OCC COMPETITIVE REGULATORY REGIME POLICIES

ONTARIO CHAMBER of COMMERCE | 100 YEARS of advocacy

2011 - 2012

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AGENDA

OCC COMPETITIVE REGULATORY REGIME POLICIES: 2011-2012

INTRODUCING SMART REGULATION

The purpose of regulation is to ensure that business activities further the public interest by bringing about socially and environmentally responsible business practices.

Smart regulation creates a level playing field for business – wherein the rules apply equally to everyone – and provides business with an incentive to apply technological innovations and tacit knowledge to the betterment of society as a whole. Smart regulation contributes to the triple bottom line of people, planet and profit, and is integral to the economic health and well-being of the province.

Ontario's businesses support smart regulation both in principle, and through demonstrating corporate leadership in the development of standards that will ensure social and environmental sustainability.

Red tape, on the other hand, means overlap, duplication, inconsistency, and inflexibility - an excessive regulatory workload for businesses and individuals that is expensive, requires a huge sacrifice of time, causes people to cut corners, fuels the underground economy, and decreases public confidence. Regulations become red tape when rules are made without due consideration for the existing regulatory, social, environmental, and economic contexts, which is often a result of lack of communication between regulators.

In recent years the Ontario government has taken initial steps to systematically review and modernize Ontario's regulatory framework and processes through the Open for Business initiative. However, the government's historical approach to regulation more closely resembles red tape than smart regulation. A lack of coordination between the various government ministries, arms-length organizations, and other levels of government with respect to information sharing and planning has led to an inefficient and costly regulatory regime. The practice of evaluating policies, thinking through implications and making decisions in silos has caused regulations to be created without consideration for how they interact with other government priorities.

As a result, business regulations in Ontario are unduly heavy and complex. There is often overlap, duplication and conflict between competing regulations, with no clear guidelines or procedures in place for navigating the system or reconciling conflicting requirements. Acquiring reliable and consistent information about compliance obligations is a significant challenge and causes businesses to expend valuable time, money and resources that could be reinvested in the business.

There is an important inter-provincial element to the regulatory environment. Many companies in Ontario are national in scope and are subject to regulation by more than one province. Variation in provincial regulations constitutes a barrier to inter-provincial trade, cuts into the corporate bottom line and puts Canadian companies at a disadvantage to their international competitors.

The inefficiency of the existing system is compounded by the lack of regular channels for stakeholder participation. Policy-makers and public servants need to understand the business world and its challenges to fully address the needs of business in the design of regulations. However, few provincial government departments and agencies have a formal advisory role for business or service bureaus for client outreach.

Insufficient and inconsistent consultation with the business community often leads to regulations that are well intentioned but have a negative economic impact. In some cases the direct and indirect costs to businesses are so high that their very survival is threatened. Government regulation in the province now far exceeds small business' capacity to comply as well as government's capacity to administer, communicate, and enforce. As

such, reinvigorating the Open for Business initiative through comprehensive reform of existing government practices is essential to creating the necessary conditions for Ontario businesses to thrive.

STREAMLINING APPROVAL AND COMPLIANCE PROCEDURES

Regulations become overly cumbersome when different segments and levels of government develop policies on the same issue, resulting in intersecting mandates and uncertainty about how businesses should respond. In a federal system in which the lines of responsibility often vertically and horizontally intersect, uncoordinated government interventions often produce sub-optimal outcomes.

Existing provincial and federal government policies regulating the sale of liquor are one such example. Within the existing legislative and regulatory framework, wineries that sell their products outside of their home province must go through long and costly approval processes to have their merchandise carried by approved provincial sellers. Provincial liquor boards stipulate minimum product volumes and mark-ups that are out of reach for several small to mid-sized wineries. In Ontario, the LCBO collects 58 percent of the sale of every bottle of wine this does not include provincial and federal taxes which are extra (see *Removing Inter-Provincial Trade Barriers for Ontario VQA Wine Delivery*, Appendix).

Under the existing rules, many Ontario wine producers struggle to increase their market share. The Ontario government should support this emerging sector of the provincial economy by working to remove unnecessary restrictions on inter-provincial sales of Ontario wines.

The lack of coordination between government agencies, crown corporations, and human rights tribunals at the provincial level poses similar challenges. Often these bodies have overlapping mandates which result in conflicting regulations. A recent example is a restaurant caught in the middle of two provincial commissions – Ontario Human Rights and Ontario Alcohol and Gaming. Ontario Human Rights has determined that a patron has the right to smoke 'medical marijuana' at the doors of a restaurant while Ontario Alcohol and Gaming revokes a restaurant's license if alcohol is served to an individual known to have used a 'controlled substance'.

In this particular case, the restaurant owner incurred thousands of dollars in legal fees trying to determine which avenues were available to meet the conflicting regulatory requirements. In addition to the direct financial burden, there was a significant disruption to the operation of the business.

This outcome could have been avoided had there been oversight of the two commissions in order to determine which public policy objective was of greater priority. Instead, responsibility for resolving the dilemma fell to the business owner, causing a significant diversion of resources that could have been reinvested in the company (see *Improving the Process for Establishing Regulations that Impact Business*, Appendix).

