

**REFERENCE GROUP ON REGULATING  
MEETING 1**

**Ottawa Marriott, Wellington Salon  
JULY 13, 2005**

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

D E N N E R Y  
**RESOURCES**

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## Executive Summary

In February 2005, the Government of Canada agreed to review the existing federal Regulatory Policy and develop a proposal to improve the governance system for developing, implementing, reviewing and evaluating regulation. The Reference Group is a key part of a comprehensive consultation strategy on the government's efforts to develop this proposal on regulatory governance.

The Reference Group on Regulating held its first meeting on July 13, 2005 at the Marriott Hotel in Ottawa. The Regulatory Affairs Division of the Privy Council Office convened the meeting.

The meeting focused on assessing and building upon the success of the existing federal Regulatory Policy and setting the broad policy direction for the Directive. Participants discussed the general policy statement on the intent of the Government of Canada, how best to communicate the policy direction to citizens, businesses and government departments, as well as the Smart Regulation principles and strategic objectives. Discussions also took place on process, policy and analytical requirements with respect to development, implementation and compliance, performance measurement and reporting. International regulatory cooperation, risk-management and capacity assessment and enhancement strategies were also on the agenda.

There was a divergence of views concerning the overarching principles of the Policy Directive on Regulating. Some participants expressed the view that there should be a balance between social and economic interests. Other participants commented that social interests should predominate while others remarked that the intent of the Directive should focus on economic interests. Some participants thought that values and principles should not form the basis of the document, while others thought that they should. Some participants felt the need for additional principles.

Among other things, the Reference Group discussed the scope of the Directive. Participants also referred to the need for clarity, and for the directive to be an accountability document. Members of the Group also noted the requirement for greater cooperation between federal and provincial governments, and for regulators to be aware of provincial as well as international standards. Participants expressed the view that Canada should take advantage of international expertise and resources. The need to reallocate capacity rather than to increase resources, and to build on skills, renew knowledge and address succession planning in regulatory agencies was also referred to.

Presentations were made by Eric Milligan, Delsys Research Group, Daniel Wolfish, Privy Council Office, and H el ene Quesnel, Privy Council Office.

Dominique Dennery, President, Dennery Resources, was facilitator. Lise Legault is the report writer.

## Part 1 – Introduction

Dominique Dennerly welcomed the Reference Group on Regulating to their first meeting and invited George Redling, Assistant Secretary to Cabinet, Regulatory Affairs and Orders-in-Council Secretariat, Privy Council Office, to begin the session.

### WELCOMING REMARKS

George Redling welcomed participants and thanked them for agreeing to participate in this important forum and dialogue on regulating. He indicated that, over the next several months, the Reference Group will provide critical input and feedback in the review of the federal Regulatory Policy.

Mr. Redling referred to Canada’s leadership in regulatory affairs among OECD countries. He remarked that the Directive will be an agent of change within the federal regulatory system. He explained that the current Directive focuses largely on the development of regulations, and that it should also focus on implementation, enforcement, evaluation and review, or a life-cycle approach.

Mr. Redling indicated that this marks the first time that the Government of Canada has undertaken to engage Canadians in a meaningful way in the development of a regulatory policy. It is now recognized that the Government Directive on Regulating can be both a directive to departments and a commitment to Canadians about how the government will exercise its regulatory responsibility.

He informed participants that the Reference Group complements two other major consultation streams: online engagement and public consultations. Mr. Redling commented that the Group represents a diverse cross-section of Canadian society, and that there is much to learn through an open dialogue. Participants can also look at this day as an opportunity to gain a better understanding of each other.

### PRESENTATION OF AGENDA

Dominique welcomed the group and walked participants through the agenda and format of the day. She indicated that the objective of the meeting is to obtain participants’ input on the *Proposed Outline - Government Directive on Regulating*, and that participants are not expected to reach a consensus. She remarked that she would do a process check in the afternoon to see if participants wish to adjust the agenda in view of their next two meetings.

Dominique invited participants to introduce themselves and to indicate one key expectation they had for the day.

