

**FPT Working Group on Regulatory Reform
Meeting**

**Capital Hill Hotel and Suites, Tupper Room
October 12 and 13, 2005**

**A report commissioned by the
Privy Council Office**

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**Reviewing the Government Directive on Regulating
Summary of Comments on the Directive**

Part 1 – Introduction

The objective of the FPT Working Group on Regulatory Reform is to advance FPT cooperation in regulatory reform through information sharing, achieving common goals through development of tools and approaches, and act as a forum for FPT discussion on regulatory governance.

The working group met between October 12 and 13 in Ottawa. The objectives of the discussions were:

- To seek provincial and territorial comment and input into the Federal Government’s Directive on Regulating.
- To seek agreement from FPT Governments on the timetable for implementing the Terms of Reference and Work Plan. This included identifying areas of common interest and priority and an agreement on a process and implementation plan for moving forward.
- To seek agreement on implementing the Terms of Reference of the working group, including identifying areas of common interest and priority and agreeing on a process and plan for moving forward.

PRESENTATION OF AGENDA

Peter Hadwen, facilitator, welcomed the group and walked the provinces and territories through the meeting process for the first half day (October 12) and the full day on October 13. He referred to the importance of receiving the Group’s best commentary on the *Government Directive on Regulating* (hereinafter the “Directive”) (see Part 2 below), and to focus on the development of a forward plan for the group with respect to three areas of discussion: Information Sharing, Capacity Building, and Tools and Approaches.

Part 2 – Reviewing the Government Directive on Regulating

The Directive sets out the responsibilities of federal government departments and agencies in all stages of regulating – development, implementation, evaluation and review. The facilitator-led discussion on the first day of the meeting focussed on four essential questions about the Directive. The provinces and territories were asked to prepare written responses to the questions, which were then reported to the group for plenary discussion. The provinces/territories rated their general responses to the first three questions as a “Yes” or “No”. They were also asked to provide written comments or suggestions for change in the Directive.

A summary of the answers to each question are provide below.

1. Do we have the “Commitment to Canadians” right? Are these the right commitments of how the federal government should be acting with respect to your activities and those of your stakeholders?

All provinces and territories except one replied ‘yes’ to the above question (New Brunswick and Prince Edward Island were not present at the meeting). The provinces/territories wanted to ensure that the document did not lose sight of and also achieved a balance between commitments with respect to the economy (business) and the environment. One province gave a qualified ‘no’ to the question because of a perceived imbalance due in part to the fact that the opening statement referred to environment and not economy.

A number of provinces/territories suggested that the commitments be divided into two groups. Some commitments were seen as global or philosophical in nature while others were more specific or operational. One province recommended ordering the commitments according to importance.

Clarity was sought with respect to the interpretation of various words and phrases in the directive. One province/territory sought greater explanation of enforcement and penalties for non-compliance to give Canadians the assurance the policy would be followed. One province/territory wanted a definitions page incorporated in the document for terms such as ‘cooperating’ and ‘sustainable’. Another province did not believe the Directive clearly showed that it applied to both existing and new regulation.

The following additions were suggested:

- ✓ Add the word ‘protect’ to the phrase “and sustain the environment in which we live”
- ✓ Add “economy and” to “sustain the environment in which we live.”
- ✓ Change the word ‘create’ to ‘develop’. One province/territory was of the opinion that ‘create’ has a negative connotation because the public thinks of government as a creator of obstacles.
- ✓ Include wording on what is meant by ‘evidence’.
- ✓ Re-insert the word ‘implementation’ and generally ensure greater reference is made in the Directive to implementation issues. One province/territory noted that in the most recent draft the word ‘implementation’ had been taken out.
- ✓ In the commitment about making decisions add “on early and ongoing consultation and input from stakeholders.”
- ✓ In the commitment about promoting effectiveness add “performance review to ensure relevancy”.

