

Back from the Brink

Lessons from the federal-provincial dispute
about the Ontario Retirement Pension Plan

Mowat Centre

ONTARIO'S VOICE ON PUBLIC POLICY



School of Public Policy & Governance
UNIVERSITY OF TORONTO

Mowat Centre

ONTARIO'S VOICE ON PUBLIC POLICY

The Mowat Centre is an independent public policy think tank located at the School of Public Policy & Governance at the University of Toronto. The Mowat Centre is Ontario's non-partisan, evidence-based voice on public policy. It undertakes collaborative applied policy research, proposes innovative research-driven recommendations, and engages in public dialogue on Canada's most important national issues.

©2016 ISBN 978-1-77259-013-5

416.978.7858
INFO@MOWATCENTRE.CA
MOWATCENTRE.CA

 @MOWATCENTRE

439 UNIVERSITY AVENUE, SUITE 2200
TORONTO, ONTARIO M5G 1Y8 CANADA



School of Public Policy & Governance
UNIVERSITY OF TORONTO

Summary

Last year, the previous federal government announced its refusal to cooperate with the Ontario government's plan to create a new Ontario Retirement Pension Plan (ORPP). Prime Minister Harper and Finance Minister Oliver announced that they had instructed the Canada Revenue Agency (CRA) to provide no administrative support for the ORPP and also made an implicit threat that the new pension would not be registered or recognized for tax purposes.

The new federal government announced its intention to cooperate with Ontario, and a commitment from the Trudeau government to strengthen the Canada Pension Plan (CPP) may eventually eliminate the need for the ORPP. Nonetheless, the 2015 dispute between the federal and Ontario governments posed potential threats to the economic union, and raises questions about the role of the CRA in neutrally administering tax and benefit programs on behalf of Canadian governments.

The merits of the ORPP or CPP expansion have attracted a great deal of public scrutiny and are not the focus of this paper. Instead, this *Mowat Note* examines the implications for the federation of the federal refusal to cooperate with the province to administer the ORPP and concludes that such a refusal represented a real threat to decades of effort to strengthen the Canadian economic union and the harmonized tax collection system.

Ontario, like most other provinces, voluntarily uploaded its tax collection capacity to the federal government decades ago, with an understanding that the CRA would administer tax and benefit programs on behalf of the federal and provincial governments on a politically neutral basis. If the federal government had

gone through with its threats earlier this year, it would have created a real practical barrier to Ontario pursuing policy choices in areas of provincial jurisdiction. No province would tolerate an implicit federal power of disallowance and Ontario would likely have been forced to reconsider its participation in the federal-provincial tax collection agreements. This eventuality could have led to backtracking on decades of tax collection simplification that has reduced the administrative burden on individuals and businesses and reduced the cost to governments.

Even though the change of federal government likely takes this issue off the table in the short-term, policymakers should learn from this near-miss and take this opportunity to strengthen the infrastructure of our economic union. Federal and provincial governments should work to clarify our shared understanding of the tax collection agreements and the limits of federal power, as well as make changes to the Canada Revenue Agency to prevent future threats to the neutral administration of the tax system.

History Repeating

The feud had simmered for years. On one side, the Ontario premier, and on the other – representing a different political party – the prime minister and the federal finance minister. The provincial government tried to implement policy changes that had tax implications. Doing so required administrative cooperation from the federal government due to the Tax Collection Agreements that Ontario (and most other provinces) had long ago signed with the federal government. The federal government of the day withheld this cooperation, in part, because it disagreed with the province’s policy choices. With no real movement after years of public and private lobbying, the disagreement escalated

The Tax Collection Agreements had long been viewed as a real success story. The province had uploaded its tax collection and administration capacity to the federal government, allowing the CRA to administer taxes and benefit programs on behalf of both governments. This saved time and money for governments, individuals and businesses because now tax filing could be handled in one return instead of two. The administrative benefits were real and the logic of having one tax collector was compelling.