SUMMARY OF PARTICIPANTS EXPECTATIONS/COMMENTS
✓ Implementing recommendations of the External Advisory Committee on Smart Regulation (EACSR) as soon as possible;

- ✓ Concern about looking at regulation in terms of risk and risk management which has a negative connotation;
- ✓ Promoting and encouraging a vision of society expressed in the concept of sustainable development;
- ✓ Modest expectations; to better understand and to clarify role and scope of input required, and to input effectively;
- ✓ Hope that public consultations will be in plain language so that broad spectrum of public can understand, and to ensure real consultation;
- ✓ To find out what are the key issues of individuals around the table;
- ✓ To slow the process and find out what problems we are trying to solve;
- ✓ A tangible regulatory policy that defines protection of public good, safety and the environment as overarching priority rather than a balancing of the social and economic considerations;
- ✓ To discuss the role of regulation and transparency;
- ✓ To find out more about the process, to input on various alternatives to regulation, and to understand when various instruments should be used;
- ✓ Being engaged as opposed to being consulted; expectation is not only to look at end product, but to examine the process so that people can assume responsibility; to obtain clarity around the process;
- ✓ To understand views of participants and contribute to a regulatory environment that encourages Canadian bio-technology and commercial development;
- ✓ To better understand the regulatory process and concerns of participants, to develop a directive that will lead to efficient and user-friendly regulation, and minimize administrative burden for citizens;
- ✓ To obtain a better understanding of the problems PCO is trying to address and how this ties into Parliament and the legislative context of regulation;
- ✓ To develop a document that is not a public relations exercise, that is too broad, and to make a positive difference in the way government regulates; to focus on capacity building;
- ✓ To have a lasting impact; to focus not only on the development of regulation but also on its implementation; to make it as easy as possible for people to follow;
- ✓ To move to strategic issues of implementation; need for public engagement and trust in the process.

## Part 2 – Governance Architecture of the Federal Regulatory System

*Presenter:* Mr. Eric Milligan, Delsys Research Group

Eric Milligan's presentation focussed on the logic and architecture of the federal regulatory policy to provide a common basis of understanding prior to discussions. He covered the evolution of the federal regulatory policy, the architecture and logic of the governance system, the overview of rule-making processes as well as the federal rule-making processes for enacting statutes and promulgating regulations. Eric referred to substantive and process values, and the four families of values (economic, social/cultural, environmental and governance). In addition, he raised the issue of the scope of the regulatory policy, and whether among other things it should apply to the primary legislation stream as well as the secondary legislation stream. Eric also reviewed three process maps with participants: 1) the policy development process, 2) the statute development process and, 3) the regulation making process.

## Part 3 – Dialogue on Policy Direction

**Presenter:** Daniel Wolfish, Policy Analyst, Implementation Strategy for Smart Regulation, PCO.

The objective of this presentation was to set a baseline for discussions by providing a brief overview of the federal regulatory policy, and to review some of the key advice received by the government since 2000. The presentation focused on the advice provided by the Auditor General of Canada, the OECD, and the External Advisory Committee on Smart Regulation.

### DISCUSSION ON POLICY OPTIONS, SMART REGULATION PRINCIPLES AND STRATEGIC OBJECTIVES

Dominique led participants in the first discussion concerning policy options, principles and strategic objectives. She reminded participants that the agenda could be adjusted and certain elements of the discussion could be postponed to the next meetings. She asked participants to remember to think about the scope of the policy during their discussions.

### Summary of Participants Comments

HIGHLIGHTS
<ul style="list-style-type: none"><li>✓ Need to clearly identify problem and policy objectives</li><li>✓ Legislation sets the values</li><li>✓ Regulation protects the public good and should improve overall quality of life</li><li>✓ Social regulation separate from economic regulations;</li><li>✓ Clear definitions needed</li><li>✓ Regulation should be framed according to social needs;</li><li>✓ Economic considerations should be overarching priority;</li><li>✓ Need to balance economic and social interests;</li><li>✓ Regulatory policy = primary and secondary legislation</li><li>✓ Regulatory policy = secondary legislation;</li><li>✓ Directive should deal with risk</li><li>✓ Need principle on ease of implementation for users</li><li>✓ Need principle to avoid political influence and fiscal pressure</li><li>✓ Principles of timeliness, accountability and performance should be included</li><li>✓ Regulate according to best available knowledge</li><li>✓ Benefits should justify costs</li><li>✓ Meaningful participation by all stakeholders</li><li>✓ Acknowledge intersection of private sector regulation</li><li>✓ Competitive system</li></ul>

The participants discussed their view of what would be necessary elements of the policy direction for the Government Directive on Regulating (GDR). Participants noted:

- ✓ The need for regulation to clearly identify the problem and policy objectives to be achieved;
- ✓ The importance of legislation setting the values and direction of regulatory frameworks;
- ✓ Regulation should protect the public good;
- ✓ Social regulations should be treated separate from economic regulations;
- ✓ Clear definitions are needed so that stakeholders and government officials clearly understand what is encompassed by the term social (e.g., that it includes issues of personal, public and environmental health);
- ✓ The directive should be proactive and include values that will help Canada move forward;

In a discussion on values and the relative importance or balance among social, economic and environmental objectives, the Reference Group participants raised a number of diverging points of view, including:

- ✓ While people have different values, an effective regulatory system should contribute to improving overall quality of life;
- ✓ Regulation should be framed according to social needs; commercial considerations are valid but are subordinate to social policy;
- ✓ The overarching priority should be economic growth;
- ✓ There should be a clear distinction between social and economic/commercial considerations;
- ✓ The GDR should articulate the need to balance economic and social interests;
- ✓ The GDR should not articulate any values, but rather stipulate that the values enshrined in legislation determine how regulation should be developed.

