# A Fair Deal for Alberta: Are Changes to the Equalization Program Coming?

On 17 June 2020, the Government of Alberta released the Fair Deal Panel's report.[1] The Fair Deal Panel, created by Premier Jason Kenney, interviewed and curated responses from Albertans on "the necessity of a fair deal for the province within Confederation."[2] After attending 25 town halls across the province and combing through over 40,000 survey responses, the Panel issued 25 recommendations.[3] Among these recommendations is a call for Alberta to hold a referendum on the equalization program – the system of transfer payments made by the federal government to provincial governments with below average revenue.

While concerns with the equalization program are nothing new, the Panel's recommendations present a particularly strong call for change.[4] Though the equalization program began in the 1950s, since 1982 the Constitution requires the federal government make these transfers.[5] This presents a challenge for those calling for their abolition, since changing the Constitution requires the use of an amending formula. Just what is the equalization program, how does it work, and what can Alberta (or any other province) do to change it?

**Alberta's Fair Deal Panel and Their Recommendations**

Premier Jason Kenney established the Fair Deal Panel in November 2019, tasking it with determining Albertans' opinion of Alberta's place in Confederation.[6] After hosting 25 town halls across the province, collecting over 40,000 survey responses, and reading many emails, the Panel submitted their report.[7] They found that a "substantial majority of Albertans do not believe they are receiving a fair deal from the federal government" and "want the Government of Alberta to reassert its position in Confederation and minimize Ottawa's overreach".[8]

The Panel chose to place its recommendation concerning the equalization program at the front of their report. Their second recommendation is that the Government of Alberta:

> Proceed with the proposed referendum on equalization, asking a clear question along the lines of: 'Do you support the removal of Section 36, which deals with the principle of equalization, from the Constitution Act, 1982?'[9]

**The Equalization Program: How does it Work?**

Equalization payments are monetary transfers from the federal government to the provincial governments. The transfers aim to ensure the residents of provinces with a lower capacity

to generate revenues can nonetheless access similar quality public services as those in wealthier provinces without having to pay substantially higher provincial taxes to fund those services.[10] A related program, the Territorial Formula Financing program, plays a similar role for the territorial governments.[11]

While the equalization program began in 1957[12], it only became part of the Constitution in 1982.[13] Section 36 of the *Constitution Act, 1982* states:

> 36. (1) Without altering the legislative authority of Parliament or of the provincial legislatures, or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures, together with the government of Canada and the provincial governments, are committed to
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> (a) promoting equal opportunities for the well-being of Canadians;
>
> (b) furthering economic development to reduce disparity in opportunities; and
>
> (c) providing essential public services of reasonable quality to all Canadians.
>
> (2) Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.[14]

Because the Constitution includes the equalization program, the federal government must continue making equalization payments until a constitutional amendment occurs. The Constitution does not, however, specify the formula used to calculate the equalization payments. The federal government is free to set this formula as it sees fit.[15] Provinces do not play a formal role in this process, though the federal government typically consults the provinces before changing the formula.[16]

**How Does the Equalization Formula Work Today?**

The equalization formula has changed many times since its inception. Today, the formula is based on 'fiscal capacity.' Fiscal capacity is a province's ability to generate revenue. The current formula determines a province's fiscal capacity by analyzing five categories: personal income tax, business income tax, consumption taxes (like provincial sales taxes), property taxes, and natural resource revenues.[17] For the first four of these, the formula estimates how much revenue each province could generate if all provinces used an identical tax rate.[18]

The formula assesses natural resource revenue differently, calculating 50% or 0% of a province's actual natural resource revenue, whichever yields the higher equalization payment.[19] The formula operates this way to avoid disincentivizing resource development.[20] Including 100% of actual natural resource revenue would incentivize

provinces to not develop their natural resources, since doing so could raise their fiscal capacity, barring them from receiving equalization payments.

Once the formula has determined the fiscal capacity of all 10 provinces, it compares each provinces' fiscal capacity to the 10-province average fiscal capacity.[21] If a province's fiscal capacity is below the 10-province average, that province is eligible for equalization payments. If the province is above the average, it is not eligible for payments.[22]

The federal government transfers monies to the "have-not" provinces to make up some of the difference between their fiscal capacity and the average fiscal capacity. The funds transferred come entirely from the federal government's general revenue – the monies the federal government earns, for instance through federal taxes.[23] Provincial governments do not pay into the equalization program.

