

## **Smart Regulations – A Short Primer for ENGOs**

*“Smart Regulation” has been described as the most significant factor to change the face of Canadian legislation since Confederation. Canadian civil society is banding together to address the implications of Smart Regulations and to ensure that Canadians know what their government is planning.*

### **Introduction**

As part of the Government of Canada’s “Smart Regulation” initiative (see [www.regulation.gc.ca](http://www.regulation.gc.ca)), the Privy Council Office (PCO) is proposing reform of federal regulatory policy and process. In particular, PCO is developing a proposed Government Directive on Regulating (GD-R), which would replace the current (1999) Regulatory Policy for Canada.

The purpose of this document is to provide ENGOs with some background for the GD-R. As well, it is intended to solicit feedback on your experiences with regulatory processes and outcomes that are connected to the Smart Regulations agenda. *Please see end of document for a brief survey.*

### **Cross-Canada Workshops**

As part of this process, PCO is planning seven public consultation workshops across Canada during the last two weeks of November. The meetings will be public with no limit on numbers of attendees. PCO has provided the Canadian Environmental Network (RCEN) with funds to pay the expenses of approximately ten NGOs per workshop (including environmental, health, labour and consumer groups).

November 14, **Moncton**  
November 16, **Montreal**  
November 18, **Toronto**  
November 21, **Winnipeg**  
November 23, **Saskatoon**  
November 25, **Calgary**  
November 28, **Yellowknife**  
November 30, **Vancouver**

In preparation for the public workshops, we should begin a discussion about experiences with the regulatory process. Specifically, we need to share any real-life problems you may have encountered with the Regulatory Policy, with the use of Regulatory Impact Analysis Statements (RIASs), and consultations in which economic (“efficiency”, “competitiveness”) considerations may have trumped the specific public interest objectives of the legislation.

### **Regulatory Reform in Context**

The federal government has had a written regulatory policy since 1986. Before that, the de facto policy was performed by officials in a regulatory reform office in the Treasury

Board Secretariat, whose function was to challenge regulating departments by asking, “do you really need this proposed regulation?” The policy was changed in 1992, 1995 and 1999, but the main function – challenging regulation – has remained.

Two main drivers for successive stages of regulatory reform are big business lobbies, and periodic reports by the OECD on Canada’s regulatory performance. Like the policies that have resulted, these drivers consistently assume economic competitiveness and trade liberalisation as the core value and starting-point for regulatory reform. Other goals like transparency and accountability are also present, but hazy, while the specific aims of public protection regulation are virtually invisible. (For an example, see the 2005 OECD *Guiding Principles for Regulatory Quality and Performance*.)

### **Recent History**

In 2003, the Government appointed a so-called External Advisory Committee on Smart Regulation ([EACSR](#)). The EACSR reported its recommendations in September 2004.

A number of RCEN members signed on to a [letter](#) to the chair of the EACSR in summer 2004, urging the Committee to confirm in its final report that the highest priority of regulation is protection of human health, safety and the environment, ahead of economic priorities. Instead, many of the same value assumptions articulated by business and by the OECD appeared in the report, again in the virtual absence of real regulatory contexts or public interest articulations of what “smart” regulation might look like.

The Government whole-heartedly embraced the thrust of the EACSR report, mentioning “smart regulation” in two consecutive Speeches from the Throne (and using the phrase “smart government” in a third). The President of the Treasury Board unveiled a [Smart Regulation Report on Actions and Plans](#) in March 2005 in which current government initiatives are outlined, including headings explaining “Why Is It Smart?”.

### **Current Consultations**

One such initiative is the PCO-led development of the GD-R, which is being developed in consultation with other government departments, provinces and territories, aboriginal groups, and a multi-stakeholder Reference Group on Regulating (RGR). David Coon (Conservation Council of New Brunswick) and Hugh Benevides (Canadian Environmental Law Association) are the two RCEN-selected ENGO delegates. Before the third and final meeting of the RGR, public consultation workshops (listed above) are planned across Canada during the second half of November.

### **Scope of the GD-R**

The proposed GD-R, like the current Regulatory Policy, will set out the responsibilities of departments and agencies at all stages of regulation: development, implementation, evaluation, and review of both legislation and regulation. Like the RP, the GD-R will direct federal government departments on the criteria they must consider when developing and reviewing regulations under the Acts of Parliament for which they are responsible. The draft GD-R will soon be available at [www.regulation.gc.ca](http://www.regulation.gc.ca).

### **Intimate Connection with SSTs**

The March 2005 Smart Regulation Report on Actions and Plans includes the Competitiveness and Environmental Sustainability Framework that gave rise to the Sector Sustainability Tables (SSTs) that have been the subject of much discussion by CEN members.

At the risk of oversimplification, there are two main difficulties with the current Regulatory Policy and the GD-R as envisioned so far. One is that there is no explicit recognition that **the public good protection purpose of the Act of Parliament giving rise to a proposed regulation** – particularly where the legislation is social regulation intended to protect health, safety or the environment – **ought to be the core purpose of a regulation**. The current approach is to “balance” public protection goals (where they are mentioned at all) against pure economic “values”.

The second difficulty is that there is **little transparency, and little accountability as a result**, in the administration of the current Regulatory Policy (and no new procedures are proposed), so that Canadians can see how a decision to regulate – or not to regulate – has been arrived at. The only exceptions are consultations that take place and in which CEN members participate regularly, and the Regulatory Impact Analysis Statement (RIAS) that is published along with proposed and final regulations in the *Canada Gazette*. However, consultations are increasingly for experts (including ENGOS) and the RIAS only appears towards the end of the regulatory process. We could propose new measures to enhance public participation and greater transparency.

### **Survey – Your Input Required**

If you have experience with consultations – in particular, outcomes that have not reflected transparency – please describe them.

If you have experience with Regulatory Impact Analysis Statements (RIASs) – in particular, RIASs that have *not* described adequately the political or economic-environmental trade-offs that have occurred – please describe them.

If you have experience with consultations or processes that have not resulted in a regulation – and therefore not required a RIAS – please describe the experience.

If you have proposals for greater transparency in the regulatory process that could be incorporated into the GD-R, let us know.

Observations about the current SST processes in light of the above themes would be particularly helpful.

Your responses will be used in an ENGO position paper for sign-on, which is being prepared in advance of the public workshops. RCEN members wishing to find out more information on the various references and documents above, or having questions on

regulatory reform, may contact [Hugh Benevides](#) at CELA. Questions respecting participation in the workshops should be directed to [Barbara Schaefer](#) at the RCEN.

If you wish to become involved in and remain current on issues of regulatory reform, please note that a listserv will be established over the next few weeks as the GD-R is discussed and the workshops get underway. Send your request to [Barbara Schaefer](#) at (613) 728-9810 x 30.