La différenciation horizontale et verticale d'une variété de valeurs, de préférences et d'intérêts communautaires territoriaux et non territoriaux a entraîné la décentralisation asymétrique qui est la caractéristique de l'administration de la gouvernance de la sécurité à niveaux multiples au Canada. Cet article établit les racines historiques et constitutionnelles, puis s'appuie sur des exemples d'un sondage de sa structure institutionnelle aux trois paliers de gouvernement. Il se termine par une discussion sur les défis de gouvernance que posent la souveraineté partagée et les autorités de juridictions dépareillées pour maintenir de manière efficace et efficiente la sécurité publique au Canada.

### **Introduction**

The purpose of this article is to survey the structure of public safety in Canada, including differences in the organization and delivery of police services across provinces, and asymmetry in the relationship between the

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federal government and select provincial governments. As long as an issue is confined to and within the purview of provincial boundaries, it is a matter of public safety; once it surpasses provincial purview or capacity or its effects risk spilling over boundaries, notably because one or more elements of the hazard cycle – mitigation, preparation, response, recovery – it becomes a matter of national security. Premised on subsidiarity in the form of local engagement and accountability, Canada's asymmetric, decentralized approach to public safety is a system of local control flexible enough to meet diverse demands, yet centralized enough to benefit from federal support in times of need. Federal asymmetry notwithstanding, an equilibrium of de/centralized service delivery makes possible a relatively standardized service delivery in day-to-day operations and during times of disaster or emergency relief. Apolitical federal bureaucratic coordination encourages and supports national standards and provides surge capacity in times of crisis.

This article begins by mapping the historical and constitutional roots of public safety in Canada. It then surveys the system's institutional structure, emphasizing the distribution of power and responsibility across three levels of government with an eye to changes in the wake of a number of recent focusing events, starting with the terrorist attacks of September 11, 2001. The power-sharing arrangement that emerged following Confederation gave rise to federal (shared-rule) control of national *security* and territorial integrity with self-rule over local matters of individual and public *safety* largely left to the provinces, often delivered by municipalities as unitary appendages of the provinces. The post-9/11 era has precipitated an expansion of unfunded and underfunded mandates at the municipal level with provinces legislating new requirements not accompanied by concomitant resources (Henstra 2003). This is problematic in a country whose five largest cities are more populous and of greater economic import each than four of ten provinces. The final section discusses challenges posed by the multilevel provision of public safety in Canada, notably the difficulties of shared sovereignty in public safety and national security governance as manifest in coordinating strategies priorities and of the disconnects that arise when much of the first-response capacity resides with municipal and local government whereas jurisdictional authority is vested with provincial and federal authorities.

Asymmetry, in the context of federalism, is often associated with different degrees of legislative autonomy or independence among constituent units. In the case of public safety in Canada, however, de jure powers are identical across provinces. Their exercise, implementation and administration, however, differ among provinces. Decentralization denotes not just a constitutional division of powers, but specifically a set of inviolable powers that the Constitution assigns to the provinces and that constitutional

practice honours as such. Constitutionally, then, the policy and administrative provision of public safety is an area where sovereignty is genuinely shared between the provincial and federal governments. By contrast, the relationship between provinces and municipalities is strictly one of devolution where local self-rule is at the whim of the province. Although Aboriginal government is not enumerated as a constitutionally distinct level, some Aboriginal communities nonetheless enjoy some privileges of self-rule in the administration of public safety. Pluralistic federalism is one way to refer to special recognition that sets select Aboriginal communities apart from the municipal, provincial and federal orders of government. Among federal systems, the resulting amalgam of multilevel governance in the provision of security and public safety is a unique way of ensuring comparable safety outcomes across a range of communal priorities, interests, norms and values.

## **Constitutional and historical roots**

### **Constitutional roots**

The preamble of Article 91 of the British North America Act (BNA 1867) assigns the federal government with powers over Peace, Order and good Government (POGG). The article gives the federal government jurisdiction over criminal law, emergency management, national security, policy on violent crime and the political executive's prerogative over foreign and defence policy. By contrast, article 92 explicitly assigns matters that are "local" in nature to the jurisdiction of the provincial government: detention facilities, civil matters and natural disasters as well as the enforcement of laws made by the province. This arrangement is meant to preserve local solutions to local public safety issues.

In theory, articles 91 and 92 delineate jurisdictional boundaries; in practice "the fundamental problem with the current regime is the absence of a clear and shared understanding of the roles and responsibilities of the various orders of government" in matters of public safety (Federation of Canadian Municipalities 2008: 5). Ambiguity means having to rely on intergovernmental mechanisms to resolve the resulting conundrum: who pays and who delivers? The central government, for instance, has the legislative capacity to standardize certain public safety practices at the local level. Under Section 91, the Parliament of Canada has exclusive constitutional jurisdiction over criminal law, but the legislative assemblies of the provinces are responsible for the administration of justice. As a result, the federal government's ability to legislate in certain areas of public safety is locally contested and controversial. Firearms legislation, for instance, which has been part of the Criminal Code of Canada since 1892, has long

been considered by many a local matter (especially in rural and northern areas) and not one to be legislated federally.