**What is so Controversial About the Equalization Program?**

The equalization program has been the subject of criticism for years. For example, during a 2006 debate about changes to the equalization formula, then Alberta Premier Ralph Klein threatened to walk Alberta away from the equalization program entirely.[24] The dollar value of the transfers alone is staggering. Since 1957, estimates place the total amount transferred through the equalization program at roughly $450 billion.[25]

One major source of criticism concerns the fact that some provinces have perennially received transfers, while others have rarely received them. Québec has historically received the largest share of transfers, with estimates placing their total amount received through the equalization program at roughly $230 billion.[26] Alberta, on the other hand, is a typical example of a "have" province, having only received eight transfers since the program's inception totalling roughly $92 million.[27] Historically, calls to amend or scrap the equalization program have come from perennial "have" provinces like Alberta.[28]

**Changing the Equalization Program Method 1: Changing the Formula**

There are two main ways the equalization program could be changed. The easiest way is to change the formula used to calculate the transfers. The federal government can unilaterally amend the formula, though they usually consult with the provinces before making any changes.[29] A new formula could change the total amount transferred or calculate the transfer differently.

The federal government has made many changes to the equalization formula over the years. One of the most significant recent changes came in 2007 under Prime Minister Stephen Harper following the advice of the "2006 Expert Panel on Equalization and Territorial Formula Financing."[30] Prior to 2007, the fiscal capacity calculation included 100% of actual provincial revenue from natural resources.[31] Prime Minister Harper amended the formula to include either 50% of actual natural resource revenue or 0% of actual natural resource revenue, whichever yields the higher per capita equalization payment.[32] This decision was likely a political compromise. The Expert Panel recommended the formula calculate 50% of

actual provincial natural resource revenue, to take account of the wealth generated by natural resources while still incentivizing further natural resource generation. However, Prime Minister Harper chose the compromise instead, likely because his Conservative Party had stated prior to the 2006 election that they would exclude natural resources from the formula entirely.[33]

**Changing the Equalization Program Method 2: Amending the Constitution**

If the federal government chose to amend the equalization formula, the next governing party could undo the changes at will. As such, such changes may be viewed as temporary solutions. Perhaps for this reason, the Fair Deal Panel recommends Alberta hold a referendum asking Albertans if Canada should remove the equalization program from the Constitution entirely.[34] Since the equalization program is constitutionally entrenched, removing it entirely requires constitutional amendment.

Constitutional amendment in Canada is difficult. Canada's Constitution lays out the foundational laws and values of the country. Changing these foundational laws is purposefully difficult. By making the foundational rules of the country difficult to change, the Constitution more effectively forces the government to comply with these foundational laws and values. If the Constitution was easy to change, the government could change it whenever it wanted to violate those foundational rules and values.

The framers of the *Constitution Act, 1982* recognized that sometimes the Constitution would need amending. As such, the Constitution includes several different amending formulas. Which formula must be used depends on which component of the Constitution is being amended.[35] To remove the equalization program from the Constitution requires using the general amending formula. This formula, used for most amendments, requires approval from the federal House of Commons and Senate, as well as the legislatures of at least two-thirds of the provinces that together represent at least 50% of the population of the provinces.[36] This amending procedure is sometimes called the seven-fifty formula, since it requires the approval of seven provinces representing half of Canada's provincial population.[37]

Achieving such a consensus across Canada today would be difficult. Provinces which rely on equalization payments to fund public services are unlikely to agree to abolish the program. While minor constitutional amendments have succeeded, major attempts at change, like the Meech Lake and Charlottetown Accords, have failed.[38] The more minor changes succeed largely because they require a more lenient amending formula. For example, in 2001 Newfoundland and Labrador, together with the federal government, amended the Constitution to change the province's name from "Newfoundland" to "Newfoundland and Labrador."[39] This change required only the approval of the federal government and of Newfoundland and Labrador's government.[40]

**Conclusion**

Calls to amend or entirely abolish the equalization program are not new, and will likely

remain for some time. Despite opposition, the program serves an important unifying purpose. It is a powerful tool for strengthening national unity and rectifying the inequities that can emerge in a nation as diverse and broad as Canada.[41] As the 2006 Expert Panel on Equalization noted, the equalization program reflects a "distinctly Canadian commitment to fairness."[42] It is the "glue that holds our federation together," ensuring that all Canadians have access to quality public services, regardless of where they live.[43]

No province can change the equalization program on their own. The easiest way to amend the equalization program is through a change to the formula used to calculate the payments. The federal government can make this change alone, though they usually do so in consultation with the provinces.

