

SUMMARY REPORT
of the
Yellowknife Public Workshop
on the
Draft *Government Directive on Regulating*
Held November 28, 2005

Prepared by:

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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 Yellowknife Workshop (November 28, 2005)

3.1. Attendance at the Yellowknife Workshop

In total, 17 individuals attended the Yellowknife workshop. These individuals were primarily affiliated with aboriginal organizations, territorial review boards and territorial and federal governments. For a complete list of participants, see Appendix 1.

3.2. Modification of the Yellowknife Workshop agenda

The participants at the Yellowknife workshop agreed to modify the agenda due to relatively small group size. 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 Yellowknife Workshop held on November 28, 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 (SRI) 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 mentioned 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 (e.g., environmental organizations, or industry groups) 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 at 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 Yellowknife Workshop

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

- Some participants commented that they did not have sufficient time or resources to properly prepare for the workshop.
- One participant asked whether PCO had a tracking system for comments it hears at the workshops and wondered how comments will be incorporated or rejected.
- Another participant asked whether there was still a mandate for the regulatory renewal and workshop process given that the current government would likely fall with the upcoming non-confidence vote in the House of Commons.
- One participant asked how the draft Directive applies to existing regulations, and what the criteria will be for identifying regulations that “need work” most urgently.
- Another participant wanted to know how the regulatory renewal process related to other harmonization and regulatory renewal processes in other jurisdictions.
- One participant asked which national Aboriginal organizations had been consulted as part of the public engagement process for the draft Directive. Another participant asked whether these groups received resources to contribute effectively.

4.2. *General comments relating to the draft Directive*

- Initial comments relating to the draft Directive were either generally supportive or ambivalent.
- Several participants commented that the draft Directive was lengthy, complicated, repetitive and bureaucratically written. They felt that a shorter and simpler document and one that provided more context would have been more amenable to public input. In terms of context, one participant suggested that there needed to be more information on how the draft Directive would improve things for the average citizen.
- A couple of participants wondered whether the requirements in the draft Directive would make regulation-making more time-consuming and add more bureaucracy to the process and whether the resources would be

available to fulfill these requirements. These concerns were raised by several other participants throughout the workshop.

- One participant stated that many of the requirements of the draft Directive have been in practice among regulators in the North for the past 15 to 20 years. The draft Directive is simply describing current practices.
- Individuals also offered the following specific comments:
 - The draft Directive should never refer to Aboriginal people as stakeholders.
 - The draft Directive does not address the marginalization of women stemming from existing regulatory obligations.

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 supported the commitments as nice-sounding “motherhood” statements, but believed that the commitments are only meaningful if supported by what follows in the draft Directive, including timelines for achieving goals and measurable indicators.
- A few participants expressed concern about the concept of “greatest overall benefit” in the opening paragraph in lines 41 to 43 (lines 41 to 43 in the French version). It was suggested that the concept of equity should be included in this section to ensure that benefits for the majority are not accrued at the expense of certain groups. Several participants agreed that this was particularly important for the North since they did not think that development in the North should hinge on the rest of Canada, which has a much greater population. Another participant stated that gender equity needs to be addressed explicitly.
- Two participants commented on the prominence of commitments to a market economy and these commitments may not be a priority for everyone. One of these participants suggested that economic commitments should be secondary. It was also noted that it will be difficult to meet such a wide range of commitments with limited resources.
- Other suggestions and comments from individual participants included the following:
 - Add “gender equity” to the list beginning with “health, safety and security ...” in the first commitment on lines 47 to 49 (lines 48 to 50 in the French version).
 - The meaning of the phrase “do the most good” is unclear.
 - Include a statement of commitment towards existing land claim and international agreements.

- Include a commitment to protect the subsistence lifestyle of Aboriginal peoples. This comment was later expanded to include a commitment to protect the diversity of lifestyles, particularly in the North.

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

General comments related to the Regulatory Analysis section as a whole

- Participants provided comments and made suggestions regarding the wording and format of this section:
 - A few participants suggested that more active language such as “will” and “must” instead of “are expected to” or “should”. Some participants felt that more active language could be used in many instances without being overly prescriptive, such as in lines 251 to 252 (lines 281 to 282 in the French version).
 - One participant suggested that a flow chart be included in this section to describe the regulatory analysis requirements and to clearly show that consultation is an overarching requirement.
 - One participant suggested that a list of definitions (glossary) for important terminology be provided.

