

SUMMARY REPORT
of the
Moncton Public Workshop
on the
Draft *Government Directive on Regulating*
Held November 14, 2005

Prepared by:

Hajo Versteeg, B.A., LL.B., M. Jur.
Environmental Law and Policy Advisor
5365 Hilltop Dr
Manotick, Ont, Canada K4M 1G4
☎ (613) 692-4837
✉ hajo@sympatico.ca

And:



Stratos Inc.
1404-1 Nicholas Street
Ottawa, Ontario
K1N 7B7
www.stratos-sts.com

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 Moncton Workshop (November 14, 2005)

3.1. Attendance at the Moncton Workshop

In total, 38 individuals attended the Moncton workshop. These individuals were primarily affiliated with public advocacy groups, including but not limited to environmental non-government organizations, labour, public health, conservation and consumer groups. Individual members of the Canadian public, as well as individuals affiliated with provincial governments, universities, political organizations, fisheries and farming organizations, and industry and business interests were also in attendance. For a complete list of participants, see Appendix 1.

3.2. Modification of the Moncton Workshop agenda

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

3.3. Structure and content of this Workshop Report

Section 4 of this Report provides a summary of what was heard at the Moncton Workshop held on November 14, 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 Moncton Workshop

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

Several participants suggested that the government work through multiple channels, including the media, in order to inform and engage a wider audience in its public consultations. It was noted that public consultations provided a rare opportunity to foster dialogue between different groups, and it was suggested that greater attention to communicating the workshops might have attracted better representation of business. Several participants felt that they had not been given proper notification of, and adequate time to prepare for, the workshop. One participant suggested that eight workshops across Canada should not be viewed as fully consulting Canadians.

A few participants questioned the motive for the workshops—they felt the draft Directive was a *fait accompli* and would not change as a result of workshop discussions. These individuals cited their experiences participating in other consultative processes where they felt their views had been ignored. These PCO workshops were seen as “diversionary tactics” to force an agenda of deregulation and unbridled economic expansion on the country. Several participants felt that economic growth was inherently incompatible with environmental protection.

A suggestion was made that the entire workshop proceedings be taped, transcribed and made available to anyone with an interest in them. This suggestion was supported by several participants, particularly from the public advocacy sector.

Several participants felt that the existing and the proposed regulatory regime in Canada afforded inadequate protection to the environment, human health and safety. The real costs, both monetary and non-monetary, of environmental degradation were noted. These individuals expressed support for a green economy that would reap many benefits for the country.

Several participants, primarily from the public advocacy sector, expressed a distrust of the Smart Regulation Initiative. They felt that the Smart Regulation Initiative and, by implication, the draft Directive were a move toward deregulation and voluntary measures. Many participants worried that the Smart Regulation Initiative would eventually threaten our health care system, water, land and air.

One participant expressed the view that the regulatory system would remain powerless to prevent the demise of the natural environment as long as the federal government pursued a policy of economic growth. To some, the government seemed to be regulating the demise of the environment.

4.2. General comments relating to the draft Directive

Many participants, primarily from the public advocacy sector felt that the draft Directive subscribed to a business/economy-first paradigm and therefore did not break with approaches in the past. They expressed great disappointment that the draft Directive did not emphasize respect and protection for the environment, human health and safety over economic growth. Among other things, this was reflected in the sections of the draft Directive that require: regulatory initiatives to comply with international trade obligations (such as the World Trade Organization (WTO) Agreement and the North American Free Trade Agreement); departments to conduct economic impact analyses of regulatory proposals, especially the reference to measuring costs and benefits; and, requirements to analyze and manage risks. While some provided specific suggestions for improving the current draft (captured in the subsections below), others advocated scrapping the draft Directive and starting over. The focus of a rewritten Directive would be on protecting human health, safety and the environment with the Precautionary Principle as the guiding beacon for regulatory policy.

Participants from public advocacy groups worried that “harmonization” was a move toward deregulation and the lowest common denominator in protection for the environment, health and safety of Canadians. A very clear message from these participants was that the Precautionary Principle was not, but must be made, the focal point of the draft Directive. Many participants felt that requirements in the draft Directive for the departments to assess the benefits and costs of a regulatory proposal abrogated protection of the environment and human health and well-being. They felt, for example, that a reliance on “best available evidence and knowledge”, risk assessment and cost benefit analyses to determine whether regulatory action is required and whether regulation should be part of the mix of instruments could and would be used to weaken or eliminate the use of precaution in decision making. These, taken together with a call for the use of “a mix of instruments”, opened the regulatory-making process to the influence of special interests, particularly from industry and business. For most participants from the public advocacy groups, the Precautionary Principle must be made the cornerstone of the draft Directive and of all regulatory activity in Canada.

