BEYOND FEDERALISM: THE KYOTO PROTOCOL AND MULTI-LEVEL GOVERNANCE IN CANADA

By

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ABSTRACT

This thesis uses multi-level governance and win-sets to examine the effect of formal, informal and negotiation constraints placed on federal, provincial and municipal orders of government on implementing policy related to the Kyoto Protocol. Firstly, the theoretical and historical underpinnings of environmental policy approaches in this area are examined. Then, this work studies the formal and informal institutional constraints placed on governmental levels in Canadian politics. Finally, the negotiation relationships between all orders of government are mapped using a stag hunt game, which clearly illustrates the roles and powers of all orders of government. This thesis finds that the federal government will need provincial help in order to implement policies relating to the Kyoto Protocol, even if they could unilaterally ratify the agreement. In addition, the local order of government can play an important role in the policy process by acting as a bridge between conflicting provincial and federal interests.

DEDICATION

To my family.

ACKNOWLEDGEMENTS

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AQMP.   Air Quality Management Plan

CCME.   Canadian Council of Ministers of the Environment

FCM.   Federation of Canadian Municipalities

GVRD.   Greater Vancouver Regional District

CHAPTER 1: INTRODUCTION

Since the ratification of the Kyoto Protocol by the federal government at the end

of 2002, there has been significant academic discussion regarding the jurisdictionality of

this issue. While the federal government has sole jurisdiction over international

agreements and thus could unilaterally ratify the accord, it appears that *implementation* of

policy regarding the Protocol will require the support of the provinces. Legal analysis of

this issue appears to support the idea that the federal government could unilaterally

decide to sign the agreement but cannot unilaterally implement policy, as environment,

along with immigration and several other issues, is a shared provincial/federal

jurisdiction (Barton, 2002, p. 421). The federal government has met considerable

opposition from some of the more powerful provinces, such as British Columbia, Alberta

and Ontario regarding implementing policy to support the Protocol. Although there has

not as of yet been a legal challenge, the provinces have threatened to use the courts to

force the national government to recognize provincial interests. The federal government

recently outlined an implementation strategy for reaching the goals of the Kyoto

Protocol, but the nascent nature and lack of details in some aspects of this policy area

make this issue complex.

With conflicting federal and provincial outlooks on this issue, the likelihood of

compromise appears to be small. However, there may be ways in which effective policy

can be implemented. At the very least, a complete understanding of the underlying

political and legal issues facing policy negotiation and actor tactics will shed light on why

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some policies fail and how to correct for the difficulties a federal system can pose in developing successful policy.

1.1 Hypothesis

It appears that implementation of policy related to Kyoto will be difficult, given the need to involve both provincial and federal governments in this stage of the policy process. Successful policy implementation is dependent on the number of policy outcomes that would be deemed acceptable to all actors involved. The number of acceptable solutions is in turn affected by factors such as which orders of government are engaged in the policy issue and how this involvement is translated in terms of the power and negotiation strategy of these actors, constituent preferences, and the nature of formal institutions (Putnam, 1993, p. 439). The difficulties facing implementation of Kyoto-related policy seem high (van Kooten, 2003, p. 403-407), but the federal government remains set on maintaining their responsibility to meet Kyoto objectives. While this may indicate a naivety or foolhardy optimism on the federal government's part, this belief that policy can be implemented may stem from some factors and strategies not yet revealed in this area of public policy. The hypothesis of this work is that, in order to succeed, the implementation of policy related to the Kyoto Protocol must go beyond traditional ideas of federalism and intergovernmental relations. Success in this area will come from policy makers developing some method of bridging the gap between the differing ideals and goals of the federal and provincial governments and involving all willing orders of government in the policy process.

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1.2 Project

This project will analyze the implementation feasibility of the Kyoto Protocol based on the actions of the federal, provincial and local governments present in Canada's political system and the interactions between these actors. It will look at the levels of power in Canadian politics and the relationships and networks that have developed between the three governments. Using political models of interaction, this study will identify potential areas of contention in policy implementation and reasons for possible policy failure. In addition, analysis using the ideas of multi-level governance will identify overlapping or conflicting alliances that will work to either help or hinder successful policy implementation. This will help to identify how situations in which policy failure occurs will develop and how this failure can be averted. Finally, this work will forecast the likely outcome of intergovernmental relations in this policy area and generate hypotheses regarding the reasons for success or failure in this policy area.

It is important to note that this thesis is concerned with the process rather than the substance of environmental policy in Canada. Although the details and intricacies of the Kyoto Protocol do play a role in establishing the likelihood of policy success in this area, the formal, informal and negotiation processes that govern how intergovernmental relations in Canada work will play a more important role and have more application in Canadian political discourse as a whole than a simple analysis of the Kyoto Protocol and other environmental legislation and policy would provide. In essence, the environmental aspect of this study is simply used as a case study. The focus of this research is on multi-level governance and its effects on Canadian intergovernmental relations.

1.3 Cases

Specific cases will be developed out of British Columbia's relationships with the federal government regarding environmental policy and, at a local level, the Greater Vancouver Regional District (GVRD) will be used as an example. J.A.G. Griffith points out that "every example can be shown in some way to be unrepresentative and ill-chosen. Any generalization evokes shouts of protest" (Griffith, 1966, p. 17). However, this case will hopefully evoke few shouts of protest and was chosen precisely for its (currently) unrepresentative nature. Greater Vancouver is used as a case primarily for normative reasons. The region has a history of successfully developing and implementing air quality policies, allowing for this kind of study to be undertaken. This background allows for a deeper and more meaningful examination of how policy relations between the city and the province work and will possibly work in relation to the Kyoto Protocol. Without this history and indication of general policy direction, it would be difficult to ascertain the positions taken by the region on air quality issues. Although all regions are not as proactive in this area as the GVRD, there are indications that more areas may be following suit and the GVRD's current position may in time become an accepted local action. For example, Hamilton has made significant steps in improving its air quality initiatives (Touralias, 2000, p. 33), and many other local and municipal governments have in place air quality policies that are separate from provincial and federal initiatives. The GVRD is also a good case as, despite some initial problems and ongoing issues related to air-quality policies in place in the region, the GVRD's air-quality policies have generally been successful and implemented with few problems or concerns from any order of government. Therefore, the Vancouver case provides an important normative

base upon which to determine how potential policy initiatives can be successfully implemented. Finally, after the public dissatisfaction with mega-city policy in Montreal and the subsequent dismantling of the nascent mega-city in that area (Cohan, 2004), the interplay between the GVRD and its member cities provides an alternate and important illustration of the potential future for urban areas and urban politics. The Vancouver case is generalizable to other local governments with similar ideals and structures, as is the BC case. While these cases cannot be generalized to all governments in Canada, they act as strong and varied normative cases, as well as potentially standard ones, and provide strong evidence regarding intergovernmental relations and negotiation in an important Canadian case.

This study looks at local governments, but a distinction must be drawn between this type of government and a municipal government. This distinction is an area of special concern in Vancouver, where a reasonably strong regional government exists alongside municipalities in governing urban business. In the relationship between municipalities and the GVRD, the municipalities have maintained a considerable amount of autonomy in governing their own business, but the regional government plays a significant role, too. Dunn notes that municipalities are now only one level of local government that is considered important in federal politics (Dunn, 38). Increasingly, other local bodies play a role, and the GVRD is a case of this in air quality policy. The GVRD does have significant powers in enforcement and implementation of air quality standards in the lower mainland (AQMP, 1994) and is therefore a better case than the municipal level. Still, this power is contingent on the support of the municipalities in the region, which could potentially hamper the effectiveness of policy-making and

implementation power in the GVRD. However, there is little or no indication that problems will arise, as all municipalities in the Greater Vancouver Regional District have agreed to abide by the Air Quality Management Plan in place. Therefore, this study will look at the local level (the GVRD), as the focus of this study is air quality.

Compressing the two tiers of local governance into one can be problematic in certain studies. However, certain factors allow this difference to be reconciled and create a situation in which both levels of local governance can be analyzed as one. As mentioned above, the issue of air quality control in the lower mainland has become a regional rather than a municipal issue. In addition, the regional government allows a stronger voice for local governance in the politics of the province and the country. While this does not necessarily result in municipalities being completely irrelevant in provincial or federal politics, the region is more likely to play an important role in larger political issues. Finally, many policies of provincial or federal significance that have a municipal component can 'filter up' to the regional level. Most examples of this trend in the Lower Mainland occur with the City of Vancouver. In fact, the idea of air quality management started at the city level with the City of Vancouver's *Clouds of Change* before morphing into the region-wide *Air Quality Management Plan*. For these reasons, municipal and regional politics will be contained under the single rubric of 'local governance'.

Because the GVRD is used as a case, it logically follows that British Columbia should be used as the provincial example. In addition, this provides a useful counterpoint to the GVRD, a supporter of the Kyoto Protocol, by highlighting a province that opposes the Protocol. Both of these cases will be examined in relation to each other, as well as to the federal government.

1.4 Methodology

In order to understand the situation surrounding environmental politics in an intergovernmental Canadian political context, two theoretical ideas will be used. Firstly, win-sets will be used to establish the potentiality of policy success and failure. Secondly, the idea of multi-level governance will show how and why the different orders of government work together (or, potentially, do not) to successfully implement environmental policy.

The goals of this project will be accomplished using a mixture of case studies, theoretical frameworks and game models. The focus of this work will be on the process of multi-level governance rather than the substance of the Kyoto Protocol. In addition, this work will centre on the implementation stage of the policy cycle.

> For rather obvious reasons, the initial decision to do something seems to be the most important part of policy-making. The awareness has grown, however, that the initial objectives can be substantially transformed as they are put into practice (Rhodes, 1986).

To effectively analyze the impact of all three orders of government on implementing policy related to Kyoto, a general approach will be taken to look at the federal government, plus the provinces and municipalities as single actors. While this study may appear to be one based on federalism and revolving around the two actors with formal power over environmental policy - the federal and provincial governments - on-the-ground implementation is often undertaken by the lower orders of government and thus municipalities and local governments will be examined extensively. The relationships between federal, provincial and local levels will be examined in terms of

formal institutions, informal political procedures and negotiation processes between the actors.

In addition to the cases mentioned above, comparisons can be drawn within the policy field. While it may not seem odd that policy implementation will prove more difficult the more actors there are involved, this difficulty is more evident in certain policy areas or sub-areas than others. Other interjurisdictional policy issues, even within the environmental sector, have not proven as contentious or difficult to implement as it appears policy related to Kyoto will be. For example, environmental assessment has seen both provincial and federal governments at least partially cooperating to achieve effective policy in this area. Likewise, agreements such as the Environmental Harmonization Accord and work by organizations such as the Canadian Council of Ministers of the Environment (CCME), an organization using an intergovernmental consensual framework to look at the environment (Lindquist, 1999, p. 54) and the Federation of Canadian Municipalities has shown that environmental policy can potentially effectively engage all three orders of government without being confrontational. Comparisons can be drawn between these more cooperative environmental ventures and the difficulty likely to face Kyoto-related policy to answer why some policy can be implemented easier than others, and how federal/provincial conflict can be mediated in the environmental sector. In addition to the more general question of how Canada's federal system affects environmental policy making, this study will show the effect of intergovernmental relations and the potential role of other orders of government (ie. municipal and local) in the policy process.

1.5   Thesis Outline

This thesis begins in chapter 2 with a review of the theoretical and conceptual underpinnings used and analyzed in this work. Firstly, it examines the evolution of win-sets as a method of ascertaining the likelihood of policy success. Secondly, it examines the growth of multi-level governance as an alternative to traditional federalist thought, its development in Europe and its subsequent utilization in federal systems such as Canada to more closely look at the intricacies and complexities of intergovernmental relations. Finally, chapter 2 examines the nature and general history of intergovernmental relations in a Canadian context looking at the machinations of federal/provincial, provincial/local, federal/local and three actor relationships. Chapter 3 takes a historical look at air quality policy in Canada. This involves a brief overview of the involvement of the two formal players – the provinces and the federal government - in crafting policy in this area, including a breakdown of British Columbia and Greater Vancouver policy initiatives in the area. In addition, intergovernmental relations and the special informal role of local governments as regards environment and air quality policy are examined. The Kyoto Protocol is also specifically looked at in this chapter. Chapter 4 looks at the formal and informal constraints existing on all three orders of government in developing and formulating air quality policy. Chapter 5 dissects intergovernmental negotiation between the three actors using a stag hunt game theoretic model. All two-actor and three-actor permutations are mapped out in order to understand the role and nature of negotiation in establishing successful policy. Finally, the concluding chapter ties together the information gleaned in this study and determines whether and how Kyoto-related policy

can succeed in Canada, which governmental level will be responsible for ensuring policy

success and the general roles of all players in this policy situation.

CHAPTER 2: THEORETICAL AND HISTORICAL FRAMEWORKS

In order to understand the structure and workings of intergovernmental relations in Canadian environmental policy, theoretical models and ideas must be developed in order to accurately measure and detect the effectiveness of these relationships in terms of implementing policy related to the Kyoto Protocol.

2.1   Win-Sets

Kenneth Shepsle and Barry Weingast first raised the idea of 'win-sets' in their piece on American congressional committees (Shepsle & Weingast, 1987, p. 90-91). This piece uses mathematical and statistical methods to examine interaction, bargaining and the probability of agreement and compromise in a dynamic, multi-actor setting such as congressional committees. Their theoretic model builds on an existing spatial model of committee decisions and looks at committees as groups of n actors with well-defined reference points on an m-dimensional Euclidean space. This space is divided into different policy jurisdictions and each actor has static preferences for decisions made on certain issues. The interplay between the actors and the jurisdictions create 'win-sets', which are defined as the overlap of actor preferences creating a set of potential agreements that would be approved by all of the actors when raised against the 'no-agreement' status quo (Shepsle and Weingast, 1987, p. 91). In other words, in order to successfully reach an agreement, the policy must fit into a set of overlapping options acceptable to all actors. Therefore, successful policy implementation is dependent on

finding a solution that fits within the win-set and would thus be approved by all actors. Finding this solution will be made easier by maximizing the size of the win-set and potential points of agreement.

Robert Putnam further refines the idea of win-sets, bringing it slightly away from Shepsle and Weingast's mathematical model and into an international context. Putnam applies the idea of win-sets directly to negotiation and to international politics. He breaks the phases of negotiation into two levels: a negotiation phase and a ratification phase. In the negotiation phase, separate actors bargain with each other, attempting to come to a tentative agreement. In Phase II, the ratification phase, within each group there is discussion about whether to ratify the agreement (Putnam, 1993, p. 438). Putnam identifies three factors that affect the size of win-sets in international policy decisions. Firstly, "the size of the win-set depends on the distribution of power, preferences, and possible coalitions among level II constituents [domestic-level actors]" (Putnam, 1993, p. 443). Whether a policy will be approved or not is highly dependent on how actors interact within the domestic political system. Secondly, in Putnam's analysis the size of the win-set will depend on domestic institutional factors. Finally, Putnam argues that the size of the win-set will depend on the strategies of the level one (foreign level) negotiators. It is the aim of groups on both side of the issue to maximize the win-set for the other group. By doing that, less compromise will be needed on their part, as the size of possible sets in which agreement is reached is made larger. Therefore, negotiation is an important aspect affecting the size of win-sets.

Shepsle and Weingast's model, along with Putnam's derivation, can be applied to the domestic policy level in Canada. Using these ideas as a base of study, one can

determine the relative size of each party's win-set and establish the likelihood of compromise on an issue. In order to exactly use Shepsle and Weingast's mathematical model, policy jurisdictions must be well defined (Shepsle & Weingast, 1987, p. 90). This is clearly not the case, as environmental policy in Canada is a jurisdiction shared by provincial and federal governments. Therefore, a pure mathematical method of analysis will not suffice. For that reason, a modified version of Putnam's win-set framework will be used. Putnam's original model looks at the negotiation strategies of international actors at the negotiation stage (phase I) and the preferences, coalitions and institutions of domestic actors at the ratification stage (phase II) to establish the size of the win-set. In order to apply this to the Canadian case, the governmental levels must be shifted down one level. Therefore, applying this model, for example, to the federal/provincial case will result in the three factors related to Canadian policy being (1) the informal preferences, coalitions and relations between the federal and provincial actors, (2) the formal institutional processes affecting the relationship between the two orders of government and (3) the negotiation methods and strategies of the two governments. In addition, the number of issues in question can play a role in the likelihood of achieving a win-set probable to succeed, but this analysis limits the issue to one, thus removing this factor as a variable.

These levels can be further shifted down or altered in order to examine relationships between provincial and local actors, and even federal and local actors. Since there is no way to measure the relative importance of the three variables of formal politics, informal politics and intergovernmental relations, this application will more closely follow Putnam's non-mathematical application of the win-set theoretical

framework, except to note that informal politics and intergovernmental relations will be bound, at least technically, by the limitations of the formal political framework. Therefore, the available win-set will likely be a sub-set of the available formal political options, limited by informal political processes and inter-governmental negotiation and strategy.

2.2 Multi-Level Governance

Although much of the multi-level governance literature focusses on the European Union situation, this framework can be applied in a Canadian context and in other federal systems. Pure unitary systems are becoming rarer as most countries move administration of policy downwards or delegate certain powers to overarching multi-state government systems, such as the European Union. This has made the distinction between the European and North American cases less clearly defined. In addition, the idea of multi-level governance adds a new relatively unexplored dimension to federalism. The term 'multi-level governance', while sometimes used simply to denote a federal or federal-like system (Bernard, 2002, p. 8), can also be more narrowly defined as relating to policy networks, where power is diffused to a number of different governmental or non-governmental actors, representing separate policy 'nodes' that are related in a heterarchical-type network (Ladeur, 1997). These relationships are more ones of influence and symbiosis rather than ones of control and clearly delineated power structures (Bernard, 2002, p. 3). Literature focussing on the European situation tends to favour this definition. The European idea of multi-level governance emphasizes the "fluidity, the permanence of uncertainty and multiple modalities of authority" (Rosamond, 2000, 111). These modalities represent strategies and methods of policy

procedure used by institutions and policy elites to advance their own interests and act as 'bridges' of sorts between the different orders of government (Jones & Clark, 2001, p.2). This derivation of policy-based network theory is relevant in the Canadian environmental case. No actor clearly has superiority over the other. In this case, according to the specific issue, the federal government may have more power than the provincial, or vice versa. In addition, power can be equally shared between the two actors. Actors in this situation can therefore be treated as policy 'nodes', with a possible horizontal power structure.

