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Parliament of New South Wales

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Section 9 of the Regulation Review Act 1987

9 Functions

(1) The functions of the Committee are:

(a) to consider all regulations while they are subject to disallowance by resolution of either or both Houses of Parliament,

(b) to consider whether the special attention of Parliament should be drawn to any such regulation on any ground, including any of the following:

(i) that the regulation trespasses unduly on personal rights and liberties,

(ii) that the regulation may have an adverse impact on the business community,

(iii) that the regulation may not have been within the general objects of the legislation under which it was made,

(iv) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made,

(v) that the objective of the regulation could have been achieved by alternative and more effective means,

(vi) that the regulation duplicates, overlaps or conflicts with any other regulation or Act,

(vii) that the form or intention of the regulation calls for elucidation, or

(viii) that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation, and

(c) to make such reports and recommendations to each House of Parliament as it thinks desirable as a result of its consideration of any such regulations, including reports setting out its opinion that a regulation or portion of a regulation ought to be disallowed and the grounds on which it has formed that opinion.

(2) Further functions of the Committee are:

(a) to initiate a systematic review of regulations (whether or not still subject to disallowance by either or both Houses of Parliament), based on the staged repeal of regulations and to report to both Houses of Parliament in relation to the review from time to time, and

(b) to inquire into, and report to both Houses of Parliament on, any question in connection with regulations (whether or not still subject to disallowance by either or both Houses of Parliament) that is referred to it by a Minister of the Crown.

(3) The functions of the Committee do not include an examination of, inquiry into or report on a matter of Government policy, except in so far as such an examination may be necessary to ascertain whether any regulations implement Government policy or the matter has been specifically referred to the Committee under subsection (2) (b) by a Minister of the Crown.

INTRODUCTION

The Regulation Review Committee sent a delegation on an international study tour to explore recent developments in regulatory reform and management from 12 July to 29 July 2002. The delegation comprised Dr Elizabeth Kernohan MP and the Honourable Malcolm Jones MLC and was accompanied by the Committee's Manager.

The delegation visited the following jurisdictions:

- **The Organisation for Economic Develop and Cooperation**—the OECD had a program dedicated to regulatory reform.

- **The UK Parliament and Regulatory Reform Unit**—the UK had a parliamentary committee review similar to that in Australia and had also pursued a regulatory reform agenda over the last few years through a Regulatory Reform Unit in the Cabinet Office, including the Better Regulation Task Force, and the Regulatory Reform Act which provides expedited procedures for removing unwanted legislation.

- **Ireland** was well advanced in a comprehensive review of its systems of regulatory reform and management, having just concluded an extensive consultation process on its regulation policy following consideration of an extensive review by the OECD.

- **Ontario** had taken a novel approach to regulatory reform by establishing a Commission comprising legislators to review proposed Cabinet policies and regulatory measures that affect business and institutions, and intervene on behalf of business, institutions and members of the public seeking assistance with provincial red tape problems.

- The Canadian Government in **Ottawa** had a management standards approach to ensuring regulatory quality and assessment rather than requiring assessment by law. This worked in conjunction with a system of parliamentary review by committee.

- The United States administration in **Washington** had highly developed regulatory processes, with major government agencies ensuring regulatory standards regarding cost/benefit assessments, consideration of the impact on small business and consultation.

The delegation was particularly impressed by the regulatory processes developed in the UK and Canada. Both these jurisdictions developed systems to ensure that thorough analysis and consultation processes were integrated into the government's policy decision making process. This appeared to not only result in a better regulatory process but to lead to better informed policy decision making and greater integration of action across all government agencies. Since the delegation conducted the study tour, the OECD has released reviews of both these jurisdictions, which should provide useful models for consideration in NSW.

The Committee is most grateful to all those who met with the delegation and gave so generously of their experience, time and hospitality.

Gerard Martin MP
Chairman

REGULATORY MANAGEMENT AND REFORM PROGRAMME, PUMA, OECD

On Monday 15 July, the Delegation met with Cesar Cordova and Peter Ladegaard of the Regulatory Management and Reform Programme, OECD, Paris. The focus of the discussion was regulatory impact assessment systems, particularly the effectiveness of such systems, how to best target effort for maximum gain, and innovative approaches to regulation.

The OECD describes the work of the Regulatory Management and Reform Programme as follows:

> The PUMA work on regulatory management and reform is aimed at building policy support and skills for good regulations in Member countries. The intent is to establish a longer-term basis for efficient and responsive regulation by changing incentives, capacities, and cultures in public sector institutions, based on market, juridical, and public management principles.
>
> PUMA's emphasis is on regulatory quality combining both good regulation where needed to protect health, safety, and the environment and to enhance the functioning of markets, and deregulation where free markets work better. Activities focus on administrative simplification, improving regulatory compliance, independent regulators, and tools for self-assessment.

Mr Cordova noted that there were two basic systems for targeting impact assessment:

- Thresholds, eg, Korea assesses all regulations which have an impact of a certain money amount and impacts on more than 1 million people, and USA, which assesses regulations costing more than $100,000,000;

- Two stages process, whereby a low level assessment is completed on most regulations and a more rigorous assessment is then done when warranted.

Any assessment needs to be proportionate to the potential impact of the regulation. There was no identified formula for identifying when assessment was warranted. The delegation asked about whether the OECD had identified any means of measuring the performance of assessment processes but were informed that the impossibility of knowing what would have happened without the assessment makes such performance measurement very difficult. In testing the accuracy of their regulatory impact assessments, the USA had found that costs tend to be overestimated.

In Scandinavian countries, perhaps the greatest advantage of regulatory impact assessment has been horizontal integration of government planning and decision making, improved coherence within the Government and better communication between departments and Ministers. While impact assessment was formerly focussed on budgetary and legal issues, it is now a means of employing uniform guidelines for civil servant decision makers.

Mr Cordova also stated that it was of greater benefit to have positive incentives for assessment processes, such as peer pressure and highlighting benefits, rather than negative incentives, such as a central monitoring agency with the right to challenge

and censure the work of other bureaucrats. Positive incentives provide greater encouragement for assessment procedures to be incorporated into the decision making process rather than being seen as a hoop to jump through. Assessment procedures are most effective when there is:

- high level government commitment
- an explicit policy promulgated
- central procedural guidelines provided which are accessible.

The OECD was near completion of reviews of the regulatory systems in the United Kingdom and Canada. Mr Cordova indicated that these countries were leaders in regulatory management. Issues highlighted for Canada were the need to target assessments to where the greatest gains can be made; concerns about consultation fatigue; and the need to avoid conflict within the oversight body between the roles of training those who conduct impact assessments and challenging those assessments. Issues for attention in the United Kingdom included consultation fatigue, especially for business, independent regulators being responsible for political as well as technical issues, the role of grey regulation, eg, letters from Ministers, and regulation within Government.

The delegation also sought comment on systems for impact assessment of bills. However, Mr Cordova informed the delegation that as the members of the OECD are the executive arm of government, its focus of study has been on subordinate rather than primary legislation. He did note that there were systems of bill assessment in Denmark and Italy. Denmark appeared to have developed an effective model of assessment of legislation through a parliamentary committee system assisted by professional staff. This assessment model was not based on any formal cost benefit analysis but sounded similar to models of comprehensive bill review by committees as occurs in New Zealand.

UNITED KINGDOM

Visits by the Delegation

House of Commons Regulatory Reform Committee

On 16 July, the delegation met with Mr Peter Pike MP, Chair of Regulatory Reform Committee, Mr Dai Havard MP, Member of the Committee, and Mr Huw Yardley, Clerk to the Committee.

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) was appointed to consider and report to the House on proposals for regulatory reform orders under the Regulatory Reform Act 2001, and subsequently, any ensuing draft Regulatory Reform Order. It also considers any "subordinate provisions order" made under the same Act.