In order to minimize the negative impact of regulation on Ontario businesses, mechanisms must be put in place to ensure all new regulations are subject to a full analysis that considers how the proposed regulation impacts existing and proposed regulations from other jurisdictions and bodies of government.

TOWARDS A COORDINATED ENVIRONMENTAL REGULATION REGIME

Environmental policy can be singled out based on the sheer volume of regulation and the growing activism of governments in response to global issues such as climate change. In Ontario, environmental regulation covers activities from environmental assessment, to air emissions standards, to endangered species regulations, which are jointly regulated by the provincial and federal governments, and are increasingly part of regional and international regulatory efforts.

With respect to the environmental assessment (EA) process, the lack of coordination, duplication of requirements and absence of reliable timelines have historically been burdensome for business, particularly in light of the need for market responsiveness and the opportunity cost of unforeseen delays in project implementation. The existence of multiple requirements and timelines, which vary from project to project in accordance with the specific project agreement, is a major contributor to project delays. Often the disruption to economic activity occurs for purely "not-in-my-backyard" reasons. The result is increased cost to business with no added benefit to the environment (see *Environmental Harmonization: Towards a ONE Project- ONE Assessment Approach*, Appendix).

In 2010 the federal government enacted a number of changes to the existing EA process. It delegated authority for major energy project assessments to arms-length agencies, exempted certain infrastructure projects from assessment and allowed the environment minister to limit any remaining EAs to a small portion of the project.

While these steps amount to acknowledgement of the redundancy of the federal EA process in many instances, the downloading and curtailing of federal authority does not automatically move Canada closer to a standardized EA regime. At best it reproduces the patchwork of different policies and expertise, only with weaker links between regulators at different levels. At worst, it results in the erosion of protection for activities that are not adequately covered by provincial jurisdiction.

EA standards also vary from province to province. Easing the burden on business therefore requires the provincial government to work with its federal and provincial counterparts to arrive at a harmonized EA framework which enables greater compatibility between the two levels of government and from one province to the next.

Several common themes have emerged in the case of air emissions standards. The lack of a clearly defined framework for emerging approaches on the part of sub-national and national governments drives up operating costs for business, as firms must adjust their activities to meet the prevailing standards in each location. In Ontario, this is the case with municipal regulations governing fine particulate matter, which are being enacted by various municipalities despite a lack of resources and capacity to implement economically feasible regulations at the local level (see *Air Quality*, Appendix).

On a larger scale, the Ontario government is negotiating with other North American jurisdictions on targets for a common cap-and-trade system to regulate green house gas emissions. However, indications are that Ontario and its partners are pursuing more aggressive targets and protocols than the American and Canadian governments, which would have serious cost implications for business. Costs would escalate even further if Ontario's policies were not aligned with emerging international carbon markets (see *Ontario's Competitive Clean Air and Climate Change*, Appendix).

As these scenarios suggest, there is a need for evolving environmental regulations to be developed through a commitment by all governments at the national and sub-national levels to a standardized, collaborative approach. Such a commitment is necessary to ensure that a cleaner and sustainable environment for future generations does not come at the expense of Ontario's economy.

ADOPTING A CONSULTATIVE AND EVIDENCE-BASED APPROACH

One of the shortcomings of government practice in initiating new guidelines and regulations is a lack of broad-based participation at the preparatory stage to ensure the relevance and sustainability of the ensuing programs. Often times the design of programs does not take into account the key attributes of the target group (such as size, sector etc.) and is ineffective for a large portion of the business community. Small and medium businesses

are often the most negatively impacted by rigid, one-size-fits all approaches to regulation due to their lower profit margins and more limited internal capacity.

The government's OntarioBuys program is an example of a government initiative which is out of step with the reality of the marketplace. OntarioBuys delegates authority for Broader Public Sector (BPS) procurement to collaborative purchasing organizations. The boards and steering committees of these organizations are made up almost exclusively of representatives from BPS organizations. There is no requirement to solicit input from supplier representatives - who best understand the workings of the marketplace - in the development of competitive sourcing criteria. As such, Requests for Proposals are often inaccessible to many small and medium-sized businesses, limiting the participation of many businesses in the marketplace (see *Ensuring Competitiveness and Accountability with OntarioBuys*, Appendix).

The existing procurement process has caused many stakeholders, including the Auditor General, to question the efficiency and effectiveness of OntarioBuys. Developing new guidelines and accountability mechanisms to ensure a fair and open bidding process would produce the best outcome for both government buyers and industry suppliers.

Ontario's Residential Tenancies Act is another body of regulations which has undue regard for the economic context. The Act places the onus for meeting rental responsibilities on landlords, despite the fact that they have little influence over tenant behavior. Through imposing unnecessary costs on landlords and the provincial adjudication system the existing legislation results in an inefficient distribution of resources. The government of Ontario should acknowledge this negative economic impact by amending the Residential Tenancies Act to take into account the actual outcomes associated with the application of the legislation (see *Ontario's Residential Tenancies Act*, Appendix).