Several participants expressed a desire to see the draft Directive rewritten in language that is more easily understood. This would make it accessible to a wider audience. Many participants suggested that certain terms and phrases in the draft Directive needed to be defined explicitly. For example, “greatest overall benefit to Canadians” and “fair and competitive markets” were terms identified as being subjective and open to interpretation. Some participants felt the draft Directive was too broad in its scope and suggested that it be broken into smaller, more manageable topics.

There were a small number of individuals with an industry/business perspective in attendance at the Moncton workshop. Generally, these individuals felt that the

draft Directive was a move in the right direction. In particular, some of these participants felt that the requirement that regulators coordinate their activities and cooperate with other jurisdictions was very useful. This they saw as a move toward reducing red tape and duplication in the regulatory system of Canada. Participants from business said they did not object to effective regulations as long as these were efficient regulations that did not add unnecessarily to the costs of doing business, which can be quite onerous for small and medium-sized enterprises.

Some participants saw the draft Directive's requirement that regulators consider environmental, social and economic impacts when developing regulatory proposals as a clear move towards sustainability. Others noted the absence of the words "sustainable" and "sustainability" from the text of the draft Directive.

Enforcement of regulations was identified by many participants as a perennial problem which undermined the effectiveness of regulations. They felt that the draft Directive did not adequately address the paramount need for departments and agencies to ensure that their regulations are strictly enforced.

A suggestion was made that the draft Directive should require "sunset clauses" to be incorporated in new regulations to ensure continual reassessment of regulations for their effectiveness and efficiency and responsiveness to changing times. Related to this, a suggestion was made to ensure specific timelines for review of submissions.

One participant noted that everywhere the word "human" appears, the phrase "respect for the earth" should be added.

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 state that the prime purpose of regulations and government is to protect and preserve health, safety and environment, and therefore, any references to supporting businesses and the economy were inappropriate. These participants expressed a strong desire to see the Precautionary Principle emphasized in the commitments. The Precautionary Principle should be the cornerstone of all regulatory activity in Canada. Some suggestions were to:
 - Replace the commitment to making decisions based on evidence (lines 58 to 59 in the English version, lines 60 to 62 in the French version) entirely with a commitment to basing decisions on the precautionary principle;
 - Qualify the commitment to making decisions based on evidence so that it is understood that in the absence of evidence, decisions are based on the principle of precaution.

- It was noted by some participants that the government should commit to making Canada a leader in environmental standards and protection.
- A suggestion was made to change the word “Canadians” to “citizens” in the first paragraph of the section on commitments (lines 41 to 43 in both English and French versions).
- The suggestion was made that the statement should include a commitment to enforce regulations.
- It was noted by several participants that the statement on commitments did not articulate a vision. Suggestions were made that the vision that was needed was one that emphasized protection of the natural environment and human health.
- Several participants, primarily from the public advocacy sector, objected to the government committing to a fair and competitive economy (lines 54 to 56 or lines 56 to 58 in the French version). Some suggested that this ran contrary to the value of protecting the environment. Others suggested that the terms needed to be defined as they are value-laden. One participant, agreeing in general with the above changes, suggested removing the commitment to a fair and competitive economy entirely.
- One participant suggested keeping the first commitment (lines 47 to 49: “Serve and protect the public interest”, or lines 48 to 50 in the French version) and deleting the rest (lines 50 to 71, or lines 52 to 75 in the French version), reasoning that government did not have the legal right to commit to the other six.
- The importance of transparency in all aspects of the regulatory process was highlighted by many participants, a number of whom suggested that the commitment to transparency (lines 61 to 62, or lines 64 to 65 in the French version) in the draft Directive needed strengthening. The suggestion was also made that the commitment to transparency should include a commitment to clear (understandable, plain English) regulations. People also need to be able to easily find regulations that affect them. This is needed if the public is to participate effectively in policy debate and decisions. One participant pointed out that transparency and clarity in regulations would help people understand the policy objectives of regulations, which might at first not appear obvious (e.g., social objectives of inter-provincial barriers to dairy trade).
- The suggestion was made that the draft Directive should commit to protecting whistle blowers who speak out in the public interest. The regulatory system needs to reinforce the independence of its scientists and provide them with the resources to carry out their work in the public

interest. Responsibility for conducting the necessary research should never be delegated to industry.