Participants also expressed diverging views concerning the scope of the Regulatory Policy and noted:

- ✓ That it is not the function of regulatory policy to address primary legislation;
- ✓ The need for the Directive to look at both primary and secondary legislation.

During these discussions, participants also commented on risk-management and noted:

- ✓ The need for the document to deal with risk since a major part of the debate about regulation has centered around risk-based concepts.
- ✓ The need to recognize that there is no such thing as zero risk.

Participants also discussed objectives and principles and noted:

- ✓ The need for a principle on ease of implementation for users, both citizens and government officials;
- ✓ The need for a principle to ensure that the system operates without political influence and fiscal pressure; fiscal pressure should not dictate the form of regulation;
- ✓ The need for principles of timeliness in implementation and application of the regulation as recommended in the EACSR Report;
- ✓ Accountability and performance are also key and should be strengthened.

Participants also noted that:

- ✓ Regulatory power should be exercised based on best available knowledge and should reflect an understanding of, and support for Canadians;
- ✓ Regulation should conform to legislative intent, and provide benefits that justify costs. Benefits and costs should be equitably distributed;
- ✓ Design, implementation and communication should be carried out with meaningful participation by all relevant stakeholders;
- ✓ The approach could be different for regulation than for other instruments; instrument mix/choice must include regulation;
- ✓ The intersection of regulation in the private sector with Smart Regulation should be acknowledged;
- ✓ The regulatory system needs to be competitive with systems in other countries.

### **Discussion on Communications**

Participants then discussed how the Government Directive could best communicate to citizens and businesses the policy direction on regulation.

#### **Summary of participants' comments**

<b>HIGHLIGHTS</b>
<ul style="list-style-type: none"><li>✓ Important strategic requirement</li><li>✓ Need for clarity / scope of policy has implications</li><li>✓ Consistent principles and congruent values in processes</li><li>✓ Diversity of venues</li><li>✓ Different document for public and officials</li><li>✓ Accountability document</li><li>✓ Communicate results not policy</li></ul>

Participants noted:

- ✓ That communications is an important strategic requirement for Canadians' trust in the process;
- ✓ It would be quite useful to obtain a report of the Action-Research Roundtable on Communications, chaired by George Anderson and sponsored by the Canada School of the Public Service, on the government's communication approach;
- ✓ The need for the document to be clear to avoid problems of multiple interpretations and approaches; the document should address the question of: why the government needs to regulate, what are the objectives of regulating, and then address how government should regulate;
- ✓ That the scope – whether the scope is all encompassing and includes statutes and regulation, or regulation only – is a very important issue and has implications for the clarity of the directive. Values and principles should be embedded in each aspect of Maps 1, 2 and 3;
- ✓ The document for officials and the public does not need to be identical;



- ✓ Members obtain information and advice from their advisors, professionals and sector associations, and do not refer to websites;
- ✓ The need for a diversity of communication venues, since websites are not always the most convenient for citizens;
- ✓ The need to stress the significance of the policy, why and how the public should get involved;
- ✓ The need to design the Directive as an accountability document;
- ✓ That the Directive will be of interest to the few who deal with regulation, and that time should be spent communicating the results of the policy, but not the policy directive.

Dominique explained that the Reference Group would be providing input on the draft Government Directive on Regulating that they will be receiving prior to the 2<sup>nd</sup> meeting. This input will be taken into account at the meeting of Assistant Deputy Ministers who will be reviewing the Directive. Dominique added that at the 3<sup>rd</sup> meeting, the Reference group will be responding to input provided by Canadians through the public consultation process, and reflecting on whether this input has been well integrated into the Directive.

## Part 4 – Dialogue on Policy Requirements

**Presenter:** H el ene Quesnel, Senior Officer, Regulatory Affairs and Orders-in-Council Secretariat, PCO

H el ene presented the life cycle approach to regulation management to set the context prior to the discussion on development, implementation, compliance, performance measurement and reporting. She spoke of the outcomes of Smart Regulation in terms of healthy environment, healthy people, equal opportunity and economic growth, and of the key partners to make it happen. She referred to the objectives and principles of Smart Regulation, explained the lifecycle approach and reviewed questions for discussion.