The purpose of the Regulatory Reform Act is to facilitate the reform of legislation that imposes a regulatory burden on the community. It enables Ministers to amend primary legislation by the use of Regulatory Reform Orders. This was to remedy the problem of worthy reforms not being of sufficient priority to find a place in the legislative program. However, before an order can be made, it is subject to mandatory consultation and a two stage review by a committee of each House of Parliament. Consequently, although Regulatory Reform Orders enabled the amendment of Acts without the normal legislative process, the level of scrutiny orders received was arguably greater than that required of bills.

Terms of Reference for the House of Commons Regulatory Reform Committee

House of Commons Standing Order 141

141.—(1) There shall be a select committee, called the Deregulation and Regulatory Reform Committee, to examine—

(i) every document containing proposals laid before the House under section 3 of the Deregulation and Contracting Out Act 1994 (the 1994 Act) or under section 6 of the Regulatory Reform Act 2001 (the 2001 Act);

(ii) every draft order proposed to be made under section 1 of the 1994 Act or section 1 of the 2001 Act; and

(iii) every subordinate provisions order or draft of such an order made or proposed to be made under sections 1 and 4 of the 2001 Act.

(2) The committee shall report to the House, in relation to every proposals document referred to in paragraph (1)(i) of this order, either

(a) that a draft order in the same terms as the proposals should be laid before the House; or

(b) that the proposals should be amended before a draft order is laid before the House; or

(c) that the order-making power should not be used in respect of the proposals.

(3) The committee shall report to the House, in relation to every draft order referred to in paragraph (1)(ii) of this order, its recommendation whether the draft order should be approved.

(4) The committee may draw the special attention of the House to any subordinate provisions order or draft order referred to in paragraph (1)(iii) of this order, and may report its opinion whether or not the order or draft order should be approved or, as the case may be, annulled.

(5) The committee may report to the House on any matter arising from its consideration of the said proposals, draft orders or subordinate provisions orders.

(6) (A) In its consideration of proposals the committee shall consider in each case whether the proposals—

(a) appear to make an inappropriate use of delegated legislation;

(b) remove or reduce a burden or the authorisation or requirement of a burden;

(c) continue any necessary protection;

(d) have been the subject of, and take appropriate account of, adequate consultation;

(e) impose a charge on the public revenues or contain provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribe the amount of any such charge or payment;

(f) purport to have retrospective effect;

(g) give rise to doubts whether they are *intra vires*;

(h) require elucidation, are not written in plain English or appear to be defectively drafted;

(i) appear to be incompatible with any obligation resulting from membership of the European Union.

(B) In the case of proposals presented under the 2001 Act, the committee shall also consider whether the proposals—

(j) prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;

(k) satisfy the conditions of proportionality between burdens and benefits set out in sections 1 and 3 of the Act;

(l) satisfy the test of desirability set out in section 3(2)(b) of the Act;

(m) have been the subject of, and take appropriate account of, estimates of increases or reductions in costs or other benefits which may result from their implementation; or

(n) include provisions to be designated in the draft order as subordinate provisions;

and in the case of the latter consideration the committee shall report its opinion whether such a designation should be made, and to what parliamentary proceedings any subordinate provisions orders should be subject.

(7) In its consideration of draft orders, the committee shall consider in each case all such matters set out in paragraph (6) of this order as are relevant and the extent to which the Minister concerned has had regard to any resolution or report of the committee or to any other representations made during the period for parliamentary consideration.

(8) In its consideration of any subordinate provisions order the committee shall in each case consider whether the special attention of the House should be drawn to it on any of the grounds on which (in accordance with paragraph (1)(B) of Standing Order No. 151 (Statutory Instruments (Joint Committee)) the Select Committee on Statutory Instruments may draw the attention of the House to a statutory instrument; and if the committee is of the opinion that any such order or draft order should be annulled, or, as the case may be, should not be approved, they shall report that opinion to the House.

(9) The committee shall consist of eighteen members.

(10) Unless the House otherwise orders, each Member nominated to the committee shall continue to be a member of it for the remainder of the Parliament.

(11) The committee shall have power—

(a) to send for persons, papers and records, to sit notwithstanding any adjournment of the House, to adjourn from place to place within the United Kingdom, and to report from time to time;

(b) to appoint specialist advisers either to supply information which is not readily available or to elucidate matters of complexity within the committee's order of reference; and

(c) to appoint a sub-committee, of which the quorum shall be two, which shall have power to send for persons, papers and records, to sit notwithstanding any adjournment of the House, and to adjourn from place to place within the United Kingdom.

(12) The committee and the sub-committee shall have the assistance of the Counsel to the Speaker and, if their Lordships think fit, the Counsel to the Lord Chairman of Committees.

(13) The committee and the sub-committee shall have power to invite Members of the House who are not members of the committee to attend meetings at which witnesses are being examined and such Members may, at the discretion of the chairman, ask questions of those witnesses; but no Member not being of the committee shall otherwise take part in the proceedings of the committee or sub-committee, or be counted in the quorum.

(14) It shall be an instruction to the committee that before reporting either—

(a) that any proposal should be amended before the draft order is laid before the House, or

(b) that the order-making power should not be used in respect of any proposal, or

(c) that any draft order should not be approved,

it shall afford to any government department concerned an opportunity of furnishing orally or in writing to it or to the sub-committee appointed by it such explanations as the department think fit.

(15) It shall be an instruction to the committee that it report on every draft order (not being a subordinate provisions order) not more than fifteen sitting days after the draft order was laid before the House, indicating in the case of draft orders which it recommends should be approved whether its recommendation was agreed without a division.

Joint Committee on Statutory Instruments

On the afternoon of 16 July the delegation attended a meeting of the Joint Committee on Statutory Instruments. This Committee had a role in scrutinising statutory instruments with a view to determining whether the special attention of Parliament should be drawn to it in relation to a defined set of legal principles. For this purpose, the Committee was heavily reliant on advice from Counsel assisting the Committee.

Terms of Reference for the Joint Committee on Statutory Instruments

The Joint Committee on Statutory Instruments examines statutory instruments “with a view to determining whether the special attention of the House should be drawn to it on any of the following grounds:

(i) that it imposes a charge on the public revenues or contains provisions requiring payments to be made to the Exchequer or any government department or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;
(ii) that it is made in pursuance of any enactment containing specific provisions excluding it from challenge in the courts, either at all times or after the expiration of a specific period;
(iii) that it purports to have retrospective effect where the parent statute confers no express authority so to provide;
(iv) that there appears to have been unjustifiable delay in the publication or in the laying of it before Parliament;

(v) that there appears to have been unjustifiable delay in sending a notification under the proviso to section 4(1) of the Statutory Instruments Act 1946, where an instrument has come into operation before it has been laid before Parliament;
(vi) that there appears to be a doubt whether it is *intra vires* or that it appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made;
(vii) that for any special reason its form or purport calls for elucidation;
(viii) that its drafting appears to be defective;

or on any other ground which does not impinge on its merits or on the policy behind it; and to report its decision with the reasons thereof in any particular case.

Cabinet Office Regulatory Impact Unit & Better Regulation Task Force

On the morning of 17 July the delegation met with Phil Wynn Owen, Director, and other officers of the Regulatory Impact Unit. During the afternoon, the delegation attended a meeting of the Better Regulation Task Force where it gave a presentation on the work of the Committee and answered questions on regulatory reform in New South Wales.

A striking feature of regulatory management and reform in the UK was a very high degree of commitment at the top levels of Government to incorporate regulatory impact analysis within Government decision making. This was characterised by:

- the preparation of a first level Regulatory Impact Assessment (RIA) before initial policy proposals are put to Cabinet;
- nomination of a Minister in each department with responsibility to promote regulatory reform;
- an accessible Guide to Regulatory Impact Assessment promoted by the Prime Minister;
- requiring an RIA on any proposal likely to have a direct or indirect impact on business, charities or the voluntary sector, which encompasses all forms of Government, including primary legislation and non-legislative measures;
- a central unit (staff of 70) to promote the assessment process throughout government;
- regulatory impact units existing in major departments to facilitate the RIA process.

