

SUMMARY REPORT
of the
Montreal Public Workshop
on the
Draft Government Draft Directive on Regulating
Held November 16, 2005

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1. Background and Context: The Draft Government Directive on Regulating and the Public Workshops

As part of the Government of Canada's Smart Regulation Initiative, the Privy Council Office (PCO) has been tasked with developing a proposed *Government Directive on Regulating* to strengthen the current federal process for designing, implementing, evaluating and reviewing regulations. Once approved by the government, the *Government Directive on Regulating* will replace the current Government of Canada Regulatory Policy. It will apply to all federal departments and agencies responsible for regulating.

The PCO has committed to working with a broad cross-section of Canadians interested in developing the draft *Government Directive on Regulating* (the draft Directive). To this end, an independent consultant was hired to work with interested parties including environmental, health, consumer, industry, business and labour groups, and Aboriginal organizations to prepare a Consultation and Engagement Strategy. The Strategy recommended several mechanisms for Canadians to express their views on the draft Directive. The PCO adopted all of the recommendations including the sponsoring of eight public workshops across Canada to solicit input on the draft Directive.

The **purpose of the public workshops** was to:

- provide participants with an opportunity to present their views and to hear the views of others on the draft Directive; and,
- work with others in a multi-stakeholder setting to develop practical advice to government on improving the draft Directive.

Workshops were held as follows:

- Moncton, November 14, 2005
- Montreal, November 16, 2005
- Toronto, November 18, 2005
- Winnipeg, November 21, 2005
- Saskatoon, November 23, 2005
- Calgary, November 25, 2005
- Yellowknife, November 28, 2005
- Vancouver, November 30, 2005

The public workshops were one of several initiatives aimed at soliciting stakeholder input into the draft Directive. The other initiatives include an invitation to make submissions (written or electronic) on the draft Directive, by December 23, 2005. Extensive information is posted on the following website: (www.regulation.gc.ca and follow the Smart Regulation Initiative link). Information on this site includes the draft Directive, information on the Smart Regulation

Initiative, the Consultation and Engagement Strategy for developing the draft Directive, the current Government of Canada Regulatory Policy, the agenda and the PCO slide show presentation used at the Public Workshops, and opportunities to comment on the draft Directive. PCO will continue to routinely contact its comprehensive email list of interested parties to notify them of updates that are posted on the website.

Over 900 organizations, associations, networks, groups and individuals with an interest in the draft Directive were directly contacted by the PCO about the public engagement opportunities and were given specific information on how to get involved. In addition, the Canadian Environmental Network was contracted by the PCO to notify individuals and organizations associated with their Network about the public workshops and to ensure that a core group of individuals (five to eight per workshop) affiliated with environmental, consumer, public health and labour groups were in attendance at all of the workshops except Yellowknife. Separate interactions were held between the PCO and five aboriginal organizations aimed at encouraging attendance, particularly at the Yellowknife workshop. In total, approximately 250 individuals attended the eight workshops. These individuals were affiliated with a broad cross-section of interests including: all levels of government, aboriginal groups, industry, business, the natural resource sectors (e.g., farming, fisheries and forestry), environmental non-government organizations, labour, public health and consumer groups and individual members of the Canadian public.

2. Structure of the Public Workshops

Consultants were engaged to assist in the design and to facilitate the workshops. In addition, the consultants were responsible for preparing separate venue Summary Reports highlighting the key issues, options and messages that were heard during each workshop, as well as a final Report summarizing what was heard across the country.

3. The Montreal Workshop (November 16, 2005)

3.1. Attendance at the Montreal Workshop

In total, 11 individuals attended the Montreal workshop. These individuals were primarily affiliated with public advocacy groups, including environmental non-government organizations, public health and consumer groups. An individual affiliated with a university and two individuals affiliated with business interests were also in attendance. For a complete list of participants, see Appendix 1.

3.2. Modification of the Montreal Workshop Agenda

The Montreal workshop agenda was modified at the request of participants. Instead of breaking into smaller groups, the workshop stayed in plenary throughout the day. As well, the order in which the three themes were addressed was modified to deal with the “Commitment to Canadians” before the other two themes.

