Review of Cost Recovery in Regulatory Departments and Agencies
Report on Findings

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For the
Interdepartmental ADM Working Group on Cost Recovery
& The Office of Revenue and Costing Division, Health Canada
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Background

Federal government cost recovery is guided by the 1997 Treasury Board Cost Recovery and Charging Policy. This policy replaced the 1989 policy on External User Charges for Goods, Services, Property, Rights and Privileges. Three years after the 1997 policy was approved, Treasury Board Secretariat is undertaking a review of the policy with a view to adjusting it as needed.

A number of the departments/agencies that embarked on new or increased cost recovery in the past several years are responsible for regulatory programs. Since these departments hold the view that regulatory programs have particular challenges in regard to cost recovery, an ADM-level working group on cost recovery was established in 2000. This committee includes representatives from the following departments and agencies:

- Health Canada
- Agriculture and Agri-Food Canada
- Transport Canada
- Fisheries and Oceans Canada
- Environment Canada
- Canadian Food Inspection Agency
- Canadian Grains Commission
- Canadian Environmental Assessment Agency

The Assistant Secretary Financial Policy and Analysis Sector of the Treasury Board Secretariat (TBS) is also a member of the ADM Working Group on Cost Recovery. A Sub-Working Group (SWG) composed of executives representing all of the involved departments supports the Working Group on Cost Recovery.

As an input to the TBS review of the Cost Recovery and Charging Policy, the SWG was directed to undertake a review of three elements of the policy of particular interest to Working Group members. These areas were:

- The mechanisms for establishing the relative importance of public/private benefits and the impact on the level of cost recovery within the individual program areas;
- The mechanisms and structures supporting dispute resolution; and
- Incentives and flexibilities that could support current and future cost recovery across the federal government.

Terms of Reference

To research, document and assess the challenges faced by various departments and agencies with regulatory responsibilities in implementing aspects of the TBS policy on Cost Recovery and User Charging, April 1997. The study will examine the specific challenges faced by the Department of Fisheries and Oceans, Agriculture and Agri-Food Canada, the Canadian Food Inspection Agency, Transport Canada, Health Canada, the Canadian Grain Commission, Environment Canada and the Canadian Environmental Assessment Agency. The study will consider three main areas of concern: Public/Private Benefit, Dispute Resolution Processes, and Incentives for programs to implement or enable cost recovery initiatives to enhance program delivery, performance or services. The study will present its findings to the Interdepartmental ADM Working Group on Cost Recovery for its review.

Methodology

There were two distinct elements to the methodology employed during the data collection phase of this review:

- ***Individual members of the SWG*** to the ADM Working Group on Cost recovery reviewed and documented the specific practices within their departments in regard to:
  - The assessment of the methodologies and the results of assessment of public/benefits for each of the major cost recovery programs; and
  - The dispute resolution mechanism that is in place as required by TB Policy.

  The results of these reviews were tabulated in matrices that are attached as Annex A to this report.

- ***Visionor Associates Inc***. interviewed two to three key senior officials from each department on the Working Group to identify incentives/flexibilities that were needed to enhance the quality of the existing cost recovery and to encourage the affected departments to consider new fields for potential cost recovery. A complete list of the individuals interviewed is attached as Annex B to this report.

These inputs from the data collection phase (public/private, dispute resolution and proposed incentives/flexibilities) were then analysed, overall issues identified and potential solutions for dealing with the issues were developed.

Regulatory Department Issues

The following issues raised were specific to regulatory departments and agencies although it is believed that they apply more broadly.

- The public perception that fee charging created too close a relationship between the regulator and the regulated; and
- The mandatory nature of many of the fees charged by regulatory cost recovery programs.

Incentives and Barriers

The overall view on incentives was that good governance should be the motivator and chief incentive of any cost recovery initiative. There was, however, a strong general view that implementing cost recovery is risky, difficult and costly and that anything that can be done to simplify and improve the process and eliminate or reduce barriers would be advantageous. This section deals with both incentives and barriers.

To facilitate subsequent analysis and development of recommendations, incentives and barriers have been grouped into major theme areas as follows:

1. Financial

The major overall incentive identified in this area related to the desired ability to retain and reinvest some of the revenue received under cost recovery. All departments interviewed expressed a desire for this to be more easily done. The general view was that this reinvestment would enhance the direct service or private benefit components of the relevant program.