While the core principles of the Canadian Constitution have remained intact since 1867, federal legislation has been adapted. Canada's Anti-Terrorism Act and the Emergency Management Act are contemporary examples of the federal-provincial arrangement for sharing public safety and national security responsibilities. The federal structure of disaster management recognizes the authority and capability of the provinces to deal with disasters unless a provincial government requests the assistance of the federal government or if the federal government believes that the disaster has national implications. Federal intervention is a function of these two conditions.

### Historical roots

Following the terms of the Treaty of Washington in 1871, the withdrawal of British troops was imminent. In light of the need to take responsibility for its own defence, and new emerging threats to Canadian territorial integrity, Canada had a strong incentive to expedite unification. Instability in the US, in large part due to the Civil War, threatened to spill over into Canada, and Canadians were confronted with the very real possibility of an invasion from the US as part of America's manifest destiny doctrine. Raids by the radical Irish-Americans Fenian movement across the border into Canada was cause for concern and swelled the ranks of the Canadian militia, unifying and at the same time defining federal-local public safety and national security cooperation (Haglund 2008). Similarly, the North-West Mounted Police was created in response to violence incited by American whiskey traders in western Canada.

Lacking in a military tradition, the funds to pay for a military, and faced with the impossible task of trying to secure the border between Canada and the United States, the Canadian government resorted to a system of shared responsibilities. A local system of public safety was already in place in the form of local constabulary and militia. As a result, the cost of public safety was effectively "downloaded" to the provinces. Yet, the federal government maintained legislative control over the powers that were being administered at the provincial and municipal levels of government. This was politically expedient and a way to mitigate provincial concerns about federal encroachment – which had roots in Ontario but would soon be shared by Quebec.

The mere establishment of an independent militia was viewed by Canadian statesmen at the time as an exercise in unifying the diverse interests of English and French Canada (Morton 1999). The Canadian militia model, based loosely on the organization of the American militia, created localized military units sensitive to such issues as language,

religion, class and even traditional styles of uniform, while exercising centralized control. Having witnessed the deleterious effects of local militias under local control as assigned in the American constitution, in contrast to the United States, Canada centralized control of militias under the federal government. To discourage provinces from setting up their own militias, provincial entities, including municipalities, were given relatively free rein to call upon their assistance in emergencies.<sup>1</sup> However, any response was always at the discretion of the federal executive power and the military. The unintended consequence is for provinces and municipalities to abdicate some responsibility, which the federal government tries to counteract by billing provinces when called upon to supplement emergency services.

Prior to Canadian Confederation in 1867, public safety, defined in large part by police and fire services that predated Confederation, was a community responsibility modeled after the English and French traditions brought to Canada from Europe. The federal government's initial foray into federal policing came in 1868 by creating the Dominion Police Force, initially composed of about a dozen men, whose primary responsibility was to protect federal buildings in Ottawa. The mandate was later expanded to include the protection of other federal structures, such as naval shipyards. The Dominion Police was eventually absorbed into the Royal Canadian Mounted Police (RCMP) in 1920.

Canada's "other" federal police force was established in 1873 in response to lawlessness and violence in Canada's western territories. Initially known as the North-West Mounted Police, the plan for the force was to patrol the territory that includes the modern-day Canadian provinces of Manitoba, Saskatchewan and Alberta. The entry of Manitoba into Confederation in 1870, however, meant that the federal government no longer had the right to police that area. Instead a Manitoba provincial police force was established with funds provided by the federal government. Similarly, when Saskatchewan and Alberta entered Confederation as provinces in 1905, the now Royal Northwest Mounted Police provided policing services to the new provinces on a contractual basis. This arrangement lasted until 1916, when both provinces established their own respective provincial police forces. By 1928, however, Saskatchewan had reverted back to the RCMP; Alberta followed suit in 1932 (Lunney 2012: 435). To this day, all provinces contract the RCMP to enforce provincial law (although some larger municipalities in these provinces have their own municipal forces that, for all intents and purposes, enjoy the same mandate as their provincial counterpart), except for Ontario and Quebec which have long had their own provincial police forces.<sup>2</sup> That is possible because policing *per se* (in contrast to the administration of criminal and other laws) is not actually regulated in the BNAA. Within a few years of Confederation, both

provinces had set up rudimentary policing structures at the provincial level that would eventually become the Ontario Provincial Police (OPP) and the *Sûreté du Québec* (SQ).