3.3. Structure and content of this Workshop Report

Section 4 of this Report provides a summary of what was heard at the Montreal Workshop held on November 16, 2005. Generally this section follows the structure of the revised workshop agenda along the three main themes corresponding to specific sections in the draft Directive: 1) Commitment to Canadians; 2) Regulatory Analysis; and, 3) Implementation. In many instances, participants provided very useful comments that related to the workshop process, to the regulatory policy/process in general, to the draft Directive as a whole, and to the Smart Regulation Initiative itself. While the draft Directive was the primary focus of the workshops, the more general or broader issues raised by participants have also been captured in Section 4.

This Report strives to ensure that all of the issues that were heard in each of the sessions are presented fairly. However, “the details” that often accompanied a specific view, and examples used to illustrate these views are not presented in this Summary Report. As noted at each workshop, the views detailed in this Report are not attributed to any particular individual. In some cases this Report does attribute a particular perspective to a specific stakeholder interest where this is appropriate and helpful. Readers who participated in the workshops are cautioned that the issues they raised are not reported verbatim in this Summary Report. However, workshop participants should be able to recognize the general intent and thrust of the comments/advice that they raised in the sessions. Participants were informed that the Summary Reports for each workshop would be posted on the PCO website within three to four weeks of each session. Individuals who feel that comments they expressed at the workshop were not fairly captured in this Summary Report, or who want to add additional comments were strongly encouraged by PCO personnel and the facilitator to post their views on the PCO website preferably by December 23, 2005. All posting on the PCO website are available for public viewing.

The facilitator stressed that the purpose of the sessions was to solicit the views of participants, and not necessarily to strive towards consensus with respect to any particular view. As a result, a particular perspective on the draft Directive that was proposed by one individual at one session is as legitimate and as important in helping the PCO prepare the Directive as a perspective that was shared by many participants across sectors in all sessions.

4. Summary of what was heard at the Montreal Workshop

4.1. General comments relating to the Workshop process and the Smart Regulation Initiative

- Some participants felt that there was not sufficient notice of the workshop and that they had not had sufficient time to prepare. The small turnout for the workshop was offered as further evidence that the government still had work to do to encourage broader participation from the public in these types of consultations. It was suggested that this might require the government to completely rethink its consultation strategy. Some participants felt that the technical language of the Directive itself presented a barrier to fuller participation. A suggestion was made that the government engage professional communicators/writers to translate the language of its regulations, specifically the Directive, into language that is intelligible to a wider audience.
- Several participants, noting the small number of participants and the absence of certain groups in the room, said that the workshop could not be considered representative of the public.
- One participant noted that, while the process could be much improved, the government was indeed consulting, which was more than many governments could claim. Another participant commended the government on its efforts to increase the participation of the public in policy making.
- Several questioned the sincerity of the government effort in consulting the public and wondered whether industry/corporations had a significant role in drafting the Directive behind the scenes. At least one individual felt that there was a hidden agenda, which was hard to pinpoint in the vague language of the Directive.
- Several participants, particularly from the public advocacy sectors, expressed a distrust of the Smart Regulation Initiative, which they saw as a move toward harmonizing Canadian regulations and policies with those of the USA. It was suggested that this was part of a larger trend of loss of control by governments over corporations, particularly transnational corporations. Government must therefore work hard to regain control so that it can fulfill its role of protecting the well-being of Canadians.
- One participant reported that the website of the Smart Regulation Initiative was very difficult to navigate.

- Several participants, particularly from the public advocacy sectors, asked that the workshop Summary Report attribute comments to either individuals or organizations.
- A number of participants expressed frustration with public consultations in the past, reporting that there is a widespread feeling that advice from the public is ignored. A recommendation was put forward that the PCO account for how the views expressed through these consultations were used in redrafted the Directive. A suggestion was made that the workshop Reports also outline what the PCO does with the advice it receives from the public.
- Several participants described a lack of confidence in the policy-making process and the government.
- Several ideas were offered for requiring a statutory review of the Directive and the Smart Regulation Initiative. These included setting up an *ad hoc* committee of stakeholders to undertake a regular review of the Directive and report its findings to Canadians and Parliament, and a suggestion that the Auditor General be explicitly tasked with preparing a regular report on the Smart Regulation Initiative and the Directive.

