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THE FEDERAL TAKEOVER OF CANADA'S CAPITAL MARKETS

Centralization at Odds with Competitive Regulation

BY FERGUS HODGSON AND DANIEL DUARTE

FRONTIER CENTRE FOR PUBLIC POLICY

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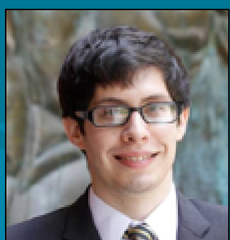

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EXECUTIVE SUMMARY

The proposed federal regulation of Canadian capital markets is of dubious constitutional authority and is a centralist solution in search of a problem. Contrary to the claims of the chief proponents, who enjoy federal funding, it would make markets less harmonious and more regulated. It would undermine the bottom-up coordination already underway between the provinces and territories without federal imposition. Further, the new federal role of surveyor and stabilizer generates privacy and moral-hazard concerns. Federalization lacks clear justification, both in terms of economic theory and competitive pressures. The most compelling explanation for its advancement is a desire for regulatory capture and social engineering from Ontario at the expense of sovereignty and constituent-driven policies in the provinces.

CURRENT VERSUS PROPOSED REGULATION OF CAPITAL MARKETS

At present, Canada has no federal regulator of securities[1] comparable to the Securities and Exchange Commission[2] in the United States. There are, however, various federal prohibitions[3] on and approval procedures for foreign-direct investment (FDI), in the name of national security and protecting[4] Canadian culture. Federal reviews kick in at steps of investment sizes, depending on the industry. The lowest is $5M[5] for "cultural business."

Although focused on large transfers, the dampening effect of federal meddling has raised well-founded concerns, as documented by a 2018 policy report[6] from the C.D. Howe Institute. In the report Daniel Schwanen highlights Canada's "lackluster" FDI performance and calls for the elimination of most "screening mechanisms" that "deprive Canada from the potential benefits of additional FDI."

Aside from these impediments, all 13 provinces and territories have their own unique legislation and take final responsibility for capital-markets regulation. For example, Ontario has the *Commodity Futures Act and the Securities Act,*[7] along with numerous portions of its general regulation that apply to capital markets.

Since 1928,[8] Ontario has adopted more onerous licensing requirements than its peers, specifically in 1945, 1966, and 1978. Although the stated intent was fraud and crisis prevention, citing the Toronto Stock Exchange that experienced one of the largest scams in world history, Bre-X Minerals Ltd.[9] The Bre-X case saw the fabrication of a gold discovery, by "salted" samples, climbing the company's market value to $6B only to tumble in March 1997 when the fraud was exposed.[10]

Not surprisingly, Prairies regulators have a greater tolerance for the uncertainty that comes with startup ventures. As explained[11] by Shaun Fluker, a University of Calgary law professor, "The consensus historically has been that investors in Western Canada take on a little bit more risk when they invest and the regulatory structure has to allow for that."

That translates to more relaxed laws and lower barriers-to-entry, such as the "offering memorandum" with less stringent disclosure requirements than prospectuses required by other provinces. This openness lends itself to junior[12] resource and mining companies that struggle[13] to cross regulatory hurdles.

However, appearances can be deceiving. Canadian capital markets are far from lacking regulatory oversight. As is the pattern in many sectors, regulatory burdens have been on the rise for generations. In 2002, the late Neil Mohindra, then a senior economist with the Fraser Institute, sounded the alarm[14] over what he described as micro-supervision and obsolete regulations: "Increasingly, Canadian [securities regulatory authorities] have been tightening the regulatory environment. The traditional philosophy … of resorting to regulation only when there is a problem that market participants cannot resolve between themselves has been replaced by a new approach—resorting to regulation first, even before a clear problem arises."

Further, although there are variations across jurisdictions, capital-markets regulation is far from fragmented. There is a high degree of reciprocal support and voluntary harmonization between provincial and territorial regulators. The 13 jurisdictions[15] manifest their coordination in the non-federal Canadian Securities Administration (CSA), formally instituted in 2003.

This association's mission is to "give Canada a securities regulatory system that protects investors from unfair, improper, or fraudulent practices and fosters fair, efficient, and vibrant capital markets, by developing a national system of harmonized securities regulation, policy, and practice."

Since 2008, the CSA has had a functioning "passport" system.[16] This "gives a market participant access to markets in all passport jurisdictions—every province and territory in Canada, except Ontario—by dealing only with its principal regulator and complying with one set of harmonized laws." The CSA claims this coordinated approach is simpler, faster, and cheaper.

Canada's local-lite approach to regulation has harbored diverse capital markets. That includes derivatives and the first all-digital exchange, as of 2004,[17] in North America: ICE Futures Canada, based in Manitoba until mid-2018. The Toronto Stock Exchange trades approximately $1.7T[18] each year, which makes it the ninth largest in the world and the third largest[19] in the Americas.