Asymmetry is a hallmark of Canadian federalism, including the provision of police services: a federal police force (the RCMP) also provides police services to some provinces and urban areas on a contractual basis. Municipalities in Ontario and Quebec can contract with the province to provide police services at the municipal level in lieu of setting up their own police force (often attractive for smaller towns for reasons that are beyond the scope of this paper). Although some Aboriginal reserves are policed by the RCMP, currently 168 service agreements underpin First Nations policing in 408 communities. This relationship with Aboriginal reserves is significant for our purposes since Aboriginal communities' ability to enjoy autonomy over some aspects of service delivery is a form of non-territorial, pluralistic federalism (Bauböck 2001; Karmis 2009) that stands in stark contrast to both universal and communitarian federal norms. About 77 per cent of Canadians live in communities served by municipal stand-alone police departments, 15 per cent in communities served by RCMP-contract members, 6.5 per cent in communities with served by province police forces, and 0.5 per cent in communities served by First Nations police.

Canada demonstrates that there is no *prima facie* reason for a symmetric approach to delivering public safety, including police services. Canada's federal public safety arrangements are sufficiently flexible to allow for different approaches for different communities. That Ontario and Quebec have opted for their own provincial police forces is more than a historical artefact. They are the two largest provinces in the federation. Quebec, of course, also likes to think of itself as a distinct society and, as such, has a long history of trying to maximize its autonomy by means of services provided by the province. Yet, the structures of Quebec's provincial police service predate the advent of modern Quebec nationalism. The original reason for a provincial police force in Quebec was instrumental: a linguistic minority group is difficult to police if the police force in question is unable to communicate in the minority's vernacular. The RCMP was originally a largely Anglophone force and ill-suited to policing Francophones. To this day, some four million Quebec Francophones speak little or no English; consequently, French-language policing remains a necessity.

The same rationale applies to Ontario. Numerically, Ontario has the largest Francophone community outside of Quebec. Although immigration has diluted the proportion of Ontario's Francophone community over the years, in the latter half of the nineteenth century, there were large pockets of Ontario, especially along Ontario's border with Quebec as well as in

Northern Ontario, that were almost exclusively French-speaking. So, Ontario needed a police service with the linguistic ability to police these communities. To this day, French remains a sought-after asset among applicants to the OPP, Ontario being the country's only province with a Ministry of Francophone Affairs. In sum, a territory's population size and its linguistic particularity drive policing asymmetry in the Canadian federation. A common lingua franca reduces the need for asymmetry of this sort.

Cultural and linguistic particularity is also the reason why some Aboriginal reserves enjoy the right and have chosen to police themselves. However, not all do. Some are just too small or have insufficient resources to support their own police service: having a community of a couple of hundred people itself risks undermining basic Rule-of-Law principles of the impartial administration of justice. Others are too fractured to agree on whether and how local policing should be provided. Others yet face security challenges on a scale that a police service provided by the community would be overwhelmed and unable to cope. In other words, there are good instrumental reasons for asymmetry, both for and against the decentralized, asymmetric delivery of police services.

## **Institutional structure**

### **Canadian public safety and security apparatus**

At the federal level, the primary mechanism by which the federal government discharges its operational responsibilities is Public Safety Canada (PSC) – created out of the former Department of the Solicitor General in the aftermath of 9/11 to centralize and coordinate what had been disparate organizations across various departments. Its mandate is to “keep Canadians safe from a range of risks such as natural disasters, crime and terrorism.” This mandate is achieved, according to PSC, by working and coordinating with other federal agencies, other levels of government, first responders, community groups, the private sector and other countries. In addition to a (relatively small) departmental staff of about 1,000 civil servants, PSC is composed of five agencies: the Royal Canadian Mounted Police, the Canada Border Services Agency (CBSA), the Canadian Security Intelligence Service (CSIS), the Correctional Service of Canada (CSC) and the Parole Board of Canada (PBC). Three review bodies also fall under the Public Safety portfolio: the Commission for Public Complaints against the RCMP, the Office of the Correctional Investigator and the RCMP External Review Committee.

Tables 1 and 2 illustrate the practical division of responsibilities imposed by the constitutional separation of federal and provincial powers. The next

Table 1. *Division of powers in the administration of security in Canada*

	<i>Federal Jurisdiction</i>	<i>Provincial Jurisdiction</i>
Ministry	Public Safety Canada, Department of National Defence	Ministry of Community Safety and Correctional Services (Ontario)
Agencies	Royal Canadian Mounted Police, Correctional Services of Canada, Canadian Security Intelligence Services, Canadian Border Security Agency, Parole Board of Canada	Correctional Services, Policing Services, Public Safety and Security, Fire Safety Commission, Ontario Parole Board
Mandates	Crime, disaster assistance under certain conditions, Border Safety, National Security, Emergency Management and mitigation	Crime, Provincial Fire Safety, disaster relief, hazard elimination, workplace safety, highway/transport safety

section examines these divisions in greater detail to explain the roles of the federal and provincial governments in protecting Canada. Because these organizations are designed to be interoperable, some overlap is inevitable in highlighting how these agencies are structured.

### Federal safety agencies and enforcement

PSC is the primary federal ministry tasked with coordinating emergency management programs and policy. Its mandate is to protect critical infrastructure against natural or anthropogenic disasters that have national implications. To achieve that mandate, PSC performs two primary functions: delivering programs and developing policy.