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

- Several participants made comments and requested clarification regarding the scope of the draft Directive:
 - A few participants asked for clarification on how the draft Directive would affect territorial land and water boards and other quasi-federal bodies in the North such as environmental impact review boards.
 - Some participants also asked how the draft Directive would impact Aboriginal rights under land claim agreements (LCAs).
 - One participant suggested that more direction was required on how the analysis requirements in the draft Directive would be applied to low risk and high risk policy issues.
 - One participant stated their support for the use of the word “among” in line 129 (line 148 in the French version), as it reflects that there is a wide range of interests among Canadians, which is particularly relevant in the North which has few voices in a large area. It was suggested that there be more in the draft Directive on how conflicts between different interests will be addressed. Conflict between the interests of the oil industry and the north with respect to potential greenhouse gas regulations was cited as an example.

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

- Participants had several comments and suggestions regarding consultations, especially engagement and dialogue with Aboriginal peoples.
- One participant expressed concern that consultation with Aboriginal people was being focused on National Aboriginal Organizations instead of regional aboriginal groups or other groups that are more likely to be affected by the proposed initiative. It was suggested that a stronger requirement for adequate regional Aboriginal representation be included in relevant sections (lines 138 to 175 and/or lines 335 to 347; lines 157 to 200 and/or lines 374 to 387 in the French version). Citing lessons learned from consultation with the Inuvialuit, another participant emphasized the importance of regional differences between and within Aboriginal groups, not only between North and South but also between the East and West.
- One participant also stated that under many land claim agreements, there are co-management boards with regional representation that are designated contact points for consultations instead of National Aboriginal Organizations. These governance structures and their implications for consultation should be considered and clarified in the draft Directive.
- Several participants raised the issue of capacity and funding for Aboriginal consultation.
 - It was suggested that the draft Directive expand on the obligations described at lines 147 and 148, (lines 166 to 167 in the French version) and provide more clarity and transparency regarding responsibility for funding and capacity-building.
 - It was also suggested that an additional bullet be added following the bullet of lines 164 and 165 (lines 186 to 188 in the French version) that reads “ensure that communities have the capacity to participate.” This point was considered to be especially important in the North.
 - One participant suggested incorporating the Auditor General’s recommendation on Aboriginal consultation into the draft Directive.
 - One participant asked how the consultation requirements of the directive would change in light of consultations by Indian and Northern Affairs Canada concerning the Haida Nation and Taku River Tlingit court decisions.
- One participant emphasized the importance of consulting with those who will be most affected by a proposed regulatory activity and the challenge of getting input from individuals or groups that are not “officially” recognized.

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

- Given the requirements for comprehensive analysis set out in the draft Directive, one participant suggested that guidance be provided with respect to timelines to avoid protracted analyses.
- One participant stated the emphasis on analyses based on quantifiable risk, scientific and empirical evidence, and economic factors (lines 184 to 193, or lines 210 to 221 in the French version) would favour minimization of non-predictive results. However, non-predictive results may be desired for creative and dynamic social change. Therefore, the analyses recommended in the draft Directive could stifle certain initiatives.

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

- A few participants found this section to be far too wordy and suggested that it be shortened or that sections be moved to an appendix, such as the section detailing obligations under trade agreements including sanitary and phytosanitary measures (lines 276 to 305, or lines 310 to 343 in the French version).
- Two participants considered the section concerning fostering cooperation with Aboriginal peoples on lines 340 to 347 (lines 380 to 387 in the French version) to be limiting due to its focus on legal considerations. Two suggestions for changing this section were made:
 - Add the following bulleted statement at line 347 (line 387 in the French version): “In a manner consistent with the honour of the Crown and its fiduciary obligations to Aboriginal Peoples.”
 - Add “as appropriate” to the end of the sentence at line 342 (line 382 in the French version) and remove the bulleted statements on lines 343 to 347 (lines 383 to 387 in the French version).
- Individuals also offered the following specific comments and suggestions:
 - An opening statement should be added to this section to indicate that the Government of Canada is moving away from a *command and control* approach to achieving policy objectives to one that places responsibility on individual organizations.
 - As mentioned earlier, working with National Aboriginal Organizations or other groups could go against provisions of LCAs that specifically designate co-management boards as contact points.
 - In the subsection entitled Assessing Legal Obligations, change “a legal obligation” to “an existing legal obligation” in line 248 (line 280 in the French version). This change emphasizes that this requirement

pertains specifically to existing legal obligations and is not to the exclusion of moral obligations.