Dominique facilitated the next discussion on process, policy and analytical requirements. The questions were as follows:

*In your view, what requirements are needed to facilitate the **development** of better quality regulation?  
What requirements in your view can be included in the Government Directive to support regulatory **implementation** and **compliance**?  
What requirements can be included in the Government Directive to encourage **performance measurement** and **reporting** to ensure that results are achieved for Canadians and that the regulation remains relevant, successful and effective over time? What analytical requirements should underpin the review of existing regulation?  
Are you aware of any **capacity issues** that would affect the federal government's ability to implement the Government Directive and Smart Regulation in terms of skills/knowledge, culture/attitudes, resources or other areas?*

During discussions Dominique also invited participants to reflect on bridging the diverging views concerning social and economic interests, and to provide advice to facilitate the task of the drafters of the Directive.

## Summary of participants' comments

<b>HIGHLIGHTS</b>
<p><b><u>Development</u></b></p> <ul style="list-style-type: none"><li>✓ Clarity</li><li>✓ Providing alternatives to regulation; use mix of instruments</li><li>✓ Practical process</li><li>✓ Awareness of provincial and international regulation</li><li>✓ Unique Canadian requirements must be justifiable</li></ul> <p><b><u>Implementation and Compliance</u></b></p> <ul style="list-style-type: none"><li>✓ Inventory of key variables that encourage/discourage compliance</li><li>✓ Implementation, review and performance reporting are continuous stages</li><li>✓ Need for structured implementation process</li><li>✓ Compliance and enforceability should be considered up-front</li><li>✓ It is not a linear process; there will be interactions at all levels</li></ul> <p><b><u>Performance measurement and reporting</u></b></p> <ul style="list-style-type: none"><li>✓ Evaluation should start at the beginning</li><li>✓ Evaluation is different from performance measurement</li><li>✓ Achilles heel is lack of utilization</li><li>✓ There are many forms of accountability</li><li>✓ Regulations should be reviewed systematically</li><li>✓ Performance plans and performance reports could be an option</li><li>✓ A continuous loop approach as opposed to a life-cycle approach</li></ul> <p><b><u>Capacity</u></b></p> <ul style="list-style-type: none"><li>✓ Discipline and cultural change needed</li><li>✓ Inventory of federal and provincial regulations</li><li>✓ Need to reallocate capacity rather than increase resources</li><li>✓ Need to systematize life-cycle approach</li><li>✓ Need for an appeal process</li><li>✓ Capacity should be considered in the development phase</li><li>✓ Examine different methodologies of enforcement</li></ul>

### With respect to the Development of Regulation, participants noted:

- ✓ The need to start with a clear statement of intent in order to be able to measure and determine if objectives have been achieved;
- ✓ It would be helpful if those being regulated could have the option of providing alternatives to regulation; not everything in regulation has to be prescriptive. The process must be practical to allow citizens to have input into development and implementation;
- ✓ The need for a requirement that regulators be aware of provincial and international regulations to ensure there is no rewriting of what already exists;
- ✓ There must be synergy with other jurisdictions, unless there are unique Canadian requirements that are justifiable;
- ✓ The need to identify what international regulations Canada is implementing, and where Canada is going beyond the international standard;
- ✓ Inconsistency is unnecessary between levels of government. There are different requirements because the multiple levels of government do not sufficiently cooperate;

- ✓ The life-cycle approach is useful; one must be realistic about public interest; the book entitled “*Democracy By Disclosure*” by Mary Graham concerns the way in which the United States has allowed consumers to be active in the regulatory arena and how disappointing the results have been.

**With respect to Implementation and Compliance, participants noted:**

- ✓ It might be helpful to have an inventory of key variables (i.e. soundness, clarity and consistency of the policy intention and resources and incentives) that encourage or discourage compliance, taking into account the external environment – political and social – people’s understanding, acceptance and rejection of regulation;
- ✓ That implementation, review and performance reporting are continuous and more than one-time events;
- ✓ The need for a structured implementation process from beginning to end. Citizen buy-in will be stronger if process is laid out very clearly in the Directive;
- ✓ The word “criteria” should be used rather than “requirements”. Compliance and enforceability should be considered in the development phase of the regulation;
- ✓ That the life-cycle process is problematic; the process is not linear, and there will be interactions at all levels that will involve a number of stakeholders;
- ✓ If you look at compliance and enforceability at the outset, the process will never being; with sufficient capacity and resources all regulation can be enforced;
- ✓ The need to review sociological literature;
- ✓ That where there is a definite standard, a regulation is easy to enforce; the more vague a regulation is, the more difficult it will be to enforce.