PSC delivers programs in five distinct areas: emergency management, national security, law enforcement, corrections and crime prevention (Public Safety Canada 2013). In each area PSC has developed programs available for delivery at the federal and provincial levels, and in some cases to the general public and the private sector. For example, as part of the crime prevention priority, PSC has developed the National Crime Prevention Centre (NCPC), which supports targeted crime prevention initiatives and disseminates best practices knowledge. NCPC partners with federal, provincial and municipal governments, as well as community groups and the private sectors as part of their mandate.

Policy developed by PSC reflects its focus on its five core priorities. For example, related to the crime prevention priority and the NCPC is the National Crime Prevention Strategy (NCPS). First implemented in 1998, the NCPS is administered by the National Crime Prevention Centre in collaboration with the provinces. The NCPS provides a framework for the

Table 2. *A representative sample of division of power and labour in Canada in the field of public safety and security*

<i>Jurisdiction</i>	<i>Investigate, Detect, Apprehend</i>	<i>Public Order</i>	<i>Competence</i>	<i>Oversight</i>
Federal	<ul style="list-style-type: none"> <li>• RCMP</li> <li>• CSIS</li> <li>• CBSA</li> <li>• CSEC</li> <li>• FINTRAC</li> <li>• Fisheries and Oceans</li> <li>• Environment Canada</li> <li>• Public Prosecution Service of Canada</li> <li>• Parks Canada</li> <li>• Coast Guard</li> <li>• Citizenship and Immigration</li> <li>• Transport Canada</li> <li>• National Transportation Safety Board</li> <li>• Passport Office</li> <li>• Canadian Human Rights Tribunal</li> <li>• CSC</li> <li>• DND (with respect to the CAF and its members)</li> <li>• Canada Revenue Agency</li> <li>• Agri-food and Agriculture Canada</li> <li>• Public Health Agency of Canada</li> </ul>	<ul style="list-style-type: none"> <li>• RCMP</li> <li>• CAF</li> </ul>	<ul style="list-style-type: none"> <li>• Criminal code</li> <li>• Customs and Excise</li> <li>• Criminal code legislation and enforcement</li> <li>• Immigration and refugees</li> <li>• Revenue and taxation</li> <li>• Environment</li> <li>• National parks</li> <li>• Fishers and Oceans</li> <li>• Transport</li> <li>• Incarceration (for criminal-code offences over 2 years) and probation</li> <li>• National defence</li> <li>• Emergency measures (in effect concurrent jurisdiction)</li> </ul>	<ul style="list-style-type: none"> <li>• Parliament of Canada</li> <li>• RCMP Public Complain Commission</li> <li>• Security Intelligence Review Committee</li> <li>• The Judiciary</li> <li>• Auditor General</li> <li>• Military Police Complain Commission</li> <li>• Inspector General of Correctional Services</li> <li>• Information Commissioner</li> <li>• Privacy Commissioner</li> <li>• Public Sector Integrity Commissioner</li> <li>• Ombudsman for victims of crime</li> </ul>
Provincial	<ul style="list-style-type: none"> <li>• provincial police services (including the RCMP on matters of Contract Policing)</li> <li>• ministries of transport</li> <li>• security and exchange commissions</li> <li>• children's aid</li> <li>• provincial human rights commissions</li> </ul>	<ul style="list-style-type: none"> <li>• provincial and First Nations police services</li> <li>• Canadian Forces</li> </ul>	<ul style="list-style-type: none"> <li>• provincial criminal code legislation</li> <li>• criminal code enforcement</li> <li>• highway traffic acts</li> <li>• alcohol and tobacco</li> <li>• environment</li> <li>• family and children's services</li> <li>• property and civil rights</li> <li>• revenue and taxation</li> <li>• provincial offences</li> </ul>	<ul style="list-style-type: none"> <li>• provincial assemblies/ legislatures</li> <li>• Independent police special investigations units (Ontario, BC, Alberta)</li> <li>• police services boards</li> <li>• provincial human rights commissions</li> <li>• coroners offices</li> <li>• correctional services offices</li> <li>• victims of crimes offices</li> <li>• the judiciary</li> <li>• provincial auditors' general</li> </ul>
Municipal	<ul style="list-style-type: none"> <li>• Municipal police services (sometimes in the form of the RCMP or provincial police services)</li> </ul>	<ul style="list-style-type: none"> <li>• local, Aboriginal and/or provincial police services</li> </ul>	<ul style="list-style-type: none"> <li>• Criminal code</li> <li>• By-law enforcement</li> </ul>	<ul style="list-style-type: none"> <li>• Municipal councils</li> <li>• Police services boards</li> <li>• The judiciary</li> </ul>

reduction of criminal activity in Canada. PSC per se does not have the capacity to administer and deliver policy; for that, it relies on the five agencies housed in the department.