But this progress was in jeopardy. The agreements became a source of real frustration for the province, as the federal government used them to place a roadblock in front of a central promise of the provincial government’s election platform. This was, in the eyes of the provincial government, an unacceptable intrusion by the federal government on provincial autonomy. As part of the bargain to create a more efficient tax administration system, Ontario had understood that the federal government would neutrally administer tax collection and benefit administration on behalf of both orders of government. The province expected that the federal government would be neutral in their administration of these agreements.

In the midst of this feud, the province used its annual budget to send a clear message: if the federal government planned to use its administrative powers to stand in the way of a provincial government looking to implement policies in its own jurisdiction, then Ontario would have no other choice but to step away from the decades old tax collection arrangements. While this would mean rebuilding a parallel bureaucracy in Ontario to administer tax collection and would create the associated duplicative paperwork for taxpayers, the Ontario government felt like it had little choice.

This story, while reminiscent of the 2015 dispute over the ORPP, in fact describes the conflict between Prime Minister Chrétien¹ and Premier Harris over the provincial government’s plans to implement a set of tax cuts.² The point of this analogy is to underline that the disagreement that arose between the Harper and Wynne governments in 2015 should not be dismissed as a partisan battle over pension policy. Instead, we should focus our attention on the now

It is hard to imagine Ontario, or other provinces, accepting a precedent that hands the federal government an effective veto on provincial social policy choices.

1 CBC News. “Chrétien slams Ontario Premier in Speech.” February 18, 2000. <http://www.cbc.ca/news/canada/chretien-slams-ontario-premier-in-speech-1.232887>.

2 Government of Ontario. “Budget 2000, Background Paper C, Made For Ontario Taxes: A New Beginning.” May 2, 2000. Accessed September 2015. <http://www.fin.gov.on.ca/en/budget/ontariobudgets/2000/00c.html>.

apparent ambiguity within the tax collection agreements and the disagreements over the limits of federal power and the role of the CRA in neutrally administering tax and benefit programs for both governments.

The conflict that arose in 2015 over the administration of the ORPP – like the earlier conflict between the Chrétien and Harris governments – underscores a risk to the tax collection agreements and the economic union. While Ontario clearly considered the behaviour of Minister Oliver to be an unacceptable intrusion into provincial affairs, clarification of the role of the CRA is likely necessary to avoid these kinds of conflicts in the future. It should be possible to enjoy the benefits of the harmonized tax collection system while also protecting the rights of provinces to implement policies in their own jurisdiction.

The story from the Chrétien-Harris era had a happy ending. The federal government ultimately relented to the demands for greater flexibility coming from Ontario and from other provinces. This new compromise formed the basis of the renewal of the Tax Collection Agreements and paved the way for modernization of our provincial income tax and benefit systems. According to the federal finance department, this new set of agreements enshrined a new consensus where “both orders of government recognize that, in order to move forward together, the framework for change should ensure a balance between the federal objective of a co-ordinated tax system nationally, and the provincial/territorial objective of policy flexibility.”³

While there was always an understanding that a harmonized tax base and shared administration meant provinces would lose some autonomy, the idea that a federal government would leverage the voluntary dismantling of provincial tax


administrations to effectively disallow social policy in areas of provincial responsibility goes well beyond this understanding. It has become necessary to clarify that Minister Oliver’s interpretation of the scope of his powers went beyond the conventional understanding of what is acceptable behaviour on the part of the federal government.

Consider an alternative where the roles were reversed and the province considered an implicit power of disallowance to block the federal government from making policy in its areas of jurisdiction. For example, the federal government has introduced a series of reforms in criminal justice, including the use of mandatory minimum sentences. Many of the implications of the *Safe Streets and Communities Act* (often known as Bill C-10) fall in areas of provincial jurisdiction, and provinces expressed concern with both the policy direction and the costs imposed.⁴ However, the provinces ultimately have an obligation to enforce the law. The criminal justice system in Canada depends on the federal and provincial apparatuses working together, including provincial enforcement of federal criminal law. What if provinces simply chose not to enforce the laws that they don’t like and refused to keep those offenders in provincial jails? It is hard to imagine the federal government would accept provincial non-compliance, which would lead to a constitutional crisis.