Regulatory Impact Assessment was a vital plank in improving the means of government decision making, rather than a compliance hoop enforced on the regulatory process.

Delegated Powers and Regulatory Reform Committee

The delegation attended a meeting of the House of Lords' Delegated Powers and Regulatory Reform Committee at 11.30 am on 17 July. Members of the Committee present included Lords Waddington, Wigoder, Dahrendorf, Desai and Tombs, and Baroness Carnegy of Lour. Sir James Nursaw, the Committee's legal adviser, was also in attendance.

The House of Lords Delegated Powers Scrutiny Committee was first established in 1992. Its chief concern is with the extent of legislative powers proposed to be

delegated by Parliament to Government Ministers. It is required "to report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny". In 1994 it was given the additional role of scrutinising deregulation proposals under the Deregulation and Contracting Out Act 1994. This now falls under the Regulatory Reform Act 2001.

The Committee spends most of its time on examining bills in relation to their delegation powers. The members noted there was a danger of overstating the deregulation role as action under the Regulatory Reform Act was peripheral to the work of Government and minor compared to the weight of new regulation coming through.

Working methods

The Committee has 8 members. It takes evidence and meets regularly when Parliament is sitting, according to the legislative workload. As most of its meetings are deliberative, it usually meets in private, but when it meets to hear oral evidence it does so in public. The Committee issues separate reports on draft deregulation orders and on bills. Reports are available the morning after the Committee adopts it.

Delegated Powers Scrutiny

The Committee takes evidence in writing on each public bill from the relevant Government department. On occasion, the Committee also hears oral evidence. The written evidence-

- identifies provisions for delegated legislation;
- describes their purpose;
- explains why the matter has been left to delegated legislation;
- explains the degree of parliamentary control provided for the exercise of each power (affirmative, negative, or none at all) and why.

The Committee does not report on Supply Bills, as the Lords are barred from amending these. It does not consider consolidation bills because they do not seek to introduce new law.

In examining a bill the Committee:

(1) considers whether the grant of secondary power is appropriate. This includes expressing a view on whether the power is so important that it should only be one granted by primary legislation;
(2) always pays special attention to Henry VIII powers - a provision in a bill which enables primary legislation to be amended or repealed by subordinate legislation with or without further parliamentary scrutiny;
(3) considers what form of parliamentary control is appropriate and, in particular, whether the proposed power calls for the affirmative rather than the negative resolution procedure;
(4) considers whether the legislation should provide for consultation in draft form before the regulation is laid before Parliament, and whether its operation should be governed by a Code of Conduct.

The Committee's role is to advise the House of Lords; it is for the House to decide whether or not to act on the Committee's recommendations. The Committee itself has no power to amend bills, although amendments are frequently tabled in response to its recommendations. The Committee was formed as part of a move to increase control of the Executive while at the same time to save time on the floor of the House. There is an informal understanding that when the Committee has approved provisions in a bill for delegated powers, the form of those powers should not normally be the subject of debate during the bill's subsequent passage.

In relation to Government Bills, most of the Committee's recommendations to the House have in practice been accepted by the Government, and where necessary have resulted in the subsequent amendment of the Bill concerned. Where the Committee has made recommendations concerning private members' bills, its practice has been to raise these matters informally with the member sponsoring the bill in the House of Lords.

Deregulation Proposals

Part I of the Deregulation and Contracting Out Act 1994 created a special kind of delegated legislation, usually referred to as "deregulation orders". Under that Act, deregulation orders may be made by any Minister to amend or repeal any enactment of primary legislation with a view to removing or reducing any burden, if the Minister is of the opinion that this can be done without removing any necessary protection.

The 1994 Act provides for a two-stage process for the parliamentary scrutiny of deregulation orders. In Stage 1, a document containing the proposal is laid before Parliament in the form of a draft of the order, together with explanatory material; and the Committee and the Commons equivalent committee have 60 days in which to report on it. In Stage 2, the Government lay before Parliament a draft order, either in its original form or amended to take account of the two committees' views, for approval by resolution of each House. In the Lords, a motion to approve a draft order can be moved only after the Committee has made a second report on it.

In examining a deregulation proposal the Committee considers whether:

(1) it is intra vires;
(2) it removes a burden;
(3) it removes any "necessary protection"; (the 1994 Act requires that the amendment or repeal of existing primary legislation must be done "without removing any necessary protection");
(4) consultation (also required by the 1994 Act) has been adequate.

Overview of Regulatory Reform and Management in the UK

Regulatory reform in the UK is promoted through:

- the **Regulatory Reform Act**, which allows Ministers to reform primary legislation by order subject to parliamentary scrutiny;
- the **Better Regulation Task Force**, which is an independent body to advise the Government;
- the **Regulatory Impact Unit** of the Cabinet Office, which supports the implementation of the Regulatory Reform Act and the work of the Task Force and provides a central coordination and promotion point for the Governments regulatory reform policies. It supervises the **regulatory impact assessment process** and the **Government's Regulatory Reform Action Plan** under the Regulatory Reform Act;
- the **Regulatory Reform Committee** of the House of Commons, which examines reform proposals under the Regulatory Reform Act;
- the **Delegated Powers and Regulatory Reform Committee** of the House of Lords, which examines reform proposals under the Regulatory Reform Act and scrutinises all bills regarding any power to make delegated legislation;
- the **Joint Committee on Statutory Instruments**, which reviews regulations to see if they should be brought to the attention of the House.

Regulatory Reform Act

The Regulatory Reform Act 2001 received Royal Assent on Tuesday 10 April 2001.
Briefly the Act:

- provides Ministers with a wide power to use Orders to reform primary legislation.
- gives Ministers a reserve power to set out a code of good practice in enforcement.

Main effect of the Act

The Act is an important part of the Government's Modernising Government agenda. It fits into a wider programme of action aimed at addressing the problem of burdensome regulation.

Briefly, the main provision of the Act is to create a powerful tool to enable regulatory reform. It allows Ministers to use orders to reform primary legislation. Orders must always remove or reduce some burdens, but they can also apply new burdens, reapply existing burdens and remove inconsistencies and anomalies.

Subject to the strict safeguards in the Act, orders can be used to make major worthwhile changes to existing legislation.

It also gives Ministers (and the National Assembly for Wales, where appropriate) a reserve power to set out a code of good enforcement practice.

Better Regulation Task Force

The Better Regulation Task Force was established in September 1997. It is an independent body that advises Government on action to ensure that regulation and its enforcement accord with the five principles of good regulation:

- Transparency
- Accountability
- Proportionality
- Consistency
- Targeting

The Task Force does this by carrying out studies of particular regulatory issues. These reviews are taken forward by sub-groups of Task Force members who set their own working methods and produce detailed reports. As an advisory group with limited resources, the Task Force cannot carry out full consultation, but all sub-groups discuss their proposals with key organisations and individuals, as well as with Ministers and Government Departments. All reports are endorsed by the full Task Force before being sent to the relevant Ministers for their response. The Prime Minister has asked Ministers to respond to Task Force reports within 60 days of publication.

The Better Regulation Task Force regularly reviews how Ministers and Government departments have acted on recommendations in earlier reports.

Regulatory Reform Unit, Cabinet Office

The **Regulatory Impact Unit (RIU)** is based at the centre of Government in the Cabinet Office. Its role is to work with other government departments, agencies and regulators to help ensure that regulations are fair and effective. Regulations are needed to protect people at work, consumers and the environment, but it is important to strike the right balance so that they do not impose unnecessary burdens on businesses or stifle growth.