By virtue of spanning federal, provincial and municipal jurisdictions, the RCMP is arguably Canada's preeminent federal security agency. However, four other federal public-safety organizations are of note. The Canadian Security Intelligence Service (CSIS) is Canada's security intelligence service, mandated with investigating and reporting primarily on (counter-) terrorism, foreign espionage, and weapons of mass destruction. CSIS, in collaboration with other entities, such as the Privy Council Office's Security and Intelligence cell, provides threat assessments to the government of Canada and other federal agencies. CSIS operates primarily in a domestic and, secondarily, in limited foreign capacity (although it is not a foreign-intelligence service in the conventional sense, which Canada does not have). Canada Border Services Agency (CBSA) is responsible for ports of entry into Canada: land crossings as well as entry points at international air terminals and sea terminals. CBSA enforces requirements for individuals seeking to enter Canada, trade regulations and agreements on good entering the country. Correctional Services of Canada (CSC) manages facilities housing individuals with sentences of two or more years in a federal prison and is responsible for programs designed to reduce recidivism, including a variety of retraining programs within prisons and communities. The Parole Board of Canada (PBC) makes decisions on whether to release prisoners from federal detention. In provinces without provincial prisons, the PBC also acts in a provincial capacity to release, deny or revoke parole.

At the federal level, the RCMP enforces federal statutes, such as: Customs Act, Excise Act, Radio and Telecommunications Act and the Corruption of Foreign Public Officials Act. Other federal statutes enforced by provincial and municipal police include the Controlled Drugs and Substances Act and the Immigration and Refugee Protection Act. The RCMP also provides protective services to other federal departments as well as to domestic and foreign leaders. In addition, they provide specialized training, research, forensic, identification and informatics services to other law enforcement agencies.

Provinces have the option to contract the RCMP for police services constitutionally within provincial mandate. Although performed by the same police service, Contract Policing is distinct from federal police service: the former is paid for by the province, the latter by the federal government. Police Service Agreements are negotiated and administered not with the RCMP directly, but through the Department of Public Works and Government Service Canada. Provinces have several incentives to contract the RCMP to look after provincial policing. First,

cost-sharing incentives have the provinces (and territories) pay 70 per cent of the RCMP budget in their boundaries while the federal government covers 30 per cent. Although there are no metrics to this effect, the share assumed by the federal government is meant to approximate the amount of time the RCMP spends on federal policing responsibilities as opposed to provincial duties in the same jurisdiction. Municipalities can also contract the RCMP; however, it is more expensive per capita for municipalities to contract the RCMP than for provinces because the federal cost-share has declined steadily from 50 per cent in 1976 to zero for all municipal RCMP contracts signed after 1992, although the federal government continues to cost-share 10–30 per cent of costs for municipal contracts signed prior to 1992 (Federation of Canadian Municipalities 2008: 17). Over the same period, however, demand for local police services has increased substantially (Malm et al. 2005), which means reductions in federal (and provincial) cost-sharing effectively amount to downloading.

Second, it is an efficient way for the RCMP (and, indirectly the federal government) to establish a national presence (while offloading some of the cost to the provinces). This national presence ensures a considerable degree of uniformity in service delivery without the federal government resorting to complex intergovernmental negotiations as with other policy areas of quasi-joint jurisdiction, such as health. Confronted with the ever-mounting complexity of investigations and prosecutions, the RCMP reduces vertical and horizontal collective-action problems by tackling cross-jurisdictional issues within a single organization. In addition to eight of ten provinces, the RCMP is the police of jurisdiction, in all three territories, 190 municipalities, 184 Aboriginal communities and three international airports.

Third, in the spirit of section 94 of the BNAA, the arrangement amounts to provinces “opting in” to a federal program. The federal government has an incentive to avoid potential defections by locking provinces into long-term contracts (often of 20 years). This opting in is attractive to provinces looking for certainty in the cost structure of police service delivery that is much harder to obtain for services that provinces administer directly. The federal government also has an incentive to prevent defections by providing a high and consistent level of service. Consistent with data for police forces in other advanced industrialized liberal democracies, levels of trust and satisfaction with the service are high with 84 per cent of Canadians reporting “trust and confidence” in the RCMP (Lunney 2012:441). Nonetheless, in principle provinces are free to “opt out” and set up their own service, as Ontario and Quebec. Other provinces, notably more populous ones, have, at times, contemplated following suit for either financial or ideological reasons.

As per the Canada First Defence Strategy as well as the National Defence Act, the Department of National Defence (DND) also contributes to public safety, within a domestic context. The Canadian Armed Forces (CAF) has no jurisdiction over the day-to-day security of Canadian citizens and property. Provinces may call on the CAF to provide aid-to-the-civil power in the form of surge capacity in the case of emergencies when provincial resources are overwhelmed. Almost all deployments fall under one of the three forms of aid-to-the-civil-power deployments, which come in response to an explicit request from one or more provinces to the federal government. They are legally distinct from civil-order emergencies, which allow federal government to deploy the CAF domestically without provincial consent.

### **The administration of public safety and security across select provinces**

Like the federal government's apparatus, public safety at the level of the provinces is marked by horizontal asymmetry in response to differing demands in each province. Since their geographic and demographic scope is more limited than that of the federal government, each province has developed legislation to suit its needs. The agencies responsible for public safety at the provincial level are too varied to examine comprehensively, but four representative cases are illustrative of the way decentralization in the administration of public safety affords provinces the autonomy to respond to localized issues while harnessing economies of scale through access to resources and knowledge at the federal level.