Likewise, it is hard to imagine Ontario, or other provinces, accepting a precedent that hands the federal government an effective veto on provincial social policy choices. Regardless of one’s position on the merits of the ORPP, it is well within Ontario’s right to choose to expand the public pension system. Pensions are one of the few areas in the Constitution that are explicitly shared jurisdiction but with provincial

3 Department of Finance Canada. “Federal Administration of Provincial Taxes.” January 2000. <http://www.fin.gc.ca/fapt-aipf/fapt1-eng.asp>

4 Tories use majority to pass omnibus crime bill.” March 12, 2012. <http://news.nationalpost.com/news/canada/contentious-tory-crime-bill-passes-as-countrys-biggest-provinces-voice-concerns-over-costs>



paramountcy. And, as we will discuss below, the CRA regularly collects information and administers tax and benefit programs to support provincial initiatives, as requested by Ontario last year.

Although the new federal finance minister has indicated that the federal government is willing to administer the ORPP for Ontario, last year's conflict revealed an apparent lack of agreement on the obligations of the federal government under the Tax Collection Agreements. Few Canadians would want provinces to feel compelled to leave the shared arrangements and take on the burdens of re-creating a duplicative tax collection system. But provinces cannot tolerate the ambiguity that last year's conflict revealed and live with the threat that a future federal government will use its monopoly over tax administration to once again try to erect barriers to legitimate provincial policy choices. Now that the immediate crisis is off the table, the federal government should take this opportunity to work with provincial governments to clarify the meaning of the Tax Collection Agreements and the role of the CRA. From these discussions, a renewed understanding should emerge that the federal government has an obligation to neutrally administer provincial tax and benefit programs for provinces, and this understanding should underpin new agreements that insulate the CRA from the kind of partisan machinations witnessed earlier this year.

What are the Tax Collection Agreements and where does the Canada Revenue Agency fit in?

The Federal-Provincial Tax Collection Agreements are a set of agreements between provincial governments and the Government of Canada where the federal government collects and administers taxes and benefit programs on behalf of provincial governments, and ensures a common income tax base. The agreements date back to 1962, as successors to the World War II era “tax rental agreements” that temporarily allowed the federal government to take over all income taxation in exchange for payments.⁵ A core component of the 1962 agreements and all subsequent updates is that while the provinces returned to levying their own income taxes, they retained the administrative arrangement where the federal government would continue to collect those taxes on their behalf (with the exception of Quebec, which opted out of this arrangement).

These agreements have meant that the Canada Revenue Agency (CRA) administers tax collection for both orders of government. In fact, the stated mission of the CRA is “[t]o administer tax, benefits, and related programs, and to ensure compliance on behalf of *governments across Canada* (emphasis added), thereby contributing to the ongoing economic and social well-being of Canadians.” Provinces gave up their tax collection resources and capacity with this understanding and it is common for the CRA to deploy a “fee for service” model when administering provincial tax and benefit programs.

There are two major components to this cooperative framework. The first is administration – the shared system that makes it possible for one-window collection of information and money from individuals and employers so that individuals receive one T4 and file one set of tax forms. The second component is the common tax base. Having a common tax base doesn’t mean that the federal and provincial governments have identical tax policies, but it does require a shared definition of taxable income. This ensures, for example, that provinces deduct RRSP contributions from taxable income in the same way the federal government does. In practice, this ‘shared definition’ typically means provinces directly mirror decisions made by the federal government on issues affecting taxable income, such as federal decisions to create and set limits on Tax-Free Saving Accounts or permit pension income splitting.

While they don’t get much attention, these agreements underlie much of how federal and provincial public administration works in Canada today, and are one of the foundational elements of fiscal federalism.⁶ The agreements have been called “a remarkable achievement of the Canadian federation.”⁷

5 LeBlanc, Marc. “Tax Collection Agreements and Tax Competition Among Provinces.” *Library of Parliament*. February 12, 2004. <http://publications.gc.ca/collections/Collection-R/LoPBdP/PRB-e/PRB0344-e.pdf>

6 Inwood, Gregory, Carolyn Johns, and Patricia O’Reilly. *Intergovernmental Policy Capacity in Canada: Inside the Worlds of Finance, Environment, Trade and Health*. 2011. pg. 132