This heterarchical idea of politics has become more prominent vis-à-vis hierarchical governmental relations for two main reasons. Firstly, the increasing complexity of politics has resulted in central governments downloading many responsibilities to both other orders of government and private organizations. This has resulted in more actors taking part in the governance process. Secondly, according to Nick Bernard (2002, p. 236), disillusionment with the state has resulted in separate groups, or different orders of government, dealing with issues on their own, or with little involvement by the central government.

Liesbet Hooghe and Gary Marks further break down the idea of multi-level governance into type I and type II forms. Type I forms, they say, are similar in theoretical nature to federalism, whereby the number of actors are limited and denote only governmental players. Type II forms, meanwhile, are ones in which the number of jurisdictions are vast and overlapping, creating separate 'nodes', rather than simply having 'a government', or even a couple of governments (Hooghe & Marks, 2001, p. 5-8). However, in Canada's case, these two types are not so distinguishable. While on the surface Canada's federal system appears to fit into the mould of a type I multi-level

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governance system, because of the overlapping and poorly defined nature of the environmental policy sector, this sector meets some of the criteria associated with a type II form of governance. However, it does not reach the fluid and infinite nature suggested by Hooghe and Marks. Therefore, the environmental policy sector in Canadian politics is a hybrid of sorts between the two types. At least in direct policy action, like that studied in this work, it has the neatly defined number of actors and general governmental makeup of a type I system, but possesses the overlapping and flexible jurisdictions usually associated with type II systems.

Network theory, a close relative of multi-level governance, is most often associated with the policy formulation step in the policy process (Howlett & Ramesh, 1995, p. 127). In this case, networks can equally be applied to the implementation process. In inter-jurisdictional areas in federal systems, implementation of policy is reliant on the relations between the various actors involved in the process. It is important to note that, in the study of multi-level governance, the term 'networks' is applied more broadly than the term is applied in the traditional policy literature. Public policy literature focusses on one order of government and the relationship between various actors in that sphere. A policy network thus defines a subset of people from a policy universe who share the same policy focus and who interact with each other on a regular basis. These policy network sub-systems are drawn from actors including parliament, cabinet, pressure groups, individuals, federal agencies and others (Pal, 1997, p. 201). In the multi-level governance literature, a network still is taken to mean a group of actors involved in the policy process, but the actors tend to be more broadly defined. In this case, the three actors of importance are the federal and provincial governments, with local governments

playing an important but smaller (or at least non-formal) role and any smaller groups of actors (such as pressure groups, governmental agencies, etc.) simply representing a sub-set of the three main actors.

In this multi-level governance network setting, federal, provincial and local governments work together (in an ideal world), without clear power delineation, to establish effective implementation of environmental policy. In order to understand the effect of networks on successful policy implementation, it is important to define the relevant networks. While, on the face of it, provincial and federal governments occupy mutually exclusive networks in regard to jurisdiction and policy, inter-jurisdictional areas such as the environment do allow for some overlap in policy networks. This is most evident in the gathering and dissemination of information, where the two orders of government often work together and share information as it relates to policy issues such as the environment. The work of the Canadian Council of Ministers of the Environment (CCME) is the best example in this jurisdiction. Made up of federal and provincial environment ministers, the CCME "works to promote effective intergovernmental cooperation and coordinated approaches to interjurisdictional issues such as air pollution" (About CCME, 2005).

There are several important considerations worth highlighting when using a multi-level governance framework. Firstly, the actors present in the system need not be governmental. While often times the major players are the different orders of government, other players such as non-governmental organizations, lobby groups, private organizations and even individuals may play a role in the overarching idea of multi-level governance. In this case, however, the major actors strongly and visibly involved in the

policy process are the three governmental levels and this study will be limited to government players. Secondly, the linkages between the actors can be informal or formal and can stem from convention or statute. The important condition is that these linkages are seen as legitimate (Jones & Clark, 2001, p. 2). Thirdly, the relationship between the actors need not be hierarchical. Instead, each actor represents a point or node of power that works with other nodes in order to achieve policy objectives. This should not be interpreted as saying the state is no longer the most powerful actor in the political process, and any loss of control by the central government should not be overstated. The state remains an important (and likely the most important) instrument in politics, but other actors have begun to be more important in governance issues than they once were. Fourthly, government action – or inaction – can take place independently of other actors. For example, parallel policies may be enacted by different levels of government without overlap. This is important, as a desire for unilateral control on any actors' part will not necessarily derail the policy process if their desire for control does not overlap with the power or perceived power of other levels of government. However, this study can safely assume that actions on the part of federal and provincial governments have a great likelihood of overlap. Otherwise, there would be little reason for the conflict that currently exists in the policy area. Finally, when more than one actor is involved, the potential for 'free riding' exists, where one actor may benefit without assuming any responsibilities for the policy. While this is a serious concern, this study assumes that free ridership will not be a problem, as no governmental level appears to want to ride for free.

This derivation of policy-based network theory is relevant in the Canadian environmental case. All three orders of government work, in certain capacities, to

develop and implement environmental policy that is useful, effective and politically feasible in their given constituency. In order to accomplish this, all governmental actors rely on other actors, such as environmental groups, business interests, think tanks and other governmental ministries and organizations to help them develop and maintain policy standards related to their respective areas. In addition, governmental actors will interact with other players within the governmental levels. It is on intergovernmental interaction that this study will focus. Just as jurisdictions overlap between governmental levels, so do policy networks. Therefore, municipal, provincial and federal networks all overlap to a certain extent, which can affect the ease with which policy is implemented. This study, using the multi-level governance literature, will map these networks and network overlap in order to understand this factor that will affect inter-governmental negotiation and strategies preferred by each actor.

Recently, some interesting work has been done linking environmental policy development and implementation to multi-level governance ideas in the European Union. Fairbrass and Jordan look at multi-level governance and environmental policy in the EU and, more specifically, in Great Britain, but they find that the multi-level governance framework fails to adequately explain why sub-national actors would mobilize in such a situation (Fairbrass & Jordan, 2004, p. 164). While this is a legitimate concern, the work in this thesis does not require the kind of information these authors say multi-level governance theory cannot provide. It is enough to simply know that sub-national (ie. local) governments are willing to work within this framework. Sonja Wälti has done work on multi-level governance in the European Union and its effects on environmental policy. Her work highlights a possible link between economic development, corporatist

accommodation and environmental policy (Wälti, 2004, p. 600). While this is an interesting direction in which to take the relationship between environmental policy and multi-level governance, this thesis chooses to use a more political and less economics-based approach to the study of this area. Wälti's ideas regarding business, economics and the environment translate to an interesting comparative perspective on the issue, but a more political approach works well in highlighting the unique challenges and circumstances that the Canadian political system introduces to multi-level governance and the environment.

2.3 Intergovernmental Relationships

2.3.1 Federal/Provincial Relationships

At the time of Confederation, jurisdiction over environmental issues had not emerged as an important issue and thus was not included as a power clearly given to either the provincial or federal governments. This has since proven to be problematic as Canada moves more and more towards accepting environmental policy as a necessary and important area of politics. This increased emphasis on the environment has created political problems, as both orders of government have some legitimate claim over aspects of environmental regulation. It is generally accepted that the environment is a shared jurisdiction and Supreme Court decisions have cleared up the powers over some environmental issues, but sufficient precedent has not been achieved in order to absolutely demarcate federal and provincial responsibilities.

As past cases such as environmental assessment have shown, in the area of Canadian environmental policy it is crucial to consider both provincial and federal

positions in establishing successful policy, thus making the idea of win-sets an important one in establishing the likelihood of success for policy implementation. Unfortunately, this analysis will show that implementation of the Kyoto Protocol faces more constraints on the size of its win-set than it faces facilitators. Firstly, informal constraints, such as the number of possible preference sets, and thus the number of actors involved in the process, will greatly limit the number of agreeable, and thus 'winnable' to all parties involved. Secondly, constraints on negotiating practices between the two orders of government, such as the apparent unwillingness to cooperate and compromise and the limitation of previously successful policy strategies like elite bargaining, will limit the number of acceptable decision sets. Although these constraints are somewhat offset by network overlap and some indications of cooperation, this factor probably does not increase the size of the win-set significantly. Finally, the informal political processes and intergovernmental negotiation strategies must be filtered through the formal political process evident in Canada. This means that any agreement must be both constitutionally appropriate and based on sound legal arguments.

It is evident that successful implementation of policy requires a level of support and cooperation usually unseen in Canadian intergovernmental relations. The possibility of implementation failure is high. In addition, the list of important issues presented above is by no means exhaustive and only represents the factors immediately evident that will affect the ease with which policy related to Kyoto can be implemented. Other issues are likely to develop as time and governmental ingenuity increase the number of factors that may play a role in the feasibility of policy implementation.

2.3.2 Provincial/Local Relationships

While past policy cases, environmental and otherwise, have not always involved the local or urban order of government, with regard to policy related to this jurisdictional area and the past involvement of municipalities and urban polities in air-quality policies, it is important to consider the relationship between provincial and local governments in establishing feasibility of policies related to the Kyoto Protocol. In terms of chance of policy success in areas where local governments have traditionally had a significant role, the relationship between provincial and local orders of government, while ostensibly cooperative, could still be problematic in ensuring feasible and effective policy implementation. Although the lack of conflict between the two groups eliminates many of the troubles associated with formal relationships, local and provincial governments lack the mechanisms that come with formal relationships such as judicial review to clearly outline the roles, responsibilities and potential areas of strength each group possesses.

Dealings between provincial and local governments operate on three distinct levels. Firstly and most noticeably the formal institutions and processes that mark Canadian politics also govern relations between the two actors. These formal aspects mostly limit power to the provincial government, but must still be considered. Formal institutions clearly delineate the power held by the provincial government, how it can act regarding certain issues and how these issues are dealt with and resolved. In addition, it limits local governments to operating within the bounds of provincial powers. Secondly, provincial/local governmental relations depend on informal coalitions, negotiation and preferences between the two actors. Due to the strong formal strength of the provinces

vis-à-vis local and urban governments, informal preferences and negotiation are the main source of power for these lower orders of government. Finally, the negotiation methods and strategies of the two governments will affect the level of cooperation between the two actors and how likely it is that a successful policy outcome will be achieved. These three factors together determine whether agreement is likely and if successful policy will be implemented. If both informal and formal policy processes are favourable and provincial and local governments are willing to negotiate in good faith, then the win-set will be larger, thus making success more likely (Putnam, 1993, p. 439). Finally, it is important to remember that, although municipal and local power flows from the provincial government, local governments still have significant power to implement policy and local policy cannot be overridden regardless of provincial stance if the local enactments can stand without infringing on provincial law (Hoehn, 1996, p. 10).

One of the foremost sources of power for local and urban governments results from the principle of subsidiarity. This principle, simply stated, argues that political activities should be undertaken by the lowest level of organization possible. This idea has gained prominence worldwide in the last decade as governmental resources are further stretched and changed (Council of Europe, 1994, p. 11). A prime example of the idea of subsidiarity is the European Union, where the principle of subsidiarity has been incorporated as a central tenet behind the Union (Maastricht Treaty, 1992). In a Canadian context, the principle of subsidiarity first gained prominence in political discourse after the release of the Tremblay report in 1956, where the author used the term to develop the idea of French-Canadian nationalism in Quebec (Gagnon and Erk, 2001). As of late, and possibly due in part to the increased prominence placed on the idea in Europe, the

principle of subsidiarity has been applied not only to provincial/federal relations, but also to provincial relations with lower orders of government.

Past air-quality efforts have proven that municipalities can play a significant role in determining the effectiveness of policy in this area. As municipal governments have no formal power over environmental issues, local governmental involvement in environmental policy implementation tends to be done in an ad-hoc manner. As illustrated above, in the area of air quality management, the GVRD has a significant history in reducing emissions and improving air quality. In addition, the provincial government has supported, if not monetarily then theoretically, Greater Vancouver's air quality initiatives. This fact provides some hope that environmental policies related to the Kyoto Protocol will not face a high likelihood of policy failure at the provincial/municipal relations level.

2.3.3 Federal/Local Relationships

Historically, relationships between federal and local or municipal governments are less developed than the more formally entrenched relationships between federal and provincial governments or the relationships between provincial and municipal governments. In addition, municipalities and cities have traditionally played a smaller role in the formulation of national policies in Canada than in the United States (Jones, 1988, p.89). However, the migration of populations from rural areas to urban areas has resulted in a country-wide demographic shift whereby 79% of the population lives in cities of 10,000 people or more, 65% of the population of Canada now lives in the 27 largest metropolitan areas in the country and 51% of the population lives in only four

regions (Statistics Canada, 2001).[1] This population shift has given great powers to regional and local governments. In the example of Vancouver, the GVRD represents a population base approximately ten times that of Prince Edward Island. Although the province clearly has more jurisdictional and real power, cities for their sheer size are increasingly seen as important players in provincial and national politics. Recent federal government budget initiatives involving the local government sphere continue to project the importance of this relationship in Canadian politics and municipalities and local governments continue to expand their role in the Canadian political landscape.

Due to the size and political importance of city populations, the federal government is more willing and likely to consult with municipalities and local governments, either directly or through the provinces. In addition, municipalities and local governments have become more organized and involved with politics at a federal level. The current mandate of the Federation of Canadian Municipalities (FCM), which represents the needs and issues of municipalities at a federal level, seeks to involve municipalities further in national politics and can be seen as an acid test of the new importance of local governments at a federal level. While this work assumes at least some willingness of local governments to cooperate with the federal government, this may not always be the case. Although cooperation is likely in a city like Vancouver that has a fairly significant history in cooperating with the federal level, willingness of all municipalities or local governments to cooperate may not exist and without this

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[1] These areas are the Golden Horseshoe in southern Ontario, Montreal and the surrounding region, the lower mainland of British Columbia and southern Vancouver Island, and the Calgary-Edmonton corridor.

cooperation the federal government may lose an important ally in on-the-ground policy implementation.

Significant constraints exist that may limit the size of the win-set in federal/local negotiation, most noticeably the potential for provincial checks on the relationship. Although direct federal/local relationships may be relatively trouble-free due to the lack of direct power or competition over jurisdiction or resources, this may strain federal/provincial relations, as the provinces may feel the federal government is 'skipping a level' or usurping some of their power by working directly with local levels. This is noted in Patrick Smith's article on local/federal relations, where he notes of occasions "where federal opportunity existed and was even encouraged, only to find significant provincial 'checks' on such interaction" (P. Smith, 1988, p. 133).

The main constraint against the federal government is the fact that they share jurisdiction with the provincial governments over environmental issues, and the main constraint against local governments is simply the lack of resources to deal with these environmental issues. Instead of being a constraint, the lack of provincial involvement in air quality issues gives local governments the freedom to instigate policies, even though this area technically falls outside of their jurisdiction. This creates a situation in which the constraint against the two orders of government and the freedoms afforded them serve to balance each other out. The resource constraint on local governments can be relieved by the federal government. In turn, contribution to municipal policy initiatives gives the federal government a level of involvement they would normally not be able to achieve without the consent of the provinces. There is evidence that intergovernmental relations are moving in the direction of increased cooperation between federal and local powers, as

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shown by the federal government's financial initiatives involving local governments planned for in Prime Minister Paul Martin's 2002 Throne Speech (*Speech from the Throne*, 2002).

Despite the fact that this arrangement effectively cuts the provinces out of the direct processes of the policy decision-making and implementation processes, this is not necessarily a negative for the provinces, nor does it have to be a permanent result. Firstly, successful policy implementation by the federal and local governments may result in provinces showing more willingness to be involved, as the possibility of failure has been lessened. Secondly, federally and locally produced outcomes do not inevitably have to conflict with the desired aims of the provinces. If the provinces are willing to allow local governments to have de facto control over air quality policies, then this should not change if the federal government becomes involved. However, that assumes that the provinces will not take exception to the involvement of the federal government or see it as an aggressive ploy by the senior government to garner more power and jurisdictional control over the provinces. In addition, provincial willingness to accommodate local air quality policy may not continue if those local policies are taken to the extent necessary to uphold the requirements of the Kyoto Protocol. Because of the nature of multi-level governmental relationships in Canada, the assumption that the provinces will remain unworried about federal/local relationships in this sensitive area cannot be made. However, even if increasingly close relations between local and federal governments exacerbate the relationship between federal and provincial governments, there are ways in which the provincial government can be involved without upsetting the balance and gains established by the federal/local relationship. The guiding hand of the provinces will

influence federal/local relations weakly even without direct provincial involvement due to the fact that local governmental powers are derived from the provinces. This would leave the door open for increased future involvement by the provinces if they so chose without negating the successes established under strong federal/local relations.

The potential benefits derived from a federal/local relationship and the possible conciliatory effect successful federal/local dealings may have with provincial governments may help to increase the number of successful possible outcomes. Still, success in this case is highly dependent on at least partial cooperation (or willingness to remain uninvolved) from the provincial government. If this willingness to cooperate or to remain uninvolved exists, then a relationship between local and federal governments, whether weak or strong, should not greatly diminish the likelihood of successful policy outcomes related to the Kyoto Protocol.

2.3.4   Federal/Provincial/Local Three Actor Relationships

Historically, there have been many examples of both cooperation and dissention between the three orders of government in dealing with environmental policy concerns. The clearest examples of three-party governmental cooperation occur with federal aid and negotiation with municipal and local governments. Because local governments derive their power from the provincial level, that level is necessarily also involved. In turn, the provincial government seems to be becoming more accepting of federal involvement in municipal and local policy, providing it does not interfere with provincial objectives and the federal government is willing to contribute, either politically or financially, to the policy initiative. An example of this can be found in the 'new deal' for cities that Paul

Martin promised in his 2002 Throne Speech. This 'few strings attached' deal for local

governments has not raised much fuss from provincial governments

(Plunkett, 2004, p.20).

However, most three-actor relationships have been clearly asymmetrical in nature,

usually favouring two actors and relegating the third to a minor role. T.J. Plunkett (2004)

discusses the renewed interest the federal government has shown in further developing

relationships with municipalities. This will necessarily be accomplished through the

provinces. The federal/provincial/local relationship, Plunkett notes, is a three-party

association, but usually an unequal one. The author notes that provinces still have the

ability to check municipal and local behaviour, giving provinces the advantage in this

relationship. Christopher Dunn (2004) raises the example of the Canadian Foundation for

Innovation (CFI) as another example of a three-actor partnership. In this case, local

governments are supported by the federal government indirectly through support offered

for institutions within cities. Dunn notes that the provinces are still involved in a funding

role, but their political impact is greatly limited in this case, as the federal government

successfully circumnavigates provincial jurisdiction using indirect funding. Again, the

three actors are not equal (or equally represented) in this relationship, with the provincial

government being almost excluded in this case. These examples show that the three actor

game may not be as important as two-actor negotiations. Many negotiations, as shown,

take place between only two actors. Even when a third actor is involved, most cases show

these relations to be asymmetrical, creating, in essence, a two-party scenario with the

third order of government being a source of influence rather than an actor in their own

right. The relative importance of three-actor relationships will be further developed in future chapters.