As currently structured many government programs and policies contradict the spirit of the government's Open for Business initiative. The government could make these programs more relevant to Ontarians through more flexible and participatory processes and procedures. This would allow the government to design and deliver the most effective regulations at the lowest cost, while ensuring a level economic playing field.

CREATING A TRUE 'OPEN FOR BUSINESS' CULTURE

As suggested in the preceding sections, an economically competitive regulatory regime requires horizontal and vertical coordination and harmonization as well as participatory decision-making processes.

The government has hinted at the need for a more coordinated approach through the Open for Business initiative. It has vowed to create a more modern government by harmonizing with and eliminating duplication between provincial, federal, and municipal government regulations.

The most visible sign of this commitment to date has been the Open for Business Act. While this legislation goes a long way toward streamlining and rectifying existing irritants, ensuring that progress is maintained over time requires *retroactive* measures to lower the regulatory burden to be accompanied by changes to the *entire process* used to plan, develop, enact, and evaluate new regulations. To ensure that future regulations do not create more problems than they solve, the government must minimize the creation of unnecessary red tape in the first place through adopting the essential ingredients of a proactive, enterprise-wide approach to regulation (see *Creating a True 'Open For Business' Culture in Business Regulatory and Enforcement Framework*, Appendix).

A second objective of the Open for Business program is the development of a new relationship with business characterized by greater openness and responsiveness. The goal is to achieve a clearer understanding of

business needs, perspectives, and priorities in order to make regulations more conducive to economic competitiveness. In connection with this goal, the government pledges to solicit regular input from business guided by government-wide business consultation standards and best practice guidelines.

The government has taken steps to transform the existing relationship with business through stipulating a 45 day consultation period and twice-annual effective dates for all new regulations. It has also commenced with the development of a Risk and Competitiveness Impact Assessment and a best practices guide on alternatives to prescriptive regulation. The government has further opened the door to greater collaboration with business through the Business Sector Strategy, which gave seven sectors the opportunity to identify their top five priorities for reform and have them addressed in a signed agreement by the relevant Ministries.

These measures represent the building blocks of a sustainable approach to regulation that provides improved outcomes for the environment, society, and the economy. However, in order to achieve a wholesale transformation of government practice, the government must ensure that fostering a new relationship with business becomes a long-term commitment. The government must prove that it is serious about more effectively engaging stakeholders through the development of formal protocols and tools for communicating with business and addressing private sector priorities (see *Creating a True 'Open For Business' Culture in Business Regulatory and Enforcement Framework*, Appendix).

APPENDIX: POLICY RESOLUTIONS

Air Quality

(approved June 24, 2010)

ISSUE

We reference the Ontario Chamber of Commerce Principle: Each order of government must maintain legislative, regulatory, and enforcement powers within its jurisdiction.

Currently, the Ontario Municipal Act permits Municipal governments to enact bylaws to protect the public interest if there is believed to be risks to the overall health, both physical and economic, of their communities, in areas that are clearly defined as a Provincial jurisdiction.

In the past, individual municipal governments enacted bylaws to control the use of pesticides within their own borders, creating a patchwork of inconsistent regulations. Eventually, the Provincial Government intervened and produced province-wide regulations, noting that airborne substances do not recognize borders.

An Ontario municipality has recently enacted a bylaw to regulate at a local level, fine particulate matter emissions from business and industry. With the stated willingness of other municipalities to enact similar air quality regulations, we can predict events to unfold as they did with pesticide regulations.

BACKGROUND

Responsibility for regulating Air Quality, including Fine Particulate Matter places an onerous burden on municipal governments' limited resources. Municipal governments do not have the resources or expertise to undertake the complex process required to produce effective and enforceable air quality regulations.

Implementation of an enforcement plan would require massive, duplicative investments by the 444 municipalities in Ontario, including, but not limited to, new departments and staff in an area not currently within the scope of municipal responsibilities. When resources are allocated to new programs such as this, other priorities may be sidelined.

The additional costs to business to comply with a regulatory environment with 444 disparate municipal regulators (plus federal and provincial regulations) will establish a balkanized business climate that will detract from efforts to enhance business productivity, reduce competitiveness of Ontario businesses and will drive businesses looking to locate in Ontario to jurisdictions with greater regulatory certainty and clarity.

It must be stated that FPM cannot be contained within their source community and that they cross international boundaries, irrelevant of the source: industrial, commercial, residential, institutional, or from transportation. This makes attempts by individual municipalities to regulate air quality at a local level ineffective.

Current provincial regulations allow a municipality to define a public interest that may be contrary to the overall health, both physical and economic, of an area that is clearly identified as a Provincial interest. It is important that the Province amend the statute and regulations to reserve exclusively for itself the ability to define the public interest in the area of air quality.

RECOMMENDATIONS

The Ontario Chamber of Commerce urges the Government of Ontario to:

1. To develop province-wide standards for the regulation of fine particulate matter, in consultation with business, scientific experts, and other stakeholders.
2. To enact legislation to regulate and enforce these standards. The legislation must be operational and effect a reduction in fine particulate matter where it is shown to have a detrimental effect on human health.