7 Macnaughton, Alan. “Compliance and Administration Issues Under the Tax Collection Agreements.” *Canadian Tax Journal* Volume 47, Issue 4. 1999. https://www.ctf.ca/ctfweb/Documents/PDF/1999ctj/1999CTJ4_Macnaughton.pdf

How We Got Here

The federal-provincial clash about the ORPP comes in the context of a long debate about the best way to ensure Canadians are financially secure in retirement.⁸ The financial well-being of older Canadians is something that cuts across both federal and provincial jurisdiction, and both governments have roles to play in the different pillars of the retirement income security system. Of the main pillars:

- » The federal government delivers Old Age Security and the Guaranteed Income Supplement payments to seniors. The federal government is also responsible for the main tax incentives for people to save for retirement – the Registered Retirement Savings Plans (RRSPs) and Tax-Free Savings Accounts (TFSA) – though both federal and provincial governments treat these contributions the same way in their income taxes (something they agree to do in the Tax Collection Agreements).
- » In Ontario, the provincial government supplements these payments with the Guaranteed Annual Income System (GAINS) and provincial governments are responsible for regulating most registered pension plans.
- » The federal and provincial governments jointly govern the Canada Pension Plan (CPP). Decisions to make changes to it require support from both the federal government and at least two-thirds of the provinces, representing at least two-thirds of Canada's population.
- » In Ontario, as in all other provinces, the province enacted pension benefit legislation that creates a regulatory framework for all non-federally regulated employers to offer workplace pension plans to their employees.

While there has been considerable support among provinces in recent years for some form of CPP enhancement, the previous federal government was the primary holdout. In this context, the ORPP developed explicitly as a “made-in-Ontario” alternative to CPP enhancement.⁹ Because a public pension plan is highly interconnected with the broader tax and benefit system, the province looked to the shared CRA administrative framework for support.

The suggestion that the federal government would decline to register the plan and deny it the same tax treatment as other provincial and employer plans would be debilitating to the ORPP.

The set of arrangements between federal and provincial governments to handle tax collection and administration of provincial programs, including provincial pension plans, has a built-in mechanism to manage occasions when a provincial government wishes to introduce a new policy that requires CRA administration. The province reimburses the federal government for the cost of the administration and has wide latitude to implement policies, so long as these do not affect the shared definition of taxable income. The Tax Collection Agreements describe in detail how the CRA should charge the province and for what kinds of services when new burdens are placed on the CRA. These provisions anticipate scenarios like Ontario's choice to introduce a provincial pension plan and spell out the options for reimbursement.

8 The debates about Retirement Income Security in Canada are well-covered in Meredith, Tyler. “Lower Risk, Higher Reward: Renewing Canada's Retirement Income System. *Mowat Centre*. August 2015. <http://mowatcentre.ca/lower-risk-higher-reward-canadas-retirement-income-system/>

9 Fekete, Jason. “Provinces accuse Ottawa of blocking CPP enrichment.” *Ottawa Citizen*. December 16, 2013. <http://o.canada.com/news/national/finance-ministers-gather-in-meech-lake-to-debate-cpp-enrichment>

In July of 2015, Finance Minister Oliver informed his Ontario counterpart by letter that all cooperation – even the type spelled out explicitly in the agreements – would be off of the table:

“We will not assist the Ontario government in the implementation of the ORPP.. This includes any legislative changes to allow the ORPP to be treated like the Canada Pension Plan for tax purposes, or to integrate the ORPP within the [registered retirement savings plan] contribution limits. Administration of the ORPP will be the sole responsibility of the Ontario Government, including the collection of contributions and any required information. We will be pleased to discuss with the Ontario Government the potential for voluntary contributions to the CPP, which we believe would better serve the interests of Ontarians and all Canadians.”¹⁰

This is an extraordinary passage. In practice it meant that the federal government had refused to collect ORPP contributions alongside CPP contributions as part of payroll deductions, or to collect or share the information that the province would need for compliance and enforcement. The letter also contained an implicit threat (in the reference to integration of the ORPP with RRSP limits) that the ORPP would not enjoy the same tax deductions for contributions and sheltering of investment returns that other pension plans have. Minister Oliver suggested that the federal government would refuse Ontario the same cooperation it provides to the Quebec Pension Plan and the Saskatchewan Pension Plan. The suggestion that the federal government would decline to register the plan and deny it the same tax treatment as other provincial and employer plans would be debilitating to the ORPP because federal registration is necessary under the *Income Tax Act*.