Depending on how you define them, there are six public exchanges in Canada, although the Toronto Stock Exchange is comfortably the largest, focused on blue-chip stocks.[20] The TSX Venture Exchange, previously known as the Canadian Venture Exchange, is based in Calgary and offers a marketplace for emerging and smaller companies.

Figure 1

Total Trading Volume and Value for 2018

Exchange	Trading products	Volume (units)	Value (CAD)	Province
Toronto Stock Exchange	Blue-chip stocks	22.5 billion	$ 429.4 billion	Ontario
TSX Alpha Exchange	Cash equities	2.9 billion	$ 38.2 billion	Ontario
Aequitas NEO Exchange	Securities of senior businesses	2.1 billion	$ 22.9 billion	Ontario
Canadian Securities Exchange	Securities	28.6 billion	$ 20.3 billion	Ontario
TSX Venture Exchange	Ventures	17.4 billion	$ 12.5 billion	Alberta
Montreal Exchange	Derivative Products	26.5 million	n/a	Quebec
ICE Futures Canada*	Agricultural Futures	2.99 million	n/a	Manitoba

*Data available up to July 2018, when the exchange moved operations to the United States.
Source: TMX Group Consolidated Trading Statistics, NEO December Report, CSE News, ICE Volume Reports

Some jurisdictions, such as Nova Scotia and Prince Edward Island, do not have their own public exchanges. However, even if at lower volumes, their regulators approve all those who trade, advise, underwrite, and manage securities from within their jurisdictions. These provincial and territorial regulators have been willing participants in CSA-coordinated regulations and the passport system.

Such is the tendency of humans to consolidate power and for others to seek favor with those in power, there has for generations been lobbying for a national regulator of Canada's capital markets. Carolynne Burkholder writes for the Canadian Bar Association that this desire, at least publicly stated, dates back at least as far as 1935,[21] when there was a Royal Commission on Price Spreads. To the credit of Canada's courts and her common-law and federalist traditions, these initiatives have largely failed.

"It's come up over and over again and it's failed over and over again," Jeffrey MacIntosh told the *Financial Post*.[22] The University of Toronto law professor explained "Part of the underlying political problem is just that we're a country of regions … and there are all of these sorts of historical mistrusts, if not animosities."

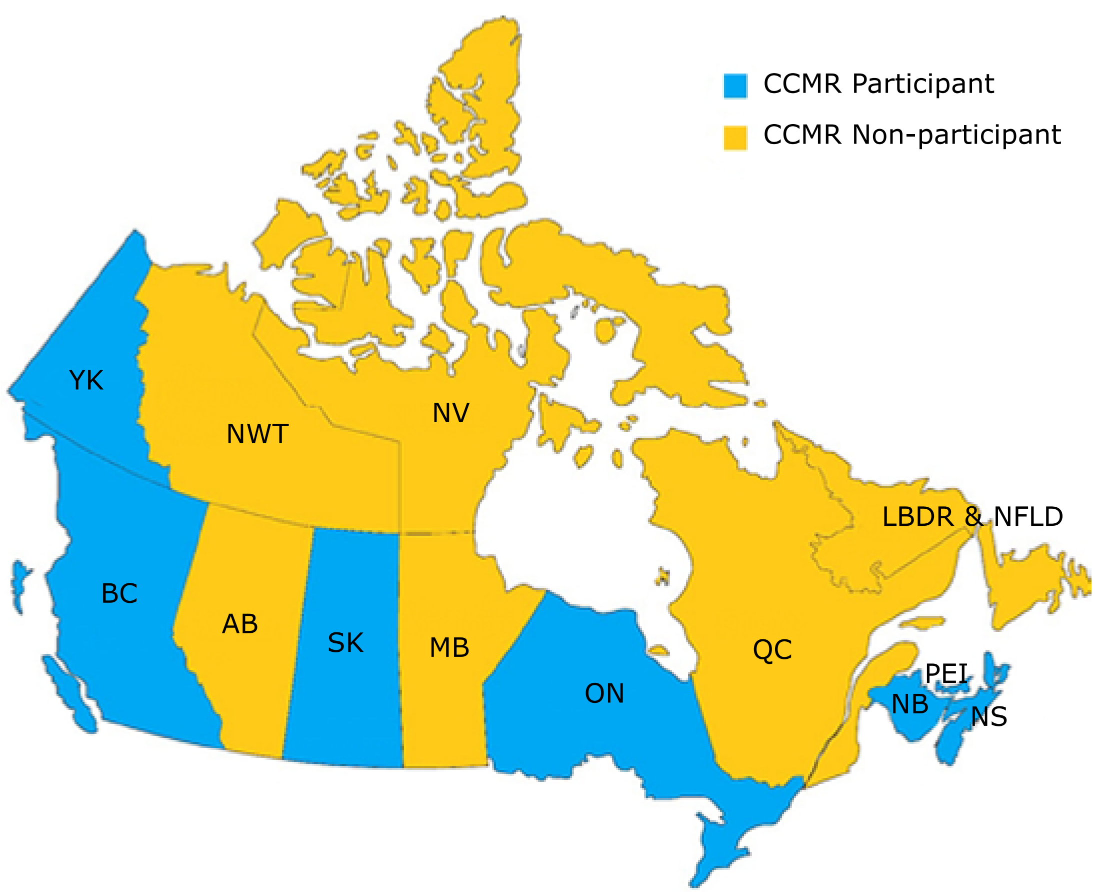
However, recent rulings and maneuvers indicate the thin end of a wedge is in the door to make this happen. Even if carried out with the appearance of voluntary agreements, the outlook is bleak for provinces that decline to participate—unless two pending laws fail to pass. Noncompliant provinces can expect to face subtle retaliation and exclusion from Ottawa and the provinces[23] already queueing up for preferential treatment from the federal government: Ontario, British Columbia, New Brunswick, Nova Scotia, Prince Edward Island, Saskatchewan, and the Yukon. Nova Scotia announced[24] membership on April 10, 2019.