- A suggestion was made that the commitments include a requirement that the government conclude a full cost-benefit analysis of the Directive and disclose the results to interested parties.
- One participant suggested the following specific changes to the commitment to Canadians:
 - **Serve and advance the public interest** as expressed by Parliament in legislation in such areas as health, safety and security, the quality of the environment, and the economic and social well-being of Canadians;
 - **Instill trust and confidence** at home and abroad in federal regulation, ~~Canadian products and services, and Canadian markets and government institutions;~~
 - **Support a fair and competitive market economy** ~~that encourages entrepreneurship, trade, investment and innovation by Canadians and businesses;~~
 - **Make decisions based on evidence** ~~and~~ the best available knowledge and science in Canada and worldwide, which includes the Precautionary Principle;
 - **Create more accessible, understandable and responsive** regulation through greater inclusiveness, transparency and public scrutiny [leave as is];
 - ~~Promote effectiveness by ascertaining that over time the benefits of regulation justify the costs, by focusing human and financial resources where they can do the most good, and by demonstrating tangible results to Canadians; and~~
 - **Facilitate timeliness, efficiency and policy coherence** through cooperation and coordination across the federal government, with other governments in Canada and abroad, ~~and with businesses and Canadians.~~

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

- A number of participants, citing problems enforcing compliance with regulations, felt that the draft Directive did not address enforcement effectively. Some participants expressed concern that there is a trend towards a smaller civil service which made enforcement all the more difficult. A number of participants felt that the draft Directive should specify that penalties be harsh enough to act as a deterrent and that departments be required to allocate sufficient resources for enforcement activities. One participant expressed the view that in most cases, fines are low enough

that businesses just consider them as a business expense (a cost of doing business).

- Many participants felt that the draft Directive should not give economic impact analysis the same importance/priority as environmental and social impact analysis (lines 400 to 444 in the English version, lines 427 to 499 in the French). Some, citing problems valuing environmental and social costs in cost-benefit analysis, felt that the entire section (lines 424 to 444 in the English version and 474 to 499 in the French) dealing with economic impact analysis should be removed from the draft Directive.
- Several participants felt that the economic impact analysis would get in the way of designing effective regulations that safeguard the environment, human health and safety. Costs to businesses and the economy have been used in the past as reasons for not acting, notably on climate change.
- A number of participants commented on the differences in the standard comment periods between regulations with international trade implications (75 days) and regulations without (30 days). For these participants, this belied a business bias in the draft Directive. The comment periods should be made the same.
- The section should commit agencies and departments to eliminating redundancies in the collection of data from the regulated communities.
- Several participants, primarily from the public advocacy sector, commented that basing decisions on analyses of risks and designing regulatory responses to manage risks were highly problematic (lines 179 to 193, or lines 204 to 221 in the French version). These participants pointed out that the risk assessment / management paradigm presupposed that risks imposed on the environment or human health could ever be acceptable and that they could be quantitatively measured and compared to economic benefits. In their view, risk analysis allows industry to place dangerous chemicals on the market.
- Some participants felt that the draft Directive's requirement for selecting a "mix" of instruments (lines 215 to 242 in English and 245 to 273 in the French), of which regulation is mentioned as one instrument, to achieve policy objectives would serve to weaken the regulatory system. One participant suggested that this proposed approach was the opposite of a precautionary approach since the onus was being placed on regulators to prove that regulation was necessary.
- The suggestion was made that line 127 (line 146 in the French version)—the cost of implementation and compliance by government,

business and Canadians—should include the costs of enforcement. A suggestion was made to drop line 129 (line 148 in the French version)—the degree of interest and contention among Canadians—because regulation making should not be influenced by the degree of interest or contention.

- Several participants, primarily from the public advocacy sector, felt that lines 158 to 159 (178 to 181 in the French version) --- When undertaking consultations, departments and agencies are expected to “inform Canadians of the nature and implications of the public policy issue based on available evidence, science or knowledge” --- did away with the use of the Precautionary Principle.
- The suggestion was made that the term “affected parties” in line 140 (line 159 in the French version) be defined. It was pointed out that there should be no third party—other than Canadians and their government—involved in public policy decisions.
- In lines 246 to 257 (275-289 in the French version), the draft Directive must be explicit about the laws and legislation it is referring to. They should all be listed.
- One participant felt that the draft Directive would add to, rather than reduce, red tape.
- Planning for compliance (lines 473 to 485, or lines 532 to 544 in the French version) must not be used to cancel a regulatory proposal just because the dollar costs of compliance are determined to be too high.
- The draft Directive should give direction to departments on when to send regulations to Parliamentary Committees for discussions, as this would improve public engagement.