4.2. General comments relating to the draft Directive

- Many participants expressed disappointment with the draft Directive, which they saw as placing economic interests ahead of protection of the environment and human safety. Among other things, this was reflected in the sections of the Directive that require departments to conduct economic impact analyses on regulatory proposals.
- Several participants questioned the objectives of the draft Directive, which they saw as a move toward deregulation and reduced protection for the environment, health and safety of Canadians. They felt, for example, that the use of terms such as “evidence,” “best available science,” “risk assessment” and “cost benefit analysis” could and would be used to weaken or eliminate the use of precaution in decision making. Indeed, they pointed out that “precaution,” “sustainable development” and “ecological life cycle management” were missing from the draft Directive. It was pointed out by at least one participant that the trouble with the risk assessment paradigm was that it put the burden of proof on establishing that a product or chemical is harmful to prevent it from entering the market. Once on the market, it is very difficult to remove chemicals. A clear message from these participants was that the Precautionary Principle must be made the cornerstone of the draft Directive and of all regulatory activity in Canada. It was pointed out that the Precautionary Principle would spur innovation in the economy.

- Several participants expressed a distrust of the real objectives of the draft Directive. They found that the terms used in the Directive were vague, and open to interpretation, with the result that “the devil is in the details”. On the surface, the draft Directive appeared to say all the right things, but one had only to dig a little deeper to see that it could be interpreted to suit the needs of special interests and corporations. Suggestions were made by several participants that words be clearly defined. Some felt that “public interest” was a phrase that had been overused, and therefore, had lost meaning.
- One participant cited a number of international conventions and studies which the government could draw on to improve the transparency of its regulatory system and implement the Precautionary Principle. These include the *United Nations Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus Convention, 2001), *Royal Society of Canada Expert Panel Report on the Elements of Precaution: Recommendations for the Regulations of Food Biotechnology in Canada* (2001) and the *Cartagena Protocol on Biosafety* (2000).
- One participant felt that the draft Directive (and most government initiatives) lacked a clear articulation of a vision and goals. It was suggested that Canada look at the model in Sweden where the government, in collaboration with other sectors in society, has developed a vision for a sustainable future by 2020. The Directive should define goals in terms of sustainability.
- One participant suggested that the need to increase education in the basic and social sciences be built into the Directive. This would allow more people to participate effectively in decision-making processes.
- One participant said he would like to see a link between the draft Directive and rewriting existing regulations to bring them in line with the rapidly changing environment of the 21st Century. For this individual the real test will be whether the Directive results in an increase in the quality and speed of decisions made by ministers. The Directive needs to specify whether it will apply to the existing body of regulations. For this individual, an important gap in the draft Directive is its failure to assign timelines.
- Several participants identified the need for stronger action-oriented language throughout the Directive; to use words such as “must”, “shall” and “will” instead of “should” “may” and “expected to”.

4.3. *Specific comments related to the “Commitment to Canadians” section in the draft Directive (line 39-71 in English version/ lines 39-75 in French version)*

- Several participants, primarily from the public advocacy sector, suggested that the statement on commitments must affirm that the prime purpose of regulations and government is to protect and preserve health, safety and environment. In this regard, some felt that references to supporting businesses and the economy were inappropriate and should be removed, while others suggested that the prominence of economics be reduced by creating separate bullets and somehow prioritizing the commitments. Suggestions for addressing their concerns ranged from specific comments (captured below) to rewriting the commitments entirely with the Precautionary Principle and sustainable development at its heart.
- Several participants, primarily from the public advocacy sector, expressed a strong desire to see the Precautionary Principle emphasized in the commitments, which they felt should be the cornerstone of all regulatory activity in Canada. For many, the requirement in the fourth commitment (lines 58 to 59, or lines 60 to 62 in the French version)—“make decisions based on evidence”—seemed to preclude the use of precaution.
- A specific suggestion was made for writing the fourth commitment (lines 58 to 59, or lines 60 to 62 in the French version) along the lines of a commitment to making decisions based on the “weight of evidence and on the best available knowledge in Canada and in the world. In the absence of complete evidence, policy decisions will err on the side of precaution.”
- One participant suggested making it clear that economic well-being (in lines 47 to 49, or lines 48 to 50 in the French version) refers to the economic well-being of Canadians, as distinct from corporations.
- One participant suggested that the third commitment (Support a fair and competitive market: lines 54 to 56, or lines 56 to 58 in the French version) contained an inherent contradiction, because you cannot have free trade if you have fair trade. He suggested that the commitments needed to be rewritten to reflect the principle that governments create regulations to support the public good, which corporations must comply with.
- The importance of transparency in all aspects of the regulatory process was highlighted by many participants, a number of whom suggested that the commitment to transparency (lines 61 to 62, or lines 64 to 65 in the French version) needed significant strengthening. It was suggested by at least one participant that the practical aspects of transparency needed to be aligned with expectations, since the word had been overused and has taken on different meanings. One individual suggested that there were a number of international conventions and reports which the government should draw on in this regard, notably the Aarhus Convention (2001).

