

SUMMARY REPORT
of the
Winnipeg Public Workshop
on the
Draft Government Directive on Regulating
Held November 21, 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 Winnipeg Workshop (November 21, 2005)

3.1. Attendance at the Winnipeg Workshop

In total, 11 individuals attended the Winnipeg workshop. These individuals were primarily affiliated with industry and business, government agencies and public advocacy groups, including environmental non-government organizations and public health groups. For a complete list of participants, see Appendix 1.

3.2. Modification of the Winnipeg Workshop Agenda

The Winnipeg workshop agenda was modified at the request of participants. The workshop stayed in plenary throughout the day. Time was provided for

participants to work together as a group before plenary discussions. 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 Winnipeg Workshop held on November 21, 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 website www.regulation.gc.ca 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 website preferably by December 23, 2005. All posting on the 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 Winnipeg Workshop

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

- Participants from public advocacy groups expressed concern that “harmonization” was a move toward deregulation and the lowest common denominator in protection for the environment, health and safety of Canadians. Business participants agreed that harmonization should not lead to a lowering of standards, but that harmonization was warranted when it led to increased efficiency and fairness in trade.
- One participant, citing examples of unfair trade practices in his industry’s dealing with the USA, advocated for Canada taking a much more aggressive approach in its interpretation of international trade rules.
- One participant said he felt that there needed to be improved auditing practices and better access to more robust data.
- Some participants felt the standard 30-day comment period for regulatory proposals published in the *Canada Gazette* was insufficient.

4.2. General comments relating to the draft Directive

- One participant, noting that the draft Directive promoted a mix of government instruments to manage public policy issues, said that he felt the language in the draft was biased toward regulations over other policy tools. He advised that the draft Directive be rewritten in more positive language and that “carrots rather than sticks” be used to achieve policy objectives. For example, when choosing instruments, the Directive should commit regulators to search out ways and choose instruments that encourage companies to be innovative, rather than focus on mitigating risks.
- Several participants, primarily from the public advocacy sector, felt that the draft Directive should focus on regulations. One participant said that, while she agreed in principle with the idea of a mix of instruments, voluntary measures should not be part of the mix; this was the key lesson of Canada’s action on climate change, where voluntary measures had failed to achieve outcomes.
- On the other hand, other participants, primarily from business, felt that the Directive should emphasize voluntary, least-cost measures over regulations if they achieve the same policy objective. One participant suggested that the onus should be on the regulator to prove why a voluntary measure will not work.

- Some participants worried that the draft Directive would drive harmonization of Canada's regulations toward the lowest common denominator of its trading partners. One participant said she worried that a downsizing in the infrastructure of the federal government was driving the process.
- One participant said he felt that the draft Directive did a good job at describing or capturing the status quo. He said one would be hard pressed to find a federal department or agency that would not say that it already follows every commitment. For this reason, he is not sure whether the draft Directive will lead to any changes. He suggested piloting the draft Directive in a "dysfunctional" policy area, such as meat inspection, to see if it leads to any improvements in the regulations.
- One participant pointed that the globalization of supply chains will present one of the biggest challenges to the Canadian regulatory system, and that this had not been adequately addressed in the draft Directive.
- Several participants, primarily from the public advocacy sector, expressed a strong desire to see the Precautionary Principle emphasized over other considerations in the design and implementation of regulations. For these participants, an "over reliance" on science throughout the draft Directive was problematic, as it seemed to preclude the use of precaution in decision making. One participant suggested that without a higher status given to the Precautionary Principle, Canadians could not be confident that their interests in health, safety and environment were being served.
- One participant suggested adding a section in the Regulatory Impact Analysis Statement (RIAS) to indicate how precaution was used in the design of the regulatory proposal. He suggested adding an outline of the RIAS to the draft Directive as an annex.

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 be clear that the prime purpose of government and regulations is to protect and preserve health, safety and environment. Some felt that references to supporting businesses and the economy were inappropriate, and should be removed or at least should not receive the same level of treatment in the commitments. Some suggestions were:
 - Remove the third commitment completely (lines 54 to 56, or lines 56 to 58 in the French version), because the economy should not be a driver of regulations. This individual said she did not, however, object to

economy being mentioned in the section of the draft Directive that deals with Regulatory Analysis.