While the equalization program is perhaps the most controversial, there are other federal-to-provincial monetary transfer programs. For example, through the Fiscal Stabilization Program, the federal government transfers funds to provinces when a province's "revenues drop suddenly from one year to the next."[44] It does this to soften the financial blow of large year-over-year economic drops.[45] Alberta, for example, received a $248 million stabilization payment in 2015-16 following a severe drop in provincial revenues.[46] The Fair Deal Panel also recommended this program be amended, since its current form caps the maximum rebate allowable at $60 per capita.[47]

Removing the equalization program entirely requires constitutional amendment. Because of the difficulty inherent in satisfying the seven-fifty amending formula, this is unlikely to occur anytime soon. At the time of writing, five provinces are receiving equalization payments and five are not.

Receiving equalization payments: Alberta, British Columbia, Newfoundland and Labrador, Ontario, and Saskatchewan.

Not receiving equalization payments: Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, and Quebec.[48]

Given this split, it is hard to imagine the requisite agreement across enough of the country. Even assuming the five provinces not receiving equalization payments agreed to abolish the program, two provinces currently receiving equalization payments would need to agree to achieve the seven-province minimum.

While a provincial referendum on the equalization program has no power to mandate constitutional amendment, it may, as the Fair Deal Panel suggests, pressure or "morally obligate" the federal government and other provincial governments to negotiate changes to the equalization formula.[49]

[1] See Tom Ross, "Fair Deal Panel report released in Alberta," *CityNews* (17 June 2020), online: <www.edmonton.citynews.ca/2020/06/17/fair-deal-panel-report-released-in-alberta/>.

[2] Alberta, Fair Deal Panel, *Report to Government*, online (pdf):

<www.open.alberta.ca/publications/fair-deal-panel-report-to-government> at 5.

[3] *Ibid* at 9.

[4] See e.g. Steven Chase, "Alberta withdraws objection to new equalization formula," *The Globe and Mail* (12 March 2007), online: <www.theglobeandmail.com/news/national/alberta-withdraws-objection-to-new-equalization-formula/article680817/>; Kevin Maimann, "Is Alberta really getting shafted on Equalization payments? We talked to an expert," *The Star* (24 June 2018), online: <www.thestar.com/edmonton/2018/06/24/is-alberta-really-getting-shafted-on-equalization-payments-we-talked-to-an-expert.html>; Peter Zimonjic, "Fixing equalization will not be easy, but there are other options, say experts," *CBC News* (16 November 2019), online: <www.cbc.ca/news/politics/fixing-Equalization-formula-challenge-options-1.5362056>; CBC News, "Bringing clarity to the sometimes murky world of equalization payments," *CBC News* (12 September 2019), online: <www.cbc.ca/news/politics/canada-votes-2019-equalizthus%20are%20ayments-provinces-kenney-1.5281736>;

[5] See *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 36(2).

[6] Fair Deal Panel, *supra* note 2.

[7] *Ibid* at 9.

[8] *Ibid* at 6.

[9] *Ibid*.

[10] See Expert Panel on Equalization and Territorial Formula Financing, *Achieving A National Purpose: Putting Equalization Back on Track*, (Ottawa, May 2006), online (pdf): <www.publications.gc.ca/collections/Collection/F2-176-2006E.pdf> at 2.

[11] See Canada, Library of Parliament, *Canada's Equalization Formula*, (In Brief), by Édison Roy-César (Ottawa: Library of Parliament, 2008, Publication No. 2008-20-E), revised September 2013, 1.

[12] See Jim Feehan, "Canada's Equalization Formula: Peering Inside the Black Box… and Beyond," (2014) 7:24 *School of Public Policy*, online (pdf): <www.policyschool.ca/wp-content/uploads/2016/03/feehan-equalization.pdf>.

[13] *Constitution Act, 1982*, *supra* note 5, s 36.

[14] *Ibid*.

[15] Roy-César, *supra* note 11.

[16] *Ibid*.

[17] *Ibid* at 2.

[18] *Ibid*.

[19] See Trevor Tombe "Unpacking Canada's Equalization Payments for 2018-19", *Policy School* (17 January 2018), online: <www.policyschool.ca/unpacking-canadas-equalization-payments-2018-19/>.

[20] See Daniel Béland, André Lecours, Gregory P. Marchildon, Haizhen Mou, Rose Olfert, "The challenge for Canada's equalization program," *Policy Options* (18 July 2018), online: <www.policyoptions.irpp.org/magazines/july-2018/challenge-canadas-equalization-program/>. See also Expert Panel on Equalization and Territorial Formula Financing, *supra* note 10.