The idea of win-sets can be used to illustrate the probability of achieving a policy that is winnable to all three parties. Because three actors are now involved, all with their own definition of acceptable policy solutions, the likelihood of achieving a policy satisfactory to all parties diminishes. However, other factors help to mitigate the negative effect the increase in actors has on the size of the win-set. Firstly, the local governments can play a role as a mediator between the two other orders of government. Secondly, the level of power of each governmental actor differs. Although concurrent jurisdictions held by federal and provincial governments can limit cooperation and compromise, as noted earlier, the relatively low level of formal powers held by local governments and the seeming desire of these governments to enact air quality policies make the likelihood of policy failure resulting from local actions quite low. This, in effect, increases the size of the win-set by rendering the game close to a two-actor model by virtually eliminating the constraints of the third actor.

In addition, formal political constraints help to create a situation in which the number of possible 'deal breakers', that is the actors who can effectively cause a policy failure, is also limited. Again, local power is derived from provincial constitutional power, and therefore creates a clearly hierarchical relationship between provincial and local governments. Therefore, local involvement, or lack thereof, does not as certainly facilitate policy failure as provincial or federal deviation. That being said, local governments can still exert tremendous influence and power over the policy process. However, this power is derived from the informal facilitating role local governments can

play between federal and provincial governments when those two levels disagree on policy initiatives or outcomes. If provincial and federal governments are willing to negotiate and cooperate, local governments will likely have little power over the process.

This three-party illustration shows that even if difficulties may exist and develop, there remain reasons for hope that successful policy related to Kyoto will be implemented. Specifically, these hopes develop out of the fact that Canadian politics is not limited to three-actor games. Instead, most policy decisions and political negotiations take place between just two actors. For example, provinces will press their needs directly to the federal government without involving local governments, and for better or for worse provinces may regularly speak for local governments in negotiations with the federal government (Bradford, 2004, p. 40). Local governments routinely negotiate with provinces, as their powers are closely linked to this order of government. Municipalities or local governments may also negotiate for themselves federally, sometimes through a body such as the Federation of Canadian Municipalities. Three-actor negotiations do exist, but common sense and analysis show that success is more likely achieved between fewer actors, and thus fewer opportunities for conflicting goals and strategies.

These conclusions are illustrated by the negotiations regarding Kyoto-related policy that have taken place to this point. The most attention has been paid to the federal/provincial relationship, which has been fraught with difficulties, but is a relatively straight-forward constitutional political issue. In addition, municipalities and local governments have been involved in this policy issue, even before it was specifically a 'Kyoto' issue. While local governments are perhaps the level most willing to work and negotiate with both other orders of government (although the federal government may

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take a more conciliatory approach in the future to ensure policy success), even in this case, local levels tend to work with provincial and federal levels separately (Young, 1991, p. 5-6). These cases show that three-party games are problematic and prone to failure. Therefore, all three levels, when possible, appear to tend to prefer two-party negotiation.

CHAPTER 3: CANADIAN ENVIRONMENT AND AIR QUALITY INITIATIVES

3.1   Intergovernmental Relations in an Environmental Context

Intergovernmental relations in the environmental field, especially those between the provincial and federal levels, have fluctuated between periods of relative cooperation and conflict. Prior to the 1960s, the environment was seen almost exclusively as a provincial jurisdiction. During the late 1960s, public support of environmental initiatives increased and the federal government became more involved in the development of environmental policy. This created more tension between the two levels in the 1970s as the provinces and the federal government jockeyed for control. After a period of relative stability in the early 1980s, disagreements arose again in the latter part of the decade as the federal government was forced legally to become more involved in the area of environmental assessment through the judicial decisions regarding the Rafferty-Alameda dam project and the Oldman Dam ruling (Harrison, 2000, p. 7). Efforts to restore harmony began in the early 1990s and have continued, but the rancour over the Kyoto Protocol may be the start of a swing back to a conflictual provincial/federal relationship in this jurisdiction.

Governmental institutional literature generally accepts that institutions will have a constraining or facilitating effect on public policy (Weaver & Rockman, 1993, p. 445). Furthermore, when multiple orders of government are involved in the policy process, the number of policy options will be constrained. This makes intuitive sense, and this thesis

will show this to be true. However, the extent of this constraint is not consistent across policy sectors. For example, trade policy, while ostensibly under federal government control, does have certain interjurisdictional aspects. Despite this interjurisdictional nature, trade policy has been relatively cooperative between the provinces and the federal government, as evinced by the Agreement on Internal Trade (1995). Even within the environmental sector, certain policies and agreements meet with less resistance than others. Therefore, a comparison of policy regarding Kyoto to other more cooperative attempts at interjurisdictional environmental policy making is necessary to understand why multi-level governance constrains some policies more than others.

Two examples of federal/provincial collaborative environmental policies or initiatives are the *Environmental Harmonization Accord* and the *Statement of Interjurisdictional Cooperation on Environmental Matters* of the Canadian Council of Ministers of the Environment and the environmental assessment acts signed by the federal government and the provinces. The *Environmental Harmonization Accord*, says Mark Winfield, marked the first example in the environmental jurisdiction of the "collaborative federalism that now defines intergovernmental relations and national policy-making in a number of fields" (2002, p. 124). As a point of contrast, this work will draw a brief comparison of policies centring on the Kyoto Protocol to provincial/federal agreements on environmental assessment to illustrate some factors constraining policy regarding emissions standards set under Kyoto that may not exist in other issues of environmental policy.

The *Canadian Environment Assessment Act* (CEAA), brought into force in 1992, outlines the federal role in environmental assessment of projects and gives the central

government the ability to assess projects that may cross jurisdictions or affect federal

lands. Two court cases relating to the Rafferty-Alameda dams in Saskatchewan and the

Oldman river dam in Alberta forced the federal government into performing these

assessments of environmental impact instead of leaving it up to the federal government's

discretion (Canadian Environmental Assessment Act, 1992). Since the CEAA came into

effect, the federal government has signed ad-hoc environmental assessment agreements

with six of the ten provinces, as well as the Yukon, with the latest agreements signed in

early 2004. Most of these agreements allow for great cooperation and coordination

between the two orders of government without impinging on either level's constitutional

powers or jurisdictions.[2]

The main reason for cooperation with environmental assessment stems from the

context surrounding the issue. The federal government did not want complete control

over environmental assessment, even if federal lands could potentially be affected.

However, this power was thrust upon them by court decisions reached at the behest of

third-party groups, such as environmental organizations (Harrison, 2003, p. 325). Due to

this reluctance to take over, the federal government was willing to negotiate with

provinces to share control over environmental assessment. The provinces also were

willing to negotiate, as federal jurisdiction over environmental assessment would greatly

slow up or hinder projects already approved by the province. While institutional factors

limited the size of the win-set, informal political agreement (in this case, in the form of

federal/provincial accords) and high levels of cooperation between the two orders of

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[2] See http://www.ceaa-acee.gc.ca/013/agreements_e.htm for a complete list – and complete texts – of the various environmental assessment agreements in place in Canada.

government significantly widened the win-set. The success of policy in this area would seem to indicate that political negotiation is able to overcome institutional constraints and is the most important factor in determining the size of the win-set.

This willingness to cooperate can be contrasted to the situation involved in regard to the Kyoto Protocol. Here, both governments claim control over jurisdiction of policy and are therefore less willing to cooperate with the other government. In addition, many political factors play a role in making legislation relating to Kyoto more contentious than environmental assessment. Firstly, the economic implications of the Protocol are far reaching and potentially quite large. This in turn means more is at stake politically for both orders of government in establishing acceptable policy. In addition, the provinces have a more substantial reason to question the legality of Kyoto due to the wide-ranging effects of policy related to this agreement. In contrast, the provinces had few legal arguments for gaining control over environmental assessment and this issue did not have the immense effects that the Kyoto Protocol will likely have. Finally, the Kyoto issue, unlike the environmental assessment issue, contains a significant international component, making this issue important at domestic and international orders of government.

The difference in willingness to cooperate can be illustrated graphically. In certain cases, the two orders of government will be more willing (or constitutionally forced) to share jurisdiction over policies than at other times, where the power will be clearly given to one level over the other. Usually, this jurisdiction will apply at all stages of the policy cycle. However, the intricacies of the federal constitutional relationship and political coordination or competition can affect this relationship. For example, one level may

unilaterally control the decision-making part of the policy process but may have to share control over implementation, as is the case with Kyoto. This will determine how easily policy is adopted and implemented.

Table 3-1:   Two-Actor Intergovernmental Relations at the Decision-Making and Implementation Stages

Implementation Stage

	Unilateral	Shared
Unilateral	Smooth policy adoption and implementation	Smooth policy adoption, with interjurisdictional trade-offs at the implementation level
Shared	Interjurisdictional trade-offs at decision-making level, with smooth policy implementation	Difficult policy adoption and implementation

(Decision-Making Stage)

Policy assessment, after the court decision clarifying the federal government's role, falls into the unilateral decision-making/shared implementation box. Implementation is shared at the behest of the federal government. As regards Kyoto legislation, the federal government argues that the decision-making and implementation power resides with their government alone. Even if coordination and cooperation is required from the provinces, the federal government feels it should control the policy process. Harrison posits that this view may stem from the thoughts and actions of individual actors (ie. Jean Chrétien) as much as from political or constitutional rules (Harrison, 2003, p. 314). While this may be true, the 'why' lies beyond the scope of this thesis. The provinces' viewpoint

differs from that of the federal government, as they feel that they should control the policy process, but even if the federal government controls the decision making process, the provinces should have an equal say in implementation. The federal government is acting as though the decision-making power is theirs alone and the implementation power is also theirs, to be shared only if they choose to do so. However, the action of the provinces and the potential threat of jurisdiction challenge have created, for the time being, a de facto shared decision-making and implementation process. While a judicial review regarding jurisdiction would certainly move this issue out of that box, pending a concrete decision regarding political jurisdiction over Kyoto-related issues, this issue must be treated as 'difficult', as both jurisdictions claim control over the area, which has the same effect as shared jurisdiction at both policy stages.

In terms of provincial/local relations, up until this point the province has allowed local governments, especially in the GVRD, a high level of autonomy in setting and implementing environmental policy. With British Columbia opposed to the Kyoto Protocol, the province may prove to be less willing to be cooperative towards policies aimed at meeting the requirements of the Protocol. However, this should not create significant problems for the GVRD. Many of their policies on air quality are regulatory in nature or else funded mostly from local sources, resulting in low costs to the provincial government, and thus little need for provincial support. In addition, local success in air quality policies, while being positive in showing provincial governments that local levels can create important policy, may also have the detrimental effect of slowing the flow of provincial money to the regions, as the region has shown itself relatively capable of developing policy on its own. This helps to create a situation where, if significant

monetary outlays are required to meet the standards of the Kyoto Protocol or if local

policy diverges significantly from provincial policy, this relationship could prove to be

less feasible in ensuring required policies are implemented

(Smith & Stewart, 2004, p. 25).

3.2 The Role of Local Governments

The two main formal actors in environmental policy in Canada are the federal and

provincial governments. These two levels have formal jurisdictional power over the

issue, and thus play an important role in the policy process. However, this does not mean

that other governmental levels are unimportant. In particular, local governments,

although not formal players, have tended to play a role in air quality policy in Canada.

For simple reasons of size and activities, cities have traditionally been the biggest air

polluters and thus need to play a role in reducing air emissions. With provincial and

federal support for Kyoto Protocol standards far from unified and a tendency of higher

governments to 'download' responsibilities onto local and regional governments, cities

have the chance to play an important and pivotal role in developing and implementing

policies and strategies to improve air quality. Despite their lack of formal power, local

governments must be examined as an important actor in informal and negotiation politics

in the environmental jurisdiction. As Smith and Stewart (2004, p. 37) point out, there is

significant room for local actors to operate in the mushy policy middle between being

completely autonomous actors and complete 'creatures of the province'.

While local governments technically derive their power from the provincial

government, this does not always result in the provincial government controlling the

actions of urban or local governments. Just as the POGG clause has not guaranteed the federal government power in all new and constitutionally unspecified powers, control over lower orders of government has not given the provinces sole power over development and dealings with municipalities or local governments. Local and municipal government institutions have become, in many ways, another practically autonomous order of government themselves and often operate on big issues with little or no provincial involvement (Fry, 1999, p. 374). Implementation of policy usually must take place at a 'ground' level to ensure success and local governments and institutions remain the best conduit for action on an issue that is primarily of a local concern. Local governments do have some power in areas like zoning and business licensing, thus showing that local governments cannot be eliminated as important players. In addition, Vancouver's progressive work on the environment and their almost twenty year involvement with region-based air quality initiatives has shown that cities are capable of dealing with bigger issues such as the environment without necessitating provincial support. In addition, whereas local governments' relationships with other orders of government used to be somewhat confined to other municipalities and the provincial government, increasingly inter-governmental relationships tend to be more heterarchical in nature. Now, local governments often interact not only with their province but also with the federal government in order to procure financial aid, enhance power and authority and develop strategies and policies.

These factors have created a situation in which provinces now often share control over certain policy issues with local governments. The sharing of control that was technically given solely to the provinces results from several factors. Firstly, the principle

of subsidiarity has forced much bureaucratic and political downloading by provinces to local governments. As the responsibilities of the provinces increase, they are necessarily forced to give control of some issues to the lower order of government. Secondly increased urbanization of provinces has given local governments, especially those in urban centres, more political power and importance. Problems that face large cities and their residents can no longer be considered merely 'local' issues, as they affect a majority of the Canadian population (Young, 1991, p. 2). This is true in a province such as British Columbia, where roughly half of the entire provincial population resides in Greater Vancouver (Statistics Canada, 2001). Finally, cities have begun to take a more activist role in the political arena in recent years, which has created an environment more receptive to their constant involvement in international, federal or provincial politics.

Air quality programs display the increasingly large scope of policy initiatives undertaken by the local level in the environmental jurisdiction. *Clouds of Change*, a Vancouver city air quality document, was the start of local government concern over air quality in this city, with the plan further refined and broadened to include the region in 1994 and renamed the *Air Quality Management Plan*. No longer are cities taking a reactive stance to policies instigated by provincial or federal governments. Now, local governments are much more likely to be proactive and play an effective and important role in policy development and implementation at both national and provincial levels.

Part of the reason cities now have more political power is simply due to the large size and population of urban areas. In addition to the sheer size of urban centres, metropolitan areas have become more focussed and coordinated in engaging in politics at a provincial and federal level. This can be seen in full-scale mega-city political

amalgamations such as that in Toronto, or the smaller scale move towards urban coordination seen in the GVRD. The increased sophistication of local governance and the increased number of people falling under this governance structure has resulted in local governments becoming more powerful.

Finally, the empowerment of cities in the political field by these other changes has resulted in urban centres showing increased willingness to actively engage in the political arena. Vancouver and the GVRD provide many examples proving this point. From international, albeit largely symbolic, political moves such as declaring the city to be a 'nuclear weapons free zone' (Smith & Stewart, 2004, p. 31) to involvement in federally-based initiatives to strong involvement in the provincial political process, Vancouver and other large urban centres have become an increasingly prominent fixture in Canadian politics. In addition, the increased entanglement of provincial, local and urban policies and the unwillingness of cities to cede any of the control they have gained have resulted in an increasingly powerful local and urban structure.

These reasons make it important to consider not only entrenched formal constitutional arrangements, but also the non-entrenched powers and informal authority held by local governments and urban centres and the interaction of this third governmental actor with the other two orders of government. The different nature of the relationship between provinces and lower orders of government creates a less formal but equally complex interplay between the actors than exists in federal/provincial relations.

The historical situation in British Columbia supports the assertion that municipalities and local governments play an important role in the environmental policy

process. The Canadian Urban Institute notes that municipalities and local governments in British Columbia enjoy a significant level of autonomy compared to those in other provinces, with Vancouver able to exercise even more power than most municipalities (Canadian Urban Institute, 1993, p. 19). This report specifically mentions the fact that municipalities and, by extension, the GVRD, have responsibility over air quality policy (p. 20). This creates a situation in which the local government is given, through informal means, a fairly strong voice in this policy area, and thus must be considered alongside the two actors with formal powers.

Although there obviously exist many constraints that may limit the size of the win-set favouring effective implementation of policy related to the Kyoto Protocol, the local governmental level may be able to have a 'bridging' effect on reconciling policy differences and disagreements between the federal and provincial governments. Due to the character of Canadian federalism and the shared jurisdictional nature of environmental policy in this country, the main constraint on the federal government is the provincial governments. As Philip Barton's piece on the constitutionality of Kyoto Protocol policy (2002) shows, without the support of the provincial governments it is unlikely that the federal government can proceed unilaterally with implementing policies related to the Protocol. In the case of local governments, the main constraints facing them are the lack of resources and the fact that their power is derived from, and thus subservient to, the provincial government. However, provincial governments across the country and especially British Columbia's have given municipal and local governments a high level of control over air quality policies, thus reducing the role of provincial jurisdiction as a constraint on the actions of municipal governments. This is shown by the

number and effectiveness of GVRD policies in dealing with air quality problems separate from the provincial government. Therefore, local governments may be able to work comfortably and effectively with both provincial and federal governments and help to bridge the distance between any differences in policy goals of the two other actors.

3.3 Canadian Federalism and the Environment

Various pieces of legislation regarding issues such as environmental assessment, endangered species, climate change and sustainable development, as well as intergovernmental organizations such as the Canadian Council of Ministers of the Environment (CCME) have attempted to solve or mediate problems of environmental jurisdiction with varying levels of success.[3] However, new issues continue to be raised that question the jurisdictionality of various environmental issues for several reasons.

Firstly, and most problematic in a country such as Canada, environmental issues rarely fit neatly into one jurisdictional area. In a federal system, this cross-jurisdictionality creates problems in environmental protection and policy implementation. In a unitary system, even if other orders of government create obstacles, the central government can implement policy unilaterally more easily than in a federal system, where policy concerns that cross institutional and constitutional intergovernmental jurisdictions must be addressed. Exacerbating this problem, many environmental issues such as air and water emissions tend to transcend territorial boundaries. This

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[3] See the CCME homepage at www.ccme.ca/ A list of federal environmental issues, many of which necessarily include provincial considerations, along with links to many pieces of legislation can be found at www.ceaa-acee.gc.ca/013/agreements_e.htm.