The Unit's work involves:

- **Promoting** the Principles of Good Regulation
- **Identifying** risk and assessing options to deal with it

- **Supporting** the Better Regulation Task Force
- **Removing** unnecessary, outmoded or over-burdensome legislation through the powers as enacted in the Regulatory Reform Act.
- **Improving** the assessment, drawing up and enforcement of regulation, taking particular account of the needs of small businesses

In addition to taking an overview of regulations which impact on business, the RIU also examines the impact on the voluntary sector and charities. It also investigates ways of reducing bureaucracy and red tape in the public sector.

The seven steps to policy and Regulatory Impact Assessment Development

There are three milestones in the development of an RIA: initial, partial and full.

Current stage of proposal	Form of assessment required
Step 1. Establishing purpose and intended effect.	An *initial regulatory impact assessment* is a rough and ready working assessment of the policy options using information that you probably already have. Contact your Departmental Regulatory Impact Unit (DRIU) and the Small Business Service (SBS) for advice.
Step 2. Working up options.	A *partial regulatory impact assessment* works up the various policy options calling on advice from economists, the Small Business Service and other specialists about the risks, benefits, costs and compliance issues of each option.
Step 3. Seeking collective agreement. Making a legislative bid.	A partial regulatory impact assessment must be submitted with any regulatory proposal seeking agreement from Cabinet, Cabinet Committee, No 10 or other interested Ministers. In addition, if a proposal is significant it must be accompanied by a *regulatory impact statement.*
Step 4. Announcing proposals and carrying out public consultation.	A partial regulatory impact assessment must be included with all public consultations.
Step 5. Making recommendations to Ministers.	A *full regulatory impact assessment* includes the results of the consultation and is submitted to Ministers with a recommendation for action, future monitoring and evaluation.
Step 6. Presenting the regulation or legislation to Parliament.	The full regulatory impact assessment is signed by the accountable Minister and placed in the House libraries when the regulation/ legislation is presented to Parliament.
Step 7. Reporting.	The full regulatory impact assessment is sent to the DRIU and recorded in a 6 monthly Command Paper.

This table applies to domestic proposals. Other procedures apply to proposals submitted to the Council and European Parliament.

DUBLIN

Visits by the Committee

On 18 July the delegation met with Mr Philip Kelly, Assistant Secretary, Public Service Modernisation and Mr John Shaw and Ms Adrienne Harrington of the Department of the Taoiseach. The delegation later met with Ms Etaine Doyle, Director of Telecommunications Regulation.

On 19 July 2002, the delegation met with Mr Edward Donelan, Director, Statute Law Revision Unit, Office of the Attorney General and Mr Kieran Mooney, Chief Parliamentary Counsel. It also visited Leinster House and met with officers of the Oireachtas.

Summary of discussions

It appeared from the delegation's discussions that there was not a significant regulatory burden in Ireland as the volume of regulations was not great. The pressures for regulatory reform primarily stemmed from demands for economic restructuring for increased competition and greater exposure to external markets. Ireland's participation in the European Union was also increasing the need for regulatory analysis and for systems to deal with European regulatory demands. It was also noted that the electoral system, where each electorate returned a number of seats to the Dáil, contributed to a focus in the political system on electorate issues rather than polarisation according to economic ideologies. As a result, there was little political impetus for regulatory reform and the civil service largely drove the regulatory reform agenda. Much of the pressure for regulatory reform also came from the European Union. The OECD's report on regulatory reform in Ireland made significant recommendations in relation to the need for the deregulation of domestic industry and the reduction of barriers to external markets.

To date, secondary legislation had not required any formal assessment and it received almost no parliamentary scrutiny. The OECD's report on regulatory reform in Ireland highlighted the need for greater scrutiny of regulations by the Oireachtas and the need for additional resources, particularly for parliamentary committees, for such scrutiny to occur.

While a major source of both regulation and pressure for regulatory reform was the European Union, the Oireachtas' involvement in Europe was not great. The Oireachtas had a committee examining European Union legislation but this was peripheral to the work of the Oireachtas and the committee's work did not have a high profile. The Committee used consultants to sift through the huge volume of paperwork that came from the European Commission and brought to the committee's attention issues of concern.

The Department of the Taoiseach had recently completed its consultation process on a national policy for better regulation. There had been significant response to this consultation process but the results had not yet been analysed.

Recent Regulatory Reform Initiatives in Ireland

The major initiatives in regulatory reform in Ireland over the last six years were as follows:

- *Delivering Better Government* launched in May 1996 promoted the following principles of regulatory reform:
  - to improve the quality, rather than the quantity of regulations
  - to eliminate unnecessary and/or inefficient regulations (including legislation)
  - to simplify necessary regulation and related procedures as much as possible
  - to lower the cost of regulatory compliance
  - to make regulations more accessible to the public

  while in each case protecting the public interest.

- *Partnership 2000* contained a strategy to improve the quality of legislation, including;
  - the establishment of a central control unit to oversee implementation of the strategy
  - introduction of Codes of Practice by Government Departments to alleviate the compliance burden
  - all proposals for legislation will be assessed to minimise any compliance burden being created for small business
  - the establishment of a consultative forum involving the Revenue Commissioners, Department of Social, Community & Family Affairs, the CSO and relevant Departments and agencies to work with small business representatives to eliminate duplication and unnecessary reporting requirements.

- *Action Programme for Regulatory Reform* (July 1999) key actions:
  - simplifying the process of doing business with Government
  - consultation with customers and clients on the best ways of putting required regulation in place
  - making our legislation more coherent and more easily accessible to those who need it.

- *OECD Report on Regulatory Reform in Ireland*. Ireland participated in an OECD National Peer Review Programme on Regulatory Reform. This was a rigorous, year-long review of Ireland's regulatory regime under a number of headings including competition policy, market openness, government capacity as well as specific sectors and markets such as telecommunications and legal services. The OECD's report was presented to the Irish Government in April 2001.

- *High Level Group on Regulation.* Following the acceptance by Government of the OECD report in April 2001, a High Level Group on Regulation was established. Two sub-groups of the High Level Group have also been established. The National Policy Statement Sub-group published its Consultation Document Towards Better Regulation and the consultation process is ongoing. Another sub-group has been established to develop a model of Regulatory Impact Analysis appropriate to the Irish situation. Work on this is ongoing.

- On 27 February 2002, the Taoiseach launched a *Public Consultation Document Towards Better Regulation*. The purpose of the document was to stimulate debate as to how to improve the quality of regulation in the State and it is the first step towards production of a National Policy Statement on Better Regulation. The objectives of this Policy Statement were to identify a set of core principles to inform future decision-making, both as to the need for, and content of, specific regulations. It will also draw on best international practice in relation to public policy formulation and managing regulatory quality. The closing date for submissions on this document was extended to 1 July 2002.

TORONTO

Visits by the Delegation

On Monday 22 July, the delegation had a series of meetings organised by Scot Weeres from the Red Tape Commission. The delegation initially met with members and secretariat of the Red Tape Commission, including Mr Norm Miller MPP, Commissioner, Scot Weeres, Director, Rob Swaffield, Assistant Director and Chris Horbasz, Policy Advisor. It later met with officials from the Standing Committee on Regulations and Private Bills, including Doug Arnott, Senior Committee Clerk, Katch Koch, Committee Clerk, Andrew McNaught, Research Officer, and Peter Sibenk, Procedural Clerk (Research). The day concluded with a meeting with Helle Tosine, Assistant Deputy Minister, Ministry of Labour.

Summary of discussions

Red Tape Commission

All but one of the Commissioners of the Red Tape Commission were government members of the Parliament. About half the Commissioners also sat on a Cabinet committee. The Commissioners were appointed by order in Council. It was considered likely that the Commission would not be continued if the Government changed.

The secretariat of the Red Tape Commission comprised eight or nine people, most of whom were policy officers.

The Commission reduces the regulatory burden by both investigating problems raised with it in order to recommend changes and by analysing draft regulations and bills.