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 GRD were much shorter than the other themes. Some participants noted that the regulatory analysis section of the draft Directive needed to be redrafted before a meaningful discussion on Implementation could take place.

- Participants from business urged that regulations be made more cost-effective.

- The suggestion was made that a full cost accounting of the draft Directive was needed in order for participants to be able to provide constructive advice on implementation.
- Concern was raised about reference to international obligations, especially given the prominence of trade-related agreements in the draft Directive.
- The suggestion was made that lines 544 to 546 (lines 608 to 610 in the French version) remove the reference to fair and competitive market economy because this should never supersede the values of protecting human health and the environment.

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. The following detailed comments made during the Round-Table that were not explicitly captured elsewhere in this Summary.

- Some individuals expressed their appreciation for an opportunity to hear a diversity of views especially the opportunity to hear views that were different from their own.
- Do no harm (and others taken from Rotary International's guiding principles) should be the key principle espoused in the document.
- Determinants of health are not mentioned in the draft Directive.
- The document lacks a Canadian identity.
- A number of people felt that the draft Directive focused on reacting to problems, rather than emphasizing prevention of the problems occurring in the first place. This was evident in the use of words such as mitigate, etc.
- Some participants noted the importance of consulting and involving all interested parties in policy decisions.

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

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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 Moncton Workshop, November 14, 2005

(Total number of participants: 38)

- Jeanne Arnold, Falls Brook Centre, Knowslesville, NB
- Louisa Barton-Duguay, SOS Eau Water Sankwan, Moncton, NB
- Wendy Betts, Eco-PNB, Fredericton, NB
- Mary Boyd, PEI Health Coalition/McKillop Centre for Social Justice, Charlottetown, PEI
- Jean-Paul Bourque, Sierra Club Canada Atlantic, Moncton, NB
- Georges Brun, Rabbit Brook Committee, Moncton, NB
- Richard Butland, Conservation Council of New Brunswick, Dieppe, NB
- David Chown, Canadian Association of Chain Drug Stores, Windsor Junction, NS
- Stephanie Coburn, Conservation Council of New Brunswick, Head of Millstream, NB
- Mary Ann Coleman, NB Environmental Network, Waterford, NB
- Kathleen Connors, Canadian Health Coalition, Pouchcove, NL
- David Coon, Conservation Council of New Brunswick, Fredericton, NB
- Sean Cooper, APCC, Moncton, NB
- John Crompton, Conservation Council of New Brunswick, Moncton, NB
- Sharon Flatt, Canadian Unitarians for Social Justice, Douglas, NB
- Melissa Friedman, CBC Radio, Moncton
- Neil Gardner, Sierra Club Atlantic, Sainte Marie de Kent, NB
- Anna Girouard, Podieur, Ste Marie, NB
- Anna Goguen, Alliance Fonction publique du Canada, Moncton, NB
- Jean-Louis Guérette, Conservation Council of New Brunswick, Moncton, NB
- Jim Harris, Green Party of Canada
- Hilary Howes, Construction Association of NB, Fredericton, NB
- Brigitte Julien, NBEN, Waterford, NB
- Gabrielle Kretzschmar, NB Partners in Agriculture, Upper Hamstead, NB
- Sharon Labchuk, Green Party of Canada, PEI
- Daniel LeBlanc, Sentinelles Peticodiac Riverkeeper, Moncton, NB

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- André Martin, Symbiose, Université de Moncton, Dieppe, NB
- Beth McLaughlin, Au Coeur/Occur Sustainable Communities, Moncton, NB
- Heather McTiernan, Graduate Student, Fredericton, NB
- Inka Milewski, Conservation Council of New Brunswick, Miramichi, NB
- Bronwyn Pavey, Petitcodiac Watershed Monitoring Group, Moncton, NB
- Huberte Richard, Conservation Council of New Brunswick, Moncton, NB
- Simonne Richard, Conservation Council of New Brunswick, Moncton, NB
- Don Ridely, PEI Bioalliance, Cornwall, PEI
- Stéphane Robichaud, Canadian Federation of Independent Business, Moncton, NB
- Andy Secord, St Thomas University, Fredericton, NB
- Nancy Stacey, NS Department of Environment and Labour, Halifax, NS
- Lise Thibodeau, AFPC, PSAC, Moncton, NB

PCO staff in attendance:

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