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consideration is especially important when considering the emissions regulations stipulated in the Kyoto Protocol (1998).

In Canada, the federal government has used various sources of power clearly within its jurisdiction as bases for arguing for federal control of environmental issues. These include the Peace, Order and Good Government power, the criminal law power and the trade and commerce power, all areas that fall into federal jurisdictions. Meanwhile, the provinces have jurisdiction over most types of natural resources, property and civil rights and certain areas of natural resource development, thus giving them a direct link to environmental issues. Due to the nature of the federal powers (as none of them directly relate to the environment), most environmental issues must be dealt with on a case-by-case basis, with the provinces usually having some way in which they can challenge the constitutionality of federal government environmental policy.

Secondly, the interjurisdictional difficulties associated with environmental policy in Canada have been aggravated by differing and sometimes conflicting objectives at the federal and provincial levels. The conflictual relationships between the two levels is exemplified by the number of times judicial review has been used to more clearly define the jurisdictional reach of both the federal and provincial governmental powers. Cases such as *R. v. Crown Zellerbach* (1988) and *Friends of the Oldman River Society v. Canada* (1992) and provincial opposition to acts such as the Fisheries Act and the Clean Air Act have more clearly defined environmental jurisdiction, but also show that cooperation between the governments on this issue is not always achieved (Winfield, 2002, p. 125).

Despite these problems, the federal government (both with and without the cooperation of all or some of the provinces) has attempted on several occasions to more adequately define the jurisdictions of both orders of government in respect to the environment. Agreements on environmental assessment have been struck with six of the ten provinces and one of the territories. Agreements reached in Alberta, British Columbia, Manitoba, Ontario, Quebec, Saskatchewan and the Yukon have proven to be successful at more clearly defining jurisdiction, albeit in a piecemeal manner, and other federal agreements along with Supreme Court decisions have helped to clear up jurisdictional issues in environmental policy.

There is also the possibility of some network overlap between provincial and federal governments, which may allow for a possible widening of the size of the win-set. As network overlap facilitates cooperation and potential concurrence, the possibility for agreement on a non-status quo compromise is theoretically increased. The amount to which the size of a win-set will be increased by this network overlap is highly dependent on the relative effectiveness and synchronization of the two networks in coordinating policy and cooperation. This increase in win-set size may, however, be offset by the relative unwillingness of the two groups to cooperate and compromise. While this factor is difficult to measure quantifiably, and despite the work done by the CCME to improve inter-governmental relations, the different preference sets exhibited by the federal and provincial governments in regard to the Kyoto Protocol indicate that the relative lack of willingness to compromise on this issue might prove to limit the size of the win-set.

3.4 Provincial Action: British Columbia Air Quality Initiatives

The relationship between provincial and local governments in Canada and specifically British Columbia has evolved over time into the current, shared-power system evident in today's politics. Specifically talking about air quality initiatives, both the province and the local governments have been involved in policy making and implementation, working together and separately.

3.4.1 Provincial Initiatives

The provincial government has numerous pieces of legislation regarding air quality in the province as a whole. The *Environmental Management Act* (2003) has specific statutes governing ozone-depleting substances, smoke and burning, vehicle and fuel emissions and industrial emissions. Most significant to this study are the vehicle and fuel emissions standards. These regulations, which came into effect between May of 1995 and April of 1996 control vehicle emissions and gasoline vapour at fuel stations, as well as creating standards for cleaner gasoline and defining the role of vehicle manufacturers in ensuring vehicles meet emissions criteria. These examples represent just the major regulatory methods used by the province to improve air quality and illustrate the methods preferred by the provincial government in dealing with air quality issues.

3.4.2 Vancouver Initiatives

Vancouver also has a significant history in dealing with air quality issues and has proven to be a relatively innovative city in dealing with air quality issues, even prior to ratification of the Kyoto Protocol. While past initiatives in the city have not been perfect, they serve as effective initial steps and a strong guide to improving air quality in the

metropolitan area and ensuring the region's place in developing new air quality policy. In particular, two initiatives served to get Greater Vancouver involved in air quality and show that the region can handle environmental initiatives on its own.

3.4.2.1 Clouds of Change

Clouds of Change, a City of Vancouver initiative created in 1990, served as an indicator that the city wished to get involved in formulating and implementing environmental policy. This project aimed to reduce emissions of harmful chemicals in Vancouver over a staggered timeline, using a set of 35 recommendations adopted by the City Council to aid this reduction. These recommendations ranged from creating an air quality management agency to limiting urban sprawl to planting urban forests. In addition, this plan aimed to include and work with both the federal and provincial governments in achieving and maintaining air quality standards (Clouds of Change Vol. 1, 1990). While *Clouds of Change* helped to develop and foster the development of an air quality management plan in Vancouver, it was more of a general statement of goals, rather than a clear and concrete policy document outlining implementation strategy. Because the plan lacked a clear plan on how to implement and carry out its recommendations, Clouds of Change did not achieve all of its goals and was seen by some as a failure (Moore, 1995).

3.4.2.2 Air Quality Management Plan

The Air Quality Management Plan (AQMP), a GVRD initiative first formulated in 1994, more clearly outlined the city's goals and plans in dealing with air quality in the region. The goal of the plan was to reduce the emissions of five major air contaminants

by 38% by 2000. This goal, according to GVRD estimates, was accomplished (Greater

Vancouver Regional District, 2005). A new version of the AQMP is planned to expand

the goals of the initiative and more clearly outlined methods of achieving these goals.

Additionally, the Livable Region Strategic Plan (1996) established a number of measures

aimed at improving the environment and liveability of the region, including air quality

initiatives.

The AQMP, which has evolved somewhat since its inception in 1994 and is

currently being revised and redone, has surpassed Clouds of Change in several ways.

Firstly, and most importantly, this initiative applies to all of Greater Vancouver, instead

of just the city of Vancouver, and is supported by all municipalities in the GVRD.

Secondly, this initiative more clearly outlines strategies of implementation and realistic

options for improving air quality, making this an effective policy document and one that

has been shown to work. There is currently a new version of the AQMP being produced

and, while it is impossible to say without the final document, there is no reason to believe

that the newest incarnation of the AQMP will not continue to function as an effective

policy platform.

3.5 Measuring Pollution Costs

These Vancouver initiatives tend to be more encompassing and treat air quality as

a more important issue than provincial regulations and guidelines. The reason for this

difference in priorities could result from a different calculation of costs and benefits by

the two actors. Economically, costs and benefits of pollution reduction and air quality

improvement can be measured in two different manners. Firstly, in the manner likely

preferred by the local government, the health, ecological and economical benefits

(all measured in dollar values) of reducing pollution can be compared to the cost of this

reduction. As there are few if any health or ecological costs to reducing pollution, costs

tend to be economic in nature, usually accrued to industries needing to upgrade

equipment. In addition, all costs are annualized. This measure creates a high benefit to

reducing pollution while keeping costs relatively low. An example of this calculation

method was used by the United States Congress in their reports on the *Benefits and Costs*

of the Clean Air Act (1997, 1999).

The second method of calculating costs and benefits centres on a more purely

economic measurement of the effect of pollution and assumes risk neutrality. In essence,

this method relies on the long period before negative effects of pollution are felt and the

uncertainty surrounding the severity of these future negative effects. Using this method,

current economic costs of reducing air pollution are compared to the discounted present

cost of the potential negative effects. In addition, these calculations are risk neutral

(as are most standard cost/benefit analyses), meaning that the potential risk (to the

environment and health, for example) involved in current practice is not factored into the

costs/benefit analysis (Tietenberg, 2000). Examples of this type of analysis can be found

in many current American governmental policies. This difference in calculation would

result in drastically different policy decisions for the two orders of government. As a

result, the provincial government would act differently and prefer a different method of

dealing with the air quality issue than the local government.

3.6 The Kyoto Protocol

The Kyoto Protocol was preceded by the *United Nations Framework Convention on Climate Change*, signed in 1992. This document began the United Nations response to climate change but was not deemed a sufficient response by the UN. They revisited the problem in 1998 and developed the *Kyoto Protocol to the United Nations Framework Convention on Climate Change*. This Protocol greatly expanded the goals and power of the Framework Convention and greatly increased the responsibility of those countries involved.

The Kyoto Protocol, first signed by Canada in 1998 and ratified in this country in 2002, has proven to be a contentious issue in federal and provincial politics, even though only recently any steps have been taken towards implementing policy to meet the required standards set out in the Protocol. The 2005 federal budget, released just prior to this work, took steps towards implementing policy related to the Kyoto Protocol. These measures revolved around six policy instruments: market mechanisms, targeted incentives, tax measures, public infrastructure investment, investment in innovation and regulation/voluntary action (Department of Finance Canada, 2005). While these instruments are significant, it is important to note that none of the proposals directly involve the provincial governments. This lack of action involving the provincial governments may stem, at least in part, from the questionable legality of the federal government's unilateral implementation of policy related to the accord. Ralph Goodale, the Natural Resources Minister at the time Canada signed on to Kyoto, said, correctly, that the ratification of international agreements is constitutionally a power of the federal government (Constitution Act, 1867, sec. 91). While that is true, it does not preclude the

provinces from becoming involved with international affairs, and *implementation* of the Protocol will likely require the cooperation and support of the provinces, as many of the conditions outlined in the agreement arguably fall under provincial jurisdiction (Barton, 2002). In implementation plans, the federal government has received some provincial support, but has met much opposition from some provincial premiers, most notably in Quebec, Alberta, British Columbia and Ontario (Jaimet, 2002). Although the Kyoto issue has not yet gone through judicial channels, there is little hope that implementing policy related to this issue will be either easy or unilateral.

There are three significant legal cases that have defined the rights of the federal government to implement policies that affect provincial jurisdiction. First, in 1932 the Judicial Committee of the Privy Council (JCPC) ruled that the federal government could override provincial jurisdiction in the area of Aeronautics and civil aviation. Second, federal governmental authority was again widened, as the JCPC ruled that the federal government could implement international policy regarding wireless broadcasting under the residual powers granted them in section 91 of the *Constitution Act, 1867*. However, both of these decisions were rendered obsolete by the Labour Conventions Case in 1937, where the JCPC ruled that the federal government could not infringe on provincial jurisdiction even if it was necessary in order to meet the conditions of an international treaty (H. Smith, 1998, p. 6). This case clearly applies in the case of the Kyoto Protocol, as the federal government will almost certainly need the support of provinces because of their control over non-renewable resources given to them in section 92a of the *Constitution Act, 1867*.

The extensive goals and requirements of the Kyoto Protocol make it unlikely or even impossible to reach these goals without the support or at least consent of the provinces (Barton, 2002, p.421). On a small-scale level, provincial government involvement may have little impact on the feasibility of implementing successful Kyoto-related policy initiatives. For example, the GVRD's AQMP (1994) sought by the year 2000 to reduce emissions of carbon monoxide, sulphur and nitrogen oxides by 38% from 1985 levels. This goal was accomplished mainly due to municipal initiatives, education and programs, and the GVRD managed to meet this target (Greater Vancouver Regional District, 2005). This shows that significant improvement in air quality can be achieved without strong provincial involvement. However, on a large-scale level, provincial involvement is likely necessary. In order to meet the requirements of the Kyoto Protocol, initiatives must take a far broader and stronger approach to improving air quality than the current city-by-city model. These stronger policies may be much more difficult to establish without provincial input. Federal government involvement may expand the areas into which local governments can exert control by opening those industries and areas under federal jurisdiction to local scrutiny, but even this lesser action will not likely prove effective enough to uphold Kyoto goals unless all local governments are willing to cooperate, a requirement that would be unlikely and impossible for the federal government to enforce.

CHAPTER 4: INSTITUTIONAL CONSTRAINTS

4.1   Formal Institutional Constraints

Formal institutional constraints are an important category to consider in determining the size of a win-set, as (at least technically) any informal political apparatuses and intergovernmental negotiations must conform to the rules set out by the formal institutions present in a governmental system. Constitutionally in Canada, no direct reference to the environment is made (Government of Canada, 1867 & 1981). Therefore, determining jurisdiction of this issue is accomplished through the analysis of other provincial and federal powers.

There are several arguments that have traditionally been used in arguing for provincial jurisdiction over certain environmental areas. Most obviously, provinces are given power over the administration and development of non-renewable nature resources, forestry resources and electrical energy. Section 92A explicitly gives the provinces control over

> Development, conservation and management of non-renewable natural
> resources and forestry resources in the province, including laws in relation
> to the rate of primary production therefrom...[and] development,
> conservation and management of sites and facilities in the province for the
> generation and production of electrical energy (1867).

This part of section 92 clearly gives the provinces powers over implementation of policy regarding natural resources. In addition, section 92 gives the provinces power over property and civil rights and "the Management and Sale of the Public Lands belonging to

the Province and of the Timber and Wood thereon" (Government of Canada, 1867).

Since Section 109 of the Constitution Act 1867 gives ownership of all "lands, mines, minerals, or royalties" to the provinces, except for those explicitly mentioned to be federal lands, this power is significant. All of these powers, when taken together, give the provinces a strong case for including many environmental policies under their jurisdiction. As regards the Kyoto Protocol, these powers would seem to necessitate including the provinces in the policy process, as the provinces are able to control activities on their lands, and the extensive proprietary powers and civil rights powers of the provinces have traditionally been interpreted to include environmental issues (Hughes, Lucas, & Tilleman, 1998, p.37).

However, the federal government also has several arguments as to why ratification and implementation of policy could possibly be achieved without the support of the provinces. Their case might be based on three major federal constitutional powers: the peace, order and good government (POGG) power, the criminal law power and the trade and commerce power. Firstly, the POGG power was meant to be the residual power clause of the Constitution. While legally this clause has not resulted in residual powers being given solely to the federal government, it has on occasion been used to broaden federal jurisdiction. Secondly, the criminal law power has also on occasion been used as a de facto residual power clause. This power has also been used to give federal control over environmental issues, such as in the *Canada v. Hydro-Quebec* case (1997).[4] Finally, the

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[4] In that case, control of toxic substances was considered a criminal matter, as "the protection of the environment, through prohibitions against toxic substances, constitutes a wholly legitimate public objective in the exercise of the criminal law power...Parliament may validly enact prohibitions under its criminal law power against specific acts for the purpose of preventing pollution."

federal government may use their trade and commerce power to base their case for unilateral implementation of the Kyoto Protocol. Under this power, the federal government could argue that trade quotas are a federal power, and this quota idea can then be applied to placing a cap on provincial pollution and emissions (Castrilli, 1999). This argument has been used successfully before, in cases such as the Supreme Court of Canada's *Reference re Agricultural Products Marketing Act, 1970 (Canada)* (1978). However, use of these powers does not symbolize an encroachment on provincial powers, although it may affect provincial authority. In addition, provincial governments may still work independently of the federal government to control pollution if they so choose (*Hydro-Quebec*, 1997).

As these cases show, judicial review, along with constitutional and political considerations, plays an integral role in determining which order of government controls certain aspects of environmental policy. Supreme Court decisions have played a crucial role in establishing jurisdictional boundaries with past environmental issues and agreement between actors, but these challenges must have a firm legal base in order to avoid litigation and possible negative decisions. Cases such as the aforementioned *R. v. Hydro-Quebec* and *R. v. Crown Zellerbach*, which established precedent for marine pollution and broadened federal control, both used the provincial inability test established in the *Crown Zellerbach* case as reason for granting power to the federal government. While it is unlikely that policy regarding Kyoto would pass the four-part provincial inability test establishing federal paramountcy in this policy area, the federal government

could possibly still be given unilateral control over the jurisdiction.[5] As Canada is a

country built on political and legal precedent, these previous cases will most likely have a

significant impact on the legal and political feasibility of the federal government

unilaterally implementing policy to meet the requirements of the Protocol.

In addition to the formal constitutional constraints determining how governments

act independently, formal constraints can also affect how the different orders of

government interact with each other. In federal/provincial relations, both orders of

government are constrained in joint jurisdictional areas (such as the environment) by the

actions of the other actor. The federal governments are unable to act unilaterally in joint

areas without the support of the provinces, and provinces also cannot act without the

direct or tacit support of the federal government. This constraint is obviously of

importance as regards Kyoto policy and increases the importance of informal politics and

negotiations.

Because of the fact that local power is derived from the provinces with no formal

acknowledgement of municipalities (or any government smaller than the provinces, for

that matter) in the Canadian Constitution, fewer formal political constraints exist on

provincial/local relations. The formal distribution of powers identified in the *Constitution

Act 1867* identifies only the powers given to provincial and federal governments, with no

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[5] See R. v. Crown Zellerbach for the full criteria of the provincial inability test. Kyoto policy would pass the first
part of the test, as it clearly does not fit under the emergency criterion (as it is a permanent problem). Likewise,
the issue could possibly pass the test of being a single, distinct and indivisible issue, as the requirements of Kyoto
are clearly outlined. However, it is unlikely it would pass the other two parts of the test. It is unclear whether the
provinces would be shown to be unable to implement policy on their own. The fourth part of the test is also
problematic. The issue must be shown to either be a new concern (clearly not the case in regard to greenhouse
gas emissions) or, if an old issue, must be shown to have acquired a national dimension. While the federal
government could argue that entering into an agreement regarding greenhouse gas emissions brings in a new
national dimension to an old issue, the decision of the court may not support such an argument.

mention of powers for the municipal or local orders of government. Local governments are only mentioned in the Act when powers over this level are given to the provincial government, which is clearly outlined in the section 92 of the *Constitution Act 1867*, which gives provinces control over "municipal institutions in the province." As mentioned in the previous chapter, the environment is also never mentioned explicitly in the Constitution Acts. Political precedent and the fact that local governments come under provincial control created a situation whereby significant court cases split political jurisdiction only among the two orders of government explicitly mentioned in the Constitution: the federal and provincial governments. This reading of the Canadian Constitution thus still does not formally acknowledge the role of municipal governments in environmental politics.

Local governments and municipalities derive their powers from provincial governments, a power given to the provinces in the *Constitution Act 1867*. Therefore, the powers exerted by local orders of government are constrained by provincial jurisdictional limitations as well as the willingness of provinces to confer powers to local governments. While local governments naturally have to abide by provincial regulations, they can also work to create their own environmental policy in issues that fall under provincial jurisdiction. As long as these policies are nested within provincial jurisdiction and do not override provincial policies, it is unlikely that a province would or even could oppose local initiatives (Hoehn, 1996, p. 10). Provincial budget strain, implementation downloading and the principle of subsidiarity have given significant power to local governments, and, for political reasons, the provinces are unlikely to take these powers away from the lower order of government. Although this gives local governments some

power, the power is still constrained by the formal institutions set up by the provinces, which clearly define local powers and thus limit the control of this level.