In 1997, a Regulatory Impact and Competitiveness Test (RICT) was introduced for all policy proposals that had regulatory implications for businesses or institutions carrying on business-like activities. The RICT is prepared as part of the Cabinet submission on the proposal. While it was intended that this test be done as part of the decision making process, in practice it was usually applied retrospectively. Also, there were no sanctions for failing to complete an RICT and the vast majority of policy submissions either did not have an RICT or it had been poorly done. However, nearly all submissions for regulations do have a properly completed RICT.

A Business Impact Test (BIT) was also being developed. The BIT was designed to ensure Ontario does not apply its regulatory powers to business activities unless there is clear evidence that:

- A problem exists;
- Government action is justified;
- Regulatory action is the best alternative;
- Benefits outweigh the costs; and

- Stakeholders have been properly consulted and their views fully presented and addressed.

In applying the BIT, an initial analysis is done to determine whether a regulation could have a significant impact on business. Where such an impact could occur, a detailed cost benefit analysis of the regulation is provided to the Cabinet. It was hoped that this test would move the analysis of proposals earlier in the decision making process.

Ministers produce red tape reduction plans that are reviewed by the Commission. To further increase the profile of red tape reduction, Deputy Ministers (ie, departmental heads) have red tape objectives included in their performance agreements. The Commission produces reports on Deputy Minister's performance in this regard.

Regulatory practice in Ontario is also greatly affected practice elsewhere in North America with pressure for conformity and the need to avoid duplication. There has been a particularly strong move towards outcome based regulation. There has been reluctance to sunset regulations as this provides an artificial timetable for developing a regulation that results in regulations being rushed through.

Standing Committee on Regulations and Private Bills

The Standing Committee on Regulations and Private bills examines regulations with particular reference to the scope and method of the exercise of delegated legislative power but without reference to the merits of the policy or objectives to be effected by the regulations or enabling statutes. It also considers private bills after their first reading. The Committee is assisted by counsel and is also helped by the five lawyers in the Legislative Library research service. The committee was reduced from 11 to eight members when the House size was reduced from 130 to 103 members.

All regulations stand permanently referred to the Committee so at any time the Committee can examine, or re-examine, any regulation. The Ontario Parliament does not have the power to disallow regulations.

The main focus of the Committee is its work on private bills. In recent years, the Committee has generally held one meeting every 12 to 18 months to consider a draft report prepared by Committee counsel. Committee reports typically identify five to ten regulations that the Committee has found to be in violation of the guidelines. The majority of these violations concern lack of statutory authority and retrospectivity.

The Standing Committee has little to do with the Red Tape Commission. The Commission's mandate of preventing unnecessary rules and regulation is quite separate from that of the Committee, which is to conduct a technical, legalistic review to ensure that regulations are made in accordance with the law.

Assistant Deputy Minister, Ministry of Labour

Helle Tosine gave a presentation to the delegation on Inspections, Investigations and Enforcement Project under "Networked Government: Complex Systems and Integrated Policy". The project was aimed at a more effective system of regulatory compliance enforcement in Ontario by integrated enforcement efforts across the whole Government, resulting in higher compliance rates and reduced enforcement costs for Government and business.

<u>The Vision…</u>

- A modern regulatory system conducive to growth and investment, integrated to ensure public protection and economic growth is achieved through:
    - greater coherence in regulatory strategies,
    - streamlining and continually improve compliance service delivery

<u>The Outcomes…</u>

- Enhanced quality and a balanced approach:
    - better protection for Ontario
    - improved satisfaction and value added with the process for regulated clients and the public (reduce system redundancy and duplication)
    - enhanced effectiveness and efficiency while maintaining public protection

- "Connected Inspection, Investigations and Enforcement (II&E) Community"
    - collaborative compliance between ministries
    - increased II&E capacity – present and future
    - maximised internal and external service delivery
    - shared processes, shared value system, and consistent application of remedies and tools commensurate with risk

A major component of the project was to enable a compliance officer visiting a business to conduct inspections for a number of agencies. This requires integrated training of officers to ensure consistency of approach and the requisite knowledge and competencies. It also requires an integrated IT and data management approach so the officer can access and enter relevant information about the organisation being inspected. This is guided by integrated compliance planning across agencies using a risk management framework to enable a focus on high risk areas. Part of that risk management strategy was negotiated compliance agreements for non-inspection of high performing companies.

Overview of the Red Tape Commission

Mandate

The mandate of the Red Tape Commission shall include:

a) To help businesses, institutions and consumers with red tape problems;
b) To evaluate regulatory proposals applying the Business Impact Test;
c) To co-ordinate the development of at least one Red Tape Reduction Bill per year;
d) To assist ministries in implementing red tape reduction plans; and
e) To undertake special red tape reduction projects on behalf of ministries."

History

In 1995, the Ontario government consulted with hundreds of businesses, institutions and individuals to identify ways to improve the business environment. It found that people wanted government to be more responsive to consumers and businesses and to provide more effective and efficient customer service.

The government responded by creating the Red Tape Commission and giving it a mandate to eliminate existing red tape and prevent unnecessary rules and regulations from being created in the future.

Unlike some jurisdictions where red tape reduction is a bureaucratic exercise, Ontario established a committee of legislators to lead the fight against red tape. This approach enables the province to send a clear signal across the government and empowers the Commission to obtain the explanations, actions and changes the government requires.

The Red Tape Commission is a committee appointed by the Premier to help remove barriers to business and improve the business climate. The Commission is supported by a small group of public servants in the Red Tape Secretariat.

The Commission reviews proposed Cabinet policies and regulatory measures that affect business and institutions, and intervenes on behalf of business, institutions and members of the public seeking assistance with provincial red tape problems.

The Commission reviews and reports on ministries' annual red tape reduction plans. It also prepares legislation that reduces barriers to business, investment and job creation.

Functions

Takes action on special projects - The Commission works on special projects with ministries and the regulated community to eliminate and prevent red tape and improve Ontario's business climate for investment and job creation.

Develops red tape reduction legislation - The Commission works with ministries to develop red tape reduction legislation that reduces barriers to business, investment and job creation.

Intervenes in red tape matters - The Commission investigates and resolves red tape problems brought to its attention by business, institutions and members of the public.

Reviews proposed policies and legislation - The Commission reviews ministries' policy, legislative and regulatory proposals for red tape implications.

Reviews red tape reduction plans - The Commission reviews red tape reduction plans that are part of ministries' annual business plans.

Operation

Fostering a Cultural Shift

The Red Tape Commission is fostering a cultural shift within government that gives priority to eliminating red tape now and to preventing more red tape from being created in the future. Each ministry has Red Tape contacts who work with the Red Tape Secretariat to coordinate ministry red tape activities.

Eliminating Red Tape Now

Red Tape reduction legislation -- The Commission works with ministries to develop red tape reduction legislation that reduces barriers to business, investment and job creation.

Red Tape reduction plans -- Every ministry is required to examine its operations and eliminate duplication, reduce the paper burden, and make government more efficient and effective. The Commission assists ministries in implementing red tape reduction plans.

Preventing Red Tape in the Future

Evaluation of all new regulations and legislation -- All new regulations and legislation affecting business and institutions are evaluated according to the Regulatory Impact and Competitiveness Test (RICT), an impact test that is designed to prevent new barriers to job creation or better government. The test is based on a set of common sense principles, as follows:

- Regulatory action must be justified by a clearly defined problem.
- All realistic alternatives to regulation should be explored.
- Early and ongoing consultation is required with all affected parties.
- The benefits of regulatory intervention must outweigh the risks/consequences of not regulating.
- Where possible, regulatory action should be harmonized with existing international, national or provincial standards and regulations.
- The regulatory focus should be on outcomes not process.
- Regulatory proposals must include a sunset or performance review to ensure they are meeting their objectives and desired results.

The Commission is currently refining its Business Impact Test. In the meantime, ministries are required to complete the Regulatory Impact and Competitiveness Test for all new legislative and regulatory proposals.