Ironically, the more some jurisdictions drag their feet, as they will do, the more fragmented the regulatory system will become, undermining the publicly stated purpose of a federal regulatory regime. Writing for *Maclean's* magazine,[25] business journalist Bryan Borzykowski notes that "Alberta and Quebec continue to push back against the idea, as they have been doing for years," and the system will not be nationally unified without buy in from all provinces and territories.

Borzykowski strongly favours centralization, and he senses the federal government's capacity to cajole subservience: "now that Ottawa can get involved—there was a question as to whether the constitution allowed the Feds to have a say in capital market-related matters—we may be at least one step closer to a long-awaited regulator."

Map 1

Canadian Jurisdictions versus Federal Oversight, Regulation



Source: Cooperative Capital Markets Regulatory System (CCMR)

Despite a 2011 Supreme Court ruling[26] that upheld provincial jurisdiction over capital markets, the push for federal or pan-Canadian regulator continued on. Centralization proponents have noted the ruling, known as the *Reference re Securities Act,* did accept, in theory, a distinct but related federal role: "the economic importance and pervasive character of the securities market may, in principle, support federal intervention." So for stability's sake, the logic goes, there may be instances that require a federal rescue. However, such interventions would be "qualitatively different from what the provinces can do."

Further, the protection of capital markets and the maintenance of Canada's financial stability "do not justify a wholesale takeover of the regulation of the securities industry which is the ultimate consequence of the proposed federal legislation." These judges foresaw what was in store if the federal government got involved: an end to provincial and territorial autonomy over capital markets. However, the judges did leave the door slightly ajar for a "cooperative approach."

The outcome did not faze proponents of a takeover, albeit in a piecemeal fashion. Given the growth of Canada's economy, the rent-seeking[27] opportunities enabled by an additional, centralized regulator are enormous. As elucidated by the public-choice school of economics,[28] these opportunities incentivize[29] economically counterproductive[30] lobbying and regulatory capture[31]—not that profiteering for industry insiders and lawyers will be the public justification.

The long-term push for an additional layer of regulation from Ottawa culminated in another major Supreme Court decision[32] in November 2018: *Reference re Pan-Canadian Securities Regulation.* The judges ruled unanimously that provinces and territories "were allowed under Canada's Constitution to delegate their respective authority to regulate securities to a single regulator," as reported by John Georgakopoulos in Mondaq,[33] a professional-intelligence publication. However, the judges did not endorse the idea on policy grounds:[34] "The efficacy of such a regime remains to be seen as there may be new problems that arise with this approach."

In other words, provinces and territories could opt into the proposed federal regulations, the Cooperative Capital Markets Regulatory System (CCMR). Since the decision is voluntary, at least on the surface, the judges wrote that the CCMR "does not improperly limit the provincial and territorial legislatures' parliamentary sovereignty." Presumably all parties could opt out later, although that would likely generate confusion and come with many complications, à la Brexit.[35]

The sleight of hand between the two court decisions is the latter's lack of recognition for the Trojan-horse risk. Since Ottawa has authority over and assigns funding for countless other sectors of the Canadian economy—from equalization to infrastructure—the capital has many tools at its disposal to nudge parties to the confederation into compliance. This tension between the two levels of government should be taken as a given: he who pays the bills makes the rules. It holds regardless of which party carries power at any particular time and has led various lobbies to openly[36] call for added strings to funding to coax legislative and regulatory changes.