10 Curry, Bill. “Ottawa won’t help Ontario establish new provincial pension plan.” *The Globe and Mail*. July 16, 2015. <http://www.theglobeandmail.com/news/politics/ottawa-wont-help-ontario-establish-provincial-pension-plan/article25538987/>

The threat to refuse to register the ORPP compromised provincial trust that the federal government and the CRA were acting neutrally in the administration of the system on behalf of Canadian governments. Acting on the threat would have been a clear violation of the principles of both the tax collection agreements and the mandate of the CRA. Under the Agreements, the federal government may refuse a provincial request if acting on it would affect the definition of the common tax base. That was not the case in this instance, because the ORPP (much like mandatory employer-based pensions or the Quebec and Saskatchewan Pension Plans) does not affect the definition of the common tax base. In fact, Prime Minister Harper made clear the motivation in a subsequent news conference: he didn’t like the ORPP and disagreed with the policy choice of the Ontario government.¹¹

If the Harper/Oliver position had been allowed to stand, it would have set off events that could have led to the dismantling of the harmonized tax collection system. Even though the new federal government has withdrawn this threat, the federal and provincial governments should now act to strengthen and clarify this aspect of the economic union to prevent a future threat. For the harmonized tax system to work, provinces need to know and trust that the federal government will impartially administer their policies through the tax collection agreements and not let policy disputes stand in the way of policies that provinces have every right to implement within their own jurisdiction.

11 Canadian Press. “Stephen Harper ‘delighted’ to slow down Kathleen Wynne’s pension plan.” *CBC News*. August 11, 2015. <http://www.cbc.ca/news/canada/toronto/stephen-harper-delighted-to-slow-down-kathleen-wynne-s-pension-plan-1.3187225>

Why this Matters

In the years since the new set of Tax Collection Agreements, established in the wake of the Chrétien-Harris dispute of the late 1990s, the shared framework has managed to accommodate provincial policy choices even when the federal government of the day holds very different views. For example, under the Harper government, the CRA administered the B.C. low-income climate action tax credit (part of the province's carbon tax policy) and Ontario's surtaxes on high earners, despite the Conservatives' strong opposition to carbon taxes and surtaxes. In general, the federal government has honoured the spirit of the agreements and administered tax and benefit programs that might not be supported by the party in power at any one time.

The federal and provincial governments should now act to strengthen and clarify this aspect of the economic union to prevent a future threat.

In contrast, the refusal by the previous federal government to cooperate on the ORPP would have been a massive roadblock to the province's plans. The unprecedented threat to not register the ORPP as a multi-employer plan would have made it more difficult and more expensive for Ontarians to save for retirement through the ORPP and put them at a disadvantage in their retirement savings compared to other Canadians. The need to create a parallel administration would have increased costs for Ontario individuals and businesses. To avoid this, Ontario would almost certainly have

withdrawn from the Tax Collection Agreements. To provincial governments, the loss of policy autonomy would likely have outweighed the financial savings from shared administration.

The shared administrative framework inherent to the tax collection agreements and the economic union should be strengthened, not weakened. For example, even the Quebec government has considered abandoning its own provincial tax administration in favour of sharing the machinery of collection with the federal government.¹² Quebec's openness to shared administration is consistent with a broader national trend toward greater harmonization of the tax system, most notably through the federal government's push for Harmonized Sales Tax (HST) agreements with different provinces, along with greater flexibility in the way that provincial governments make policy in that harmonized tax base. This depends on good faith cooperation, even among governments that have profound policy disagreements, and requires that provinces trust the CRA to neutrally administer the tax system. If the CRA is perceived to be taking political direction to pursue partisan disputes, this will likely give pause to the Quebec government about ceding powers over tax collection.