**With respect to Performance Measurement and Reporting, participants noted:**

- ✓ Evaluation should start at the beginning – at the development stage;
- ✓ Evaluation is different from performance measurement. Evaluation means – did the regulation do what it was intended to do? Do people speed less in comparison to how many tickets were given for speeding. The objective is to have compliance so that it becomes the norm. It is the measurement of outcome rather than outputs;
- ✓ The useful connection between evaluation and performance measurement; Performance measurement is an early warning system that tells us how things are progressing and if there are disturbing signs, this can lead to a more in-depth evaluation. The two are complimentary and both should be part of a sound regulatory process;
- ✓ The need to create incentives and resources to incorporate the findings of performance measurement into program improvement. Reporting in itself is not accountability. Accountability includes upward and horizontal accountability as well as consumer accountability;
- ✓ The article in *Optimum* on the future of performance measurement;
- ✓ A suggestion that every new regulation be reviewed systematically after 5 years; heads of regulatory agencies should be mandated to analyse existing regulations within their spheres and assess their relevance;
- ✓ There is too much innovation in technology to wait 5 years; in the area of standards, a 5-year review is now not responsive enough;
- ✓ That government departments produce performance plans and performance reports, and that a similar approach could be followed for regulation;

- ✓ The term “life-cycle” has a negative connotation. A continuous loop process as opposed to a life-cycle approach denotes that as new information becomes available it is immediately fed into the process.

**With respect to Capacity, participants noted:**

- ✓ Federal, provincial and municipal cooperation is an important issue. When regulation is done in isolation, there is no possibility of getting the aggregate impact;
- ✓ The largest problem relates to the differing views of federal and provincial jurisdictions; discipline is missing and cultural change needs to take place within government;
- ✓ The need for an inventory of federal and provincial regulations according to topic;
- ✓ The need to work horizontally through information exchange and adherence to criteria;
- ✓ The need for a strategy to reallocate capacity rather than increasing resources, and to build on skills and renew knowledge in order to keep abreast of international developments;
- ✓ The need to systematize the life-cycle of regulation;
- ✓ The need to look at regulation on a continuum – from no regulation to regulation – and at the many options in between;
- ✓ That an appeal process could improve the system and bring citizens and industries into the continuous loop;
- ✓ That without capacity at the beginning, there will be problems in accomplishing the next phases especially if there is expertise required for development;
- ✓ The need to examine different methodologies of enforcement.

**Participants also noted:**

- ✓ That increasingly regulation is a partnership activity, and there is a need to consider the quality of those inter-organizational relationships and the potential for coordination in a shared regulatory environment;
- ✓ In the environmental field, the SCC has said repeatedly that there will be conflict and overlap. There has not been satisfactory demonstration that duplication of requirements is detrimental to the objectives of two or more levels of government. They may overlap but they are distinct.

Note: David Bennett, Director, Canadian Labour Congress tabled a document of the Canadian Labour Congress which explains the reasons why the risk-based approach is not the only approach that should be encompassed in regulatory policy. This submission will be shared publicly via the [www.regulation.gc.ca](http://www.regulation.gc.ca) website.

## **Part 5 – Policy Development for Supporting Frameworks**

### **International regulatory cooperation**

Participants also discussed requirements for international regulatory cooperation that should be included in the Government Directive to advance Canadian priorities.

## Summary of participants' comments

### HIGHLIGHTS

- ✓ Need to address political component
- ✓ Valid reasons needed for uniquely Canadian regulations
- ✓ Take advantage of international expertise and resources
- ✓ Mandatory awareness of international regulations and MLAs and MRAs
- ✓ Cooperate in the context of existing international agreements
- ✓ Examine impacts on trading environment
- ✓ Primacy of trade agreements is inappropriate
- ✓ Use existing international models on public engagement
- ✓ Canada as leader in certain areas
- ✓ Cooperate on research and on building international models
- ✓ Transparency
- ✓ Involvement of provincial governments

