

March 31, 2011

The Honourable Rob Moore
Minister of State (Small Business and Tourism)
Red Tape Reduction Commission Secretariat
L'Esplanade Laurier, East Tower, 10th Floor
140 O'Connor Street
Ottawa, Ontario M7A 1A2

RE: Red Tape Reduction Commission – Consultation Discussion Paper

Dear Mr. Moore:

The Ontario Chamber of Commerce (OCC) is a federation of 160 local chambers of commerce and boards of trade in the Province of Ontario, representing 60,000 businesses of all sizes, in all economic sectors covering every area of the province. The OCC's mandate is to advocate strong and effective policies on issues that affect its membership throughout Ontario's business community.

The federal government has engaged in focused regulatory reform efforts since the mid 1980s. However, red tape remains a top barrier to competitiveness cited by the Canadian business community. The Canadian Federation of Independent Business estimates that the burden of red tape costs Canadian businesses \$30 billion each year in compliance costs alone. This figure represents a significant drain on the Canadian economy that the country can ill afford at a time when unprecedented openness to emerging markets puts Canada in direct competition with low-cost jurisdictions from around the world.

The stated goals of the federal government's Red Tape Reduction Commission (the Commission) are to: 1) identify the top irritants facing business and 2) devise permanent solutions focused on systemic changes that measure, control, and reduce the compliance burden on an ongoing basis.

Steps to identify and rectify existing regulatory irritants are a necessity for addressing the costs, uncertainty, and delays characteristic of the current regulatory environment. Businesses from across the province have identified numerous examples of red tape at the federal and provincial levels that constitute significant disincentives to investment, including:

- Cumbersome paperwork and processing times for approval and reporting obligations: companies must expend valuable time and resources on understanding and meeting technical requirements. Many companies must hire external consultants just to administer the associated paperwork. All of this adds up to less time and resources for investing in the business.
- An unclear relationship between the various system partners, making government regulations and programs complicated and difficult to navigate

- Lack of clarity when it comes to accessing information and assistance: many companies experience frustration due to a perceived lack of capacity within government to identify who does what, direct clients to the most appropriate individual(s), and provide concrete answers. The challenge is compounded by the strict approach to compliance taken by many enforcement officials.

Examples like these abound, and the government will undoubtedly hear many concrete, industry-specific examples through the Commission consultations. Reducing the \$30 billion compliance burden will require concerted action to pinpoint and eliminate existing irritants. However, the OCC believes that for the current review exercise to differentiate itself from previous attempts at regulatory reform and set the stage for lasting change, *retroactive* measures to lower the regulatory burden must be accompanied by changes to the *entire process* used to plan, develop, enact, and evaluate new regulations – the systemic change alluded to in the second half of the Commission’s mandate. To be sustainable, regulatory reform must be oriented towards a proactive approach to regulation which minimizes the creation of unnecessary red tape in the first place through championing alternative outcomes arrived at through the collective input of public and private sector stakeholders.

The rationale for such an approach is simple: not only would it eliminate the need for future one-off review exercises, it would lead to more streamlined and efficient government that recognizes and seizes on the common ground between social and environmental stewardship on the one side and economic development on the other. The payoff would be both the lower costs of doing business for government and industry, and the greater opportunity to harness private sector expertise in the development of regulations that reflect leading practices in social and environmental sustainability.

The OCC presented a comprehensive package for regulatory reform in our 2010 report to the provincial government: [*Red Tape Holding you Back? Smarter Regulations for a Competitive Economy*](#). The report provides an overview and assessment of the provincial regulatory context, and makes recommendations informed by the business community.

The challenges with the regulatory process span both levels of government. As documented in our report, the process lacks sufficient grassroots consultation, front-end analysis, and inter-ministerial/jurisdictional cooperation to respond in a positive way to the needs and priorities of the private sector. The OCC’s call to action is therefore equally applicable to the federal and provincial governments, and offers a scorecard against which both can measure success.