Failure to strengthen and clarify the agreements could produce real costs. On an issue like the ORPP, Ontario would have had to create an entirely duplicative administration system to implement the ORPP if the CRA had continued to refuse any support. This would have required setting up duplicate processes for collecting information from companies and individuals and administering and enforcing

12 Commission de révision permanente des programmes. "Administration fiscale: la commission recommande d'envisager l'option d'un transfert d'activités au gouvernement fédéral." Government of Québec. August 31, 2015. <http://www.fil-information.gouv.qc.ca/Pages/Article.aspx?aiguillage=ajd&type=1&idArticle=2308316590&lang=en>

parallel procedures and systems. To register virtually all employers, as well as the 3.5 million employees that would be covered by the ORPP, the province would need to either create a new provincial body or expand existing bodies such as the Workplace Safety and Insurance Board (WSIB). But the costs would not have been borne by the Ontario government alone. Having to comply with separate federal and provincial tax administrations would significantly increase compliance costs for businesses and having to deal with a second set of tax administrators would have done real damage to Canada's attractiveness as a destination for investment.¹³

While the need to create a parallel administration to handle ORPP contributions would present an immediate and tangible cost, the more significant concern is what this precedent would mean for intergovernmental cooperation on the economic union in Canada. If the federal government had continued to use the Tax Collection Agreements to extend influence into provincial jurisdiction, then it is likely that Ontario (and other provinces) would have seen the end of the tax collection agreements as their best available option. Once provinces built their own systems to administer personal and corporate income taxes, a province like Ontario might even have considered withdrawing from the CPP altogether to avoid duplication.

The dispute around the ORPP was only the latest pressure on provinces through the Tax Collection Agreements, suggesting that they merit a renewed intergovernmental conversation. When the federal government introduced TFSA's, the provincial governments had little choice but to mirror the federal decision in order to protect the common definition of taxable income. The earnings in TFSA accounts are treated as non-taxable by both federal and provincial governments. While establishing the TFSA's

was relatively routine, the cost was not: the Parliamentary Budget Officer put the cost of cooperation on TFSA's by provinces at just over \$1 billion by 2020 in foregone tax revenue, reaching \$9 billion by 2040.¹⁴ A similar pressure from the policy to introduce income splitting for families with children was avoided at the last minute only by a kludge-like tax credit design designed to retain the spirit of the tax collection agreements.¹⁵ Putting aside the current conflict on the ORPP, the magnitude of the fiscal costs stemming from unilateral federal redefinitions of taxable income continues to erode provincial revenues and merits more serious discussion.

How to move forward


As the Chrétien-Harris tug-of-war over taxation 15 years ago showed, the temptation for federal governments to make it impractical for provinces to pursue their preferred policy choices does not reside uniquely in one party. Clarity is now required to ensure that threats to the harmonized tax system in Canada are avoided in the future.

There are reasonable differences of view on the wisdom of the ORPP in principle or in its details, and it is certainly possible that this dispute will become a historical footnote if Ontario agrees to shelve its pension plans in favour of a strengthened CPP. But regardless of the immediate outcome on the issues of the ORPP and the CPP, the key question in this paper requires attention: should the federal government be able to use its monopoly power of tax administration to erect barriers that make it impractical for provincial governments to pursue policy choices in areas where provinces have jurisdiction? Provinces have believed

13 World Bank Group. "Doing Business." Accessed October 2015. <http://www.doingbusiness.org/data/exploreeconomies/canada/>

14 Office of the Parliamentary Budget Officer. "Update of PBO's Tax-Free Savings Account Analysis." 2015. http://www.pbo-dpb.gc.ca/files/files/Budget_2015_Analysis_TFSA_changes_EN.pdf

15 Johal, Sunil. "Income Splitting or Trojan Horse? The Federal Government's Proposal and its Impact on Provincial Budgets." *Mowat Centre*. September 18, 2014. <http://mowatcentre.ca/income-splitting-or-trojan-horse/>



that there is no place for an implicit power of disallowance in today's federation and it is reassuring that the new federal government has instructed the CRA to re-engage provincial officials, in the spirit of the Tax Collection Agreements, to move forward to help Ontario implement the ORPP. This will likely avoid many duplicative arrangements and ensure that Ontarians receive the appropriate tax treatment for their pension contributions.