#### Participants noted:

- ✓ The need to address the political component of international cooperation and the usefulness of international obligations for Canada;
- ✓ The need to use international standards and create uniquely Canadian standards only when valid reasons exist;
- ✓ That many countries are cooperating on the assessment/approval of new products, (i.e. new medications), and that Canada should take advantage of the expertise and resources in other countries;
- ✓ Canada should be at the international table and lead in certain areas;
- ✓ The need for Canada to document and publish information;
- ✓ The need for mandatory awareness of the international standards; Canadian standards should not be harmonized with the most minimal international standard;
- ✓ The need for a full understanding by regulators of the MLAs and MRAs;
- ✓ The need for regulatory cooperation within the context of existing international conventions and treaties Canada (i.e. Kyoto protocol);
- ✓ The importance of examining the impact and effects the adoption of international standards will have on Canada-U.S. relations;
- ✓ The very good models that exist internationally on public engagement;
- ✓ The need to cooperate with other countries on research, or to build on international models on global issues ( SARS, HIV / AIDS) to develop better strategies or policies;
- ✓ The need to examine trading realities and realize there may be a North American approach that could be equally effective or a uniquely Canadian approach that we want to take internationally;
- ✓ The need for transparency so that Canadians realize that Canadian regulations have been adopted internationally; it should be clear when Canadian regulations go beyond international standards;
- ✓ The need to take a proactive approach in discussing new issues with other countries;

- ✓ That other international agreements can take primacy over trade agreement; the apparent primacy of trade agreements in the 1999 policy is inappropriate;
- ✓ The need to involve provincial governments in international negotiations as was done for the convention on tobacco control;
- ✓ The need for mutual recognition agreements with other jurisdictions Canada has developed a core competency.

## Managing Risk in a Regulatory Context

The Government's decision to regulate depends in part on the public's tolerance to a particular risk or hazard. Participants also discussed the mechanisms that should be used by the government to gauge public tolerance to risk. PCO clarified that it is also interested in obtaining input on how best to manage risk.

## Summary of participants' comments

HIGHLIGHTS
<ul style="list-style-type: none"><li>✓ Educating the public prior to gauging public tolerance to risk</li><li>✓ Engage public at the beginning of the process</li><li>✓ Do not put undue emphasis on public tolerance to risk</li><li>✓ Strong capacity required</li><li>✓ Support EACSR recommendations 19, 20 and 28; review by experts in relevant discipline</li><li>✓ Need for gap and cost benefit analysis</li><li>✓ Sound scientific approach required</li><li>✓ Need for balance</li><li>✓ Limits to risk assessment and cost benefit analysis</li><li>✓ Risk-based approach is one of many; notion of hazards</li><li>✓ Sustainable development should be addressed and not confined to risk</li></ul>

Participants noted:

- ✓ That tolerance to risk or regulation often has to do with a lack of public awareness. If time has not been spent up-front to inform people about the ramifications of the risk, they may not understand the reason to regulate;
- ✓ The public tends to be very uninformed about science. It is also important to inform the public of scientific uncertainties;
- ✓ Risk tolerance is assessing someone's perception about a possible risk. This involves defining tolerance to risk through an assessment and educating people in the process;
- ✓ The need to engage the public at the beginning, and throughout the process;
- ✓ Support for recommendations 19, 20 and 28 of EACSR. These deal with the process, guidelines for risk communication (communication to the public on what was studied and how it was studied) and risk-based policy analysis being open for public comment; review by experts in the relevant discipline is key;

- ✓ That it would be a mistake to put undue emphasize on public tolerance to risk. Canadians expect that their government will protect them from harm;
- ✓ The need for a sound scientific approach to risk management;
- ✓ The important recommendations of the Auditor General on science and risk assessment and the need for regulators to have sound capacity to identify risk and adequate resources to establish base-line data;
- ✓ The need to consider all policy implications and who the proponents of a policy represent;
- ✓ Need for a gap analysis and a cost-benefit analysis. If you have 90 % compliance and a regulation will increase it to 92%, is it worth it? It should be mandatory for officials to present the best possible scenario so that elected officials can make choices;
- ✓ The need to consider how regulatory agencies are affected if they become risk averse, and to keep a balance so that agencies can focus on important risks and know how to effectively manage these risks;
- ✓ The presumption that all regulation will be risk-based, and that risk management is the only proper implementation strategy;
- ✓ The need to distinguish carefully between a risk-based approach and the response to it – one possibility of which is a risk-management strategy. There are limitations to risk assessment and cost benefit analysis; need to consider hazard-based approach;
- ✓ That the 1999 policy misconstrues the role of sustainable development in regulations, and that policy should address sustainable development in ways that are not confined to the risk-based approach.

Dominique reminded participants that they would be receiving for comment a copy of the report summarizing their discussions and a first draft of the directive before the next meeting. She asked whether the group could suggest ways of **addressing the balance of social and economic interests** due to the challenges in drafting the directive. She asked how the two could be weaved in, in view of the concern for health and environmental elements and considerations related to business and trade.