That federal leverage makes all the difference. It means two laws[37] awaiting passage in Ottawa and participating provinces and territories will inevitably bring a curtailment of legitimate and economically preferential powers held by the sub-national governments. Although initially held up awaiting court approval, the partially open door suggests the feared "wholesale takeover" is in the offing.

They are the *Capital Markets Act*[38] and the *Capital Markets Stability Act*[39] which bring the CCMR into force. The latest version of the *Capital Markets Act* provided on the CCMR website dates to January 2016, so assessment of its finer details is difficult, given major revisions and additions before passage. However, the CCMR precursor organization has a 14-page commentary overview[40] on its website, which seeks to justify its existence.

The takeaway is that the *Capital Markets Act* is a uniform law to replace all the existing laws in each sub-national jurisdiction, so each is identical.

Reforms to the *Capital Markets Act,* to keep the bloc matching, would require the same changes in all aligned jurisdictions.

However, the bill will likely match most closely Ontario legislation, given the Ontario and federal governments are driving its passage and are by far the most influential of the current eight parties. A symptom of this appears in the latest CCMR press release,[41] which lists the contacts as the Ontario Ministry of Finance and the Canadian Department of Finance.

The *Capital Markets Stability Act* is strictly a federal law that, if passed, would apply nationwide. It stretches the limits of the 2018 Supreme Court ruling and does so to "address systemic risk related to capital markets and criminal-enforcement matters," as stated in the CCMR commentary.[42]

The Capital Markets Authority Implementation Organization (CMAIO) is the one greasing the wheels for the CCMR. Founded in 2015, the CMAIO organization is doing so at the expense of the Canadian taxpayer. The federal government is funding it with $30M,[43] and it spent $6.5M in the year through March 31, 2018.

The CMAIO also receives funding from the Canadian Securities Transition Office—yes, another layer of bureaucracy from the federal government—which has been promoting federalization since 2009.[44] Since then it has received $96.1M for this purpose alone, and as of July 31, 2018, it had a war chest of $26.7M.[45]

The 15 CMAIO board members alone pocketed $1.2M for attending no more than seven meetings in the 2018 financial year,[46] in addition to salaries, since some are also CMAIO staff. These cronies[47] are a who's who of well-connected industry insiders. Those enjoying the federal largess include past and present regulators from New Brunswick and Ontario and a former Bank of Canada director.[48]

The incentives for compliance have already begun, since we shan't expect federal tax money to bankroll critics and the non-participants' defense against CCMR encroachment.

The *Capital Markets Stability Act* would establish[49] the Capital Markets Regulatory Authority. This would be the new federal overseer, if you will, to supervise and monitor Canada's capital markets. Rather than add another abbreviation, we'll call it the Overseer.

With little to no constitutional authority, the Overseer would:

- collect nationwide data;
- impose new regulations and benchmarks;
- interfere in the case of "serious and immediate threats";
- enforce compliance of jurisdictions and market participants.

However, the CCMR commentary contends the Overseer is "not intended as a substitute for the existing regulatory framework." The CCMR precursor acknowledges concerns about an "undue burden on market participants" and "additional reporting requirements." It has offered for the Overseer to "consider" these concerns before imposing new requirements.

If that sounded hollow, consider the Overseer would "make efforts to coordinate its regulatory activities, including data collection, with other federal, provincial, and foreign financial regulatory authorities." Given the federal government's spotty record[50] with protecting data privacy, this heightens rather than relieves concerns.

The particularly important new power the federal government would grant itself with the new Overseer is "urgent order making." That means a "national application to prohibit a person from engaging in a practice or activity related to the risk, suspend or restrict trading in a security or a derivative, or suspend or restrict trading on a trading facility."

Urgent risks include "threats to financial stability that are sufficiently large to *potentially* have a material adverse effect on the Canadian economy" (emphasis mine). Since this is self-assessed and open to speculation regarding what could be a risk, there would for practical purposes be no limit on the Overseer's power to interfere and shut down capital markets or block participants anywhere in Canada.

THEORY FOR AND AGAINST CENTRALIZATION

There are economic arguments both for decentralization and for a national regulator, although some are more compelling than others. One must assess 1) how well they apply to Canada's case, and, 2) which arguments carry more weight.

Further, as in any public-policy debate, one does well to consider whether the arguments offered are genuine or a pretense. The latter often fits for lobbyists because their own self-interested motives are not the priority to voters nor other participants in the broader economy, such as foreign investors[51] and trade partners.[52]

A well-known example is the notorious "supply management" of dairy products throughout Canada.[53] Sector lobbyists and partner politicians opine[54] that the provincial cartels are necessary to protect the quality and safety of dairy for Canadians, along with stable availability and "fair" prices and returns. Unless we are to believe the dairy sector is made up of altruists, such claims are laughable.