Intervening in Red Tape Matters

The Commission investigates and resolves red tape problems brought to the Commission's attention by business, institutions and members of the public.

Taking action on special projects

The Commission works with ministries and the regulated community to undertake special projects to eliminate and prevent red tape and improve Ontario's business climate for investment and job creation.

OTTAWA

Visits by the Delegation

On Tuesday, 23 July, the delegation met with George Redling, Assistant Secretary and Jody Aylard, A/g Director, Operations, of Regulatory Affairs & Order in Council, Privy Council Office. On Wednesday, 24 July, the delegation visited the Canadian Parliament and met with members and staff of the Standing Joint Committee for the Scrutiny of Regulations, including the Honourable Senator Céline Hervieux-Payette, PC, Joint Chair, Me Doris Berthiaume, Legislative Assistant to Senator Hervieux-Payette, M. Derek Lee, MP, Member and former Joint Chair, Mr Till Heyde, Senate Joint Clerk, and Mr Peter Bernhardt, Committee Counsel.

Summary of discussions

Regulatory Affairs & Order in Council, Privy Council Office
The Regulatory Affairs and Orders in Council Secretariat of the Privy Council Office is responsible for monitoring, coordinating and advising on regulatory and Orders in Council issues and policies, and their consistency with economic, social and federal-provincial policies. The secretariat is divided into the Regulatory Affairs Division and the Orders in Council Division.

Canada has a "management standards" approach to the regulatory process. These standards link in with the Government's Regulatory Policy. They are a set of quality assurance standards for departmental regulatory processes, with a standard applying to each policy requirement. This approach allows for flexibility of process for different agencies while at the same time ensuring standards of analysis, consultation and co-ordination.

The Regulatory Performance Management Standards appeared to be having a positive impact on regulation in Canada. A strong regulatory policy community existed. Departments demonstrated commitment to the regulatory policy and regulatory impact analysis was an integral part of departmental decision making processes. The management standards approach, in contrast to the outcomes review by a central agency, appeared to foster ownership and adoption of the policy.

Consultation was an important component of the Regulatory Policy. Each agency took their own approach, with a number of agencies using stakeholder committees and website postings. Work was underway to improve consultation processes for horizontal policies where a number of agencies where involved. This was being done through central co-ordination and departments meeting jointly with stakeholders.

Legislation often included review clauses to ensure that regulations were re-examined. Stakeholder comments or international treaties often also triggered review. Review provisions were preferred to sunset clauses.

The Standing Joint Committee for the Scrutiny of Regulations

The Statutory Instruments Act defines the mandate of the Standing Joint Committee for the Scrutiny of Regulations, which authorizes the Committee to review and scrutinize statutory instruments made after 31 December 1971. In addition to its statutory order of reference, since 1980 the Senate and the House of Commons have renewed an order of reference at the beginning of each session authorizing the Joint Committee to study the means by which Parliament can better oversee and control the government regulatory process. Therefore, taken together, the statutory and sessional references of the Committee provide it with a broad jurisdiction to enquire into and report on most aspects of the federal regulatory process.

The focus of the Committee's work is on individual regulations. If the Committee recommends the revocation of a regulation in a report, the Minister has 15 days in which to challenge the revocation. If the revocation is not challenged, it is deemed to be an order. One hour's debate is allowed on a revocation. Eight or nine orders have been revoked over the last decade.

Government of Canada Regulatory Policy (revised November 1999)

Canadians view health, safety, the quality of the environment, and economic and social well-being as important concerns. The government's regulatory activity in these areas is part of its responsibility to serve the public interest.

Ensuring that the public's money is spent wisely is also in the public interest. The government will weigh the benefits of alternatives to regulation, and of alternative regulations, against their cost, and focus resources where they can do the most good.

To these ends, the federal government is committed to working in partnership with industry, labour, interest groups, professional organizations, other governments and interested individuals.

Policy requirements

When regulating, regulatory authorities must ensure that:

1. Canadians are consulted, and that they have an opportunity to participate in developing or modifying regulations and regulatory programs;
2. they can demonstrate that a problem or risk exists, federal government intervention is justified and regulation is the best alternative;
3. the benefits outweigh the costs to Canadians, their governments and businesses. In particular, when managing risks on behalf of Canadians, regulatory authorities must ensure that the limited resources available to government are used where they do the most good;
4. adverse impacts on the capacity of the economy to generate wealth and employment are minimized and no unnecessary regulatory burden is imposed. In particular, regulatory authorities must ensure that:
    - information and administrative requirements are limited to what is absolutely necessary and that they impose the least possible cost;
    - the special circumstances of small businesses are addressed; and
    - parties proposing equivalent means to conform with regulatory requirements are given positive consideration.
5. international and intergovernmental agreements are respected and full advantage is taken of opportunities for coordination with other governments and agencies;

6. systems are in place to manage regulatory resources effectively. In particular, regulatory authorities must ensure that:

    - the Regulatory Process Management Standards are followed;
    - compliance and enforcement policies are articulated, as appropriate; and
    - resources have been approved and are adequate to discharge enforcement responsibilities effectively and to ensure compliance where the regulation binds the government.

7. other directives from Cabinet concerning policy and law making are followed such as the Cabinet Directive on Law-making and the Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals and the Cost Recovery and Charging Policy.

Responsibilities

Regulatory Authorities

Regulatory authorities are responsible for developing, maintaining and enforcing regulatory programs that follow the Regulatory Policy and for having regulatory management systems in place that meet the Regulatory Process Management Standards. Regulatory authorities are responsible for reviewing their performance and reporting to their senior management on how they have met the Management Standards. Copies of the review reports are to be provided to the Treasury Board Secretariat (Comptrollership Branch).

Regulatory authorities are responsible for including information on planned regulatory initiatives in their annual Report to Parliament on Plans and Priorities and for reporting on results of the regulatory plans in the annual Departmental Performance Reports to Parliament.

Privy Council Office

The Privy Council Office is responsible for assessing the effectiveness of this Policy, its implementation and its elaboration. To do this, the Privy Council reviews existing sources of information such as regulatory information in annual departmental reports to Parliament on Plans and Priorities and Performance Reports, regulatory submissions to the Governor in Council, Regulatory Impact Analysis Statements and departmental reports on their review of the Regulatory Process Management Standards. The Privy Council Office provides advice to regulatory authorities on the Policy requirements, develops guides and supports capacity building to help regulatory authorities comply with the Policy.

Treasury Board Secretariat

The Treasury Board Secretariat is responsible for providing guidance to regulatory authorities on how to include regulatory information in their annual departmental Reports on Plans and Priorities and in the annual Departmental Performance Reports, which are both tabled in Parliament.

Department of Justice

The Department of Justice is responsible for offering legal advice to regulatory authorities. For example, the Department provides regulatory authorities with the legal tools and legal opinions on alternative regulatory solutions, harmonization of regulatory requirements, compliance and enforcement techniques, and use of performance and international standards.

Canadians

This policy is also dependent on the input of Canadians — industry, labour, interest groups, professional organizations, other governments and individuals — into the design and review of regulations and regulatory programs. Through an open and transparent regulatory process,

Canadians have an opportunity to make a contribution and help the government develop regulatory programs that will benefit Canadian society as a whole.

Regulatory Process

The process for the approval of regulations is governed by the *Statutory Instruments Act* and is enforced by the Department of Justice, the Privy Council Office, and the Treasury Board Secretariat.

Highlights of procedural requirements

The *Statutory Instruments Act*, cabinet policy, and the Regulatory Policy set out the process that must be followed when developing regulations. The general requirements are outlined below, but there are some exceptions.

There are three broad classes of regulations:

1. Governor-in-Council (GIC) Regulations — regulations requiring the authorization of the Governor General on the advice of the Special Committee of Council (most regulations fall into this category).
2. Ministerial Regulations — where an Act gives an individual minister the authority to make regulations.
3. GIC or Ministerial Regulations Affecting Government Spending — because of the fiscal implications, these require additional approval from the Treasury Board.