#### **Ontario**

Ontario's public safety structure is not unlike that of the federal government in that it is differentiated across several agencies. Ontario's Ministry of Community Safety and Correctional Services fulfills three core tasks: correctional services are responsible for maintaining provincial jails (for sentences of less than two years), probation and the Ontario Parole Board; police services coordinate the activities of the OPP and all municipal police forces; public safety is mandated with coordinating services between municipal fire and emergency services. In addition, public safety provides programs and services to the public and private sectors.

The OPP designs and delivers training to First Nations police services in Ontario, conducts Aboriginal awareness training for OPP officers, administers Provincial Liaison teams – a full-time bridge-building organization to link in with First Nations communities – and provides them with access to support services, such as identification, criminal investigation and, in some cases, dispatch. The OPP also has an Aboriginal Policing Bureau that administers

police services for about eighteen aboriginal communities who have not exercised a self-directed police services agreement pursuant to the Ontario First Nations Policing Agreement (Christmas 2012: 463–464). While Ontario's First Nations police services program is managed by the OPP (because under section 54 of Ontario's Police Services Act only the Commissioner of the OPP can appoint First Nations constables), most Aboriginal communities never actually see an OPP officer because they have their own police services, officers, uniforms and equipment. Not only is this force representative of the communities it serves, but specialized training ensures each officer is sensitive to Aboriginal issues. Ontario's decentralized and asymmetric police services model has become key to mitigating and defusing the politically volatile, complicated and tense public safety relationship between the provincial government and many local Aboriginal communities.

Although a clear division of responsibility appears to exist between federal and provincial jurisdictions, cooperation and coordination in day-to-day operations is the norm. In some cases, such as the unit that investigates violent crime in prisons, the arrangement is formalized by an agreement. In other instances, such as investigations of organized crime groups, the arrangement is ad hoc. In all cases, leadership and funding is determined on a case-by-case basis.

### Quebec

Sécurité Publique Québec (SPQ), and its provincial police force the Sûreté du Québec (SQ), is similar to Ontario's public safety ministry in its focus on crime prevention, fire safety, emergency preparedness and correctional services. The SPQ provides programs and policy guidance to other provincial agencies, municipalities, the public and to the private sector. Like Ontario, Quebec has formal and ad hoc financial and workforce arrangements among police agencies operating in the province. For example, police agencies from three levels of government formally cooperated on an investigative project Project Colisée, a three-year investigation eventually leading to the downfall of the Rizzuto Crime family in Montreal (Montreal Gazette 2008).

### Manitoba

Unlike Ontario and Quebec, Manitoba does not have a centralized ministry for public safety and emergency management, but has a Department of Justice and a Department of Infrastructure. Manitoba also does not have a provincial police force per se. Instead, it contracts the RCMP to police smaller communities and in rural areas. Larger urban areas, such as Winnipeg and Brandon, and even some of the smaller rural communities, have opted for their own municipal police forces. This arrangement allows

smaller communities to maintain local control over community police services.

In the past, Manitoba has drawn disproportionately from federal emergency resources because its demographic distribution makes emergency evacuation difficult. For example, in the summer of 2007, Manitoba registered eleven tornados, one of which reached F5 intensity. Manitoba's sparsely populated rural areas worked to its advantage, as these tornados did not touch down in densely populated areas. By contrast, Manitoba has long been plagued by seasonal flooding. The 1997 Red River flood was among the most severe of Manitoba's flood emergencies. Seven thousand military personnel were deployed over the course of 36 days to relocate over 25,000 evacuees; over 1,000 homes were lost (Province of Manitoba 2013). In response, Manitoba established comprehensive flood controls during the 2009 floods that prevented C\$10 billion in damage (Henstra and McBean 2005; Government of Manitoba 2014). The Manitoba case suggests even provinces with fewer resources can enjoy full protection from provincial and federal governments.

### British Columbia

Public Safety in British Columbia is part of the portfolio held by the Minister of Justice, which includes traditional areas, such as police services, emergency management and prisons, as well as child protection services, industry licensing, court services and motor vehicles. BC is an anomaly: most of its police services are contracted with the RCMP. In BC, the RCMP covers provincial police services, 61 urban areas, eleven municipalities and administers one First Nations police force. In addition, as elsewhere in Canada, RCMP also investigates federal crimes.

Public safety in BC extends into more controversial areas. For example, in an effort to reduce public health risks associated with intravenous drug use, BC opened a needle-exchange program in Vancouver which became a destination of choice for many IV drug users. The Insite program provides safe, clean needles to reduce the spread of illness related to IV drug use, but has been extraordinarily unpopular with the federal government (and even the US government under George W. Bush), which has attempted on several occasions to close down the clinics. Still, the RCMP has continued to work with provincial organizations to achieve provincial goals.