[21] Roy-César, *supra* note 11.

[22] *Ibid* at 2.

[23] *Ibid* at 1.

[24] See CBC News, "Klein threatens to abandon equalization" *CBC News* (25 May 2006), online: <www.cbc.ca/news/canada/calgary/klein-threatens-to-abandon-equalization-1.596652>.

[25] See Glen Kobussen, Sureesh Kalagnanam, and Whitney Loerzel, "Why Canada's equalization program needs a major overhaul" *The Conversation* (March 26 2020), online: <www.theconversation.com/why-canadas-equalization-program-needs-a-major-overhaul-132233>.

[26] *Ibid*.

[27] *Ibid*.

[28] See e.g. Daniel Béland, Gregory P. Marchildon, Andre Lecours, Rose Olfert, "Premier Moe's equalization plan would curb redistribution," *Regina Leader-Post* (27 June 2018), online: <www.leaderpost.com/opinion/columnists/premier-moes-equalization-plan-would-curb-redistribution>.

[29] Feehan, *supra* note 12 at 3.

[30] See Expert Panel on Equalization and Territorial Formula Financing, *supra* note 10. See also "Minister of Finance Announces Members of Expert Panel on Equalization and Territorial Formula Financing," *Government of Canada* (21 March 2005), online: <www.canada.ca/en/news/archive/2005/03/minister-finance-announces-members-expert-panel-equalization-territorial-formula-financing.html>. See also Feehan, *supra* note 12 at 6

[31] Roy-César, *supra* note 11.

[32] *Ibid*.

[33] *Ibid*.

[34] Fair Deal Panel, *supra* note 2 at 7.

[35] *Constitution Act, 1982*, *supra* note 5, ss 38-49.

[36] *Ibid*, s 38(1).

[37] See Peter W Hogg, *Constitutional Law of Canada*, vol 1, 5th ed (Scarborough: Thomson, 2007) (loose-leaf 2010 supplement) at 4.3(a).

[38] See Richard Albert, "The Difficulty of Constitutional Amendment in Canada," (2015) 53:1 Alta L Rev 85-113 at 2.

[39] See CBC News, "Newfoundland's Name Change Now Official," *CBC News* (6 December 2001), online: <www.cbc.ca/news/canada/newfoundland-s-name-change-now-official-1.279040>.

[40] *Constitution Act, 1982*, *supra* note 5, s 43.

[41] Béland, Lecours, Marchildon, Olfert, *supra* note 20.

[42] Expert Panel on Equalization and Territorial Formula Financing, *supra* note 10.

[43] *Ibid*.

[44] Trevor Tombe, "An (Overdue) Review of Canada's Fiscal Stabilization Program" (2020) IRPP Insight 31. Montreal: Institute for Research on Public Policy, 4-24 at 4.

[45] See "Backgrounder: The Fiscal Stabilization Program," *Government of Canada Department of Finance* (last modified 23 February 2016), online: <www.canada.ca/en/department-finance/news/2016/02/backgrounder-the-fiscal-stabilization-program.html>.

[46] See Bev Dahlby, "Reforming the Federal Fiscal Stabilization Program" (2019) 12:18 *School Public Policy Publications* 1 at 1.

[47] Fair Deal Panel, *supra* note 2 at 16. See also Ryan Tumilty, "Bill Morneau prepared to talk to provincial finance ministers about 'equalization rebate'," *National Post* (10 December 2019), online: <www.nationalpost.com/news/bill-morneau-prepared-to-talk-to-provincial-finance-ministers-about-equalization-rebate>; James Keller and Daniel Leblanc, "Bill Morneau expects to announce changes to fiscal-stabilization program as Western provinces push for reforms," *The Globe and Mail* (19 January 2020), online: <www.theglobeandmail.com/politics/article-bill-morneau-expects-to-announce-soon-changes-to-fiscal-stabilization/>. See also Lisa Johnson, "Fairness Alberta calls on Ottawa to

increase stabilization payment from $500 million to nearly $7 billion," *Edmonton Journal* (9 June 2020), online: <www.edmontonjournal.com/news/politics/fairness-alberta-calls-on-ottawa-to-increase-stabilization-payment-from-500-million-to-nearly-7-billion>.

[48] See "Major federal transfers," *Government of Canada* (last visited 29 June 2020), online: <www.canada.ca/en/department-finance/programs/federal-transfers/major-federal-transfers.html>.

[49] Fair Deal Panel, *supra* note 2 at 18.