While local governments have some flexibility in their formal relations with their provincial counterparts, more significant formal constraints exist in local/federal relations. Formally, provincial jurisdictional boundaries constrain the actions of both local and federal governments in intergovernmental relations between these two actors. Local governments, as mentioned above, operate as a constitutional sub-set of the province. Therefore, all powers of local governments are derived from the province, and can also be removed by the province. This means that any federal influence or negotiation by the federal government with the local level could theoretically be blocked by the provinces. However, if the provinces do not obstruct federal/local relations, then few direct formal constraints exist on this type of connection as it is not a constitutionally mandated relationship.

4.1.1 Possible Legal Outcomes

While conjecture is always somewhat problematic, possible legal outcomes of a jurisdictional challenge of the environmental issues involved with Kyoto must be examined in order to understand the issues and considerations important to the provincial and federal governments. Firstly, the courts, as well as the provincial and federal governments, have generally accepted that international issues should be dealt with by the federal government. This is bolstered by items covered in section 91 of the Constitution Act 1867 giving the federal government jurisdiction over international matters such as the regulation of trade and commerce, defence, banking, currency and

immigration. Most importantly, the federal government, through the powers of the Crown, has the power to negotiate and sign international treaties and agreements. However, the federal government does not have the power to *implement* policy related to the agreement if the subject matter falls under provincial jurisdiction (*Attorney General for Canada v. Attorney General for Ontario et al.,* 1937). This distinction is important in the case of the Kyoto Protocol. As an international agreement, most likely the court would not overturn Ottawa's ratification of the agreement without the provinces' support. However, implementation of policy to meet the standards set by the Kyoto Protocol would almost certainly require provincial consent.

Under the POGG clause, the federal government would have difficulty arguing for federal control over the issues involved, as they would have to prove that the issue would be of national concern, have a singleness that would prevent it from pervading other provincial jurisdictional issues and show that there is 'provincial inability' in dealing with the issue (*R v. Crown Zellerbach*, 1988). Since the *Crown Zellerbach* case, the courts have been wary to use the national concern doctrine as a valid defence, making this outcome unlikely (Valiante, 2002, p.5). Secondly, the criminal law power is unlikely to be used for several reasons. Rolfe argues that using the criminal law power over an essentially regulatory mechanism "would involve an unprecedented extension of what is considered criminal law" (1998, 362). Barton shows that a criminal law basis for jurisdiction would invite challenges from the provinces for three reasons. Firstly, deeming the issue to be a criminal one would require a complete ban on greenhouse gases, secondly greenhouse gases have always been legal before, so they cannot be made illegal now and finally, emissions control is essentially regulatory, not criminal (Barton,

2002, p. 423-440). However, some authors such as Valiante and Harrison contend that the criminal law power can be used more broadly than Barton states. Harrison notes that "there are indications that the courts would consider threats to public health resulting from environmental contamination to be an appropriate matter for the criminal law... [and] the Court might be equally willing to uphold criminal penalties for 'adulteration' of the environment" (Harrison, 1996, p.41-42). However, she also notes that the criminal law power is limited in several respects. It is not clear whether the courts would use the criminal law power in cases where pollution only indirectly affected health or welfare, when policy instruments would necessarily be 'regulatory' rather than 'prohibitive,' when the purpose is for reasons other than health and welfare (a situation where Kyoto-related policy could potentially fit), or when enforcement is difficult (Harrison, 1996, p. 42). Finally, Webb notes that effective use of the criminal law power in environmental situations is generally conditional on mens rea, or possession of a guilty mind (Webb, 1990). In essence, there might have to be proof that producers of greenhouse gases intended to act wrongly in order to argue Kyoto-related legislation is a criminal matter. While it is possible that the criminal law power could be used in future environmental situations, the limitations outlined above along with the analysis by Barton make a strong case that it would be an unlikely defence for keeping Kyoto-related policy under exclusive federal jurisdiction.

Finally, the federal trade and commerce power has traditionally been narrowly interpreted, instead usually being superseded by the provincial power over property and civil rights. However, it has on occasion been used successfully in environmental policy. Most notably, the 1991 *Grand Council of the Crees* decision used the trade and

commerce power to argue for federal involvement (*Cree Regional Authority*, 1991).

Harrison argues rightly that with this decision the courts gave broad licence to the federal

government to pursue environmental objectives based on the trade and commerce power

(Harrison, 1996, 40). However, in the *Hydro-Quebec* (1997) case, a trade-and-commerce

argument was rejected, as the 'pith and substance' of the legislation was not directly

related to this jurisdiction (*R. v. Hydro-Quebec*, 1997). This factor for rejection, as Barton

notes, is important and relevant in the case of Kyoto-related policy, especially regarding

emissions trading. Even if Kyoto-related policy fulfills all requirements set out by the

courts in deeming an environmental issue to fall under the trade and commerce power,

the policy is unlikely to meet the pith and substance argument set out in the

Hydro-Quebec case (Barton, 2002, p.444). As limitations on greenhouse gas emissions

could be argued to fall outside of the 'pith and substance' of the trade and commerce

power, the use of this power to support unilateral federal control of Kyoto-related policy

is uncertain and probably unlikely.

However, the strength of the provincial case relies on proving that policy related

to the Kyoto Protocol will directly affect provincial jurisdiction. Even if this is proven, it

is unlikely that the province would get sole control over policy implementation, as

emissions guidelines set in Kyoto affect federal lands and easily display the

trans-boundary characteristic necessary for the federal government to have at least some

control over policy. In addition, the *Rafferty-Alameda* and *Oldman Dam* decisions

regarding environmental assessment show that that the 'provincial inability' argument

does not always prove successful in giving sole jurisdiction to provinces or the federal

government (Harrison, 2003, p.325). At the best, the provinces could hope for shared

implementation, with the level of control of both governments unknown until a legal decision. Therefore, a judicial decision could still hurt the provincial position on this issue.

Both the constitutional and legal aspects of establishing environmental jurisdiction show that unilateral implementation of the Protocol by the federal government is at least unlikely, and most likely unconstitutional and liable to be struck down by the Supreme Court of Canada. Therefore, applying the idea of win-sets to this issue is warranted and necessary. In order to implement policy in this area, cooperation among the actors, both with different preferences and powers, will be necessary. These formal processes clearly place a significant limit on the size of the win-set. The formal constitutional and legal institutions present in Canada are, in the case of the environment, highly constraining. Immediately, sets that rely on unilateral implementation must be removed. In addition, due to the nature of judicial review and the importance of the courts in deciding jurisdiction, any decision must have a strong legal base in order to avoid possible litigation. This constrains sets that rely too heavily on 'backroom' deals and unofficial agreements.

4.2   Informal Institutional Constraints

While the extent to which informal political constraints will matter is dependent on the nature of the formal political constraints, the informal aspect of politics still plays an important role in determining the size of the win-set and possibility of compromise and agreement between two orders of government. The very nature of informal political processes makes it a difficult variable to measure. For the purposes of this study, a

historical approach will be used to examine the distribution of power, preferences and coalitions at play at both the federal and provincial levels.

At the provincial level, especially in environmental issues, there has been at least some cooperation between the provinces in attempting to establish a jurisdictional right for themselves at least equal to that of the federal government. However, the approach used by the provinces in establishing this position has not been consistent, thus serving to weaken the provincial position. As regards Kyoto, the provinces have not reached an agreement, with some provinces such as Saskatchewan and Manitoba supporting the accord, while others such as Ontario and British Columbia are opposed.[6] This disagreement has shown that, even at the provincial level, preferences are unclear or at least vary from province to province. In addition, this fragmentation has limited the power and effectiveness of provincial coalitions.

In local political relations, most constraints on power or freedoms given to local governments are informal. Despite the formal restrictions on local governments, relations between provincial and urban governments in British Columbia in the area of environmental policy have traditionally been cooperative, but also relatively independent. Both the BC provincial government and urban governments such as in Vancouver and Victoria have created and maintained policies regarding the environment. Provincial

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[6] In early 2002, the provinces, headed by Gordon Campbell who was at that time head of the premiers' conference, produced a letter opposing the ratification of the Kyoto Protocol by the federal government. While the letter claimed to have the support of all the provinces except for Quebec, Manitoba premier Gary Doer quickly gave his support to the ratification of the accord. In addition, Saskatchewan and at least one Atlantic province did not fully support the letter prepared by Campbell. Since that time, the premiers have not united behind a common position in response to the federal government's commitment to the Kyoto Protocol. See Kate Jaimet, "Bid for Provincial Solidarity Against Kyoto Accord Fails," *Ottawa Citizen*, 20 February 2002. Ontario has since come out in favour of the Protocol. See Legislative Assembly of Ontario, 16 February 2005.

governments have not traditionally infringed on local governments in environmental politics despite their formal powers, and the principle of subsidiarity and realities of budgets and political downloading show that informal politics has created a reality different from institutional rules.

This informality has allowed both provincial and local levels to operate in the environmental sphere. Provincial governments still technically hold the formal power over their share of the environmental jurisdiction, but the development and implementation of policy have been shared with municipal and local governments. In addition, these powers given to the local governments are unlikely to disappear. The public political acceptance of these institutions, the strength of such organizations and the success of local governance to this point make it highly unlikely that the province will hinder local involvement in this area. In effect, this is a slight constraint on the province's power, as they give the local governments power to deal with environmental issues completely separately from the province. This arrangement provides more freedom for local governments and is an acceptable constraint for the province, as this sharing frees up resources and time for other issues.

Informal political constraints on federal/local relations tend to stem from the subservient nature of local governments to the provincial level of politics. Because of this subservience, the character and extent of relations between federal and local governments tends to be limited. Traditional relations between federal and local orders of government have been relatively cooperative. That being said, troubles can arise when federal involvement in municipal issues is seen to step out of federal jurisdiction and into the

provincial governments' area of authority.[7] Therefore, in considering federal/local relations, the role of provinces must still be carefully examined.

In addition, Patrick Smith, in a comparison with municipalities in the United States, notes that the relative porousness of the American system allows for municipalities there to have more power and influence over national issues. However, the Canadian system, while allowing for municipalities to exert certain powers in the national sphere, is still fairly hierarchical in image if not necessarily in substance. That is, local powers to negotiate are limited, because "to fight in the Canadian intergovernmental system is fraught with significant dangers for local governments" (P. Smith, 1988, p. 133). It is necessary, though, to distinguish between powers of local governments to have a formal *presence* vis-à-vis the other governmental levels and the powers of municipalities to create their own policies. While Canadian local governments may have less power to exert formal and direct influence with other governmental levels, they may still have significant power to create their own policy solutions, as long as they fit within accepted federal or provincial standards. This can indirectly influence federal or provincial policy. The lack of influence for local governments, while not necessarily a constraint on federal/local interactions, does temper the nature of relations between these two actors and creates a situation in which cooperation with the federal government by the municipal government (but not necessarily the provincial government) is more likely than confrontation, as municipalities are unlikely to 'win' in confrontational situations.

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[7] An example of this can be seen in the 2002 disagreement between the federal government and Ontario's provincial government over arts funding for local programs. This clearly shows that federal involvement in municipal issues is still regarded with suspicion by provincial governments. See Mary Janigan, "How to Help the Cities: the Feds are Once Again Ready to Give Money to Cash-Starved Urban Canada, but it's Not the Best Solution," in Maclean's, 8 April 2002, vol. 115, i. 14, p. 56.

Federally, there has been more unity in terms of coalitions, power and preferences than at the provincial level simply due to the nature of the federal political system and the existence of only one government instead of ten. However, due to recent political circumstances, there still exists a certain level of uncertainty regarding informal federal politics. The succession of Prime Minister Jean Chretien by Paul Martin has led some to question whether policy supporting the Kyoto Protocol will be a political priority. Under both prime ministers, little has so far been done policy-wise to help Canada meet the demands of the accord. Although the government has made recent financial overtures to help meet the goals of the Protocol for Canada, these plans have been criticized for failing to completely address industrial pollution, which accounts for half of Canada's greenhouse gases (Government Mulls, 2005). Although there is some disagreement, due to the normal nature of Canadian politics and party discipline, this study will assume a unified federal preference position on the issue, with a well-defined political coalition consisting of the governing federal Liberal party.

Even with a unified federal position (or at least the appearance of a unified position), the lack of a unified provincial position creates problems in establishing a sufficiently large win-set. Win-sets, to a large extent, are based on preferences to establish the likelihood of support for a policy. Since win-sets rely on support of a certain policy over support of the status quo, the number of actors is less important than the number of preferences. In fact, the number of actors relies less on the physical number of groups involved than the number of preferences present. This paints a much more complex picture of win-sets and actor accommodation. Instead of the two major formal actors, the provincial and federal governments, the number of actors now present may be

much larger. The provincial 'actor' can be broken up into as many as ten separate actors, depending on provincial policy preference (not to mention territorial and possibly aboriginal governments). However, in this scheme each actor is not created equal. The sum of all provincial actors (and their preferences) would only constitute one 'actor' at the intergovernmental stage, assuming that provincial and federal governments are on a more or less equal footing in the environmental policy sector. The relatively simple and straight-forward definition of the win-set existing wherever provincial and federal policy preferences overlap now becomes defined as existing only when federal preference overlaps with provincial preference as established by ten separate decision sets. Therefore, the nature of informal political negotiation will greatly limit the size of the win-set in implementing the Kyoto Protocol.

That being said, informal political constraints on actors appear to be shifting or decreasing. The smaller role of local governments and their constitutional subservience to provincial governments had meant that, early in the Canadian confederation, the federal government played a minimal role in local politics. This has been changing to include a more active role for the federal government at the municipal level for quite some time, but even in the past decade federal/local relations have been strengthening (Dunn, 39). Therefore, what was initially an informal constraint on the federal/local relationship has partially dissolved and created a more open situation between the three actors.

However, certain informal constraints still exist. For example, Canadian politics in general have been moving towards a more decentralized political climate, which has given provinces more power in relation to the federal government. There is a certain amount of 'trickle down' of this power to municipalities and local governments, and both

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lower levels are empowered to work without the cooperation of the federal government.

Given the already tenuous constitutional and political nature of federal/local relations,

this can be an impediment to effective two or three-actor negotiation. This constraint is,

at least to a certain extent, balanced out by the renewed interest of the federal government

in dealing with municipal and local governments. Paul Martin's 'New Deal' for cities and

the willingness and desire expressed by the Federation for Canadian Municipalities to

work with the federal government show that those two levels wish to develop a stronger

relationship (FCM Mandate, (n.d.), and Plunkett, 2004, 19). Because of its constitutional

position, there is a good chance that the provinces will also become involved in this

relationship.

When one combines the formal and informal constraints existing on

intergovernmental relations, a clearer picture of the political situation begins to emerge.

Table 4-1 - Formal and Informal Political Constraints on Implementation

Formal Political Constraints	Informal Political Constraints
1. Constitutional Constraints (unclear jurisdiction) 2. Inter-governmental constraints (local governments fall under provincial powers)	1. Uncertain actor preferences 2. Provincial constraints on local powers 3. Increased decentralization of political power

The formal and informal constraints, already outlined in the preceding sections, can be

broken down generally into the categories shown in *Table 4.1*. The formal limits help to

define the nature of other relations, but do not drastically limit informal or negotiation

action. In addition, these formal constraints, mostly affecting the federal and provincial governments, have a great effect on determining the outcome of policy at the decision-making phase. Therefore, this creates a situation in which actors with little formal presence (ie. local governments) probably have little influence over the decision-making phase of the policy process. Informal constraint or facilitators have more of an effect on the implementation phase, as this phase tends to involve less formal wrangling. Therefore, informal actors such as local governments can play a more important role in policy decisions at this time.

CHAPTER 5: INTERGOVERNMENTAL NEGOTIATION

The presence of two actors with formal powers and interests over the policy jurisdiction in question along with the need to balance competing goals of these actors as well as a third informal actor show that two-actor intergovernmental negotiation is important in order to establish potentially successful public policy in this area. In order to analyze the relations and negotiation tactics and styles employed by the three orders of government, a framework that illustrates how decisions and negotiations develop at all governmental levels must be created. Game theoretic analysis allows for negotiation to be analyzed and dissected in a way that completes the development of the negotiation pillar in the three factors affecting the size of the win-set: formal, informal and negotiation strategies.

5.1 The Stag Hunt

In order to analyze the relationship between the actors, a way of illustrating this relationship must be developed. A possible way of showing this relationship is through the use of game theoretic analysis. For the purposes of this study, a simple model of game theory can be used. Each governmental actor has three choices available to them in dealing with environmental policy issues related to the Kyoto Protocol; they may cooperate (with the other actors), defect (refuse to cooperate and attempt to maintain unilateral control) or refuse to play (cede control of this policy issue). These decision options allow for the relationship to be mapped using a game theory approach. The options available to the actors point to two games that could possibly be used for

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analytical purposes - prisoner's dilemma and stag hunt – both of which are closely related. The first option is a simple prisoner's dilemma (PD) model. PD type games are arguably the best known non-zero-sum games, marked by a situation in which the 'rational' outcome is not optimal for either actor. While this is a useful game in many political contexts, several factors make the political negotiation involved in environmental policy in Canada unlikely to be a prisoner's dilemma-type game. Brian Skyrms' (2004) work on the stag hunt shows that political situations that appear to be prisoner's dilemma games actually develop into stag hunts. A stag hunt is a game whereby actors may either choose to cooperate and hunt a stag, or choose to defect and work on their own to hunt a hare. This game is obviously dependent on the actions of the other players and works well in illustrating the actions of players when it is used in an iterated example, like with the Kyoto Protocol.