Ontario, Quebec, Manitoba, and BC exemplify that the provision of public safety across Canada is asymmetric, which extends beyond resources to differences in culture, climate and language. Canada is not spared the archetypal public safety issues that confront other federal polities: drug use and income disparity, natural disasters and violent

domestic terrorist attacks. Decentralization is part and parcel of a federal strategy approach to providing public safety in a sensitive way to local needs. The decentralization of responsibility is matched by a decentralization of resources, without which it would not be possible for provinces to realize their responsibilities and exercise their autonomy.

### Challenges for public safety in Canadian federalism

The principal challenge in the delivery of public safety is a Canadian federal system marked by shared, not pooled, sovereignty. Under shared sovereignty, institutions coordinate but remain separate under their respective areas of jurisdiction. Pooling sovereignty, by contrast, would mean building common institutions that subsume different areas of jurisdiction. Although the RCMP appears to exude features of pooled sovereignty, even its attributes of shared sovereignty remain problematic.

While tactical and operational cooperation improved substantially in the wake of a series of focusing events, including 9/11, the SARS epidemic, the Vancouver Olympics and the G8/G20, the system is plagued by a lack of intergovernmental coordination on strategic priorities and goals (Lunney 2012: 438–439). The federal government's position is that a single arrangement is workable for all the constituent entities despite different demands by the provinces (Lunney 2012: 436). Across the ten provinces, the respective ministers of public safety (or its equivalent) have the responsibility for setting the objectives, priorities and goals for the provincial police service. Federal priorities, by contrast, are reported by the federal minister for public safety to Parliament as part of the federal strategic priorities. The resulting disconnect between federal and provincial priorities has some provinces considering setting up their own provincial police forces (Alberta Agenda 2013). In effect, provinces have little input into the operation and management of the RCMP (Lunney 2012: 442), for example. Police services contracts between the RCMP and the provinces allow the provincial authorities to request and participate in program review. Recent examples of federal-provincial coordination in this field include the establishment of Alberta's Serious Incident Response Team (ASIRT) (Alberta Views 2013) and BC's civilian-led Independent Investigation's Office (IIO), which conducts criminal investigations into incidents involving BC police officers that result in death or serious harm. That IIO had to encompass the RCMP because no other province has more sworn RCMP members in absolute and relative terms: with over 6,000 of the RCMP's 19,000 operational members posted to BC, the RCMP accounts for almost two-thirds of BC's police officers.

Disconnects are not limited to federal-provincial priorities; they are also prevalent in local-provincial and local-federal priorities, drawing attention

to the difficulty in operationalizing pluralist federalism, especially with regard to local Aboriginal communities. Repeated Aboriginal crisis have galvanized national attention, such as Oka (1993), Gustafsen Lake (1995), Ipperwash (1995), Kashechewan (2005–2006), Caledonia (2006) and Attawapiskat (2011) and drawn attention to the issues of democratic oversight (Sancton 2012). Bureaucracies can exacerbate these disconnects when they pursue their own interests that may well be at odds with the governments they supposedly serve (Lindsay 2009). The RCMP's infamously rocky relationship with the ministerial portfolio of the former Department of the Solicitor General and its successor, Public Safety Canada, is an excellent example (d'Ombrain 1999). The picture that emerges is one of a multilevel government system where different levels of government, their bureaucracies, and local communities have different values, interests, preferences and priorities that cause them to pursue competing, contradictory or irreconcilable strategies.

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*The marginalization of municipal governments from the federal-provincial nexus has also affected standardizing emergency management at the local or provincial levels.*

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These multilevel governance tensions are particularly apparent in controversies over the allocation of resources. Provincial governments can be reticent to spend on public safety and emergency infrastructure as it tends to be a low priority for voters who often fail to recognize the importance of preventative measures. Multilevel governance tensions can thus undermine the timely implementation of police services and disaster management legislation. Conversely, federal expenditures may be mismatched with local values and priorities. Canada hosting the G20 Summit in 2010 at the cost of C\$1.2 billion exemplifies the distrust and legitimacy issues conjured up by federal security spending that is misaligned with local expectations and priorities, and the implementation of public safety measures that run afoul of local preferences. The Auditor General's report on the costs associated with the G-20 summit heightened concerns about suboptimal spending in the security sector (Auditor General of Canada 2011).

The case of the G20 is just one illustration of the problems created by a federal system that constitutionally excludes municipalities from the federal-provincial structure of disaster and public management by treating them as appendages of the provinces. Provinces have neither interest nor incentive to change the status quo for fear of compromising provincial autonomy. As a result of Canada's discursive focus on the primacy of federal-provincial relations, municipal first responders end up being deprived of voice and resources (Juillet and Koji 2014). While the first-

response capacity is largely vested with local communities – in 2006, municipalities paid 56.6 per cent of Canada's total policing expenditures and provided 65.8 per cent of Canada's police officers (including contracted provincial or RCMP officers), provinces provided 24.5 per cent of officers (including provincial contract policing), and the federal government, by means of the RCMP, 9.7% (Federation of Canadian Municipalities 2008: 4, 13). The top-down flow of funds does not necessarily correspond to their needs and realities.