- One participant suggested that if the government was serious about basing its decisions on sound evidence then it should implement the recommendations of the Royal Society of Canada's report on *Regulation of Food Biotechnology in Canada*. Among its recommendations are that the results of all tests be monitored by an independent panel of experts who report to the public. A review by the Polaris Institute found that the government has failed to respond adequately to the 58 recommendations of that report.
- One individual felt strongly that the commitments needed to articulate a clear unambiguous vision and goals, which, among other things, would help departments interpret otherwise nebulous terms such as "serve the public interest." In this regard, a suggestion was made to add "...that encourages or promotes a health and sustainable lifestyle" to the end of the third commitment (lines 54 to 56, or lines 56 to 58 in the French version).
- Several participants felt that the requirement to ensure that the benefits over time of regulation justify the costs in the sixth commitment (lines 64 to 66, or lines 67 to 70 in the French version) revealed a bias towards industry and business. A suggestion was made to modify the language by replacing "costs" with "total costs (environmental, health, social, etc.) along the complete life cycle [of products and services]".
- One participant suggested that Canada, with its small population, should look to external sources of good knowledge. He suggested that a source of information for decision making was investigative journalists, as well as academics. He suggested these groups be added to the fourth commitment (lines 58 to 59 or lines 60 to 62 in the French version).

4.4. *Specific comments related to "Regulatory Analysis" in the draft Directive (lines 72-506 in English version/ lines 81-565 in French version)*

- One participant felt that, in principle, the draft Directive was a move in the right direction. The government appears to be moving toward optimizing its regulatory regime so that it is able to respond more quickly to the rapidly evolving business climate of the 21st Century. From a business perspective, the regulatory system is becoming more transparent. In this regard, and the commitment to consulting Canadians is good because it allows the regulatory system to learn.
- Some participants felt that the approach being proposed was reactive rather than proactive. This came across in some of the language of the Directive which speaks about "mitigating" problems rather than preventing them.

- Concerns about the prominence given to economic concerns relative to environment and health issues (see above) were raised in relation to this section of the draft Directive. For some, the section needed to be rewritten to remove references to “risk assessment” and “cost benefit analysis” and to incorporate the principles of precaution and protection of environment, health and safety. A number of international initiatives that can help Canada implement alternatives to the risk management approach were cited, such as Europe’s REACH (Registration, Evaluation, and Authorization of Chemicals) program and the Cartagena Protocol on Biosafety.
- Several participants noted that the language in the section left the impression that regulation is the least favourable instrument to achieve policy objectives. There seems to be a bias against regulations which is consistent with their view that the Smart Regulation Initiative, and by implication the Directive, is geared toward deregulation.
- The suggestion was made that the section needs to clearly identify responsibilities and accountabilities for enforcement and impose tough sanctions for those who break the rules. For example, enforcement is missing from the bullets on lines 109 to 115 (lines 143 to 148 in the French version). It was noted that one of the problems with the risk management framework was that risk assessors are not held accountable for bad decisions and their consequences.
- One participant said he objected to the language of lines 127 to 128, which seemed to give businesses priority over Canadians. The draft Directive needs to be rewritten to make it clear that regulations are made by government in consultation with Canadians. Regulations must support the public good and corporations must comply.
- Several participants urged that voluntary approaches not be part of the mix of instruments for achieving policy objectives (lines 215 to 242), citing the failure of these approaches to protect the environment over the last 20 years. One participant felt that voluntary measures should never be part of the mix because they require significant resources on the part of governments and others to make sure that corporations are fulfilling their obligations.
- One participant stressed that the data used in public decision making must be generated independently.
- One participant noted that it would be helpful for the Directive to identify which areas are under provincial jurisdiction and which ones are under

federal jurisdiction. Lines 321 to 333 (lines 360 to 372 in the French version) are not specific enough.

4.5. Specific comments related to the “Implementation” section of the draft Directive (lines 507 to end in English version/ lines 566 to end in French version)

Discussions pertaining to this section of the draft Directive were much shorter than the other themes.