In cases where a game is repeated, a stag hunt situation may develop. The policy area examined in this work fits into Skyrms' framework. Kyoto-related policy negotiation is a repeated factor in Canadian politics. Already, the first iteration of this game has occurred, where the federal government attempted to assert control over the policy process by unilaterally signing the agreement. Future iterations are possible and indeed likely, as shown by the provincial threat of challenging the federal government's decision, the desire of municipalities and local governments to be included in the process and the need of the federal government to achieve support in implementing the policies necessary to support the Protocol. However, repetition is not enough to mark a stag hunt. In addition, Skyrms shows that stag hunts develop when the *shadow of the future*, that is the likelihood of actors looking to future outcomes and negotiation, is more prominent in

the decision-making process of the actors. Skyrms notes that when likelihood of repetition is low, the game is still a prisoner's dilemma, but when the likelihood of repetition is high, hunting stag (as opposed to the smaller payoff of hunting hare) is the risk-dominant strategy. That is, it is the best strategic response to a 50-50 randomization of the other actors' response (Harsanyi & Selten, 1988). This switch of a game from a prisoner's dilemma to a stag hunt game applies when, in the repeated game, actors will choose not to cooperate or to react (either positively or negatively) to the actions of the other player. Skyrms refers to these choices as the *Foole* and *Trigger* strategies, respectively. This condition applies in the case of environmental policy decisions in Canada, even though the Foole and Trigger responses may take different forms with the different actors (Skyrms, 2004, p. 5). For example, a provincial government decision not to cooperate with the federal government can be seen as a Trigger response to the federal government's unwillingness to include the provinces when signing onto the Kyoto Protocol. In turn, the federal response of trying to include the provinces in future policy decisions would be a Trigger response to the provinces own Trigger response. Conversely, if the federal government still chooses to maintain unilateral control regardless of provincial action, this would be a Foole (defection) response, one that fails to take into account the Shadow of the Future. Finally, local governments can either have Foole strategies, whereby they defect from cooperating with the other governments, or Trigger responses, where they welcome provincial and federal advances. As the evidence above shows, this case clearly fits into a stag hunt mould, as defined and illustrated by Skyrms' work. This is a game where the costs of defection or of being exploited by the other actor(s) are not as high as in a prisoner's dilemma-type situation. Even if one actor

defects or refuses to cooperate, the other actors, while perhaps not achieving optimal outcomes, are still able to achieve some sort of victory. In the stag hunt analogy, even if the actor cannot hunt a stag without significant cooperation from other actors, the actor can still hunt a hare. In addition, defecting is not necessarily the Nash equilibrium as it is in the prisoner's dilemma game where players should, at least rationally, defect. That being said, stag hunts require a greater level of cooperation in order to ensure optimal or close to optimal outcomes for all actors, but, unlike a prisoner's dilemma game, if that cooperation is achieved, all actors will achieve a better result. In fact, depending on the makeup of actors in the game, a solution optimal to all actors (where a stag is successfully hunted) can be achieved, as long as most of the players are willing to try to hunt a stag (Skyrms, 2004, p.11).

While the stag hunt is the type of game that will be used in this analysis, the study will take a decidedly non-mathematical approach to the game. Traditionally, stag hunts are used to illustrate the cooperation necessary in order to successfully hunt a stag, the best outcome, but an optimal outcome that is conditional on the support of all (or most) actors, instead of hunting a hare, a less favourable outcome, but one that still produces some gain and does not require the assistance of any other actor. If one actor chooses to hunt stag but does not receive the support necessary to get the stag, that person will receive nothing, or at least less than he or she would achieve hunting hare. These outcomes are usually laid out numerically. This version of the game will use descriptive rather than numerical notations of outcomes, as it would be misleading to attribute numerical gains to an intangible and definitely non-numerical concept such as environmental policy outcomes. In addition, the costs and benefits of the various

outcomes will be developed in a more general sense. Instead of the specific outcomes associated with various stag hunt choices, this approach will use a more general approach whereby the optimal outcome is achieved through cooperation (or at least tacit or active support) of all actors, which will produce a multi-level policy initiative (a stag), a sub-optimal outcome is produced if there is reduced cooperation and support, which will produce a unilateral policy initiative or a two-actor initiative (a hare), and the worst outcome for the game will result from the actors refusing to play the game, which will result in no policy initiative (no hunt). In addition, and differing slightly from the traditional stag hunt story, a defection by one actor will not necessarily derail the entire process. Unlike some versions of stag hunts, only a significant portion of actor participation or participation by the most important actors is required in order to successfully hunt a stag. This does not conflict with the mathematical or theoretical versions of a stag hunt game; rather, it simply refines it for use in the real political climate of modern Canadian federalism. Finally, this study, like most game theoretic models, assumes some level of rational action by the players. This work aims to discover optimal outcomes, so even if governments act irrationally, assuming rationality fits with the goals of this study.

The free rider dilemma must also be addressed in a stag hunt situation. Keeping with the stag analogy, not all actors are needed to hunt a stag, but if one is successfully hunted, there is enough to feed all the actors – even those who did not help in the hunt (Gardner, 2003, p. 117). While this problem is significant and has been dealt with in regard to many issues, it can safely be set aside in this example, as no actors appear to wish to ride for free. Provincial and federal governments are both vying for control over

the issue, so would be unlikely to decide to simply free ride on the other actor's policies. The other actor, the local governments, also seems willing to participate rather than simply reap the rewards of the policies implemented.

5.2 The Three-Actor Stag Hunt Model

The structure of the stag hunt game used must be adapted first to deal with all three orders of government simultaneously. In this case, a stag hunt game can be used to show the responses of the actors and how they will respond to the choices of other actors. Put simply, in the environmental Kyoto policy game, the actors can cooperate, refuse to cooperate or choose not to take part (cede control). However, as three actors are involved, each with different levels of power and authority, the types of cooperation may differ. To carry the metaphor further, not all of the actors are equally powerful or successful 'hunters'. Therefore, the results will differ more given changes in the actions of more powerful actors (for example, provincial or federal governments) than they will for the less powerful actors (such as the local governments). The less powerful actors will subsequently have less of an effect on the outcome of the game. As local powers are derived from the provincial government, the actions of local governments will have the least effect on the outcome of the game. That is not to say that local governments cannot have a strong influence over public policy. However, this influence is contingent on provincial support, or at least a willingness of the province to leave local governments to their own devices. Provinces and the federal government, who both have legal and political jurisdiction over the environment, are more equally adept at influencing environmental public policy related to the Kyoto Protocol. Even there differences exist, though, given certain factors such as federal instigation and an international commitment

to abiding by the Protocol, and the ability provinces have to threaten legal challenges.
Finally, different governments may be more willing to work with one, the other or both
orders of government. This factor will affect the nature and extent of cooperation
between the actors. Therefore, this game has five possible decision trees for each actor. In
addition to a simple cessation of control or a desire for unilateral control, each actor may
choose to cooperate with both or only one of the other actors. A three-actor model of a
stag hunt involving federal, provincial and local governments thus can produce many
different possible outcomes.

Although there are 125 possible outcomes in this three-actor game (see Appendix
1 for a full illustration), many of these outcomes are entirely unlikely to occur. The
easiest outcomes to eliminate are unlikely actions by local governments. While local
governments could theoretically cede control, fight for unilateral control or share with
one or both of the other orders of government, they are unlikely to choose certain options
when they lack formal power over this jurisdiction. As previous chapters have shown,
local governments actually have a significant level of power over air-quality policies,
mostly derived from informal and negotiation powers, but this power does not easily
translate from the two-party relations from which they are derived to three-party games
where both other parties have strong formal powers in the jurisdiction. In addition, local
governments, while willing and often able to initiate air quality policies without
provincial or federal governments, are also willing and likely to cooperate with one or
both orders of government if those parties show interest. Given constitutional reality and
the nature of their powers, local governments are unlikely to insist on acting unilaterally
or cooperating solely with the federal government. Significant evidence of local

coordination of policies with existing federal frameworks also shows that local

governments are unlikely to insist on only cooperating with their overarching provincial

government if cooperation with the federal level is possible. Finally, history has shown it

is unlikely for local governments to completely remove themselves from the air-quality

policy process. Therefore, the only likely municipal action is a willingness on their part to

share control with both provincial and federal governments. Assuming this local stance, a

25-choice illustration of provincial and federal action can be developed.

Table 5-1: Stag Hunt Model of Federal/Provincial/Local Relations (Local Shared Power (Both Actors))

Federal Intent

Provincial Intent		Unilateral Control	Shared Power with Both Actors	Shared Power with Provinces	Shared Power with Local Level	Cede Control
	Unilateral Control	Deadlock	Likely challenge	Likely challenge	Likely challenge	Provincial action
	Shared Power with Both Actors	Likely challenge	Shared action (3 actors)	Likely federal challenge (and defeat) or federal withdrawal	Likely provincial challenge	Provincial/ local action
	Shared Power with Federal Level	Likely challenge	Federal/ provincial action	Federal/ provincial action	Likely provincial challenge	Provincial action
	Shared Power with Local Level	Likely challenge	Likely challenge	Likely challenge	Likely challenge	Provincial/ local action
	Cede Control	Likely provincial intervention	Federal/ local action	Likely provincial intervention	Federal/ local action	Local action

In this chart, 'challenge' refers to either a political or legal challenge (or even a spectre of a political or legal challenge) on another government's action, whereas 'intervention' refers to an action on behalf of another order of government (in this case, provincial support of local initiatives). Unless otherwise noted, the challenge may come from either provincial or federal governments. Finally, where more than one possible result exists, the outcome will depend on how strongly the actors wish to maintain their stance.

From these much more manageable 25 possible outcomes, it is easier to map the likely choices of the two remaining actors. On the first iteration, which has already occurred, the federal government, by signing onto the Kyoto Protocol, indicated it desired unilateral control over the policy area. Although up to this point the British Columbia provincial governments has not indicated whether it desires unilateral control over this issue or whether it would be willing to share control with one or both of the other actors, regardless of this choice, a unilateral approach by the federal government will result in a provincial legal or political challenge over this unilateral control. Again, this has proven to be true as the provinces have threatened legal action.

In the second iteration, which has yet to occur, the federal government is much more likely to take a conciliatory approach in relations with the other orders of government. As there has been some municipal and local interest in taking part in this policy area and provincial challenges have indicated their desire to be part of the process, the federal government is likely to be willing to share jurisdiction, at least to a certain extent, with both other orders of government. As shown by existing local policies regarding air quality, the provincial government is likely to be willing to work with local

orders of government in establishing policy. From this point, it is difficult to accurately gauge the likely action of the provincial government without considering their actions in relation to each other actor separately. Therefore, a two-actor game analysis is more useful in mapping the actions and reactions of each actor and the possibility of creating a successful policy initiative.

History tends to support the view that iterated two-actor negotiations are seen by governments as a more effective and useful way in which successful policy can be implemented, even when three actors are involved. An example of this two-actor interaction involves the federal decision to phase out the use of CFCs and other ozone-depleting substances. The Canadian Council of the Ministers of the Environment (representing provinces and the federal government) updated the National Action Plan to deal with these issues at a federal level (Canada-Wide Standards for Particulate Matter and Ozone, 2000). This led the British Columbia provincial government to revise their Ozone-Depleting Substances and Other Halocarbons Regulation (2004). This two-actor negotiation in turn affected the two-actor relationship between provincial and local actors, with local actors bringing their policy in line with federal and provincial relations (Greater Vancouver Regional District, 2005). While there is still clear power delineation in this example, it helps to illustrate both that two-actor relationships are perhaps the most important negotiation tactic in the establishment of environmental policy and that policies at all three orders of government are interconnected.

5.3   The Federal/Provincial Stag Hunt

Developing a two-actor game will successfully address the third factor of

importance in terms of establishing the size of the win-set. Already formal and informal

politics have been examined, and now intergovernmental negotiation can be analyzed

using a two-actor stag hunt model. It is in this negotiation between two actors that win-

sets are actually developed and made into reality.

Previous chapters have shown that policy adoption and implementation will prove

more difficult the more orders of government there are involved. This finding is not

overly surprising, but the 'shared decision making, shared implementation' outcome

illustrated in Chapter 3 can be further broken down, based on whether jurisdiction is

imposed by the courts or not. In the case of the environment, the courts have been

traditionally somewhat piecemeal in settling jurisdiction. As the Kyoto Protocol has no

obvious predecessors in terms of constitutionality, a court decision could potentially

favour either the provinces or the federal government. Currently, the jurisdictionality of

this issue has not gone to the courts and no level has assured control over the issue.

Therefore, the issue remains politically deadlocked, with no outcome enforced.

A simple game-theoretic model similar to the three-actor model will help to

clarify the options available and the likely actions of two actors (orders of government) in

relation to each other. Firstly, the relationship between provincial and federal

governments will be examined. With both governments, they may be willing to either

cede their control (or their claim to control) over the policy issue, they may be willing to

share control over the issue with the other actor or they may only be willing to maintain

unilateral control (or their claim to control) over the policy issue. It is important to note

that these classifications simply denote provincial and federal *positions*, as their actions

will follow the public display of their intentions.

Table 5-2: Stag Hunt Model of Federal/Provincial Relations

Federal Intent

	Cede Control	Share Control	Maintain Control
Cede Control	Inaction	Federal action	Federal action
Share Control	Provincial action	Shared action	Possible provincial challenge
Maintain Control	Provincial action	Possible federal challenge	Deadlock (possible policy failure)

(left axis label: Provincial Intent)

Pending further review or action by either level, the federal/provincial game is

stuck in the deadlock position. There is unlikely to be any second iteration until

something changes, either with provincial or federal positions or with negotiations at

other governmental levels. In contrast, with the environmental assessment issue, before

the court decisions, the federal government was willing, at their discretion, to cede

control at the decision-making level to the provinces. Even after the court decisions

forcing the federal government to act, they were willing to cede at least some control over

the implementation process, thus avoiding deadlock.

In the game shown above, any governmental level willing to disagree with the

other's actions automatically has the upper hand. It requires the cooperation of both

governments in order to reach agreement, whether that agreement is shared jurisdiction or

one government ceding control to the other. However, the disagreement of one government can either result in deadlock and possible policy failure or complete inaction, unless the other government is willing to concede defeat. In the case of the Kyoto Protocol, the provinces have the upper hand in this game. The federal government wishes to control the policy process, but, simply by challenging jurisdiction, the provinces have forced the government to acquiesce to provincial demands or face possible policy failure.

Interestingly enough, this willingness to challenge only works in the provincial government's favour as long as the issue remains in the constitutional sphere and does not become a legal or constitutional issue. As soon as jurisdiction over this issue is taken to the courts, the provincial government will lose this advantage. Once in the courts, this issue could theoretically be decided in either the federal or provincial governments' favour. Therefore, this scenario is also a bluff game for the provinces. If the federal government calls them on this bluff and does in fact force the provinces to take this to the courts, then the provinces will lose their political position of power and may lose, or at least not completely win, the jurisdictional battle. The game shows that the provinces, despite their threats of challenging jurisdiction legally, would be better served by keeping any agreement political, rather than legal. This bluff appears to be working for the provinces, as to this point in time actions of the federal government to promote the Kyoto Protocol have revolved around ways of reducing emissions that do not directly infringe, or even come close to infringing on provincial jurisdiction (Government mulls, 2005), thus avoiding a showdown with unhappy provinces. However, they have also failed, so far, to adequately engage the local governments.

As the issue currently stands, the provinces hold the balance of power. Without any formal decision regarding jurisdiction, their claims that this policy falls under their jurisdiction are as plausible as the federal government's claims that jurisdiction is theirs. Regardless, without provincial support – either through cooperation or legal force – it appears that the federal government cannot unilaterally *implement* policies regarding Kyoto, even if they can unilaterally adopt a certain policy (Barton, 2002, p. 421). Even if the federal government can force the provinces' hands in implementation (as, after all, the federal government is required to ensure that all governments abide by international agreements), this will not be a politically favourable move and will still require a certain level of cooperation from the provincial governments and concessions (in this area, or others) by the federal government. As the game shows, without a judicial decision, the federal government must cooperate with the provinces or face possible policy failure. Therefore, the provinces can be assured of a policy that is at least acceptable to them and a political decision would prove a safer route for the provinces than would a legal judgment. However, this would not be seen an optimal outcome for either group. A legal decision giving provinces sole jurisdiction over the issue would be seen as optimal for them, but a judicial challenge is a zero-sum game, where the provinces could also lose all jurisdiction over the issue. In addition, even if a legal decision in the provinces' favour is made, as has been suggested by authors such as Philip Barton, jurisdiction would at best probably be shared and, even if supportive of the provinces, may not give them an optimal level of control. The provinces would most likely settle, if possible, for a political decision to avoid the uncertainty associated with a legal case, and the lack of a formal challenge as of yet seems to bear this out.

Likewise, this outcome would not be seen as optimal for the federal government. An optimal outcome in their opinion would give them sole jurisdiction over the decision-making and implementation stages of the policy process, but concessions must be made to ensure provincial compliance. In the stag hunt language, the federal government is trying to hunt a stag but the provinces refuse to help. It should be noted that in this case a sub-optimal outcome for both actors is not necessarily a negative result, as the political negotiation associated with this outcome is productive and useful and is not simply seen as a means to achieving a legal end.

The one solution to this sub-optimal outcome is a legal decision. As shown above, this legal challenge is unlikely to come from the provincial governments. It is just as unlikely that a pre-emptive challenge would be initiated by the federal government, as the outcome might force them to concede even more to the provinces than simple political negotiation would entail. Still, a legal challenge remains the only plausible hope for one of the two actors to achieve their optimal outcome. However, a legal decision may just as likely create a similarly sub-optimal outcome for both groups. A decision in the courts would only ensure that the roles of both actors are clearly defined and limit the political posturing possible under the current game situation.

5.4   The Provincial/Local Stag Hunt

While the current situation in the federal/provincial stag hunt is problematic, there are ways involving local governments in which the game can be moved from one of non-cooperation to one in which both actors can either at least hunt hare, or perhaps even hunt a stag. The close relationship between provincial and local powers creates a political

atmosphere whereby intergovernmental negotiation is an integral part of the political process. Negotiation methods and strategy are the arenas in which local governments can theoretically increase their power in establishing and implementing effective environmental policy, while also allowing provincial governments the opportunity to work with local governments in establishing effective policies without having to provide all of the necessary resources.

Unlike the heterarchical relationship between provincial and federal governments in the area of the environment, the relationship between provincial and local governments can be illustrated in a hierarchical fashion, at least formally. As the informal political processes outlined above illustrate, the heterarchical nature and network ideas associated with multi-level governance are still useful in analyzing the informal relationship between these two levels. This idea is important in understanding and defining the relationship of local governments with their provincial counterparts and also defining the place of local governments in environmental policy making. Due to significant mutual dependence between local governments and provinces, which thus creates considerable network overlap between the two levels, local governments may be able to exert some informal influence over the policy process. This interdependence stems from local governments relying on the provincial government for power as well as money and support of initiatives. In turn, the province relies on local governments to monitor and implement policies. In the case of environmental policy, the provincial government establishes regulations and at least sometimes provides fiscal support. The local government in Vancouver is responsible for monitoring air quality and the implementation of city policies to deal with pollution. The overlap between the two

groups occurs at the political level, with ministers and their local counterparts working together, but also extends to the support network, such as the bureaucracy and hands-on areas such as monitoring (Air Quality Monitoring Network, 2005). This significant network overlap helps to maximize the potentially successful policy opportunities, because both orders of government rely on similar information and ideas of implementation and feasibility, allowing both parties to realize where compromise is necessary and useful in ensuring policy success.