The Treasury Board Secretariat (TBS) view was that there were a variety of revenue retention mechanisms available to departments under appropriations funding and that it was important to find the correct mechanism for each cost recovery initiative. There clearly appears to be a lack of understanding in this area with most cost recovery departments holding the view that there is insufficient financial flexibility in their current funding regime. TBS also indicated that few, if any, cost recovery initiatives ever exceed their revenue re-spending authority.

Specific incentives/flexibilities identified in this area were:

- The ability to reinvest some of the revenue in specific areas of the private good component of the service (most programs);
- The ability to retain earned revenue over more than one fiscal year to balance workloads as well as to deal with some fees that require significant advance payments at the beginning of a multiyear licensing or approval process (more than half of the programs);
- Assistance with funding the development of new cost recovery initiatives (about half the programs);

- Reductions in program appropriations can inflate the relative percentage of the program being recovered from private good stakeholders (two departments);
- A more balanced approach to risk taking was sought as an incentive. Under many of the reviewed initiatives, deficits in cost recovery revenue had to be covered by departmental A-Bases; any surpluses reverted to the Consolidated Revenue Fund (CRF) (three departments);

2. Consistency

Lack of consistency within and between departments was viewed as a significant barrier to effective cost recovery. The major impact of this was perceived to be on stakeholder relations since several of the programs impact on similar stakeholder groups. Some groups are confused or angered by the different mechanisms in place within and between departments as well as by the significantly varying levels of cost recovery in place.

The lack of consistency was particularly significant in regard to ways in which <u>public/private benefits</u> were defined and assessed with significant variations evident even between relatively similar programs within the same departments. Similar results were clearly evident in regard to <u>dispute resolution</u> and the relevant structures and processes used.

Another area where consistency was raised as an issue related to the definitions of the various types of cost recovery (cost recovery versus rights and privileges) and the relationship between cost recovery and several related mechanisms like collaborative arrangements, sponsorship etc.

3. Support

There were three elements to findings in this area:

- ***Political support (all departments)***

  Generally, the interviewed officials identified "political risk" as an important consideration. It is clear that strong political support is needed to pursue future cost recovery.

- ***Departmental support (most departments)***

  Improved client service is a key objective of cost recovery. Users paying for a government service are more inclined to suggest and even demand higher levels of service. This can lead to enhanced client-oriented focus in the cost recovery areas.

Cost recovery typically represents a small part of the overall funding of the reviewed departments. Most departmental resources, support elements and attention are typically focused on the larger, appropriation funded areas. While the culture and processes of the cost recovery program can be oriented towards external client service, the same is not always true of the many departmental support areas that provide significant support to the cost recovery program. Delays in staffing and the available costing and performance measurement systems were identified as inhibitors to future cost recovery.

In addition, many departments had no central focal point for all aspects of cost recovery. In some departments it was difficult to even list and quantify the extent of the cost recovery programs in place. This compelled cost recovery practitioners to often re-invent the wheel in implementing new initiatives.

- ***Support from TBS (most departments)***

Under its Cost Recovery and Charging Policy, the Treasury Board Secretariat has the responsibility for:

- Developing and interpreting the general policy on user charging; and
- Making recommendations to the Treasury Board on departmental user-charge proposals where TB approval is required.

There was a generally expressed desire from departments interviewed to have this level of support enhanced so that TBS would act as a "champion" for cost recovery within the federal government. It was clear that departments were looking for a single point of contact on cost recovery to facilitate the implementation of new or changed initiatives. This area should also be able to provide advice and training particularly in regard to the financial management and revenue re-spending authorities or mechanisms that were available. In addition, departments interviewed suggested that TBS should play a greater leadership and direction-giving role to assist in making the programs more consistent across government.

TBS was also seen to be the central point where "best practices" could be recorded and shared.

Most departments interviewed regarded cost recovery as only one of the service improvement or cost sharing mechanisms that were available to them. Departments planning a cost recovery initiative wanted to have advice on the full range of available options. The TBS point of contact could foster links with the Alternate Service Delivery Division in TBS for this purpose.

4. Process

There are two major areas of process that were identified as barriers during the review:

- ***Rate setting and modifying (most departments)***

  Under the TB policy, departments are required to "undertake meaningful and effective consultations with clients throughout the fee setting process". The policy also tasks departments with following "the regulatory approval process when required by statute." It appears that the time required to fulfil this requirement is a major barrier to setting new fees or amending existing ones.

  It is worth noting that most of those interviewed indicated that positive benefit had flowed from the consultative engagement on rates with stakeholders. The barrier was identified as the length and complexity of the full regulatory process (when required by statute) which in turn often entailed approval by both Treasury Board and the Special Committee of Council. It is worth noting that fee setting under the Financial Administration Act (FAA) requires use of this regulatory process and the FAA is often used by interviewed departments for cost recovery authority.