Creating a True 'Open For Business' Culture in Business Regulatory and Enforcement Framework

(approved May 2, 2009)

ISSUE

The Ontario Government has a recently articulated a vision to better serve and support business and economic development in the province through its "Open for Business" initiative that is intended to reduce the red tape and regulatory burden on business. However, this vision is far from being reflected in the bureaucratic regulatory framework that threatens business every day with inflexible and unfriendly business policies, approval processes and regulations that are being implemented and enforced unjustifiably to the detriment of business.

BACKGROUND

As the foundation of the Ontario Government's Five Point Economic Plan, 'Open for Business" is the ambitious three-year initiative, through the Ministry of Economic Development, to create faster, smarter and streamlined government-to-business services to make Ontario more attractive for business development while protecting the public interest. It also seeks to transform the Ontario government-to-business relationship. Specific objectives are to:

- Create open and responsive collaboration between government and business,
- Reduce the burden of government regulation on business,
- Implement enhanced, single-access point services and products, coupled with service guarantees, and
- Create a modern regulatory environment that fosters competitiveness and welcomes new business.

Business regulations are intended to serve Ontario citizens by ensuring fair business practices, consumer and public safety, community welfare and care of the natural environment. While Ontario's business support and demonstrate leadership in advancing these objectives, business regulations in Ontario are extensive and unduly heavy, covering every aspect of business. Included are government imposed legislation, taxation, regulations, registration, licenses, permits, approvals, restrictions, standards, guidelines, procedures, reporting, filing and certification requirements, paperwork, investigation, inspection and enforcement practices or other measures that truly are not needed to protect public health, safety and the environment.

Businesses in Ontario are being overly taxed in applying resources to compliance, including many circumstances where the regulations itself, its application, or enforcement, is unnecessarily and unjustifiably burdensome, crude and inflexible. The result is a strong hindrance on job creation, investment opportunities and weakened competitiveness. This regulatory environment is extremely detrimental to long-term economic sustainability and growth, and is particularly threatening to business during the current economic recession.

In order for the Provincial Government to be truly serious about its vision for Ontario to be "Open for Business", the business regulatory framework, including the bureaucratic culture of working in silos, inflexibility and lack of understanding of business operations and challenges, must be shifted, to better support business and economic sustainability.

RECOMMENDATIONS

The Ontario Chamber of Commerce urges the Government of Ontario to:

1. Establish comprehensive business regulatory reform as a strong "economic sustainability" priority, and within the next three years, having set ambitious annual benchmarks, make a meaningful and substantial change in government policies, regulations, and enforcement that support economic development, business opportunity, competitiveness and growth.
2. Translate the "Open for Business" vision into very specific and defined measures, consistently implemented and coordinated throughout all provincial ministries and departments, and from the highest policy development levels to the front line public servants and officials, that clearly demonstrates a bureaucratic "economic sustainability culture" of supporting rather than inhibiting business.
3. Educate all provincial policy makers, public servants and regulatory enforcement employees on "Open for Business" objectives and the related "economic sustainability culture" so that it is formally internalized in the provincial government, including setting appropriate performance and behavioural expectations and sustainability targets into performance assessment.
4. Consult and work closely with business (including business and industry associations), and through study, comprehensively identify the large volume of burdensome regulations hindering business, with a view to rectifying, reducing and eliminating, as well as pursue opportunities for better cross-provincial harmonizing.
5. Attach a five-year mandatory review of all new regulations.
6. Impose a statutory requirement for broad based consultation with business stakeholders on any proposed new regulations at least 60 days prior to adoption, demonstrating that it was well researched, and includes a cost-benefit analysis (including cost of implementing, enforcing and maintaining the regulation and economic impact vs. the benefit to be gained by the regulation).

Ensuring Competitiveness and Accountability with OntarioBuys

(adopted May 7, 2011)

ISSUE

Since the piloting of the OntarioBuys program three years ago, the Chamber has raised concerns regarding the procurement procedures developed by OntarioBuys.

Under OntarioBuys, shared service organizations (SSOs) were created. One such SSO is the Ontario Education Collaborative Marketplace (OECM). Under this SSO there are number of stipulations that are unrealistic for small and medium sized firms to meet.

With the permanent entrenchment of OntarioBuys in the 2009 Ontario Budget, it is clear that the government is committed to the program. However, there are significant process changes that must be made for OntarioBuys to be a fair and open process that does not negatively impact businesses across the province.

BACKGROUND

OntarioBuys is a government initiative launched in 2004 to achieve savings in the procurement of goods and services in the provincially-funded broader public sector (BPS) including hospitals, school boards, colleges and universities. The BPS Supply Chair Secretariat, part of the Ministry of Finance, is responsible for administering and managing OntarioBuys. Ontario is the only province in Canada with a formal program that provides funding and advice to BPS organizations to help them improve their supply-chain management practice. OntarioBuys encourages BPS organizations to engage in collaborative ordering, delivering, warehousing and payment of goods and services.

Since 2005, the program has provided $148 million to expand SSOs (Shared Services Organizations; basically a central organization whose sole purpose is to act as one voice for broader public sector organizations) and support projects aimed at helping broader public sector organizations become more efficient.