Like the federal/provincial relationship regarding environmental policy, the provincial/local relationship can be sketched out using a modified three-choice stag hunt game model. However, due to the different nature and situation marking the relationship between the province and local governments, the outcome of the game will differ from the provincial/federal game. Firstly, the provincial order of government controls the game, as they, not the local governments, have all the formal power over this jurisdiction when comparing the two actors. Secondly, the game between provinces and local governments will likely not be zero sum. That is, any gain in power by a local government does not necessarily result in an equal loss of power for the provincial government. This lopsidedness results from the aforementioned fact that provinces ultimately control the power in this game and simply volunteer some authority to the local levels, unlike at the national level, where power over environmental policy is legally shared between the federal and provincial governments. Thirdly, unlike the federal/provincial game, this game is not fought over the issue of jurisdiction. Instead, it is simply played regarding the job of implementing policy. Finally, because the game is non-zero sum and the issue of jurisdiction is not at play, this game will most likely prove

to be more cooperative in nature than that seen between provincial and federal governments, especially over multiple iterations.

Like the choices facing provincial and federal governments in the game outlined in the previous chapter, the provincial government can choose to maintain unilateral control over provincial environmental jurisdiction, to share jurisdiction with the local governments or to cede control to the lower order of government. If the provincial government maintains unilateral control over its environmental issues, then no game exists as the local governments have no legal or political backing to ensure their spot in environmental policy making. Likewise, if local governments choose to cede control over environmental issues, no game will exist, as the local governments will remain uninvolved in the process. Therefore, this model will focus on provincial willingness to share or cede authority and local willingness to share authority or take unilateral control due to concession of environmental policy making by the provincial government. However, the other choices will still be noted on the chart to maintain consistency.

Table 5-3: Stag Hunt Model of Provincial/Local Relations

Provincial Intent

	Unilateral Control	Shared Control	Cede Control
Unilateral Control	Provincial control (no game)	Shared local/provincial control	Local control
Shared Control	Provincial control (no game)	Shared local/provincial control	Local control
Cede Control	Provincial control (no game)	Provincial control	No local or provincial action

(Left axis label: Local Intent)

In order to understand where the current equilibrium lies, it is important to first consider the past behaviour of the two actors regarding air-quality policies. In British Columbia, although the provincial government is somewhat involved in establishing air quality policies, the policies in place in the GVRD are more restrictive than the provincial policies. This creates, in effect, a situation where provincial policies are rendered unimportant, as regional policies encompass or add onto that which is covered by the provincial policy. Therefore, this creates a situation similar to the one that would occur had the province simply ceded control to the local government. Therefore, the current equilibrium lies in the bottom left box, where environmental policy is controlled by the local government. This is, in effect, the first iteration of this game. However, as the main area of contention lies between the federal and provincial governments and the provincial government has not as of yet made any moves to restrict local powers, a second iteration is not likely at this time.

5.5 The Federal/Local Stag Hunt

Due to its lack of a formal basis, the relationship between federal and local governments relies heavily on intergovernmental negotiation in order to establish roles, duties and partnership goals between the two players. The examination of this relationship in a two-actor negotiation structure, however, is not as clearly defined as in the other relationships examined in this piece. The existence of a formal framework in federal/provincial and provincial/local relations, while not the most important factor in determining negotiation strategies, allowed for clear cut two-actor games to play out. In the case of federal/local relations, the lack of a formal framework to establish the rules of the game means that the actions of the local governments and the subsequent actions of the federal government must be framed in relation to the actions, goals and targets of the provincial government, who are the other formal constitutional player. That is, the provincial government, from whom the powers of the local governments are derived, thus influences or has the ability to influence the actions of local governments. The actions of the federal government are then also controlled because of the fact that environmental policy remains a shared jurisdiction.

Previously, in looking at provincial/local relations in this work, it was determined that provincial governments are often content to give municipalities de facto control over air quality policy and initiatives, thereby somewhat distancing themselves from this specific policy area at a provincial/local level, except as a general regulatory agent or in rural areas, an area not studied in this city-based analysis. However, there are certain factors that indicate this may not continue to be the case in the face of existence of stronger ties between federal and local governments. Firstly, powers of the local

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governments over air quality stem from authority given to local governments by the province and thus can be taken back or more closely monitored by the provinces if they wish to do so. In addition, because of the relatively nascent nature of air quality policy at the local level (or any level, for that matter), local governments do not have the benefit of firm historical convention to lessen the chances of provincial government involvement. Secondly, even at present local governmental control over air quality is theoretically less than the power wielded by the provincial government. That is, local regulations and policies must fit into provincial guidelines to be acceptable and free from provincial interference. Although the GVRD has been given great power over their air quality initiatives, those initiatives must not interfere with provincial guidelines. This creates a situation in which the provincial government can control local policies without encroaching on powers they have given to the local governments. Local levels may implement policies that fit or exceed provincial levels, but they cannot extend their policies beyond the provincial scope.

The province obviously can still control local governments if it so chooses and they may opt to exert this control if several factors change from the status quo. As federal/provincial relations have tended to be adversarial, at least in protecting jurisdiction, increased federal government involvement in local affairs may cause provinces to more closely watch or control the actions of local governments in their jurisdiction. Conversely, provinces could challenge federal government involvement at the local level, as any fiscal or political support from the senior order of government may be seen as an encroachment on provincial jurisdiction. Also, if local governments choose to expand and strengthen their air quality initiatives, which would be necessary to meet

the goals of the Kyoto Protocol, the provinces may be more likely to assert their power if their goals differed substantially from the actions of the local governments. Traditionally, intergovernmental relations in Canada have been marked by fierce protection of jurisdiction by provincial governments. Alberta's government, for one, has promised to protect provincial jurisdiction and challenge federal action should they proceed unilaterally with policies related to meeting Kyoto Protocol guidelines (United Nations, 1998). As has been shown earlier in this thesis, a legal challenge would not be an ideal outcome for the provinces, but it is obviously a preferred option to simply ceding control to the federal government either directly or indirectly through the municipal and local orders of government. These factors create a situation in which games involving municipal or local actors must consider the possible reaction of the provincial government to certain actions. Therefore, the federal/local game, although technically played by only two actors, must consider the possible repercussions of their actions in relation to the provincial governments.

Once again, intergovernmental negotiation strategies can be illustrated using a three-choice stag hunt game model. This game differs slightly from the games used in the previous sections in several ways. Most importantly, the actions of both actors will be tempered by a third actor working from outside the confines of the game – the provincial government. However, the game will remain a two-actor one. In addition, although cooperation is likely between the two actors in this game as it may likely result in giving the federal government a voice in areas outside of their jurisdiction and will likely offer local governments increased resources, this is not a cooperative game. Cooperative games imply that a binding agreement is possible, an unlikely outcome considering the

informal nature of relations between the two actors (Gates & Humes, 1997, p. 3).

Therefore, the non-cooperative stag hunt game will still be used, as it effectively

illustrates negotiation with imperfect information, such as negotiation between two

autonomous orders of government.

While the game can be structured in the same way as in previous chapters, the

nature of the terminology used also differs somewhat. In the case of local governments,

unilateral control by local governments still assumes that provinces could, if they desire,

resume control over this policy area. Again, the game boxes show resulting actions or

statements of action, not policy outcomes, although these actions will invariably create

certain policy effects. Local governments are represented in the rows, while federal

government actions are shown in the columns.

Table 5-4: Stag Hunt Model of Federal/Local Relations

Federal Intent

	Unilateral Control	Shared Control	Cede Control
Unilateral Control	Likely provincial intervention	Separate federal/ local action	Local action
Shared Control	Likely provincial intervention	Shared federal/local action with possibility of provincial involvement	Local action
Cede Control	Likely provincial intervention	Likely Provincial Intervention	Provincial action/ no action

Local Intent

In this relationship, as provinces are not directly represented, protection of their concerns would be manifested through the local level, as this level falls under provincial jurisdiction and power. As the actions and threatened actions thus far shown by provincial governments have illustrated, any decision that would threaten the jurisdictional role of the province would most likely result in provincial intervention to maintain their jurisdictional position. Therefore, any unilateral attempt by the federal government to assert their control in this policy area in order to meet the requirements of the Protocol would likely result in a challenge by the provincial government, either through their own channels or through municipal or local channels. In addition, provincial intervention or action would occur if the local government refused to become involved in the process, as the provincial order of government would be the only check on federal powers and would likely wish to prevent federal encroachment on policy jurisdiction. However, it should be noted that provincial inaction may occur if the federal government also refused to act, as provincial jurisdictional concerns would not need to be protected if they were not threatened. This can be proven by the simple lack of action by provincial governments on many of the issues dealt with in Kyoto until the federal government became involved.

If the federal government wishes to cede control over Kyoto Protocol policy issues, then local action will result, much like the situation prior to Canada signing onto the accord whereby local governments such as the GVRD were relatively autonomous in developing air quality policies. However, the likelihood of the federal government completely ceding control over this policy area is extremely unlikely, given the international responsibility of the federal government to abide by the goals set out in the

Protocol. If the federal government was willing to share control over this policy issue with the local order of government but the local order of government was not, then separate policy actions would most likely result. The federal government would be unwilling (or unable, given a legal challenge) to encroach on local, and by extension provincial, policy but would still wish to develop their own initiatives. The local government would then be free to develop their own policies in the jurisdiction given to them by the provinces. Finally, if both actors were willing to share control over this issue, shared political action between federal and local governments would result. There would be a possibility that the provincial government would become involved if they felt the federal government was trying to encroach on their policy area.

In the first iteration of the game, one which has already occurred, local governments, for fiscal reasons, would likely have been willing to share control over this policy area, but the federal government decided to unilaterally seek the mandate to establish policies related to Kyoto. This decision was, in fact, challenged by the provincial governments. Although the challenge was informal and simply threatened formal action, a lack of unilateral action by the federal government implies that the first iteration of this game has finished.

In the second iteration of the game, the federal government will be forced to involve other orders of government in its policy plans. Because of many provinces' hostility to the terms of the Kyoto Protocol, a possible source of support for the federal government would come from the municipal or local level. Kennett notes that cooperation will result when unilateralism leads to direct costs or loss of benefits (Kennett, 2000, p. 107). In the case of cities like Vancouver and Hamilton, an established

willingness to participate in air quality initiatives bolsters the likelihood of a federal/local partnership developing (Touralias, 2000, p. 1). In addition, recent federal overtures to the municipalities such as the gas tax transfer and federal investment in the Green Municipal Funds indicate that federal/local relationships are seen as important and worth developing to the federal government (Department of Finance Canada, 2005). Therefore, the federal government, wishing but unable to exercise unilateral control over this policy issue, will choose to share control rather than cede control altogether. Because of the fiscally dependent nature of local politics, local governments will also wish to share control over this jurisdiction. Therefore, the second iteration of this game would result in the equilibrium switching to the middle box, where federal and local governments would both be willing to share jurisdiction over policy issues related to the Kyoto Protocol.

This shift would change the nature of the game, the resulting tone of intergovernmental negotiation between the two actors and the role of the provincial government in these negotiations. The higher level of collaboration between the federal and local governments would result in these groups having increased power over the nature and development of policy in this area. Federal funding of municipal and local initiatives would allow cities and regions more freedom to undertake policies by removing the fiscal impediment that sometimes faces the local level. In addition, the federal government would play a greater role in the development of on-the-ground policy initiatives, as local governments would undoubtedly be more receptive to federal government involvement if that involvement included fiscal support.

This iteration also underscores the importance of the role of the provincial government in developing Kyoto-related policies. Even if the provincial government

chooses not to be involved in the policy process, previous threats of legal actions against perceived infringement of the federal government on provincial jurisdiction will result in the *spectre* of possible provincial involvement overshadowing and potentially shaping the actions of either or both the federal and local governments. In addition, if the province does wish to become involved, their presence would greatly alter the nature of federal/local relationships. As local government falls under provincial jurisdiction, any accrued good will between this actor and the federal government could be lost if the provincial government decides to take an adversarial position in federal/local relations.

While this paints a rather bleak picture of an effective but easily derailed relationship, there exist many possible reasons why the provincial government would not wish to adversely affect federal/local relations. Firstly, it would be unlikely for provincial governments to impose on local governmental issues unless these local policies directly conflicted with provincial goals. Since local powers necessarily derive from provincial powers and jurisdiction, it is unlikely that a local government could completely ignore a provincial mandate. Given that provinces are not opposed to air quality initiatives in general, but simply do not feel that the Kyoto Protocol is the best way to deal with these issues, it is unlikely that the provincial government would intervene if local governments were able to implement Kyoto-related policies that still fell within provincial guidelines. In addition, potentially successful federal/local policy initiatives could serve as proof to provincial governments that Kyoto-related policy can be effective and be adapted to the needs of all orders of government. This may act as an incentive to provinces to involve themselves in the policy process to ensure continued relevance in this area. Conversely, ineffective Kyoto-related policy would not hurt the provincial position regarding the

Kyoto Protocol and more cynical minds would say this could in fact bolster their case against Canada's involvement in the agreement. This complex outline illustrates the difficulties and uncertainties associated with the formally tenuous relationship between local and federal governments. Although many potential problems exist with intergovernmental negotiation between these two levels, there exists ample room for successful dialogue between the two governments.

When these four games are taken together, the nature of intergovernmental negotiation in this environmental issue is clearly outlined. Three-party negotiations prove to be unwieldy and difficult, forcing two-actor negotiation games to the forefront. Federal/provincial relations and negotiations, as time has already shown, have proven problematic and prone to break down. This is in direct contrast to provincial/local negotiations, which in British Columbia's case have proven to be cooperative and productive, with little indication that this goodwill will change. The nature of these two games and the unlikelihood of either situation changing leave the federal/local game as an important one in determining the likelihood of successful policy implementation. Both of these levels are willing to work together to develop policy, and such a move would be mutually advantageous, as it would give local governments increased support in air quality initiatives and federal governments would gain access to policy areas and implementation that were previously not open to them. However, provinces may still exert influence indirectly through their power relationship with the local government, still giving them a voice in the policy process. In addition, provincial involvement could be increased in time, as they have not formally ceded any power over the jurisdiction but have simply left it in the hands of the local governments. In these ways, the *spectre* of the

provinces can have a great influence on policy implementation, while local governments

can act as a bridge between the often conflicting goals and viewpoints of the federal and

provincial governments.

CHAPTER 6: CONCLUSION

This study has helped to develop and illustrate the relative role and importance of the three levels of Canadian government in implementing successful and coordinated policy related to the Kyoto Protocol. Analysis of the three factors of importance in the environmental policy field - formal constraints, informal constraints and negotiation tactics - shows that there are many factors which will have an impact on the size of the win-set and the potential for all actors to achieve an acceptable outcome. While formal and some informal constraints may limit the size of the win-set, intergovernmental negotiation allows for great flexibility and compromise to be reached, thus increasing the size of the win-set and the likelihood of reaching a solution suitable to all actors. Therefore, successful implementation of Kyoto-related policy should not be seen as an unlikely solution, as long as governments are willing to negotiate in good faith.

Although this represents only one area of environmental policy, the findings of this study can be applied in other areas in this interjurisdictional policy field. Several lessons regarding intergovernmental relations and negotiation, environmental politics and policy implementation in general have been highlighted and further developed in this work.

6.1 The Logic of Two-Level Negotiation

Although a bit of a truism, this study has helped to show that increasing the number of actors results in a much more complex situation in which successful policy

implementation is increasingly difficult to achieve. As more actor preferences and goals are accommodated in negotiation politics, the number of winnable and likely policy solutions diminishes. However, this study has also shown that the involvement of some actors may actually help to increase the number of acceptable policy solutions. In this case, the participation of the local order of government helps to foster more cooperation between actors and increases the likelihood of policy success. It is important that the general constraints on the policy issue produce a situation in which a win-set of any size is possible, but increasing the size of the win-set will make policy success more likely by increasing the number of possible solutions. This will help to produce an optimal outcome – one in which all willing actors are involved in the policy process. Certain factors must be in place in order for an actor to help to increase the size of the win-set, though. Firstly, the third (or nth) actor must act rationally and be willing to compromise and be committed to policy success. In order to achieve this, it helps if that actor has less formal power or control than the other actors, creating a situation in which the actor has 'less to lose'. Secondly, there must be room in the political system for two-actor negotiations. Three-actor negotiations create an unmanageable situation with less room for compromise and clearly demarcated negotiation, whereas two-actor deliberations allow for compromises to be reached between fewer actors. This 'two-stage' approach to negotiation in which all actors interact, but only in two-actor situations, increases the likelihood of policy success.

6.2 The Role of Formal, Informal and Negotiation Politics

The relative importance of formal, informal and negotiation processes in intergovernmental federal politics is important in determining the likelihood of policy

success or failure. Formal power over this jurisdiction (the environment) is shared between the provincial and federal governments. Formally, local governments have no control, but informally their powers are greater, as both federal and provincial governments are willing to involve local actors. Informal processes by their nature are more fluid and flexible, allowing for less rigid definitions of power and control over policy areas. Also important are negotiation processes utilized by all three orders of government. The way in which the governmental levels communicate and compromise with each other will affect the nature of the outcome and the likelihood of policy success or failure.

The relative importance of these three factors is dependent on the stage of the policy cycle in question. During the decision-making phase, the importance of formal processes was made clear by both federal and provincial governments. The federal governments were able to unilaterally sign onto the Kyoto Protocol due to their formal constitutional powers to sign international treaties. The provinces' response to this move also showed the importance of formal powers at the decision-making stage, as they were the only group who could validly threaten to legally challenge the federal government's unilaterally-made decision. Negotiation processes at this stage in the cycle were limited to threats of legal action.

In the implementation stage, the part of the cycle studied in this work, the relative importance of the three factors has changed. While formal processes still have an influence on policy at this point, this power is mostly limited to a vague type of constraint, one that has become less important than the other two factors. This is true of policy implementation in general, where so-called 'high' politics play less of a role in this

on-the-ground policy stage, and these two stages in the policy cycle are often very different politically (Simeon & Cameron, 2002, p. 283). Instead, informal political processes and negotiation strategy take precedence, which gives more power to the local governments by limiting formal constraints and somewhat lessens power to provinces, by reducing the importance of their formal role. This means that, despite their formal lack of power, the informal and negotiation role of local governments gives them more power over policy initiatives than a traditional formal relationship would. However, the importance of this should not be overstated. As shown below, provinces still wield significant power over the process, as formal political factors still play a role, albeit a lesser one.