- Economy should be dealt with in a separate framework than the draft Directive which should deal exclusively with the protection of health, safety and the environment.
- One participant suggested integrating the first and third commitments (lines 47 to 49 with lines 54 to 56, or lines 48 to 50 with lines 56 to 58 in the French version) so that economic “protection” is included in the bullet.
- A suggestion was made that the commitments should clearly state that advancing the public interest is the primary goal of regulations.
- Generally, participants from business and government felt that references to supporting the economy were warranted. Several noted that economic prosperity, social well-being and healthy environment were interconnected and that supporting a fair and competitive economy was key to achieving other policy objectives such as social and environmental well-being. One participant felt that worrying about trading off economic growth for environmental protection was a bit of a false argument, since no democratically elected government is going to let people die in order to meet economic objectives. Several participants wondered what was meant by a “fair” and competitive market economy” in the third commitment (lines 54 to 56, or lines 56 to 58 in the French version). One participant suggested either defining “fair” or deleting it.
- One participant identified problems that can arise when speaking in terms of averages, which tend to bury or hide the most disadvantaged and vulnerable in society. In this regard, she felt uncomfortable with the overarching goal of providing the greatest **overall** benefit to present and future generations of Canadians. It was pointed out by one participant that the main determinant of health is income variance. Several participants felt that distributional issues needed to be addressed up front in the commitments, not just in the section of the draft Directive that deals with regulatory analysis.
- One participant, responding to suggestions that the commitments be prioritized, advised against looking at the commitments as trade-offs or trying to prioritize them.
- One participant, citing problems with NAFTA, suggested that the commitments be made legally binding.
- Several participants felt that the draft Directive should make a commitment to timeliness and identify clear timelines. It was pointed out that the seventh commitment to “facilitate timeliness...” was not strong enough language. The current regulatory process is slow and without change will

not be able to keep up with the rapidly changing business environment of the 21st Century. The system needs to speed up significantly, without sacrificing fairness and clarity.

- It was noted by at least one participant that “sustainable development” and “sustainability” were missing from the draft Directive and should be mentioned explicitly in the commitments.
- Several participants expressed a strong desire to see a commitment to the Precautionary Principle. One participant suggested replacing the third commitment (lines 54 to 56, or lines 56 to 58 in the French version) with a requirement to apply the Precautionary Principle. It was suggested that benchmarks and processes were needed for articulating new areas of enquiry when evidence is missing. A participant from business said that he would not object to the use of precaution as long as it was accompanied by clear rules governing its use.
- Participants from business expressed strong support for basing decisions on evidence, best available knowledge and science.
- Consumer protection and workers rights were identified as issues that needed their own commitments.
- One participant said that while there is value in a consultative approach to regulating, it must not be at the expense of expediency.
- The issue of definitions was raised by several participants, who felt that some of the terms were open to interpretation.

General comments related to the Regulatory Analysis section as a whole

- One participant, noting that it is usually the same small group of stakeholders that participates in consultations, said that the government needed to seek new innovative ways to ensure that a broad base of Canadians is involved at all stages of the regulatory process. Current consultative processes have the unintended effect of tying the government’s views to those of a small group of special interests, both industry and ENGOs. Another participant said it was important to distinguish between consultations with the public (to determine what the public interest is) and consultations with the regulated communities (to work out the details).

II Scope of Application (lines 99 to 134, or lines 113 to 153 in the French version)

- Participants generally liked the needs-based approach to assessing and assigning resources as described in the subsection on regulatory

significance and allocation of resources (lines 116 to 134, or lines 134 to 153 in the French version).

A. Consulting Canadians (lines 138 to 175, or lines 157 to 200 in the French version)

- Participants agreed that the regulatory process must be transparent and open. They also recognized that there is an inherent tension between depth and timeliness in consultations.
- However, some felt that the time for consultations must be short and limited so that the regulatory system can remain nimble and responsive to the needs of a rapidly changing world. One participant pointed out that consensus is the domain of Parliament and the legislative process, not of regulation making. A suggestion was made to make better use of the internet and electronic technologies to speed up consultations.
- Other participants felt that transparency should drive the process, and sufficient time should be allotted to allow Canadians to “get up to speed” and participate effectively in decision-making processes. One participant said there was value in the consultative process itself, which went beyond the quality of decision-making. A suggestion was made that there should be benchmarks for consulting, since departments vary in their understanding of what constitutes consultation.
- Several participants felt that in informing Canadians on the nature of a public policy issue, the government should also state clearly what it does when it does not know (lines 159 to 160, or lines 179 to 180 in the French version). This needs to be accompanied by an analysis of the consequences of action and of inaction on a policy issue. One participant felt that consultations should start at a stage where Canadians can participate in determining regulatory significance of a public policy issue, earlier than suggested in the draft Directive.
- One participant suggested adding “in light of the Precautionary Principle” to the bullet in lines 159 to 160 (lines 179 to 180 in the French version).
- Several participants felt that the government should commit resources in support of participation so that other groups have a chance to contribute to the framing of the issue and debate (not just government). A suggestion was made to add the words “adequate time” and “resources in support of participation” to the bullet in lines 162 to 163 (lines 184 to 185 in the French version). A participant from business said that such support should be made available to all groups, including industry.

- One participant suggested that, in consulting Canadians, regulatory proposals include a clear articulation of the goals of consultations, a clear acknowledgement of who (e.g., industry) has had a role in drafting the regulations, as well as the reason or justification of how and why groups were involved and options available to achieve objectives.
- To address the issue of transparency and the use of precaution, a suggestion was made to add a bullet to lines 158 to 165 (lines 178 to 188 in the French version) that says: “inform Canadians of the policy objectives of regulation and the appropriate use of precaution”.