Even though the immediate federal-Ontario conflict over the ORPP is off the table, current arrangements still leave the federal government with the power to unleash such a crisis again. Federal and provincial governments should work together to achieve a longer-term fix that removes this implicit threat to the economic union and ensures that all parties' interests are protected. There are two ways to prevent this kind of recklessness in the future.

RENEWAL OF THE TAX COLLECTION AGREEMENTS

Between last year's near-miss with income splitting for families, the significant long-term fiscal pressure posed by federal decisions on TFSAs, and the present conflict over the ORPP, the Tax Collection Agreements have emerged as an under-the-radar point of tension in federal-provincial relations. The dispute between the Chrétien and Harris governments in the late 1990s was one impetus for the renewal of the Tax Collection Agreements in a manner that enshrined more provincial flexibility. That generation of agreements apparently requires clarification. A new generation of agreements is needed.

A renewed framework of Tax Collection Agreements should go further to strengthen the economic union by more clearly guaranteeing provincial autonomy within their own jurisdiction inside the framework of shared administration. The only exceptions to automatic CRA cooperation should be where there is a risk of harm to the harmonization of the tax system in a way that materially impacts other provinces, or threatens the definition of the common tax base. Those new agreements could be more explicit in establishing the terms, and costs, of CRA administration of provincial tax and programs.

These agreements should also spell out more clearly the obligations on the part of the federal government when they consider changes to the definition of taxable income. As we have seen in recent years with the creation of TFSAs, federal decisions that change the common tax base can have an enormous impact on provincial budgets. In the federal-provincial agreements on the harmonized sales tax there are limits on the ability of the federal government and requirements that it compensates provinces for changes that have significant impacts on provincial revenues. Governments should learn from these agreements on the HST and identify the right mechanisms to include in new tax collection agreements that will limit unilateral federal action and provide compensation to provinces for financial losses.

TURN THE CRA INTO A JOINTLY-GOVERNED FEDERAL-PROVINCIAL-TERRITORIAL BODY

Many of the challenges discussed in this paper stem from the contradiction between the CRA acting on behalf of both federal and provincial governments for the purposes of tax administration, but answerable only to the federal government. One option to address this would be to transform the CRA into a joint federal-provincial body, governed by both the federal and provincial governments, as suggested by former federal Deputy Minister Paul Boothe.¹⁶

A new collaborative federal-provincial governance structure would go a long way to reducing the possibility of future policy disputes being politicized through tax administration practices. This new governance structure would clarify that the CRA is an administrative body that acts on behalf of federal, provincial and territorial governments. It would reinforce the convention that since the provinces gave up their tax collection administrative capacity, it is incumbent on the CRA to impartially administer the tax system on behalf of all governments. And it would remove the CRA from potential politicization that we have seen not only in the recent conflict over the ORPP but also in the politically motivated audits of charities. The perception that the CRA is engaging in politically motivated decision-making at the direction of the party in power, rather than neutrally administering the tax system, represents a real threat to the integrity of the tax collection system and Canadians' trust in their government.

¹⁶ Boothe, Paul. "Provinces should share control of CRA to improve credibility." *iPolitics.ca*. August 12, 2014. <http://ipolitics.ca/2014/08/12/its-time-to-take-the-cra-away-from-ottawa/>

Conclusion

In recent years the federal government has actively pursued many measures to strengthen the economic union, including progress toward a common securities regulator, harmonization of value-added taxes and steps toward a renewed and strengthened Agreement on Internal Trade. The federal government has played a valuable role in these areas by promoting the importance of the economic union, sometimes in the face of reluctant provinces. The Tax Collection Agreements grab fewer headlines but they are essential to Canadian fiscal federalism and the Canadian economic union.

Upon sober reflection, it should be clear that the previous federal government's threat to refuse to administer or even register the ORPP is inconsistent with the conventions and practices governing the Tax Collection Agreements and stood in contrast to other efforts to strengthen the economic union. The incoming government has an opportunity to reset that direction. Rather than use these agreements to prosecute partisan objectives, Minister Morneau should look to strengthen and clarify the Tax Collection Agreements, and also explore new governance models that would depoliticize the CRA altogether by making it a jointly-governed federal-provincial-territorial agency.