However, the need for cartels to keep out competitors, inflate prices, and line industry pockets is far from a compelling argument for the general public. So Dairy Farmers of Canada and other largess recipients maintain a façade. Behind the scenes, they lobby heavily and back politicians such as Conservative Party leader Andrew Scheer, who owes[55] his position to his support[56] for supply management.

The two chief arguments for devolution or decentralization are innovation and accountability. Although possessing its own theoretical shortcomings,[57] the Tiebout model[58] encapsulates[59] the basic idea of local, competitive governance as superior to a centralized state and federal monopoly.

First, if 13 jurisdictions can have distinct laws, there will be more variety, experimentation, and competition, tailored to the needs of each distinct region. Second, smaller localities tend to be more nimble and accountable to constituent demands, particularly if there is free flow of capital and labour across borders.

Of course, land cannot move, so businesses and homes are not entirely mobile; competition across jurisdictions is not perfectly fluid,[60] and borders are often arbitrary. However, the threat of Vancouver firms moving to Calgary, for example, does place competitive pressure on British Columbia. Even if minimal, the pressure is more than zero, which it would be if sub-national governments' policies were straitjacketed and identical.

The two chief arguments for centralization are streamlining (or harmonization) and stability. This roughly parallels economies of scale,[61] which states that a higher quantity of output—in this case capital markets regulated—brings lower average costs, at least up to a certain point: one provider can more efficiently serve users than many smaller providers. The provision of stability, akin to national security, could also be characterized as a public good[62] non-rival and non-excludable.

First, assuming one common approval process for capital markets, compliance should be less burdensome, compared to different and numerous processes. This is part of the logic behind common regulations for Canada and the United States, as defended[63] by the free-market R Street Institute in Washington, DC. Second, an emergency stabilizer, akin to a central bank, will work more effectively if it has authority over the entire nation. That is in contrast to disjointed, smaller jurisdictions which may not play ball and may not devote themselves to stability at all.

If you have read this far, you will immediately see the glaring problems with the arguments in favor of centralization. Anyone who reads through the CCMR justifications and plans for the laws can see they are contradictory.

With the exception of holdout Ontario, there already is self-initiated streamlining and harmonization between Canada's sub-national governments with the passport system for capital markets. The CSA also already coordinates responses to securities-law violators.[64]

Talk of streamlining and harmonization in favor of a central authority in Canada's case is either dishonest or misguided. The proposed federal regulator is a solution in search of a problem and would be in addition to the provincial regulators. The CCMR precursor states clearly in its own commentary: "The proposed [*Stability Act*] is intended to *complement* the existing provincial-territorial capital-markets regulatory frameworks" (emphasis mine). You don't get less by adding more.

Ironically, by dividing the provinces against each other and imposing a federal regulator, the outcome will be more disjointed. The C.D. Howe Institute, in a 2017 policy report,[65] delivered a scathing rebuke. The paper affirmed[66] "The inability of the [CCMR] to achieve participation from all jurisdictions constrains the ability of the national regulator to operate smoothly and flexibly.… The new body is not likely to increase global competitiveness, despite assertions to the contrary."

In February this year, the National Crowdfunding and Fintech Association of Canada (NCFA) shared a public letter[67] with Ontario's Minister of Economic Development: "Compared to Canada's global competitors, equity and debt crowdfunding is being stifled by a combination of regulatory burden … and lack of coordinated government support … Our 2,000 members tell us that many startups are leaving Ontario and Canada and seeking capital elsewhere."

The CCMR would mean both more regulation and more discord, as it derails the bottom-up coordination of the provinces and territories that began formally in 2003. Further, the creative destruction offered by NCFA members threatens established industry players who hardly welcome their presence. The prospect of regulatory capture in Ottawa, given more power in fewer hands, would be anathema to NCFA members, who have a better chance making their cases to sub-national governments competing for their presence.

Notwithstanding the Bre-X fraud in the mid-1990s, Canada is hardly known for financial instability. Relative to her peers, for example, she emerged[68] with less damage from the 2008 financial crisis,[69] which took place under the watch of the SEC. Within the United States, private-equity-backed companies, without the same SEC oversight, better survived[70] the Great Recession than publicly traded peers.

However, the topic of financial stability merits attention, since it is one of the justifications offered for the CCMR. It would collect data and meddle to purportedly offset crashes and bubbles at its own discretion.