B. Identifying and Assessing Public Policy Issues (lines 177 to 211, or lines 202 to 241 in the French version)

- One participant suggested adding “business competitiveness” to the bullet in lines 198 (lines 224 to 227 in the French version).

C. Selecting, Designing and Assessing Regulatory Responses (lines 213 to 368, or lines 243 to 411 in the French version)

- One participant, noting that there was a subsection dealing with international obligations, suggested that there should also be a subsection on compliance with internal (domestic) obligations.
- Several participants objected to the mention of international trade obligations in the same sentence as obligations toward human rights, environment, health and safety (lines 261 to 264, or lines 293 to 296 in the French version).
- It was pointed out that the language in the bullet on lines 232 to 233 (lines 262 to 263 in the French version) needed to be rewritten to better express the notion that regulations are designed to facilitate compliance (rather than encourage people to break the rules).
- The suggestion was made that the draft Directive be clear on what the federal, provincial and territorial obligations are in specific sectors and detail those respective roles in the RIAS.

D. Analyzing Impacts and Ensuring Benefits Justify Costs (lines 370 to 467, or lines 413 to 526 in the French version)

- Several participants objected to the reliance on cost-benefits analyses as outlined in the section (lines 370 to 467, or 413 to 526 in the French version). It implies that environmental, social and economic costs are equally important which, in the view of several participants, is not the case.

- One participant said that he appreciated the recognition in the bullet on lines 438 to 439 (lines 491 to 493 in the French version) that regulations can impose prohibitive costs on small businesses.
- One participant said that the section on lines 433 to 444 (lines 484 to 499 in the French version) needed to state a requirement that regulations and other measures avoid creating barriers to internal trade. It should reference the agreement on internal trade.

E. Planning for Implementation and Compliance (lines 469 to 505, or lines 528 to 564 in the French version) and F. Measuring, Evaluating and Reviewing Regulation (lines 507 to 546, lines 566 to 610 in the French version)

- It was suggested by several participants that Section E and F were missing benchmarks for timeliness.
- One participant suggested that the monitoring process needs to be transparent and regulations need to be given a shelf life / sunset clause so that they are re-examined after a fixed time to ensure they are the most appropriate response given the current circumstances. Otherwise, one generation will continue making the same mistakes as the last.

4.4. 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)

- Several participants advised that adequate resources be allocated to implement regulations. At least one participant felt that the role of PCO in regulatory processes should be strengthened so that it is able to reject regulatory proposals on the basis of failure to comply with the draft Directive.
- A suggestion was made that the policies and legislation listed in Section VI (lines 641 to 652) be better organized. Currently, it mixes foundational (first principles) frameworks with operational frameworks. For example, the framework for the Precautionary Principle and the User Fees Act should not be in the same list.

4.5. Final Roundtable from participants

Before adjourning for the day, the facilitator asked each participant to provide any additional suggestions or comments that were not already raised during the workshop. Participants were asked to consider whether the draft Directive was moving in the right direction. The following details comments made during the roundtable discussion that were not explicitly captured elsewhere in this summary.

- Consultations are, in and of themselves, useful. They provide a rare opportunity for adults to come together to debate ideas. Public polling is not a substitute for public consultations. They are also needed to rebuild public trust. This was one of the findings and recommendations of the Krever Commission
- The interesting policy debate occurs in the outer circle of the second slide in the PCO presentation (i.e., Key Sectors and Thematic Areas). We need broader consultations on the Smart Regulation Initiative and on where we want to go as a country.
- The draft Directive is a move in the right direction. It will be important to establish clear timelines and show results.
- It will be interesting to see the action that results from these consultations.
- Some participants said that, without knowing more about the current Regulatory Policy, it is difficult to know whether the draft Directive is a step in the right Direction.
- There are some areas of the draft Directive that appear to be an improvement. More still needs to be done to put the public interest at the front and center of the Directive.

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

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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 Winnipeg Workshop, November 21, 2005

(Total number of participants = 11)

- Madeline Boscoe, Canadian Women's Health Association, Winnipeg, Manitoba
- Shirley Conibear, Manitoba Cattle Producers Association, Baldur, Manitoba
- Liz Dykman, Manitoba Eco-Network, Winnipeg, Manitoba
- Gerry Fitzsimmons, Internal Trade Secretariat, Winnipeg, Manitoba
- Eric Fridfinnson, Flax Council of Canada, Manitoba
- Ronald Humble, Manitoba Energy, Science and Technology, Winnipeg, Manitoba
- Anne Lindsey, Manitoba Eco-Network, Winnipeg, Manitoba
- Rory McAlpine, Maple Leaf Foods, Toronto, Ontario
- Randall McQuaker, Resource Conservation Manitoba
- Darryl Melnyk, Health Canada, Winnipeg, Manitoba
- Nevin Shaw, Manitoba Industry, Trade and Mines, Winnipeg, Manitoba

PCO staff in attendance:

- Samir Chhabra, Policy Analyst
- Ben Turcotte, Senior Policy Analyst
- Daniel Wolfish, Policy Analyst