The following deletions were suggested:

- ✓ In the commitment about promoting effectiveness delete the phrase after “costs”. One province/territory was not sure how “focussing human and financial resources where they can do the most good” was directly relevant.

2. In Part II of the document, have we set out the right accountability and expectations of departments to meet these commitments?

All provinces and territories except one replied ‘yes’ to the above question. One province gave a qualified ‘no’ to the question for several reasons. The province was concerned about the meaning attached to terms such as ‘significant’ with respect to regulatory impact analysis; ‘unnecessary’ with respect to regulatory burden; and ‘necessary’ with respect to regulatory requirements being no more restrictive of entry into markets. The province also noted the large number of policies and directives departments and agencies must follow and believed this to be a source of confusion. Other provinces/territories agreed with this observation suggesting that a roadmap or checklist be developed to guide a person through these many documents.

Some provinces/territories felt that more elaboration or ‘directness’ was needed in the section *Cooperating with Provincial and Territorial Governments* regarding matters such as the timelines for early consultation, limits to cooperation because of legislation restrictions, costing implications from federal regulatory changes, or technical guidelines for cooperation. Some provinces/territories felt the Directive should stress the importance of also consulting rural and remote communities.

The following additions were suggested:

- ✓ Add more emphasis on cooperation with provinces/territories, making it into a separate section in Part II. It was noted that there are presently 12 lines about cooperation in the Directive.
- ✓ With respect to the role of departments and agencies in developing a consultation strategy add “provide information” alongside ‘opportunities for consultation.
- ✓ With respect to cooperation with aboriginal communities the word ‘governments’ should be added since there are 11 governments who develop regulations applicable to aboriginal communities.

3. Overall, do you feel the Directive contains the right elements of good regulatory governance?

All provinces and territories except one replied ‘yes’ to the above question. The province/territory that replied ‘no’ did so for the reasons already stated.

Many provinces/territories stressed the need to position the Directive as an outcomes-based policy. The purpose and value of the policy for departments and agencies, and stakeholders should be stated upfront in Commitments to Canadians or at the beginning of the accountability section of the Directive. It should cover essential questions such as: What is the purpose for stakeholders, the public, the provinces and territories, etc.? What is their incentive?

Many provinces/territories said that although the Directive contains the right elements, the key to its success would be in its implementation. This will require: a) making sure departments and agencies follow the Directive, including through compliance measures; and b) ensuring the public and stakeholders are adequately consulted. With respect to the latter one province/territory indicated that freedom of information and protection of privacy should be recognized in the Directive. The province/territory mentioned that there have been

instances when stakeholders and members of the public have been reticent to offer information because of freedom of information and privacy concerns.

There is concern that compliance with the new Directive will affect the timeliness of designing and implementing regulation. Timeliness has been identified as an issue and will the new Directive increase time.

4. What advice do you have that would facilitate effective implementation?

In offering implementation advice, provinces/territories focussed, in large part, on awareness building and training. One province/territory recommended that workshop teams be established to effectively train departments and agencies. The suggestion was that once the Directive is finalized all departments and agencies should:

- designate a coordinator or lead person;
- arrange initial information sessions for all coordinators and recommend they lead similar sessions in their organizations (train the trainers);
- develop a template checklist to accompany all new/amended legislation papers for ministerial signature; and
- and require action on Cabinet Papers, which explain regulatory/policy impacts.

Various provinces/territories discussed performance and accountability issues in implementation. Several provinces/territories recommended that a report to Cabinet be prepared on an annual or bi-annual basis rating the success of departments or agencies in following the Directive. Performance for cross-government efforts should be recognized and assessed through Deputy Minister performance pay and other efforts. Another suggestion was that an ISO type management system with an oversight body be established. Finally, a checklist for ministerial signature for all new/amended legislation will also promote accountability.

Many provinces/territories also focussed their implementation concerns on communications matters. The directive was seen to require a ‘superb’ communications strategy. Plain language in the Directive was considered essential to its easy comprehension by those outside government.