Advocates for a central capital-markets stabilizer bring arguments similar to those for central banks to either stimulate or contract economic activity. This line of thinking has fallen out of favor even among central banks, including the Bank of Canada,[71] since there is strong recognition that inflation targeting[72] alone is most appropriate. The US Federal Reserve, a laggard, suffers from the dual-mandate problem, since it is supposed[73] to both maintain stable inflation and counteract the business cycle to maximize employment.

Bringing in a stability guarantor generates moral hazard.[74] Just as someone with insurance is more inclined to take risks, so too will market participants take greater risks if they believe the downsides will be impeded. Further, once the federal government takes responsibility for ensuring stability of financial markets, it and voters will be more inclined to favor bailouts and even punitive measures on speculators. The colossal and unprecedented bailouts[75] in the United States since 2008, with dozens of recipients in default, remind us to avoid that tack in Canada.

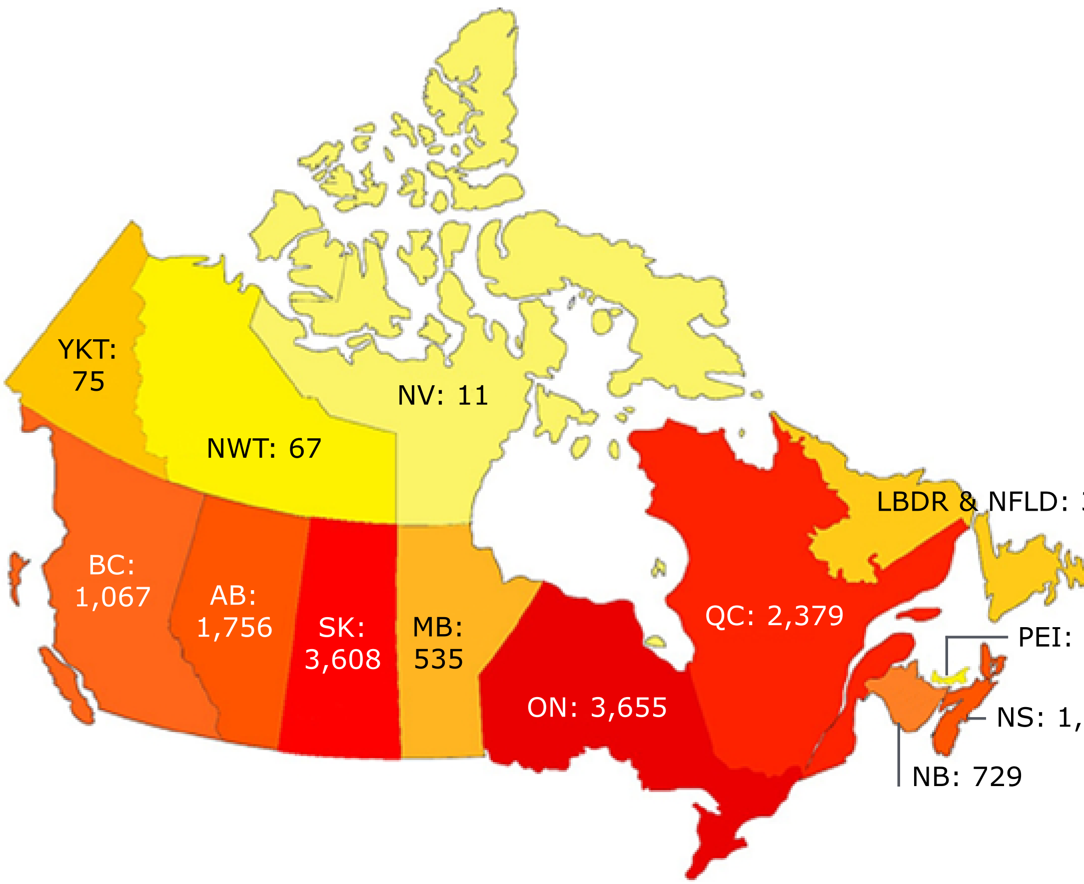
The inapplicability and deception of the arguments in favor of centralization strongly suggest the chief motives are regulatory capture and empowerment of the federal bureaucracy. The proposal under consideration pits financial centers in Alberta and Quebec against Ontario in an arm wrestle for capital-markets control that rightfully belongs to the sub-national governments.

The underlying motives become more obvious when we consider that only Ontario has opted out of the passport system, which negates the need for the *Capital Markets Act.* Ontario's lack of full participation through the CSA appears to be a ploy to force the others into a federal system. Without the federal option, Ontario would almost certainly join all the other provinces and territories and participate in the passport system.[76]

Even if we ignore the regulatory capture, there are lingering disagreements in policy approaches, one reason why retained powers are so crucial to a healthy confederation. While Quebec shares Ontario's penchant for over regulation, research from the Mercatus Center at George Mason University indicates[77] all provinces of Western Canada and Atlantic Canada have fewer than half the legislative restrictions of Ontario. That means matching provincial regulation with that of Ontario would lead to more regulation rather than liberalization for the likes of Alberta.