The marginalization of municipal governments from the federal-provincial nexus has also affected standardizing emergency management at the local or provincial levels. Local governments, especially smaller ones, often rely disproportionately on volunteer first responders as a first line of defence (Ferrier 2008). Emergency management mandates are often fragmented among other ministries or agencies, such as transport, wildlife and utilities. The ensuing horizontal and vertical coordination issues can pose a problem, especially with volunteer first responders and private sector partners such as utilities and transportation companies, where training and compliance with standards is a function of money, cooperation and volunteer time (Quigley 2013: 150–156, 160).

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*[T]he unitary dimension of the relationship between provinces and their municipalities makes it tempting for provinces to offload responsibility to the municipal level*

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Further challenges to public safety and national security in the Canadian federation loom on the horizon. Many will be asymmetric in origin, delivery and impact (Leuprecht, Hataley and Nossal 2012), climate change first and foremost among them. Throughout sparsely populated Northern Canada, passageways are opening up in Arctic ice, thus raising the spectre of having to police Arctic sovereignty more effectively and providing public safety, defence and emergency services across a large swath of land that is scarcely populated, inhospitable and far afield from military bases and the location of other public safety and emergency assets. Likewise, meteorological trends promise to become more severe and unpredictable as storms once reserved for tropical climates threaten Canadian coastal cities. Financial trends suggest that income disparities will continue to grow, potentially fuelling popular discontent and regional instability. Moreover, the prevailing terrorist threat can only be met by an intergovernmental national security and emergency management system capable of responding promptly and resiliently. The compound effect of these developments will require not only improved intergovernmental cooperation, but also the judicious application of lessons learned by federal allies. Yet, neither

provinces nor municipalities have the requisite financial, organizational and leadership resources; these are vested with the federal government which has proven reticent to get involved for fear of protruding into provincial jurisdiction. The result is a collective-action problem that municipalities and provinces cannot overcome by themselves but on which the federal government is reticent to lead.

## Conclusion

The relationship between public safety and the Canadian federal system is best described as decentralized and asymmetric. Other than delegating the maintenance of law and order to the provinces, the Canadian Constitution says relatively little about public safety and national security. This flexibility may well be both the greatest strength and the greatest weakness of the system, making it possible to adapt to hazards and corresponding needs, while leaving considerable discretion for the federal and provincial governments. The result is a hierarchy that leaves municipalities little control over their first responders (Federation of Canadian Municipalities 2008; Mukherjee 2011).

Provinces enjoy considerable autonomy because they have well-enumerated areas of jurisdiction, autonomy over much of their tax revenue, and access to many of the same revenues as the federal government, and receive substantial and mostly unconditional equalization and other transfers. By contrast, the unitary dimension of the relationship between provinces and their municipalities makes it tempting for provinces to offload responsibility to the municipal level (or, for the federal government, to the province which promptly proceeds to offload to municipalities) without necessarily providing sufficient funding to accompany new requirements: "This results in diversion of scarce resources away from core municipal roles [ . . . ] into areas of clear federal jurisdiction, such as maritime interdiction and enforcement, cyber crime, drug investigations, non-returnable warrants, border security, national security and counterterrorism" (Federation of Canadian Municipalities 2008: 5, 14–16). Moreover, specific requirements associated with unfunded mandates cause municipalities to concentrate their efforts on specific risks instead of an all-hazards approach, which is likely to yield greater security payoffs (Henstra 2010).

The shortcomings found in Canada are found in other federal countries as well (Leuprecht, Kölling and Hataley 2014). So, why does the Canadian system work relatively well? Is it because the system is decentralized and asymmetric? Or is this more reflective of a federation whose constituent units have the constitutional autonomy, financial means and consequent capacity to address public safety issues adequately and the strength of a

liberal democratic political culture that respects the rule of law and encourages compliance and volunteerism? Canadian public safety issues are as diverse as the country is large. The Canadian system empowers provinces and localities to respond to and meet local needs by means of an ad hoc arrangement of paid employees and volunteers, complemented by surge support from the federal level. The system works, owing to a combination of confidence, capacity and autonomy for local levels of government to reflect and respond to local values, preferences, interests and priorities, and a strong political culture that balances shared-rule in the form of a strong commitment to the rule of law with self-rule in the form of a concomitant engagement by Canadian “publics” to take ownership of “their” safety.

### Notes

- 1 This long-standing practice was recently constrained when the federal government unilaterally changed the law. Henceforth, requests for aid to the civil power must come from the premier of a province.
- 2 By virtue of its name, the Royal Newfoundland Constabulary is often thought of as a provincial force. In practice, however, it is more akin to a supra-municipal force that polices Newfoundland’s major urban communities: St. John’s, Mount Pearl and the surrounding communities of the North East Avalon Peninsula, Corner Brook, Churchill Falls, and Labrador West, including Labrador City. The RCMP patrols the rest of the province.

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