The first SSOs to be created under OntarioBuys are the Ontario Education Collaborative Marketplace (OECM). OECM is a not-for-profit corporation founded by nine educational institutions (six universities, two colleges and one school board). With $35 million in funding from the Ministry of Finance in 2007, the OECM objective is to establish an e-procurement marketplace for the goods and services currently purchased by its members. Over the next five years the number of members of OECM is anticipated to increase to 45 members with an average spending on goods and services of $2 billion annually. OECM is the largest OntarioBuys initiative in terms of projected savings.

In 2009, the OECM released its first RFP for office products. A review of the RFP raised a number of concerns for suppliers. First, the terms of the RFP required three-year firm pricing, which was subsequently changed to one-year firm pricing just before the close of tender with no extension granted. This has left many businesses unable to respond based on the new information. The RFP also stipulates that there should be no minimum order size. This means if an institution orders a set of the pens – it can – without receiving a higher charge rate based on size of purchase. This an unrealistic expectation considering the scope of educational delivery sites within Ontario and the request for departmental delivery.

As well, there are no provisions in the RFP process that allow for the value added components that ensure the overall service of business to its clients. The only level of service provision is the need for a toll free telephone number. Many small and medium sized companies take pride in the high level of service provided to its clients, and it is an important competitive edge in many communities across Ontario. In fact, the current system which

is driven by locally based institutions working with suppliers to keep costs contained through a strong working relationship between supplier and purchaser will be erased completely within the new guidelines.

In addition, OECM demanded a rebate of up to 5% on all purchases, plus a volume escalation discount and prompt payment discount that could actually increase the cost of products. Since the closing of the RFP, OECM has changed the rebate to a 3% administrative fee that will be charged by the awarded suppliers to the participating organizations under OECM. Again, the changes took place after the closing of the RFP negating the opportunity for all suppliers to re-submit on the RFP. The rebate will be used to finance yet another government bureaucracy at a time when governments should be looking for ways to reduce its size.

Modifications have been made to the RFP process, but there is still a concern that the competitiveness of the process is unfairly balanced. This concern was echoed in a report from the Auditor General in the fall of 2009 that assessed the OECM. The report demonstrated that there are significant risks that were overlooked in the creation of OECM. One of the noted concerns was low supplier participation. According to the report, SMEs are unable to access OECM due to the size of the RFPs, and the stipulations of the RFPs being issued by the organization.

While the government should be commended for seeking ways in which the procurement of goods and services is conducted in a manner that saves money and reduces expenses, the process of procurement should not be prohibitive to SMEs across Ontario. In addition there should be considerable metrics to determine the actual savings that the Ontario government is making through a modified supply-chain management process. In doing so the provincial government will be able to be both accountable and ensure competitiveness integrity when it comes to the OntarioBuys program.

RECOMMENDATIONS

The Ontario Chamber of Commerce urges the Government of Ontario to:

1. Include private sector representation on the boards of all shared-services organizations operating under OntarioBuys including from SME's and regions of Ontario.
2. Immediately develop monitoring guidelines to assist OntarioBuys staff as they conduct oversight of project funding.
3. Mandate performance metrics for the OntarioBuys program and its shared-service organizations as a means to measure the actual return on investment compared to the realized cost savings and leveraged efficiencies.
4. Mandate OntarioBuys and its SSOs to create a clear dispute resolution mechanism.
5. Immediately initiate consultations with business to develop proper guidelines that address the concerns raised by the Auditor General in its review of the OECM.

Environmental Harmonization: Towards a ONE Project- ONE Assessment Approach

(adopted May 1, 2010)

ISSUE

The provincial and federal environmental assessment processes that businesses must undergo are often lengthy and contain duplicated requirements. The absence of a single, streamlined approach often means significant time delays, increased business costs and ultimately has the unintended consequence of being a barrier to business development in Ontario.

BACKGROUND

Development projects in Ontario are subject to environmental assessment legislation under both the Canadian Environmental Assessment Act and the Ontario Environmental Assessment Act. Historically, the lack of coordination, duplication of requirements and absence of timelines upon which a business may rely has been burdensome, particularly in light of the need for market responsiveness and the opportunity cost of unforeseen delays in project implementation. Applicants have experienced difficulty navigating the regulations and often feel there are no clear guidelines provided and no consultation process to clarify the issues.

The federal government's "Smart Regulation: Report on Actions and Plans" (March 2005) identified environmental assessment consolidation as a priority. The report found, through consultation with industry, that although the environmental assessment was viewed as highly important, the process was found to be slow, lacking in clarity and occasionally of uncertain benefit to the environment.

In October 2007, a Federal Cabinet Directive established the Major Projects Management Office (MPMO), a Natural Resources Canada streamlining initiative for major natural resource projects only, through collaboration with federal departments and agencies. The initiative includes the development of a project agreement between pertinent federal departments, committing to timelines with the intent to improve the effectiveness and efficiency of the regulatory system for major resource projects. Beyond this federal initiative (which applies only to "major resource projects"), there has been little movement to improve the coordination between federal and provincial assessment agencies.