We believe that the Red Tape Reduction Commission is an opportunity for the federal government to demonstrate leadership in the sphere of regulatory reform. The OCC was encouraged to see a number of our top priorities identified in the Commission’s Consultation Discussion Paper, specifically:

- *expanded and refined compliance burden measurement*
- *a Small Business Impact Test*
- *a Regulatory Budget and Regulatory Agenda to measure and control the cumulative regulatory burden across ministries*

- *improved performance measurement to ensure regulations meet intended objectives*
- *mandatory reviews of established regulations to ensure ongoing relevance to economic and social realities*

The OCC strongly supports these directions, and encourages the government to take the necessary steps to make them a reality. With respect to expanded and refined compliance burden measurement, we would ask that the government follow this concept through to its logical conclusion through fully elaborating on the requirements of a mandatory Integrated Impact Assessment as a standard feature of all new regulations. There are several competing methodologies for how to best measure administrative burdens. These vary in their degree of technical complexity from simply counting the number of regulations, to sophisticated techniques that measure the scale of the burden through the price, time, and quantity of businesses affected by information obligations, data requirements, and administrative activities. The government should look to international best practice in order to determine what techniques are most promising. A Small Business Impact Test is an indispensable component of an Integrated Impact Assessment.

The Federal Government's proposed approach includes several essential building blocks of a proactive, least-cost approach to regulation. The Federal government could set an even stronger example through the adoption of complimentary measures which the OCC views as leading practices in field of regulation. The following is a basic overview of the additional key elements of an economically competitive regulatory regime. We would be happy to work with the government to provide specific details guided by private sector input in the following areas as required.

Business Participation in Setting Regulations

One of the challenges in implementing a more responsive and efficient regulatory regime is that most government agencies lack dedicated client-outreach bureaus and/or advisory roles for business to encourage substantive private sector participation in the policy-making process. As a result, regulations are usually based on policy derived from line ministry or executive direction, with almost no input from business. In order to conduct an objective risk-benefit analysis of new regulations and gauge the performance of existing regulations on an ongoing basis, the government must consult extensively with affected stakeholders at all stages of the regulatory lifecycle.

In 2010, the Ontario government took meaningful steps towards improved collaboration and accountability through the introduction of a mandatory 45-day consultation window and the adoption of twice annual effective dates for the commencement of new regulations. All proposed regulations are now posted online for public comment prior to adoption. These measures represent easy to implement solutions that can be replicated by the federal government. However, a 60-day consultation period would be preferable to the current policy of 45 days, as the later often does not give businesses sufficient time to react.

The Ontario government has since expanded on its commitment to private sector engagement through the Business Sector Strategy. Through this Strategy, sector representatives are asked to identify the

top five priorities that would strengthen their sector's success. Businesses communicate their concerns directly to the Deputy and/or Assistant Deputy Ministers from the responsible ministries. The Minister of Economic Development and Trade, who is accountable for the government's regulatory reform agenda, directly presides over the deliberations. Ministries have two months to address these priorities, or explain why they cannot be addressed and deliver alternative solutions.

The Business Sector Strategy is an innovative model of two-way dialogue between business and government. Through facilitating a shared understanding of the problems and solutions among senior civil servants, it promotes greater systems thinking on the part of government and provides a means to overcome the internal cultural resistance that is so often an impediment to reform. Through providing businesses with direct access to decision makers and built in guarantees regarding outcomes, it promotes greater clarity and certainty with respect to the regulatory framework, and greater private-sector buy-in of the government's policy agenda. Integrated into the larger policy-development process, this model would offer an effective long-term solution to the lack of meaningful private sector participation in the standards-setting process; by allowing potential inconsistencies and irritants to be identified and eliminated upfront, it would make administering and complying with regulations simpler and more efficient for government and business. The federal government should look to the Ontario experience for insight into how to achieve a more participatory and efficient regulatory regime.

Decentralization and Outcomes-Based Regulation

In a global economy that thrives on innovation and continuous improvement, a prescriptive, one-size-fits all approach to regulation is a recipe for failure. Such an approach is unresponsive to the uniqueness of individual companies, sectors, and regions and stifles the impulse for social and environmental innovation.

Although there will always be firms that only adhere to higher standards if there are explicit criteria backed by a credible threat of sanctions, experience suggests that the vast majority of firms react positively to commonly accepted standards. In fact, as advances in information and communications technology drive more complex configurations of product quality, social and environmental responsibility are becoming hallmarks of success. The issue is not primarily a lack of business leadership on the sustainability front, but rather a lack of formal policies which recognize and incentivize market solutions to social and environmental trade-offs.