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

- Several participants emphasized the complexity and subjectivity of social and environmental cost-benefit analysis and risk assessment:
 - One participant stated that social and environmental benefits and costs are difficult to quantify and stressed that involuntary acceptance of costs and forfeiture of benefits is unacceptable. The need for consultation stems from the requirement for voluntary acceptance and forfeiture.
 - Two participants stated that benefits and costs are perceived differently by different societies, such as Aboriginal and non-Aboriginal societies. One of these participants suggested that a reference to traditional knowledge should be added to this section to reflect this difference.
- A few participants felt that too much of the language used to describe costs had a financial tone. They suggested using more general language to describe cost and benefits such “negative” and “positive” impacts.
- Two participants requested more clarity on the scope of analysis required for different types of regulations, as significant costs are associated with range and types of analyses described in the draft Directive.
- Individuals also offered the following specific comments and suggestions:
 - Clarification was requested regarding the logic of the sentence on lines 378 to 382 (lines 421 to 425 in the French version).
 - It was suggested that “gender equity” be added to the list of areas of social impact in the bullet on lines 392 to 394 (lines 436 to 429 in the French version), and that the following statement be added to the list of bulleted statements on lines 434 to 444 (lines 496 to 499 in the French version): “Undertake a comprehensive gender-based analysis of all regulatory proposals and incorporate the findings to ensure gender equity.”
 - It was suggested that the possibility of the analysis showing unacceptable impacts should be acknowledged. This could be done by including a statement indicating that if impacts are unacceptable the proposed initiative should be abandoned near the end of Section C.
 - The requirement that “no unnecessary regulatory burden” be imposed on Canadians (line 430 to 431, or lines 481 to 482 in the French version) is very subjective. It was suggested that the wording be

changed to express a requirement to reduce regulatory burden for Canadian. This participant also felt that the expression “do the most good” in lines 448 to 452 (lines 503 to 507 in the French version) was also subjective.

- Duplication in environmental assessment processes is a major issue in the north. This relates to the legal status of territorial boards and how this draft Directive would affect them.

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.

- With regard to measuring, evaluating, and reviewing regulations, participants provided the following comments and suggestions:
 - One participant asked where the trigger was in the draft Directive for changing a regulation if evaluation and review shows that things are not working. Without this trigger the Directive is a futile exercise. It was suggested that this be clarified in the document, including any requirements for amendments to the regulation, or more public consultation.
 - Another participant suggested that the costs and time-sensitivity of measuring performance of a regulation need to be recognized in the draft Directive.
 - Two participants noted that the bullet in lines 544 to 546 (lines 608 to 610) specifically supports competitive market economics. They did not want to see cooperative modes of production be overshadowed by the enshrinement of the competitive market model. One of the participants stated that Aboriginal people generally do not support this economic model.
 - One participant suggested that gender equity be added to the list of areas in the bulleted statement on lines 536 to 538 (lines 597 to 600 in the French version).
- In terms of consistency with other federal government policies, one participant expressed concern about the inclusion of *The Framework for the Application of Precaution in Science-based Decision Making about Risk* and its implications for the territorial land and water board.
- Participants expressed general approval for the requirement for a 5-year review of the Directive.

4.6. Final Round-Table from participants

Before adjourning for the day, the facilitator asked each person in the room to provide any additional suggestions or comments that were not already raised during the workshop. Most participants expressed appreciation for the opportunity to express their views in the workshop and to hear those of others.

Additional comments made during the Round-Table that were not explicitly captured elsewhere in this summary are as follows:

- It would be nice to have a human face to future engagement with PCO as the draft Directive is revised.
- The draft Directive still appears to be indicative of trends in the federal government towards more central agency control and the politicization of the civil service and bureaucracy.
- The Treasury Board of Canada needs to provide resources to departments and agencies in implementing this 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 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 Yellowknife Workshop, November 28, 2005

- Rhian Christie, INAC – Nunavut Region
- Brian Davidson, Sahtu Secretariat Inc., Deline, NT
- Jessie Dawson, Kwalin Dun First Nation, Whitehorse
- Norma Dean, NWT Federal Council
- Jennifer Dickson, Pauktuutit Inuit Women's Association, Ottawa, On
- Linda Ecklund, Industry Tourism and Investment (ITI), NT
- Sheryl Grieve, North Slave Metis Alliance, Yellowknife, NT
- Chris Heron, Northwest Territory Metis Nation, Fort Smith, NT
- Adam Houston, Industry Tourism and Investment, GNWT, Yellowknife, NT

- Terry Lancaster, Industry Tourism and Investment (ITI), Northwest Territories
- Gabrielle Mackenzie-Scott, Mackenzie Valley Environmental Impact Review Board, Yellowknife, NT
- Janet Marshall, Indian and Northern Affairs Canada, Gatineau, QC
- Lesley McDiarmid, Kwalin Dun First Nation, Whitehorse
- Valerie Meeres, North Slave Metis Alliance, Yellowknife, NT
- Norm Snow, Inuvialuit Joint Secretariat, Inuvik NT
- Mary Tapsell, Mackenzie Valley Environmental Review Board, Yellowknife NT
- Bob Wooley, Mackenzie Valley Land and Water Board, Yellowknife NT

PCO staff in attendance:

- Samir Chhabra, Policy Analyst
- Murray Thorpe, Policy Analyst
- Daniel Wolfish, Policy Analyst