The Timmins Chamber of Commerce recognizes the importance of environmental protection and commends the Government of Ontario's Proposed Growth Plan for Northern Ontario (October 2009) for including a planned action item to "ensure environmental approvals are harmonized with federal requirements". Harmonizing the provincial environmental assessment and federal environmental assessment processes will result in a stronger, more efficient regulatory environment that will build competitiveness and attract investment for Ontario. The provincial government must follow through on this planned action, and must furthermore make it a priority. We believe that specific steps must be taken and timelines applied to ensure a standardized "one project, one assessment" approach becomes a reality for all Ontario businesses.

RECOMMENDATIONS

The Ontario Chamber of Commerce urges the Government of Ontario to:

1. Work with the federal government to implement a framework supporting a "one project – one assessment" approach to environmental assessments which does not lengthen project timelines;
2. Establish a mechanism or process for better communication and co-operation between Federal and Provincial government agencies to eliminate duplication of EA requirements and create greater efficiency in dealing with issues that arise in the EA process;
3. Amend legislation and regulation in provincial jurisdictions to permit a unified process, led by the province, with technical participation by federal regulators in areas of federal jurisdiction and interest by 2010; and
4. Ensure that 80% of all harmonized reviews meet the timelines as set out by the province.

Improving the Process for Establishing Regulations that Impact Businesses

(adopted May 1, 2010)

ISSUE

New and existing regulations invoked by the Ontario Government that affect business can unintentionally place businesses in jeopardy of survival. This could arise due to failing to think through implications of a regulation to the operation of a business, it could arise due to conflicting regulations with no clarity on which regulation supersedes, or it could arise from costs being in excess of social or economic benefits to be gained.

BACKGROUND

There have been examples where poorly developed laws and regulations have meant considerable expense to the public purse, to individuals, and to businesses.

A recent example is a restaurant caught in the middle of two provincial commissions – Ontario Human Rights and the Ontario Alcohol and Gaming. Ontario Human Rights has determined that a patron has the right to smoke 'medical marijuana' at the doors of the restaurant while Ontario Alcohol and Gaming will revoke the restaurant's license if alcohol is served to an individual known to have used a controlled substance.

In this particular case the restaurant owner incurred thousands of dollars in legal fees in trying to determine what avenues were available to him in the near impossible task of meeting the conflicting requirements of the Commissions. In addition to the financial burden there was a significant distraction to the operation of the business through no fault of the business owner. The goal of the business was to prevent the smoking of a controlled substance within the immediate outdoor space of the restaurant while abiding by the alcohol serving rules. Additionally the taxpayers have to fund the Ontario Rights Commission and the Alcohol & Gaming Commission in them defending their respective regulations while neither have an obligation to assist in finding a solution.

In a situation like this, business will be on the defensive. The cost will fall on the business to try to resolve such a situation. The real shortcoming is in the development of the government regulation.

RECOMMENDATIONS

The Ontario Chamber of Commerce urges the Government of Ontario to:

1. Ensure regulations are subject to a full analysis which considers issues such as constitutionality of the proposed regulation, conflict with other existing and/or proposed regulations from provincial or federal levels of government (including commissions and agencies); and
2. Establish an effective and efficient process to resolve conflicts between regulations that occur post implementation that includes reimbursement for reasonable direct costs incurred by the public to resolve conflicts that occur.

Ontario's Competitive Clean Air and Climate Change

(adopted May 1, 2010)

ISSUE

In January 2010, the federal government announced a new set of Green House Gas (GHG) emission targets by aligning them with the U.S. Standards. However, as part of Ontario's Climate Change plan the provincial government recently passed legislation on provincial emissions standards that do not align with the federal government's recently announced targets.

Overlapping, non-harmonized environmental mandates at provincial and federal levels will significantly increase business operational costs while mandated emission free technologies will drive up both capital and operating costs in regulated industries. Ontario businesses could be unduly penalized relative to key trading partners if provincial standards are misaligned relative to other provinces, the federal government, and global trading partners, primarily the United States.

BACKGROUND

On January 29, 2010, the federal government announced its 2020 target of a 17% reduction in greenhouse gases from 2005 levels. This target is completely aligned with the U.S. target. However, Ontario's Climate Change Action Plan calls for reducing greenhouse gases by 6% from 1990 levels by 2014, and 15% by 2020. In December 2009, the provincial government passed legislation (the Environmental Protection Amendment Act - Greenhouse Gas Emissions Trading), which has set the foundation for Ontario's cap-and-trade program. The Cap and Trade "implementation" date is set for 2012.

It is counter-productive for Ontario and Ontario businesses to strike out on their own, to set and to pursue targets that will ultimately create barriers to trade and put us at a competitive disadvantage.

The OCC acknowledges that Ontario is working with its partners in the Western Climate Initiative (WCI) to assist in developing a broader cap-and-trade system. (WCI members include Ontario, Quebec, British Columbia, Manitoba, and seven U.S. states). However, Ontario's regime must be designed in the context of harmonized Canadian, North American, and international approaches to ensure that Ontario can link to broader carbon markets. Further, given Ontario's extensive trade with the United States, being aligned with the emerging U.S. carbon regime is important so as to minimize the potential risk of future border measures.