### Summary of participants comments

<b>HIGHLIGHTS</b>
<ul style="list-style-type: none"><li>✓ Social and economic interests are linked</li><li>✓ Need for a generic policy</li><li>✓ Criteria = efficient or inefficient regulation</li><li>✓ Refer back to legislation (democratic linkage)</li></ul>

Participants noted:

- ✓ Social and economic interests are inextricably linked. A healthy nation is generally a wealthy nation and to have a wealthy nation you need healthy people. There is a need for a generic policy to bridge among all categories;
- ✓ The criteria should be efficient or inefficient regulation;

- ✓ The expression of values or principles should not form the basis of the document. There is a need to refer back to the legislation in question in a given context. Balancing the purpose of public good protection against economic values is unacceptable.

## Part 6 – Conclusion and Next Steps

### CLOSING REMARKS

George Redling thanked participants for their participation and focused comments. He remarked that participants seemed to endorse the life-cycle approach with some qualification regarding the continuous loop approach to regulation. Mr. Redling indicated that there are two areas on which the Reference Group will need to focus to a greater extent. One is the social and commercial objectives - whether they are exclusionary or not – and the other is the scope of the policy.

Mr. Redling indicated to participants that, in addition to the report Lise will be preparing for their comments, PCO is prepared to follow-up with participants by phone on the draft policy to make sure that the nuances of the discussion have been captured. He indicated that PCO wishes to reflect as best as possible the views of the Reference Group in both the meeting report and the next draft of the Directive, but that Ministers will be making the final decision on the policy Directive.

Mr. Redling thanked Diane Labelle, Samir Chhabra, Daniel Wolfish and Kyle Burns. He thanked Dominique Dennery for her first-class facilitation.

Participants thanked PCO for the invitation to participate in the discussion, and congratulated PCO for its efficiency as well as for the quality of the background material. Others commented on the need to share information with their constituents. Participants indicated that discussions had been much more meaningful since the draft Directive had not been prepared in advance of the meeting. Others would have liked more time in order to be able to discuss solutions. One participant proposed that the next draft Directive include various options for different language in view of the diverse points of view to facilitate discussion at the next meeting.

PCO confirmed that the next meeting will be scheduled during or after the first week of September, 2005.



# APPENDICES

## Appendix A

### Summary of Questions and Answers

#### DISCUSSION ON POLICY OPTIONS, SMART REGULATION PRINCIPLES AND STRATEGIC OBJECTIVES

**Question:** The principles and objectives have been approved for consultation by whom?

**Answer (Diane Labelle, PCO):** They have been approved by the Domestic Affairs Committee of Cabinet to help launch discussions.

**Question:** What would be the implications if the Reference Group decides on another direction?

**Answer (Diane Labelle, PCO):** The advice of the Reference Group will be presented to Ministers. The Reference Group is one source of advice among others.

**Question:** My approach would be different if we are providing input for the policy (Map 1) and statute (Map 2) development process as well as for the regulation making process (Map 3). On the other hand, one cannot say that what applies to Map No. 3 does not apply to Maps No. 1 & 2.

**Answer (Diane Labelle, PCO):** The enabling authority is the legislation; the values in one should be reflected in the other. Broad guiding principles are needed to attain goals; we are not having the same quality and results across the board. In terms of the policy, we are looking at regulation making as a system in terms of policy.

#### DISCUSSION ON COMMUNICATIONS

**Question:** One of the key recipients of the policy directive will be government officials. Is there a parallel process with government officials so that they can provide input?

**Answer (George Redling, PCO):** Government officials are involved. The document is intended to be a culture change document within government as to how regulation is developed. There will be a training and capacity building program developed taking into account the life-cycle management approach.

## DIALOGUE ON POLICY REQUIREMENTS

**Question:** There are 7 policy requirements in the 1999 Directive. Is carrying them over being contemplated? Has there been an evaluation on their effectiveness to date?

**Answer (Diane Labelle PCO):** Part of our questioning is, if we are moving towards a life-cycle approach, what needs to be done in terms of analytical requirements? The questions are whether the current requirements are still relevant to a life-cycle approach, how do they need to be modernized, and what else do we need to implement the life-cycle approach. So if participants are in favour of the life-cycle approach, what do they see as the analytical requirements to implement the life-cycle approach.

**Question:** There needs to be an evaluation of the policy to date. In absence of an evaluation we are adrift.

**Answer (Diane Labelle PCO):** We have looked at how the policy operates to date. There are weaknesses on **implementation**. Perhaps the policy is not providing sufficient guidance to departments and enough information to Canadians about how **compliance** will be sought out. We are very good at measuring levels of activities, but we are less successful at **evaluating** if the regulation or instrument is achieving its goals.