Map 2

Word Gauge of Financial Regulatory Restrictions in Canada



Source: Patrick A. McLaughlin, Scott Atherley, and Stephen Strosko, RegData Canada (dataset), QuantGov, Mercatus Center at George Mason University, Arlington, VA, 2018, see https://quantgov.org/regdata-canada/.

Note: These numbers account for restrictions in funds trust and other financial vehicles, securities commodity contracts and other financial investments and related activities, monetary authorities and central bank.

Political economist Robert Higgs of the Independent Institute in California acknowledges "complying with many different bodies of regulation costs more than complying with just one, or so it has often seemed to business people." However, in his article,[78] "Regulatory Harmonization: A Sweet-Sounding, Dangerous Development," he examines the EU case: "International harmonization of diverse national regulations tends to raise the severity of the regulations at least to the highest level previously reached by a member of the accord … a leveling up—and frequently to a higher, formerly untried level, so that even the previously strictest regulator becomes stricter still."

The progressive-leaning *Global Policy Journal,*[79] in a 2016 article by University of Toronto PhD students Michael Faubert and Amy Wood, examines harmonization versus its touted benefits for heightened commerce: "It is entirely unobvious why harmonization stands as a categorical trade policy imperative when faced with regulatory diversity.… Empirically there is a weak relationship between harmonization and trade.… Much of the recent work on harmonization takes its normativity for granted."

With heightened power and less electoral accountability, a central regulator could also be a pawn for Ottawa's social-engineering schemes that run against the wishes of the provinces. The swift addition of such manipulation, to inject social-justice causes into the financial sector, is without doubt. Already venture-capital projects in Canada are subject to diversity and minority incentives[80] via the Venture Capital Catalyst Initiative. Industry lobbies such as the Canadian Venture Capital and Private Equity Association have taken notice and now prioritize[81] "diversity and inclusion."

Business correspondent Theresa Tedesco, writing[82] for the CBC in November 2018, expects "Ottawa to move quickly on establishing a centralized securities regulator." Aside from celebrating "the modern age of securities regulation," she noted "The groundbreaking decision on the centralized securities regulator could also help fast-track the federal [Liberal Party] government's major policy initiatives on the environment and gender diversity."

"No provincial securities regulator has been willing to set targets and quotas for women for fear of alienating business … A national, centralized regulator could remove many of the openings companies currently have to avoid mandatory measures, and that alone would help improve the chances of increasing gender diversity in boardrooms and corner offices."

Apparently alienating business is less of a concern at the federal level, since businesses have to leave the entire country to escape. This is precisely why the Tiebout model remains relevant.

INTERNATIONAL TRENDS

FDI to and from Canada demonstrates a negative trajectory. As written[83] by Steven Globerman for the Fraser Institute in Vancouver, "FDI flows to Canada relative to other developed countries declined substantially from 2015 to 2017, while outward FDI flows from Canada increased relative to other developed countries over that period." Fewer people are investing in Canada, and more Canadians are investing elsewhere, as a percentage of GDP, at least relative to decades gone by.

Globerman's full research bulletin, "Canadian Foreign Direct Investment: Recent Patterns and Interpretation," does not speculate for why that is. However, the Business Council of Canada has sounded the alarm[84] over a less competitive tax environment, particularly relative to the United States, both in terms of rates and complexity.

The Fraser Institute has also focused on the key mining sector, since[85] "Canada's mining future may be in jeopardy" and Vancouver is the world hub[86] for junior mining companies. Ashley Stedman and Kenneth Green note "Canadian jurisdictions, on average, are falling behind on the majority of [permitting] measures when compared to their international competitors," specifically permit wait times and transparency.

In the Fraser Institute's Economic Freedom of the World ranking,[87] Canada's financial regulation receives near perfect scores and has done so for decades. Where the ranking identifies concerns is with business regulations: administrative requirements, bureaucracy costs, licensing restrictions, and the cost of tax compliance. The C.D. Howe report affirms[88] the Fraser Institute's finding: "There is no evidence to suggest that Canada's current [capital-markets] regulatory framework is impeding foreign investment and, in any event, securities regulation tends to have a minimal impact on foreign investment."

The latest trends in financial regulation and market capitalization uphold the success of microstate financial havens, as opposed to behemoths such as the United States and the European Union, which in March announced[89] a "more integrated European supervisory architecture." Even as larger jurisdictions throw their clout around, microstates are ballooning in importance. Attempts to export compliance burdens, such as the Internal Revenue Service FATCA[90] for foreign banks with US customers, are pushing more people to abandon US citizenship and be weary of any commercial relations with the United States.