The OCC endorses government's efforts to pursue a cleaner and sustainable environment for future generations. Yet, it is extremely important to business that the federal and provincial governments avoid regulations and compliance options that overlap, duplicate, or introduce inconsistencies that increase the compliance burden on industry.

Businesses have expressed concerns over a range of negative economic impacts related to tougher environmental regulations:

1. Technological limitations: There are genuine limits to the scope of available and affordable technologies, which could be deployed effectively and particularly to meet the likely mandated timetables. In large measure, businesses already employ best available technologies that are commercially viable, making significant reductions unattainable in the short term.
2. Competitive Realities: The capital and operating costs of new technologies may be uneconomic for Ontario producers versus global competitors. Ontario producers may be unable to pass-through additional compliance costs.

3. Limited Scope/Early Action: Over the past several years businesses have significantly enhanced their environmental performance through improved internal operations (economically achievable process improvements, equipment upgrades, and other abatement methods). Similar large-scale opportunities do not exist for the next round of reductions.
4. Structural Impediments: The reduction targets are being imposed on existing operations, which are capital intensive with long payback and capital turnover periods. While a new green-field operation could be designed more optimally to achieve environmental results, existing facilities can only realize comparable gains through capital stock turnover over an extended period.
5. Compliance burden: overlapping or contradictory federal and provincial regulations will create confusion and will increase the compliance burden for businesses. A common set of design principles would ease the compliance burden.
6. Cost implications: An environmental tax will further increase the price of energy, jeopardizing the sustainability of a range of vulnerable industries in Ontario (manufacturing, forestry, agriculture, etc.).
7. Allowing for growth: some jurisdictions, particularly US states and Europe, disallow the use of intensity to manage GHG emission reductions. These jurisdictions are developing policies that require absolute reductions in GHG emissions. It is critical that Ontario harmonize with the federal government for an intensity based approach that will allow Ontario's economy to grow.
8. The Ontario Government should collaborate with the federal government and consult with the Ontario business community to ensure an effective harmonization of new clean air regulations.

RECOMMENDATIONS

The Ontario Chamber of Commerce urges the Government of Ontario to:

1. Pursue a harmonized and non-discriminatory approach when developing any provincial standards in parallel with the federal government, and ensure:
    a. A signed equivalency agreement with the federal government on Clean Air and Climate Change regulatory frameworks;
    b. Realistic and reasonable timetables for the implementation of science-based actions directed to improving air quality;
    c. Policy changes produce the least economic impact on regulated industries;
    d. Incentives to businesses to encourage implementation of lower-emitting technologies and early "emission reducing" action;
    e. Adequate funding of research on energy efficiency and emission free technologies; and
    f. They are aligned with North American standards.
2. Engage all industries to be affected by proposed regulations/standards in a fair consultation process and ensure a level playing field for regulated businesses.
3. Partner with business, the Government of Canada, and other jurisdictions to research and develop strategies and programs, which bring awareness to the financial benefits and progressive action on tackling green house gas emissions.

Ontario's Residential Tenancies Act

(adopted May 7, 2011)

ISSUE

Ontario's provincial government regulations within the Residential Tenancies Act (RTA) enable tenants to take unfair advantage of the system. Residential or landlord tenant acts in other provinces are more equitable; thereby making it more attractive for investment in those jurisdictions.

BACKGROUND

Ontario's Residential Tenancies Act (RTA) should be changed to make it more equitable for landlords and property managers. The existing Act does not hold tenants accountable to their rental responsibilities; instead it places unnecessary financial burdens and excessive delays on landlords and property managers, and on our municipal court system.

Ontario's RTA processes must be changed in the areas of: 1) Non Payment of Rent; 2) Dispute Resolution Officers at Residential Tenant Board offices; and 3) amending last month's rent to a security deposit system.

Non Payment of Rent

Currently in Ontario, if a tenant has not paid their rent, it is the landlord's responsibility to pay a $170 filing fee and schedule a hearing. In British Columbia, if the rent is not paid, the onus is on the tenant to pay a $50 filing fee to dispute an eviction. British Columbia's Act places the responsibility in the right place by making the tenant accountable for the expenses incurred to schedule a hearing when it is their rent that has not been paid. Ontario's current process places unnecessary financial burdens on landlords and wastes valuable administrative time and associated costs. A tenant often does not attend a hearing nor are they likely to have a receipt proving their rent was paid when it was not.

Dispute Resolution Officers at Residential Tenant Board Offices

In Ontario, the Dispute Resolution Officers are at the courthouse the day of a scheduled hearing to assist with settling an issue before it is heard by a judge. However, in British Columbia, evidence can be presented by both the tenant and landlord to a Dispute Resolution Officer, and a binding ruling can be made by the Officer. This presentation can be done at a government office or by telephone conference call. This BC process avoids scheduling a hearing and using up unnecessary, valuable court time and tax dollars.

Amending Last Month's Rent to a Security Deposit System

Under Ontario's current system, a tenant pays last month's rent, which covers the last month they occupy the unit. The issue with this process is that the tenant does not pay any monies on the first day of their actual last month. Therefore, at the end of the tenancy there is no money held by the landlord to give back to the tenant leaving no motivation for the tenants to leave on time, leave the unit in reasonable repair and cleanliness, take all their possessions, or return the keys.