We recognize the need to instil a **performance evaluation** approach. Other gaps have been identified in terms of horizontal coordination within government. When we develop primary legislation, there is a strong interdepartmental consultation process as well as external consultations. We find that at the regulation-making stage, we have a lot of external consultation mechanisms, but fewer internal consultation mechanisms. The notion of better integrating federal, provincial and municipal approaches has also been identified as a weakness. We have not found the answers, so the process is open-ended because we want to hear from you and explore solutions to close the gaps.

**Question:** What is the life-span of a regulation?

**Answer (George Redling PCO):** With respect to the point raised earlier about whether there has been an evaluation of the 7 policy requirements in the current policy directive, in a systemic way, probably not the kind of evaluation that stakeholders would prefer. The Regulatory Impact Analysis Statements are assessed in terms of public comment. One of the limitations of the current policy is that it only deals with the development of the regulation to the point of approval. The life-cycle approach for your consideration would take regulatory policy further than just development.

Reviews tend to be episodic, or a snapshot in time. The life-cycle approach would put in place a systemic review, by giving a regulation 5 or 6 years, then in accordance with certain criteria determine if it is still relevant. There are not many other models in other jurisdictions that we can follow in embarking on this exercise. If the life-cycle approach is to be adopted, this approach needs capacity toolkits for regulators, and for the public to get involved. In developing toolkits

like a risk-management framework, proper toolkits might be a useful way of engaging others. Not all provinces have a uniform regulatory policy. It may not address the point about constitutional differences, but may bring about a greater alignment in the process of how to deal with regulation.

**Question:** In terms of renewing and reviewing regulation, do we assume, and if so why, that this particular exercise should be the responsibility of a regulatory affairs directorate? Why should it not be the government department responsible for the regulation? Is there a government directive guiding the departmental process, and what is the core driver of the department? Is it the public good protection that is meant to be implemented in the governing legislation or other values not legislated?

**Answer (George Redling PCO):** I have not suggested a central agency would do it. I prefer your suggestion that it might be the department that is the proponent of the regulation that would undertake the performance review with stakeholders. We might have to develop the criteria for what the drivers might be. We may have to come back to you with the criteria. I do not have that right now.

## CONCLUSION AND NEXT STEPS

**Question:** How engaged is Cabinet in this process?

**Answer (George Redling, PCO):** The President of the Treasury Board has a group of ad hoc Ministers in key regulatory departments working with him on this, so this initiative will get quite a bit of attention at Cabinet.

**Question:** You will be consulting multiple groups. At the end of the day, the document might look very different than what we have proposed.

**Answer (Diane Labelle, PCO)** It is a multiple consultation approach. The Reference Group is a more focused group. We have public consultations and consultation mechanisms with the provinces, territories and municipalities as well as internal consultations with federal government departments. Our challenge will be to weave in the results of all these consultations to reflect as much as possible what we have heard and what is believed to contribute the best to the regulatory system. My hope is that the representatives here are a reflection of the broader public.

**Question:** What is our ability to share some of the material and the draft directive when we receive it?

**Answer (Diane Labelle (PCO):** You can share everything you received today. The outcome of today's discussions will be posted on the web. As for future drafts of the regulatory policy, a decision has not yet been made.

## Appendix B

### List of participants

#### Public Advocacy Groups

- David Bennett: Director, Canadian Labour Congress
- Elinor Wilson: Chief Executive Officer, Canadian Public Health Association
- Dr. Kathy Kovacs Burns: Chair, Best Medicines Coalition
- Michael Janigan: Executive Director, Public Information Advocacy Centre
- Hugh Benevides: Associate, Canadian Environmental Law Association
- David Coon: Policy Director, Conservation Council of New Brunswick

#### Business/Industry

- Peter Brenders: President, BIOTECCanada
- John Dillon: Vice President, Regulatory Affairs and Legal Counsel, Canadian Council of Chief Executives
- Michael Murphy: Senior Vice President, Policy, Canadian Chamber of Commerce (absent) Substitute: Scott Campbell
- Gilles Taillon: President, Conseil du Patronat du Québec
- Garth Whyte: Executive Vice President, Canadian Federation of Independent Businesses
- Gemma Zecchini : Senior Vice President, Public Policy, Food and Consumer Products Manufacturers of Canada

#### Aboriginal Perspective

- Strater Crowfoot: Chair, Indian Taxation Advisory Board (Absent)

#### Other

- Yves Le Bouthillier: President, Law Commission of Canada
- Pat Keindel: President (Standards), Canadian Standards Association
- Paul Thomas: Duff Roblin Professor, University of Manitoba (via teleconference)

#### PCO

- Diane Labelle, A/Director of Operations, Regulatory Affairs Division
- George Redling, Assistant Secretary to Cabinet, Regulatory Affairs and Orders-in-Council Secretariat