6.3 The 'Bridge' Nature of Local Governments

The importance of local governments in policy implementation is evident in areas of great provincial/federal contention, such as the area studied in this thesis. In implementing Kyoto-related initiatives, the local governments may prove to be pivotal in ensuring successful policies. Firstly, the local level can act as a 'bridge' between the federal and provincial governments. Although municipal affairs fall under the control of the provinces, recent moves by the federal government have shown that both provincial and federal governments regard local governments as an important player in Canadian politics. This allows for local governments to mitigate the concerns of both of the more senior orders of government. Local governments can work with the federal government to implement policy to support the goals of Kyoto, and it appears that the federal government wishes to involve these local levels of government (Department of Finance Canada, 2005). This in turn may assuage provincial fears that this policy will have an

unacceptably negative consequence on the province. Secondly, much of the policy that will need to be implemented will be aimed at the local level. As Kyoto centres on reduction of emissions, municipal and regional programs (ie. urban forests or other carbon sinks) will be an important tool in ensuring successful implementation of policy to achieve the standards set out in the Protocol. Finally, local governments have begun to take a more hands-on approach to policy making and political decisions as cities become more influential and economically important both domestically and internationally. These factors have produced a situation whereby local governments, despite a lack of formal political power, can play a crucial informal role in policy making and implementation feasibility.

While the informal power of local governments may be considerable, this power is contingent on numerous factors. Firstly, and most importantly, local governments can only exert as much power and influence as provincial governments allow. In recent years, due to downloading and a willingness on the part of provinces to allow local involvement, municipal and local governments have played a fairly important role in some political areas, such as air quality policy. While there is no reason to believe this power granted by the provincial governments will be curtailed, the spectre of provincial involvement can still curb the effect of local governments. Secondly, local governments must be willing to take an active role in policy implementation in order for them to be effectual players. In other words, policy involvement does not just 'happen' for local governments, as it does for provincial and federal governments due to constitutional obligations. Local governments must be willing to be active and innovative participants in the process in order to have an effect. Thirdly, there appears to be at least some need

for *municipal* desire to cooperate in order for power to be exerted by *local* governments. The willingness of municipalities to band together greatly increases the likelihood of successful policy implementation and the probability of provincial and federal governments to involve the local level in the policy process. Finally, not only provincial but also federal governments must be willing to involve local orders of government in the policy process. In addition, the involvement of local governments must be as an equal or near-equal player. Local influence, a great aid to ensuring policy success, is a result of collaboration, not subordination. Rather than being a provincial or federal subordinate, local governments may then act as an intergovernmental bridge between the two other levels.

Luckily, these conditions are in place, at least in respect to Canadian air quality policy initiatives in British Columbia. The province has traditionally been willing to allow local governments an important role in developing air quality policy, as shown by the Air Quality Management Plan in place in the Greater Vancouver Regional District. This plan also illustrates the GVRD's (local government's) readiness to play a role in policy implementation, and the willingness of municipal governments to work together under the guise of the GVRD. In addition, it appears that the federal government is willing to work with municipal governments in order to increase the likelihood of policy success.

6.4   The 'Spectre' of the Provincial Governments

While the local order of government has the opportunity to increase the likelihood of policy success and act as a bridge between the two orders of government with formal

powers in the area of the environment, the provincial order of government also has significant power over policy success. In particular, this power is derived from the formal powers the provinces have in this policy area. However, the power held by the provinces is dependent on the relationship in question. In federal/provincial relationships, provinces hold the balance of power, paradoxically due to the unilateral decision of the federal government to sign onto the Kyoto Protocol. This move was unpopular with many provinces, who have significant reason to believe that they should have been included in this process. The fact that they weren't involved allows for the possibility of a legal challenge, and the threat of one has influenced how the federal government has moved ahead on implementing policy in this area. This is evident in the cautious approach the federal government has taken to implementation. In this way, even without action the provinces are able to influence the direction and scope Kyoto policy has taken. This appears to be true, as most federal political action on Kyoto-related policy to this point has shied away from policies likely to anger the provinces and has instead focussed on federally-controlled issues and pleas to individual citizens (Government Mulls, 2005).

In its relationship with local governments, the provincial government has full formal control over this and all jurisdictional issues. However, the increased autonomy afforded local orders of government and the general downloading of policy issues has resulted in local governments having a fairly strong and independent position over air quality initiatives. In addition, local governments have forged stronger relationships with the federal order of government, creating a direct link, and thus more influence, for the local governments to federal politics. Even so, local intergovernmental relationships are

marked by the possibility of provincial limitations placed on local action. Therefore, the province, again without action, can figure in to the development of policy.

6.5   The Federal Government Dilemma

Ironically, although the federal government arguably may have had the power to unilaterally sign on to Kyoto (and thus control the decision-making part of the policy cycle), they also appear to have the least amount of power of the orders of government in ensuring that successful Kyoto-related policy is implemented. The federal government unilaterally signed onto an international agreement that they will almost certainly not be able to implement unilaterally. Since not all provincial governments support the Kyoto Protocol, this has created a tough situation for the federal government. Although an argument could be made that, due to international obligations, the federal government can force the hands of the provinces, doing so would likely be politically dangerous for the government in charge, not to mention questionable constitutionally. Therefore, assuming that the federal government will continue to support the Kyoto Protocol, their job in implementing policy to achieve the goals of the Protocol will require tremendous effort and negotiation with both other governmental actors. Again, relationships with local governments will help to bolster the power and influence of the federal government, but significant provincial support may be necessary to ensure policy success.

6.6   Beyond Federalism

This study has several practical and theoretical implications. Practically, it shows that local/federal relationships can play an important role in Canadian politics and are worthy of further study in order to understand how these informal ties can increase policy

innovation, cooperation and success. More generally, this study also illustrates that local and municipal governments can play an increasingly important role in ensuring policy success. Political downloading and the principle of subsidiarity have acted to give local governments more of a stake and more legitimacy in being directly involved in the policy process, at least at an implementation level. Finally, this work adds to the general intergovernmental and multi-level governance literature and further develops links (both hierarchical and heterarchical) and illustrations between all three orders of government, which may aid in increasing the understanding of Canadian political processes.

Theoretically, this study shows that examinations of Canadian federalism must move beyond the traditional constitutional and political bounds usually explored in political writing in order to fully determine the nature and outcomes of federal politics. Although these ideas are still important, Canadian federalism has grown out of this simple model of federalism to encompass more fluid and flexible processes, non-hierarchical political processes, negotiation styles and general relations between all orders of government. The concept of multi-level governance, although traditionally applied to European Union institutions, has equally important applications in traditional federal structures to further develop political relationships and policy processes. This work helps to move the multi-level governance literature out of the European Union and show its practicality in long-standing and secure federal systems. In addition, the application of the idea of win-sets to this idea allows for a simple method of evaluating the effectiveness of multi-level governance structures.

6.7   Limitations and Areas for Future Study

This study thoroughly illustrates the idea of multi-level governance in Canadian environmental policy related to the Kyoto Protocol, but further time and an expansion on what this thesis tries to accomplish would allow for an increased development and understanding of this area. Firstly, other actors could be considered when establishing important relationships and calculating policy feasibility. Due to space and time constraints, this study did not examine the importance of international actors and institutions on the policy process or the interplay between domestic responsibilities and international obligations. In addition, non-governmental actors may play a role in the likelihood of achieving policy success, at least in some areas. In addition, this study focusses solely on the implementation stage of the policy process. As indicated, the negotiations and formal and informal relationships may differ considerable when applied to another stage in the policy cycle. Finally, the focus of this study was on process, rather than the substance of the Kyoto Protocol. While this does limit the applicability of the research to all environmental cases, the emphasis on process adds to the theoretical literature in the area. By reflecting on these other considerations, further study may widen the applicability of this work to other countries, policy areas and political and theoretical institutions.

6.8   Final Remarks

While this work shows that the likelihood of a successful outcome is far from rosy, certain steps can be taken to ensure that complete policy failure is averted and all actors are satisfied with the policy outcome. Most obviously, the federal government must concede that the provinces play a pivotal role in the implementation process of this

policy issue, and thus be willing to reasonably accommodate provincial demands. However, the provincial governments must also realize that a judicial decision may not be as favourable as they wish to think and that federal cooperation and help is not necessarily a negative. These realizations may help to show that political agreement could prove more effective in an age where judicial challenges and review are used increasingly often. In addition, other political actors should not be overlooked. As Kyoto-related policy will necessarily relate to all orders of government, the importance and role of local governments in effecting successful policy implementation should not be overlooked and provides a further avenue of exploration for possible solutions. In order to provide any hope of achieving some form of consensus between the many relevant actors present in Canada's multi-level governance system, it is important to fully understand the political 'game' being played and the issues at stake, as well as the relevant issues, constraints and possible stumbling blocks associated with achieving an effective and feasible policy implementation option.

Lack of action on the federal government's part has shown that implementation of policy related to the Kyoto Protocol will be difficult and must likely involve all orders of government in order to increase the likelihood of success. Although the lack of provincial support may make this seem like fodder for pessimism, there are factors and reasons that may help to create a situation in which air quality policy can successfully meet Kyoto's goals. Obviously, there needs to be a genuine desire to implement the policy in order to make success likely. The federal government and some local and even provincial governments have shown promise in their willingness and desire to make this work. Even if provincial governments balk at supporting Kyoto, federal and local fervour and success

may serve to quell provincial fears over negative impacts of air quality policy. The most likely and best route for successful policy implementation is through cooperation between all levels involved, and this cooperation may be mutually beneficial and need not be a sub-optimal outcome for any of the actors. This thesis shows that successful policy can be implemented, either through federal and local action and provincial detachment or, ideally, through cooperation and implementation by all three levels. The one remaining question is whether this cooperation is enough to meet the goals of Kyoto. Even if successful policy implementation does not result in a successful achievement of goals, this example of multi-level governance will act as a guide to successful (or, pessimistically, unsuccessful) formal and informal political processes, negotiation and intergovernmental relations as a whole for future Canadian politics.

APPENDIX: THREE-PARTY NEGOTIATIONS

Three-party negotiation allows for each actor to attempt to cede control, opt for unilateral control share with both other actors, or be willing to share control with only one of the actors. As each actor has five choices, this produces 125 possible outcomes. It is important to note that many of these outcomes are highly unlikely to happen. For example, given the Canadian constitutional structure, it is unlikely that local governments would be willing to work *only* with the federal government, especially if the provincial government wished to be involved. Likewise, it would be unlikely for the federal government to refuse to work with local governments if they and the provinces wished to be involved. However, it is important to consider all possible permutations in order to maintain comprehensiveness and illustrate the possible outcomes free from political reality. In the main body of this work, only the likely outcome of municipalities being willing to share with both other actors is analyzed. As with other tables in this document, it is important to remember that the labels are of actor *preferences*, not necessarily what actually happens. Here, all 125 possibilities are examined. In these tables, the provincial and federal governments are represented on the tables, with each separate table representing a choice on the part of local governments.

Unilateral Local Intent to Control Environmental Policy

Federal Intent

Provincial Intent	Unilateral Control	Shared Power with Both Actors	Shared Power with Provinces	Shared Power with Local Level	Cede Control
Unilateral Control	Deadlock	Likely challenge	Likely challenge	Likely challenge	Provincial action
Shared Power with Both Actors	Likely challenge	Shared action (3 actors)	Shared action (3 actors)	Likely provincial challenge	Provincial/ local action
Shared Power with Federal Level	Likely challenge	Federal/ provincial action	Federal/ provincial action	Likely provincial challenge	Provincial action
Shared Power with Local Level	Likely challenge	Likely challenge	Likely challenge	Likely challenge	Provincial/ local action
Cede Control	Likely provincial intervention	Likely separate federal/ local action	Likely separate federal/ local action	Likely separate federal/ local action	Local action

Local Intent to Share Environmental Control (Both Actors)

Federal Intent

Provincial Intent	Unilateral Control	Shared Power with Both Actors	Shared Power with Provinces	Shared Power with Local Level	Cede Control
Unilateral Control	Deadlock	Likely challenge	Likely challenge	Likely challenge	Provincial action
Shared Power with Both Actors	Likely challenge	Shared action (3 actors)	Likely federal challenge (and defeat) or federal withdrawal	Likely provincial challenge	Provincial/ local action
Shared Power with Federal Level	Likely challenge	Federal/ provincial action	Federal/ provincial action	Likely provincial challenge	Provincial action
Shared Power with Local Level	Likely challenge	Likely challenge	Likely challenge	Likely challenge	Provincial/ local action
Cede Control	Likely provincial intervention	Federal/ local action	Likely provincial intervention	Federal/ local action	Local action

Local Intent to Share Environmental Control (Provincial)

Federal Intent

	Unilateral Control	Shared Power with Both Actors	Shared Power with Provinces	Shared Power with Local Level	Cede Control
Unilateral Control	Deadlock	Likely challenge	Likely challenge	Likely challenge	Provincial action
Shared Power with Both Actors	Likely challenge	Possible local withdrawal or shared action (3 actors)	Possible local withdrawal or federal challenge (and defeat)	Likely provincial challenge	Provincial/ local action
Shared Power with Federal Level	Likely challenge	Federal/ provincial action	Federal/ provincial action	Likely provincial challenge	Provincial action
Shared Power with Local Level	Likely challenge	Likely challenge	Likely challenge	Likely challenge	Provincial/ local action
Cede Control	Likely provincial intervention	Likely separate federal/ local action	Likely separate federal/ local action	Likely separate federal/ local action	Local action

(Left axis label: Provincial Intent)

Local Intent to Share Environmental Control (Federal)

Federal Intent

	Unilateral Control	Shared Power with Both Actors	Shared Power with Provinces	Shared Power with Local Level	Cede Control
Unilateral Control	Deadlock	Likely challenge	Likely challenge	Likely challenge	Provincial action
Shared Power with Both Actors	Likely challenge	Possible local withdrawal or shared action (3 actors)	Possible local withdrawal	Likely provincial challenge	Provincial action
Shared Power with Federal Level	Likely challenge	Federal/ provincial action	Federal/ provincial action	Likely provincial challenge	Provincial action
Shared Power with Local Level	Likely challenge	Likely challenge	Likely challenge	Likely challenge	Provincial action
Cede Control	Likely provincial intervention	Federal/ local action	Likely provincial intervention	Federal/ local action	Local action

(Left axis label: Provincial Intent)

Local Cessation of Control

<u>Federal Intent</u>

	Unilateral Control	Shared Power with Both Actors	Shared Power with Provinces	Shared Power with Local Level	Cede Control
Unilateral Control	Deadlock	Likely challenge	Likely challenge	Likely challenge	Provincial action
Shared Power with Both Actors	Likely challenge	Shared federal/ provincial action	Shared federal/ provincial action	Likely provincial challenge	Provincial action
Shared Power with Federal Level	Likely challenge	Federal/ provincial action	Federal/ provincial action	Likely provincial challenge	Provincial action
Shared Power with Local Level	Likely challenge	Likely challenge (no local involvement)	Likely challenge (no local involvement)	Likely challenge (no local involvement)	Provincial action
Cede Control	Federal action	Federal action	Federal action	Federal action	No action

(Row axis label: Provincial Intent)

All terminology in these charts is the same as that used in the three actor game

model shown in Chapter 5. As these decision charts illustrate, the three-actor game is

much more complex than the two-actor model studied in previous chapters. These

outcomes also illustrate the likelihood of similar outcomes given different decisions by

all governmental levels and the relation between this three-party game and the two-party

games also analyzed in this work. A couple of outcomes and issues are worth mentioning.

First, these charts show that, in a three-player game, the local level has very little power.

Regardless of local action, outcomes are similar given comparable provincial and federal

actions. This is not to say that the local level is unimportant; as previous chapters have

shown the local level is able to act as a link between federal and provincial orders of

government. However, this power is derived from two-party interaction, not the larger

three-party relationship shown here. These two-party interactions will be examined

further later in this appendix. Second, the three-actor game shows that, in the absence of other negotiation, the likelihood of provincial or federal challenge (either of a legal or political nature) and other types of possible policy failure is high, occurring in 53.6% of outcomes (67 out of 125 possibilities). Oddly, the likelihood of policy failure increases when municipalities are willing to share control with both other orders of government (60% of possible outcomes, or 15 out of 25 possible outcomes), a likely scenario. The two extra outcomes that may result in policy failure if the local governments are willing to share with both provincial and federal governments happen when the federal government is willing to share control only with the provinces, but the provinces are willing to share with either both orders of government or to cede control over the policy area. In either case, if the local government wished to play a role in policy making but the federal government did not wish to share control with local governments, then the province would likely step in on the behalf of the local governments. It should also be noted that the likelihood of the federal government refusing to work with municipal and local governments is small, so the actual likelihood of increasing policy failure is also small. All of these numbers that imply policy failure is likely in a three-player game are relatively higher than the first iteration of the two-party games, which will be illustrated later in the chapter, where only 8 of the possible 27 outcomes (29.6% of all three relationships discussed) result in policy failure. By limiting the number of solutions that result in success, the size of the win-set is thus also limited. While these numbers are striking, they fail to take into account the likelihood of possible outcomes, which is acknowledged in the second iteration of the two-actor games.

As mentioned above, the actions of local governments have little effect on the policy process in a three-actor game. They may play a role in *policy making*, but their role in *negotiation* is limited. Interesting to note are the cases where outcomes do differ depending on the actions of local governments. Obviously, when local governments wish no control over this policy area, the outcome will change and, in effect, it will become a two-actor federal/provincial game. Also, if the province wishes to cede control over this policy issue, the relationship between the federal and local governments will depend on the local level, as the federal government has no direct control over local matters and cannot infringe on provincial policy without provincial involvement or consent. If the federal government did try to infringe on local jurisdiction, such as if the province ceded control or if the local governments were willing to share jurisdiction with either order of government but the federal government wished only to share control with the provinces, then a challenge by the provinces (on behalf of the local government) would likely occur. However, if the provincial government ceded control, federal governments were willing to share jurisdiction but local governments did not wish to share control with the federal government, then separate local/federal policies would likely occur, as local governments (unlike provincial governments) have no way to control federal policy. If the local governments were willing to share jurisdiction, then a combined local/federal policy would result instead. Finally, as mentioned above, if the federal government insists on only sharing jurisdiction with provincial governments (again, an unlikely proposition), then local actions will have an effect on how amicably policy issues are resolved. This mapping of three-actor decision choices shows that the increase in the number of actors, the increase in the number of decision choices and other difficulties associated with a

larger game with more actors create a situation in which a two-actor game model, like

that used in this thesis, proves more useful and likely an outcomes to study.

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