  The departments (e.g. Transport Canada) with specific authority within their enabling legislation to set/approve fees generally were able to process rate changes much more quickly than those using the full regulatory process.

- *Assessing cumulative impacts (most departments)*

  The TB policy requires any rate setting or changing to consider the cumulative impact of the proposed fee and other federal fees on the specific targeted stakeholder group. This is perceived to be an extremely complex process. In fact, the policy suggests this complexity in saying: "Assessing cumulative impacts will not be easy". The key barriers identified were the lack of a methodology and the potential complexity of the task. This complexity often resulted in significant time and expense to complete this analysis.

  It is also worth noting that some stakeholders were reluctant to provide the required (confidential) financial information to assist in this kind of analysis. In fact, it was observed that some stakeholders use cumulative impact assessment to delay the implementation of fee increases.

Potential Solutions to Identified Issues

The following potential solutions have been identified.

In adopting any of these potential solutions, those involved should build on the successful practices identified during the course of this review. Many of the departments interviewed had developed (for their department) effective tools to assist them in their cost recovery initiatives. Their experience and the work they have done can be adapted to serve a broader audience.

Potential solutions are grouped as follows:

1. Financial

- ***a.*** TBS could develop a guide and/or training program explaining the various mechanisms that are available under appropriations funding to deal with cost recovery programs and resolve their identified issues;
- ***b.*** TBS could establish a performance fund for reinvestment in the private good areas of successful cost recovery programs;
- ***c.*** TBS could increase the current 5% year end carry over provisions for some departments with cost recovery programs on the understanding that the increase was to be used for these programs;
- ***d.*** TBS could establish a development fund to assist departments in setting up new cost recovery initiatives; and
- ***e.*** Departments could ensure that cost recovery revenue for future years is included in their allowable 5% carry over allotments.

2. **Consistency**

- ***a.*** TBS could establish a mechanism for identifying and tracking all cost recovery initiatives to aid in cumulative impact assessment;
- ***b.*** TBS, departments or groups of departments could develop a methodology for determining public/private benefit and for cumulative impact assessment; and
- ***c.*** TBS, departments or groups of departments could develop guidelines around the establishment of more consistent and effective dispute resolution mechanisms.

3. Support

- ***a.*** TBS could designate a senior official to be the champion and advisor on all aspects of cost recovery. This individual could be the first and single point of contact for departments planning to undertake cost recovery initiatives. TBS would be a centre of expertise in this area and record and share "best practices". The "champion"could also engage other TBS branches where needed, particularly in regard to alternative potential mechanisms that could be employed (collaborative arrangements for e.g.);

b. TBS could develop a briefing package that can be used by departments in identifying the benefits brought about by cost recovery in general. In particular, this package could be used for ministerial briefings, responses to public or stakeholder enquiries as well as for informing departmental staff;

c. TBS could provide special authorities to cost recovery programs in regard to current government limits on the employment of temporary employees or contracting for services;

d. Departments could designate a senior official to be the champion and advisor on all aspects of cost recovery. This individual could be the first and single point of contact for branches planning to undertake cost recovery initiatives;

e. Departments could enhance their financial and costing systems to serve the particular needs of cost recovery initiatives;

f. Departments could enhance their performance tracking systems to record and report on the improvements gained through cost recovery; and

g. Departments could accord cost recovery programs different/enhanced corporate services to support the business-like requirements of some of these programs and the performance commitments required by their clients.

4. **Process**

The identified barrier on cumulative impacts has been dealt with under section 2 (C*onsistency*) above.

In regard to the perceived barrier of the full regulatory process for fee changes, the following solutions could be considered.

a. TBS could consider changes in the FAA to allow for fast tracking of changes in rate structures under certain circumstances (simplifications, adjusting for inflation etc.);

b. Departments should examine the feasibility of amending their enabling legislation to provide their minister with the required explicit rate setting authority; and

c. Departments could ensure that fast track changes (as defined above) are included in any newly established rates.

Conclusion

The review indicates that there are a number of barriers and desired incentives in regard to cost recovery within the reviewed departments.

Since TBS is currently performing this policy review, it is not reasonable to expect major changes by them until the review is complete. There are nevertheless minor improvements that TBS could consider and significant improvements that could be made within the individual departments and particularly by a group of departments like those represented on the Working Group and its SWG.