Step 1 - Planning

Departments must scrutinize each regulatory proposal to ensure that it is truly necessary and that a non-regulatory means, or instrument, is not better suited to addressing the problem at hand. Currently, each department tables its Report on Plans and Priorities in Parliament each spring, which contains a list of the major planned regulatory initiatives. These are made available to the public at department websites, as well.

Step 2 - Drafting

The department or agency then drafts its regulatory proposal, doing so alone or with the assistance of its legal advisers and the Regulations Section of the Department of Justice. In order to satisfy the Regulatory Policy, it must also draft a Regulatory Impact Analysis Statement (RIAS), which must describe the proposed regulation, the alternatives considered, a benefit-cost analysis, the results of consultations with stakeholders, the department's response to any concerns raised, and the means of monitoring and enforcing. In certain cases, there must also be a communications plan and a supplementary note.

Step 3 - Review by Justice

The department must then send the proposed regulation and supporting documentation to the Senior General Counsel of the Regulations Section of the Legislative Services Branch of the Department of Justice. Justice examines the draft regulations to ensure that they have a proper legal basis, particularly with respect to the *Charter of Rights and Freedoms*, and that they are in accordance with the *Statutory Instruments Act*. If everything is in order, the drafts are stamped and returned to the departments for the next step.

Step 4 - Signing by sponsoring minister

After being "blue-stamped", the proposed regulations are then submitted to the sponsoring minister for his or her sign-off. By signing the documents, the minister formally recommends that the Governor in Council pre-publish the regulations.

Step 5 - Review by PCO I

It is at this stage that new regulatory initiatives officially come to the Regulatory Affairs and Orders in Council Secretariat at the Privy Council Office (us). As the secretariat to SCC, we review the proposal for consistency with the Regulatory Policy and broader government initiatives. If there are questions relating to the quality of supporting documents, like the RIAS, or supporting information, we ensure that all questions are answered prior to the regulation going before the Special Committee of Council (SCC). We prepare a briefing note summarizing the rationale, impact, and issues related to each

proposal for the information of SCC Ministers who ultimately take the decision whether to approve a regulatory proposal.

Step 6 - SCC-Part I pre-publication

The first time that a regulatory proposal is seen by SCC, the sponsoring minister is typically seeking approval for pre-publication in the *Canada Gazette,* Part I. SCC considers the proposal and either approves or rejects the request for pre-publication. Pre-publication allows for public scrutiny and comment on the proposal for a period of at least 30 days. It is expected that the department will address public comments in a revised regulation, or provide reasons why a given concern could not be addressed. If comments result in changes being made to the regulations, they must be sent back to Justice for review and approval. In some cases, there may be a request for an exemption from pre-publication. In other circumstances, departments may request pre-publication periods shorter than 30 days. These requests are considered and decided upon by the SCC.

Step 7 - Updating of proposal

In some cases, comments during pre-publication may necessitate changes to the regulatory proposal. If so, the regulations would again require a "blue-stamp" from Justice. Even if the proposal is unchanged, the RIAS would need to be augmented with a description of the comments received during pre-publication and the department's response. Also, the sponsoring minister would have to sign the documents and recommend the item for final approval.

Step 8 - Review by PCO II

Proposed regulations return to RAOIC, which now considers the nature of the comments received after pre-publication and the department's response to those comments. It once again fills-in any missing information and prepares briefing materials for SCC Ministers.

Step 9 - SCC-Part II - Final approval

At this stage, SCC Ministers consider the results of pre-publication and take the decision whether to grant final approval to the proposed regulation. If approved, the Governor General "makes" the regulation by signing it and the regulation is registered with the Registrar of Statutory Instruments. Regulations normally come into force as soon as they are registered, which must occur within seven days of final approval, but can only be enforced once published in the *Canada Gazette*, Part II. Publication must occur within twenty-three days of registration. If not approved, the sponsoring department must decide whether to modify the initiative and go back to the beginning of the approval process, or abandon it entirely.

Step 10 - Standing Joint Committee for the Scrutiny of Regulations

The Standing Joint Committee for the Scrutiny of Regulations is a Parliamentary Committee that reviews all regulations. It can recommend changes to regulations, report to Parliament on problems, and propose that regulations be repealed.

History of Regulatory Policy

In the 1970s and early 1980s, governments began to realize that they needed to manage regulations better. This realization was embodied in the introduction of instruments like the Socio-Economic Impact Analysis (SEIA) in 1978, which applied to all new, major regulations in the areas of health, safety, and fairness. Also, at about the same time, the Economic Council of Canada was tasked to undertake a series of specialized studies to review the effects of regulatory action by all levels of government. Support for this movement was not limited to Canada as G-7 members spoke in favour of regulatory reform at their 1978 Summit.

The widespread support for regulatory reform pushed the issue to the forefront of the government agenda. In 1980, the House of Commons' Special Committee on Regulatory Reform, chaired by James Peterson, made 29 recommendations for improving regulation management. Acting on those recommendations, the Federal Government named a minister responsible for regulatory affairs and embarked on several major deregulatory initiatives, the air transport industry being the most notable.

The 1980's saw a rising tide of concern for the economic impact of regulations and the need to minimize regulatory burden on the private sector. Significant interest and activity in economic deregulation marked this period. These concerns were captured by the Nielsen Task Force which,

when it reported in 1986, documented the pervasiveness of regulations and highlighted concerns for their economic impact on society.

Also in 1986, a number of important developments emerged. Cabinet approved *Guiding Principles of Federal Regulatory Policy* and a Citizen's Code of Regulatory Fairness was adopted. A Regulatory Impact Analysis Statement would now support regulatory proposals. The Minister of Privatization and Regulatory Affairs was named responsible for regulatory affairs and the Office of Privatization and Regulatory Affairs was established.

The cumulative impact of the actions taken in 1986 was the establishment of a set of process principles and a regime providing an exhaustive review, and centrally managed control.

In 1991, the President of the Treasury Board was given responsibility for regulatory affairs. Concurrent with this change, the Federal Government launched two parallel regulatory reviews.

Departmental Regulatory Review

In 1992, the Government launched departmental and parliamentary reviews of regulations. These reviews had departments examine (through public consultation) and "re-justify" their regulatory programs. Departments also worked to determine the effect of their regulations on Canadian competitiveness and identified ways of improving the regulatory process, programs, and intergovernmental collaboration.

Treasury Board supported the exercise by providing guidance and encouraging interdepartmental information exchanges.

The reviews resulted in some 835 revocations and revisions of regulations that were to be made over five years. In addition to this lessening of the regulatory burden, the process also had intergovernmental benefits. There was a renewed movement toward both federal-provincial harmonization in areas like agriculture and transportation, and toward collaboration between government and industry.

Parliamentary Regulatory Review

Concurrent to the Departmental Review, a Parliamentary Review sought to gauge the impact of regulation on Canada's competitiveness. The House of Commons' Standing Committee on Finance identified six areas for change and recommended that:

- better analysis be done so that regulatory goals could be achieved with greater efficiency;
- there be greater stakeholder involvement in setting goals and determining the means of achieving them;
- there be more flexible approaches to defining and measuring the extent to which a goal is achieved;
- there be better co-ordination among federal departments; and
- parliamentarians be more involved in the regulatory process.

Lessons Learned

The 1992-1993 Regulatory Reviews were the largest reviews of their kind ever undertaken at the federal level. The twenty-six departments that participated learned several valuable lessons.

- Having the reviews led by several departments, each with its own approach, was particularly helpful. The group provided a range of learning experiences that were shared with the other regulating departments.
- Allowing departments to determine their own path of reform, based on an outline provided by the Treasury Board, gave them the opportunity to apply their expertise and experience to their particular problems, instead of forcing them into a single mold. The process was more than a paper exercise because individual departments "owned" it.
- As a trade-off for encouraging creativity, independence, and flexibility, the reviews did not accomplish as much as was originally hoped. However, they were important in recognizing the need for "regulating smarter". Some out of date regulations were eliminated and the quality of new regulations improved.