RECOMMENDATIONS

The Ontario Chamber of Commerce urges the Government of Ontario to:

1. Amend Ontario's process for Non Payment of Rent within The Residential Tenancies Act to mirror that of British Columbia's. This places the onus and payment of fees on the nonpaying tenant not the landlord.
2. Shorten the dispute process by more effectively using the role of a Dispute Resolution Officer at the Residential Tenant Board office. This will avoid unnecessary court hearings. An order of possession can be obtained from a Dispute Resolution Officer at the Residential Tenant Board office thereby avoiding going to hearing to obtain such.
3. Amend the current process of collecting last month's rent by landlords to a security deposit system similar to the process in the Province of Alberta. This process will include the following:
    a. An inspection report to be completed by the tenant and the landlord which will note any deficiencies before the tenant takes possession of the unit;
    b. A security deposit to be returned in full once the tenant vacates the unit and has met the following conditions:
        i. The tenant removes their personal possessions from the unit
        ii. The tenant returns the keys upon vacating the unit
        iii. The tenant reasonably cleans the unit before vacating
    c. The tenant recognizes that any repairs required outside of normal wear and tear will be deducted from the security deposit; and
    d. The tenant does not have full rights to the rental property until the first month's rent and security deposit are paid in full.

Removing Inter-Provincial Trade Barriers for Ontario VQA Wine Delivery

(adopted May 5, 2008)

ISSUE

In an increasingly competitive global marketplace, inter-provincial regulations prohibit many businesses and industries from expanding domestic market share. In recent years, provincial and territorial governments have commenced macro discussions related to inter-provincial trade barriers exploring areas of common interests where the removal of barriers would strengthen overall competitive advantages. While this approach is a good first step towards creating a more competitive national marketplace, attention should also be directed towards targeted regulations as a means to demonstrate the positive impacts that removing trade barriers can have on industry and economies.

For example, the Ontario wine industry produces world-class 100 percent VQA Ontario wines and yet when it comes to being able to offer its wines to consumers across Canada, Ontario wineries are hindered by regulations that prohibit the direct delivery of wines to consumers in other provinces and territories. The removal of prohibitive wine-related regulations can be used as an example of the need to further reduce inter-provincial barriers as a means to strengthen domestic industries.

BACKGROUND

In Canada, it is illegal to direct deliver alcohol across provincial borders to an individual or to a business not affiliated or representing a province's liquor board or approved seller. Since 1928, the Importation of Intoxicating Liquors Act has prevented the direct sale of liquor across provincial boundaries. Some wineries ignore the rule, even using Canada Post to transport their products, but others will not direct deliver beyond Ontario. In addition, the law actually prohibits individuals from taking even one bottle of wine across a provincial boundary.

Ontario wineries are able to apply to other provincial liquor boards, or to private Alberta stores, to have their products put on store shelves. The process can be lengthy and costly and beyond the reach for some small to mid-sized wineries who do not have either the volume of product to meet liquor board minimums or who are unable to afford the liquor mark-ups. For example, in Ontario, 58 per cent of the sale of every bottle of wine through the LCBO goes to the Crown Corporation (this does not include provincial and federal taxes which are extra).

These rules were designed long before Internet sales and just in time delivery became viable options for wine distribution. As the industry expands, it is vital that it find every domestic opportunity to market its products. Direct sales would give small to mid-sized producers another important channel to sell their wines and create more choices for Canadian wine drinkers. It would also allow Canadians who visit Ontario wineries more opportunity to be able to have those products at home – a benefit to both wine sales and tourism.

The growth of the Ontario wine industry is extremely beneficial to the province of Ontario. Not only does the Ontario wine industry create jobs, preserve valuable agricultural land and create vibrant tourism destinations, it also adds value to the economy in many other ways. A 2002 study conducted by KPMG and commissioned by the Wine Council of Ontario found that the sale of a litre of Ontario wine added $4.29 in value to the Ontario economy compared to $0.56 in added value from the sale of an imported wine.

In the United States, similar prohibitive state regulations hindered the domestic wine industry from delivering directly to consumers. In 2005, the US Supreme Court ruled that regulations restricting the direct delivery of

wine between states were unconstitutional and ordered regulations to be adjusted to allow for domestic wines to be direct delivered across state jurisdictions. In 2006-07, US wineries reported a 31 per cent increase in direct sales to consumers. By allowing more consumer choice, in all markets, the entire domestic industry has benefited.

Any changes in Canada can have the same positive impact as has been demonstrated in the US. By reducing inter-provincial barriers related to the direct delivery of wine, an important agricultural commodity will gain access to a domestic market that will improve the financial stability of the industry, and its overall positive impact on the economy.

RECOMMENDATIONS

The Ontario Chamber of Commerce urges the Government of Ontario to:

> Demonstrate Ontario's commitment to reducing inter-provincial trade barriers by working with all provinces and territories to remove prohibitive regulations related to the direct sale and delivery of 100 per cent Ontario made VQA wines.

180 Dundas Street West, Suite 505
Toronto, ON M5G 1Z8
occ.on.ca @OntarioCofC