

CABINET DECISION DOCUMENT

MINISTER:

HONOURABLE KEVIN FALCON, MINISTER OF STATE FOR DEREGULATION

IDENTIFIER NUMBER:

DATE: August 10, 2001

TITLE:

Deregulation Mandate and Approach.

ISSUE: The New Era platform includes a commitment to cut the regulatory burden by 1/3 over 3 years. This cabinet submission recommends an approach for carrying out the platform commitment.

RECOMMENDATION:

The following decisions are requested:

1. Approve the recommended definition of regulation.
2. Approve the recommended measurement of regulatory burden.
3. Approve the recommended policy for new regulation.
4. Approve the recommended policy for existing regulation.

BACKGROUND: The New Era commitment to reduce regulatory burden in British Columbia by 1/3 is consistent with global trends in regulatory reform and management. The regulatory environment plays a key role in competitiveness and economic prosperity. Most Western jurisdictions have implemented regulatory impact analysis requirements and regularly review existing regulation.

Reasons for Deregulation and Reform:

Regulation is an important tool governments use to achieve public interest objectives, such as improved education and training, consumer protection and high standards of environmental quality, health and safety.

However, the size and scope of the regulation has increased in British Columbia as the complexity and interdependence of public policy objectives have increased. New regulation has often been enacted without rigorous analysis of its necessity, cost, implications or possible alternatives. Existing regulation has remained on the books without regular review to ensure that it is still necessary or still the most appropriate and effective approach.

As a result, regulation can dampen innovation and create unnecessary barriers to trade and investment. Outdated or poorly designed regulation will not achieve public interest objectives.

Benefits of Reform:

Regulatory reform can boost efficiency, reduce costs, stimulate innovation, and improve competitiveness. Regulatory reform also helps governments promote policy goals such as environmental quality, health and safety and consumer protection. In addition, reform often brings major changes in the attitudes and behaviour of firms, workers, and individual citizens, freeing up entrepreneurial and innovative energies within an economy. Similar culture change must occur within the government and among the regulators.

Previous Reform Efforts in BC:

British Columbia had a short-lived Ministry of Deregulation in the late 1970s. In 1998, the previous government appointed a Business Task Force, chaired by the Minister of Finance, with a mandate to cut red tape and the cost of doing business in the province. However, the most compelling issues for business, such as changes to the labour code and to employment standards, were not

on the table. The initiative had a low profile, particularly outside of government, with little government backing.

Previous Cabinet and Committee Decisions:

The proposal outlined in this submission received preliminary review by all Government Caucus Committees, the Core Review and Deregulation Task Force and Cabinet. As Cabinet directed, the full submission has been reviewed by the Government Caucus Committee on the Economy.

FISCAL MANAGEMENT CONSIDERATIONS:

The program will be undertaken with existing resources at this time.

OPTIONS AND RECOMMENDED APPROACH TO DEREGULATION:

The following section outlines the key issues for decision in the delivery of the deregulation mandate.

I. SCOPE

The costs of regulation include direct expenditure by business and also indirect costs, such as management effort devoted to regulatory compliance and loss of time. Resources devoted to complying with regulation cannot be used elsewhere. Cutting red tape and making regulation more efficient can significantly reduce the costs of compliance, and ensure that regulation necessary to protect public health and safety, consumers and the environment achieves these goals at the lowest possible cost.

RECOMMENDATION:

Include regulatory reform and cutting red tape as part of deregulation

Red Tape should be defined as:

- **non-essential procedures, forms, licences and regulations that add to the cost of dealing with government.**
- **anything obsolete, redundant, wasteful or confusing that diminishes the province's economic competitiveness, and stands in the way of job creation or wastes taxpayers' time and money.**

Red Tape does not include measures that are truly needed to protect public health, safety, the environment and consumers.

II. DEFINITION OF REGULATION:

Regulation or regulatory policy can be viewed as any government intervention in the economy, particularly to limit or control behaviour. Regulations, which are made under the authority of an act, are simply one way of implementing regulatory policy. In British Columbia, these are regulations as defined by the Regulations Act. However, regulatory policy is also implemented through statutes and administrative policy and enforcement activities. For the purposes of this submission, there are two issues to address:

1. whether to use a broad definition of regulation or only as defined under the Regulations Act;
2. whether to include regulation of public sector activities as well as regulation of private sector activities.

Issue #1 Broad Definition or *Regulations Act* Definition:

Option 1. Define regulation only as defined under the *Regulations Act*.

Advantages:

- Consistent with most jurisdictions in North America;

Disadvantages:

- Narrow definition does not include the statutes which give rise to the regulations and which are often the real problem;
- Many problems that are identified are not problems with the law itself, but with its interpretation, administration and enforcement.
- Less likely to have real impact in terms of reducing regulatory burden than a broader definition of regulation.

Option 2. Define Regulation as Regulations, Legislation, Interpretative Policy, Administration and Enforcement.

Advantages:

- Enables legislation, enforcement and interpretation to be reviewed when they are the source of concern.
- Consistent with experience elsewhere, and with recommendations made by the members of the former Business Task Force as to where red tape needs to be addressed.

Disadvantages:

- More resource demands placed on government than a narrower definition.