Innovative positive examples include Liechtenstein[91] and the Cayman Islands,[92] which are particularly amenable to fintech[93] and startups.[94] Further, the rise of crowdfunding, which circumvents conventional capital markets, makes the role of a central regulator ever more anachronistic. A 2018 initial coin offering in the Cayman Islands, for example, drew $5.3B[95] for a blockchain startup, eclipsing any initial public offering in Canada. In many ways, the drive for a federal regulator and stabilizer is running against the tide,[96] while the world is passing Canada by.

A major counterexample to the success of centralized regulation comes close to home. Mexico initiated a voluntary program in 1999, so we have two decades of data, comparing the outcomes of those firms that complied with those that did not. A rigorous analysis[97] of the experience published in the *Journal of Financial Economics* suggests no benefit at all to those that participated. That is the case even though those firms would be expected to be the more trustworthy and transparent organizations relative to noncompliant peers.

"Good intentions are one thing and reality another," reports[98] *Rice Business Wisdom,* a magazine at the Jones Graduate School of Business devoted to distilling academic research. "After studying market behavior, Rice Business professors [Brian Rountree, Richard Price, and Francisco Roman] found that compliance with the code had little, if any, effect on Mexican firms' overall corporate performance. In fact, the regulations also showed little if any effect on overall earnings management or return on equity."

CONCLUSION

The manner in which the Canadian government has launched the federalization of capital-markets regulations, without clear justification, has worrisome implications for the confederacy. The plan on the table stretches the November 2018 Supreme Court decision as far as conceivable and likely further. Then the devotion of almost $100M in taxpayer funds to reward insiders, strategize, and lobby for federalization undermines the notion that participation from provinces and territories is voluntary. If federalization prevails, it will signal the fragility of any limits on encroachment into provincial and territorial affairs.

The wafer-thin and misleading arguments for federalization indicate a lack of both media scrutiny and policy alignment with financial-sector competitiveness, particularly the needs of startups. Those who eye private gain from federalization do so at public expense, and the true believers have revealed themselves to be disconnected from an industry undergoing a vast revolution of creative destruction. Far from favouring centralization and large bureaucracy, the fintech revolution is playing into the hands of microstates. They are attracting disruptive firms and making an end run around nations of vastly greater resources and economic activity such as Canada. Yet Ottawa officials are pushing in precisely the opposite direction.

APPENDIX I

Securities Regulatory Framework in Canada

- There is no securities regulator at the federal level. The *Investment Canada Act* [(R.S.C., 1985, c. 28 (1st Supp.) Last amended on 2018-12-30.] indirectly restricts capital markets. It permits the government to forbid foreign investments "of significant size," with varying amounts depending on the investor, the receiver, and the industry. The *Telecommunications Act* [(S.C., 1993, c. 38) Last amended on 2015-09-30.] and the *Broadcasting Act* [(S.C., 1991, c. 11) Last amended on 2014-12-16.] place restrictions on foreign investment in the media.
- Each province has a securities act along with a myriad of regulations and decisions by the provincial regulator. The provinces and territories have banded together to form the Canadian Securities Administrators (CSA), an umbrella organization for the provincial regulators.
- Alberta and Québec have for years opposed a national regulator.

Province	**Regulator**	**Laws and Instruments**
Alberta	Alberta Securities Commission (ASC)	- *Securities Act* - ASC Rules - Others
British Columbia	BC Securities Commission	- *Securities Act* - Others
Manitoba	The Manitoba Securities Commission	- *Securities Act* - *Commodity Futures Act* - Orders and Exemptions - Others
New Brunswick	Financial and Consumer Services Commission (FCNB)	- *Securities Act* - Rules, Policies and Orders
Newfoundland & Labrador	Superintendent of Securities	- *Securities Act* - Securities Regulations
Northwest Territories	The Office of the Superintendent of Securities	- *Securities Act* - Rules
Nova Scotia	Nova Scotia Securities Commission	- *Securities Act* - General Rules - CEDE Regulations - Others

Province	Regulator	Laws and Instruments
Nunavut	Securities Office	- Regulatory Instruments and Notices
Ontario	Ontario Securities Commission (OSC)	- *Securities Act* - Commodity Futures Act - OSC Rules - Others
Québec	Financial Markets Authority	- *Securities Act* - Securities Regulation - Others
Prince Edward Island	Superintendent of Securities	- *Securities Act* and Rules of Procedure
Saskatchewan	Financial and Consumer Affairs Authority	- *Securities Act* - Securities Regulations
Yukon	Superintendent of Securities	- *Securities Act* - Local Rules - Blanket Orders

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