- A suggestion was made that the role of the PCO in implementing the Directive should be strengthened.
- One participant urged that sustainability indicators be part of the performance measurement and evaluation strategy that departments and agencies develop to monitor the implementation of regulations and of the Directive itself. This needs to be specifically integrated into the Directive’s requirements—lines 209 to 211; lines 509 to 524; and, lines 668 to 670 (lines 239 to 241; lines 587 to 610; and, lines 748 to 750 in the French version). Sweden has developed useful performance measures as part of its strategy for a non-toxic future which Canada should be able to adapt.
- One participant suggested that, if designed properly, the draft Directive could provide an opportunity for defining a vision of sustainable development for the country and providing direction to government departments and agencies.

4.6. Final Round-Table from participants

Before adjourning for the day, the facilitator invited each participant to provide any additional suggestions or comments that were not already raised during the workshop. The following details comments made during the roundtable discussion that were not explicitly captured elsewhere in this Summary.

- One participant felt that the government has a trust and credibility problem which it must address if it is to engage Canadians effectively.
- A participant from the business sector said that the Directive and Smart Regulation Initiative provided an opportunity to create a regulatory system that is supportive of business and innovation, while protecting the environment and health. It appears to be working towards bringing people together and breaking down silos. It will hopefully lead to a regulatory system that is able to respond to the rapid pace of change in the 21st Century. There have already been benefits to some industries in the form

of a greater openness on the part of government departments to work cooperatively to improve the efficiency of regulations.

- One participant said that while there Directive might not break with the past, it was perhaps a move away from the *laissez-faire* economics of 20 years ago.
- One participant advised that when redrafting the Directive, the PCO give serious consideration to the recommendations of the Krever Commission: that regulators not lose sight of the fact that they regulate in the public interest and not in the interest of the regulated. Regulation must never be viewed as a burden.
- One participant said she found that the draft Directive was vaguer than the current Regulatory Policy.
- One participant provided a definition for the Precautionary Principle: “when an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. In this context, the proponent of the activity, rather than the public, should bear the burden of proof.”

5. Next steps and closing remarks

Following the plenary roundtable, PCO personnel detailed next steps in the development of the draft Directive. They encouraged interested parties to provide written comments on the draft Directive by December 23, 2005 (see: www.regulation.gc.ca and follow the Smart Regulation Initiative link). All submissions will be posted to the website and available for public viewing. In this regard, every effort will be made to share the summaries of each workshop (eight in total) prior to December 23. Individuals who feel that the summary for the venue they attended does not fairly capture the views/advice they raised can post his/her views on the website. All submissions received after December 23, 2005 will be posted for public viewing and, wherever possible (given timing considerations), will be taken under advisement by the PCO in developing the Directive. All individuals who attended any of the workshops and provided an email address at registration, along with all other individuals and organizations on the PCO mailing list (over 900) will be notified of changes and additions to the website, including the posting of each workshop Summary Report.

In Winter 2006, PCO will prepare another draft Directive taking into consideration the comments heard at the workshops plus any additional submissions posted on the website or otherwise received by PCO. This revision will be posted for public comment for approximately two weeks and will be discussed by the Reference Group on Regulating. (The Reference Group is composed of sixteen

representatives from a broad cross-section of parties interested in the development of the Directive, including industry and public advocacy groups. The Group has provided advice on the Directive as it has evolved. Detailed information on the Reference Group is available from the website.) The PCO will then prepare the proposed Directive for consideration by the federal cabinet.

Appendix 1—Participants at the Montreal Workshop, November 16, 2005

(Total number of participants: 11)

- Maychai Brown, Action Cancer du sein de Montréal, Montréal, QC
- John Burcombe, Mouvement Au Courant, Montréal, QC
- Marilyn Crawford, Bedford Mining Alert, Godfrey, ON
- Bohdan Czarnocki, Canadian Unitarians for Social Justice, Lachine, QC
- Eric Darier, Greenpeace, Montréal, QC
- Marie Hélène, Université du Québec à Montréal, Montréal, QC
- Roger Leclerc, MEDEC, Toronto, ON
- Jules Lizotte, Association canadienne de l'industrie de la peinture et du revêtement, St-Laurent, QC
- Jacques St-Amant, Option consommateurs, Montréal, QC
- Sasithorn Tajchakavit, A Lassonde Inc, Rougement, QC
- Beverley Thorpe, Clean Production Action, Montréal, QC

PCO staff in attendance:

- Samir Chhabra, Policy Analyst
- Hélène Quesnel, Senior Privy Council Officer
- Daniel Wolfish, Policy Analyst