- Toward the end of the review coping with budget restraint became a higher priority. However, the review did allow departments to position themselves for future funding reductions.
- Departments found it difficult to measure the combined regulatory burden (e.g., the burden created by the regulation of a given sector by more than one department or level of government). The sectoral reviews launched in 1994 sought to better address this question and break out of the "stovepipe" approach of the past.

The result of these reviews was the Federal Regulatory Reform Agenda, which became a central element of the Government's Jobs & Growth initiative. In addition to implementing the results of the regulatory reviews, priority was given to improving regulation for selected sectors of the economy.

Other items on the Regulatory Reform Agenda included:

- hastening access to regulatory information;
- creating a better complaints-handling process;
- improving federal-provincial co-operation;
- building a new regulatory culture (more training, discussion groups, newsletters, etc.);
- increasing the use of plain language; and
- possible legislative changes to ensure better regulation.

More Recently

A review of issues related to regulation and horizontal governance recommended that support for SCC in regulatory matters be enhanced and consolidated within the Privy Council Office. This recommendation resulted in the creation of a new secretariat know as Regulatory Affairs and Orders in Council. Subsequently, TBS responsibilities for the Regulatory Policy, including the Regulatory Process Management Standards (RPMS), were transferred to the Privy Council Office.

Which brings us to the present: Regulatory Affairs and Orders in Council Secretariat has responsibility for the implementation and development of the Regulatory Policy and for the provision of support to SCC Ministers on regulatory matters.

WASHINGTON

Visits by the Delegation

On Thursday 25 July, the delegation visited the US Small Business Administration Office of Advocacy and held discussions with Mr Thomas Sullivan, Chief Counsel for Advocacy, Mr Russ Orban, Assistant General Counsel and Mr Austin Perez, Economist. In the afternoon the delegation was given a tour of the US Capitol Building by the Office of Senator Zell Miller. On Friday 26 July the delegation visited the Thomas A Rose Institute for Economic Policy Studies at the Heritage Foundation and held discussions with Lawrence Whitman, Director of Economic Studies and James Gattuso, Research Fellow, Regulatory Studies and later met with Mr John Morrall, Office of Information and Regulatory Affairs, Office of Management and Budget.

Summary of Discussions

The United States has a highly developed system of regulatory review, including:

- significant proposed regulations being subject to regulatory impact assessments which must be signed off by the Office of Management and Budget (OMB) before the regulation can be made;
- all proposed regulations and final regulations must be published in the Federal Register (which is available on the internet) and are subject to consultation;
- regulations are considered by Small Business Administration Office of Advocacy prior to publication in relation to their impact on small business and conformity with the Regulatory Flexibility Act;
- Regulatory Flexibility Act requires agencies to assess if any new rule is likely to have a significant economic impact on a substantial number of small entities; whether agencies have complied with the Act in making regulations is subject to judicial review;
- annual reporting by OMB on the Costs and Benefits of Federal Regulations

Consultation on regulations was facilitated by both statutory requirements and a highly developed and well resourced lobby sector.

Office of Advocacy

The Small Business Administration's Office of Advocacy acted as an advocate of small business interests within the Government's administration. The Chief Counsel of the Office was a presidential appointee confirmed by the Senate.

The effectiveness of the Office of Advocacy's role was greatly increased as a result of amendments to the Regulatory Flexibility Act that made regulations subject to judicial review for failing to meet the requirements of that Act. This had meant that agencies had to treat the requirements of the Act seriously and ensure that proper consideration had been given to the impact that a proposed regulation would have on small business. It was noted that in one case a court had found a regulation invalid for being made on the basis of assessments that were completed 12 months prior to the making of the regulation. The requirements of the Regulatory Review Act

together with the centralised monitoring of regulations by the Office of Management and Budget provided a significant motivation for agencies to ensure small business issues were considered.

The Office of Advocacy was often involved in consultations with agencies to ensure adequate consideration of small business interests. An interagency panel would often be set up for particularly contentious regulations comprising the Office of Budget Management, Office of Advocacy and other agencies with an interest in the regulation in question.

The Office of Advocacy had no fixed formula for consultation. Panels comprising a mix of representative organisations and small business owners were sometimes established to consider issues. Advertising in business journals was sometimes used to raise awareness of an issue and the Federal Register provided a central repository of regulatory information. The main point for consultation was the countless lobby organisations that existed in Washington. It was noted that Washington had an association for just about everything, all of which would be well versed in raising their concerns with government.

While the Office of Advocacy does have research staff, its role is advocacy rather than analysis. The Office advises Congress as well as government agencies.

Heritage Foundation

The Heritage Foundation described itself as “a research and educational institute - a think tank - whose mission is to formulate and promote conservative public policies based on the principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense.” It was founded in 1973. The Foundation was a non-profit and non-partisan organisation. It has around 200 employees working on research, public relations, external relations and government relations (ie, lobbyists). It had an annual budget of around US$30 million, 93% of which came from donations from individuals. It had 250,000 donors. It does not receive any Government money. While the Heritage Foundation itself lobbied the Government, it remained fiercely independent of any other lobby agency and did not receive commissions for studies from any outside organisation. The research staff was not involved in fund raising.

The Foundation commended the work of the Small Business Administration Office of Advocacy and the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget. It noted the increased activity of OIRA since the coming of recent Bush administration with a great increase in the number of regulations OIRA had returned to agencies, identification of existing regulations for review, new standards for cost-benefit analyses, quicker reviews and increased openness. Concern was noted about the tendency of agencies to appeal directly to the White House to bypass or overrule OIRA’s scrutiny.

Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB)

The Office of Management and Budget’s predominant mission is to assist the President in overseeing the preparation of the federal budget and to supervise its

administration in Executive Branch agencies. In helping to formulate the President's spending plans, OMB evaluates the effectiveness of agency programs, policies, and procedures, assesses competing funding demands among agencies, and sets funding priorities. OMB ensures that agency reports, rules, testimony, and proposed legislation are consistent with the President's Budget and with Administration policies. In addition, OMB oversees and coordinates the Administration's procurement, financial management, information, and regulatory policies. In each of these areas, OMB's role is to help improve administrative management, to develop better performance measures and coordinating mechanisms, and to reduce any unnecessary burdens on the public.

The Office of Information and Regulatory Affairs oversees the Federal regulations and information requirements, and develops policies to improve government statistics and information management. It was set up by Ronald Reagan to review regulatory impact analyses that were required for regulations. This system of analysis and review was refined under President Clinton by Executive Order 12866 in 1993 which gave a statement of regulatory philosophy and principles, set out OIRA's role in providing advice to agencies and reviewing regulations and required that costs benefits analyses be submitted to OIRA for all significant regulations, ie, regulations which have an annual effect on the economy of $100 million or more or meet a range of other criteria for having a significant impact. This review role was given a renewed role under the Bush administration, leading to a dramatic increase in returns to agencies. A major emphasis on OIRA's work has been the need for transparency throughout the process. Analyses by OIRA and correspondence with agencies are normally public.

OIRA has two main methods of effecting regulatory change: the return letter and the prompt letter. The return letter is when OIRA returns a proposed regulation to an agency due to inadequacies in the proposal or its analysis. The President approves all returns. The prompt letter is a recommendation for changes to regulations. OIRA had recently undergone a consultation process seeking recommendations for changes to existing regulations. It received 2,000 submissions nominating 400 regulations for change.

OIRA has recently undertaken an annual analysis of the total costs and benefits of federal regulations. Its initial estimates of the total benefits, which were dependent on analyses other than its own, range from about one-half to three times the total costs, which were estimated to be between $520 billion to $620 billion per year (roughly comparable to the federal government's total discretionary budget authority in 2001).