Governments who understand this dilemma will seek to harness the role of the private sector in driving social and environmental innovation through policies that support decentralization and outcomes-based regulation. This approach entails setting targets and minimum standards for regulation, but transferring responsibility for defining and enacting the specific requirements of those targets to recognized private sector partners with the contextual knowledge and flexibility to adapt regulations to ever-changing market conditions. This approach has several advantages over the status quo. Not only do industry-based governance initiatives draw on the proprietary knowledge of lead firms, but they also operate on a cost-recovery basis. Because there are many such initiatives catering

to all types of sectors and market niches, such alternatives are characterized by natural variation and market competition. As a result, they marry the principles of continual improvement and cost-containment, producing a win-win scenario from a public policy standpoint.

Third Party Certification and Industry Responsibility Programs are models of decentralization and outcomes-based regulation in action which have achieved a high degree of industry recognition and success. At the federal level, the government's Organics Product Regulations is a prime case study of how such initiatives can be recognized as formal substitutes for prescriptive regulation. At the provincial level, the Ministry of Labour recently set a positive precedent in Bill 160, which stipulates that the Minister may approve Codes of Practice as equivalent to compliance with statutory or regulatory requirements. The OCC encourages the federal government to follow suit by formally recognizing Third Party Certification and Industry Responsibility Programs as worthy examples of regulation *for industry by industry*.

Equivalence of Performance Test

An equivalence of Performance Test represents an additional method for achieving decentralization and outcomes-based regulation. Many firms view social and economic sustainability as integral to their value proposition, and have the internal systems and capacity to pursue continual improvement towards these outcomes. An equivalence of performance test is a means to recognize companies that demonstrate leadership in corporate social responsibility and good governance, and should be used as a tool to transfer a greater degree of responsibility to the private sector.

Regulatory Tiering

In order to create a level economic playing field, mechanisms should be introduced to offset the disproportionate burden of regulations on small businesses. When significantly different degrees of risk and/or impact can be identified, there is a need for flexibility in the design of regulations to focus resources on those activities which pose the highest risk. The government should make regulatory tiering a mandatory feature of its assessment criteria by developing alternative compliance thresholds for smaller-scale and lower-risk activities.

Inter-Jurisdictional Harmonization

While the OCC supports the overall thrust of the Commission's Consultation Discussion Paper, the explicit exclusion of inter-jurisdictional issues from the Commission's mandate is problematic. Existing government practice is to work with other orders of government on specific regulations subject to existing legislative frameworks. However, without centralized structures to facilitate coordination and harmonization between the local, provincial, federal, and international levels of government, the increasing complexity of policy issues will lead to increasingly blurred lines of authority, making the regulatory system increasingly complicated and difficult for businesses to navigate. The need for greater inter-jurisdictional coordination necessitates the creation of an institutional mechanism that can deal with issues that cut across government boundaries. The federal government must work with

the other orders of government and its international trading partners to devise appropriate channels for adequately managing increasingly complex regulatory regimes.

In closing, the discussion launched by the Red Tape Reduction Commission is a positive signal that the federal government appreciates what is at stake in the issue of regulatory reform and what changes are necessary to create a sustainable regulatory regime that protects the three P's of people, planet, and profit. If the current review exercise is to mark a significant break from the past, it is imperative that the government follow through on the initiatives proposed in the consultation paper and use the review as a launching pad for additional changes that will allow for the flourishing of made-in-Canada solutions to the economic, social, and environmental challenges of our time. The OCC endorses the Government of Canada's direction, and eagerly awaits the outcome of the review process.

Thank you for taking the time to review our position. If you have any questions or comments, you may direct your staff to contact Kelly Pritchard, Policy Analyst at (416)-482-5222, extension 246, or kellypritchard@occ.on.ca.

Yours sincerely,



Len Crispino
President & CEO

cc: The Right Hon. Steven Harper, Prime Minister of Canada
The Hon. Dalton McGuinty, Premier of Ontario
The Hon. Stockwell Day, President of the Treasury Board and Minister for the Asia-Pacific Gateway
The Hon. Tony Clement, Minister of Industry
Marc Garneau, MP, Liberal Critic, Industry
Robert Bouchard, MP, Bloc Québécois Critic, Industry and Small Business
Brian Masse, MP, NDP Critic, Industry
Navdeep Singh Bains, MP, Liberal Critic, Small Business
Bruce Hyer, MP, NDP Critic, Small Business
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