RECOMMENDATION: OPTION 2. Option 2 has the greatest likelihood of ensuring that there is a real impact from eliminating, reducing and reforming regulation. Staged review based on priorities would help manage the resource requirements of the broad definition of regulation.

Issue #2. Whether to include regulation of private and public sector activities.

Option 1. Include regulation of the private sector only.

Advantages:

- Focuses on regulation that affects the business community most directly;

Disadvantages:

- Inconsistent with efforts in most jurisdictions;
- Omits regulation that significantly affects the economy and has significant fiscal impacts (e.g., hospitals, post-secondary institutions).

Option 2. Include Regulation of both Private and Public Sectors.

Advantages:

- Consistent with many other jurisdictions;
- Reflects that high quality, efficient public sector regulation is important to the competitiveness and economic prosperity of the province.

Disadvantages:

- Potentially places demands on public sector resources that would otherwise be deployed on other priorities.

RECOMMENDATION: OPTION 2. To manage resource demands:

- **Regulatory Reform Policy will apply to new regulation proposed for both public and private sectors.**
- **Initial priorities for reviewing existing regulation will be the regulation of private sector activities with emphasis on economic development ministries and on programs that impose significant costs on provincial competitiveness.**

III. DEREGULATION OBJECTIVES

The Premier outlined the overall objectives of the commitment to deregulation in his mandate letters to ministers:

"To eliminate or at least reduce the burdens imposed on companies, organizations and citizens by the various policies and procedures of government agencies that impair people's legitimate desire to conduct their affairs in an efficient and helpful manner".

RECOMMENDATION:

The following additional objectives are recommended:

1. Cutting the regulatory burden by 1/3 over 3 years.
2. The philosophy in government should shift to results-based regulation based upon scientific foundation, where appropriate, and wherever feasible to include market incentives.

IV. MEASUREMENT FOR REDUCTION OF REGULATORY BURDEN

The 1/3 reduction of regulatory burden requires measurement. Some jurisdictions have used the number of statutes or pages of regulations. Page counts are particularly problematic because they might reflect a drafting style or font-size, and it is difficult to count electronic "pages" on the Internet. However, these measures do not reflect the number, nature or cost of regulatory requirements. No jurisdictions appear to have attempted to assess regulatory burden using a broad definition of regulation. All of the measures reported have been restricted to regulations as defined under the *Regulations Act*.

Option 1. Paperwork Burden

Paperwork and the burden of providing information to regulators represent some of the compliance costs of regulation. Burden could be defined as the time, effort or financial resources the public must use to generate, maintain or provide information to a government agency.

Advantages:

- Reflects part of the compliance costs of regulation.

Disadvantages:

- Summary measures of paperwork burden can be misleading, particularly with the increase in e-government and e-business which cut the time for individuals, but could increase the total time.
- Would require significant resources to assess the burden.

Option 2. Number of Regulations

Alberta, Ontario and Saskatchewan (and some American and Australian jurisdictions) have used the numbers of titled regulations to measure regulatory burden. In most jurisdictions, the impact of cutting the numbers has not been assessed and a common practice has been to combine separate regulations into one, thus reducing the number, but not the burden of regulation.

Advantages:

- Easily counted and tracked;
- Consistent with measure used in Alberta, Saskatchewan and Ontario, at least in terms of regulations under the *Regulations Act*.

Disadvantages:

- Does not reflect the extent or nature of regulatory requirements;
- To be comparable with other jurisdictions would have to be restricted to narrow definition of regulation, which would make it inconsistent with the recommended definition of regulation.

Option 3. Number of Regulatory Requirements within Regulation, Legislation and Interpretative Policy. Progress should be tracked and reported regularly.

A variation on counting the number of titled regulations would be to count the number of regulatory requirements. While the number alone could not reflect the nature or cost of the requirements, it would be more transparent than only counting titles. For example, there are 9 regulations under the *Workers Compensation Act*, but through these regulations and under administrative policies, the *Workers Compensation Board* imposes thousands of requirements.

Advantages:

- More meaningful and transparent than counting the titles of regulations;
- Would require significantly fewer resources than an attempt to measure paperwork burden.

Disadvantages:

- British Columbia results may not be as easily compared with the results of provinces using titles instead of regulatory requirements.

RECOMMENDATION: OPTION 3. If approved, Ministers will be asked to begin the count immediately with results to be completed within 45 days.

V. POLICY FOR CONTROLLING NEW REGULATION

The government wishes to control the number and the quality of new regulation. The following approach is recommended:

1. Criteria for New Regulation

Standards for regulation are necessary to ensure that regulation meets the government and public policy objectives. Other jurisdictions have imposed such standards to guide the design and enforcement of regulation. The Premier's instructions include guiding principles of speed, certainty and flexibility in program design and operation.

RECOMMENDATION: New regulation should meet the following criteria:

- **cost-benefit analysis should indicate that there are net benefits;**
- **competitive analysis;**
- **replacement principle - cannot impose a new regulatory requirement without removing two requirements;**
- **shift in approach to results-based regulation based on scientific evidence where possible, and the use of market incentives where feasible;**
- **plain language;**
- **sunset provision;**
- **eliminate duplication or overlap with other jurisdictions; · developed in a transparent way so that interested parties have an opportunity to present views;**
- **reverse onus - ministries must justify the need for regulation; · timeliness.**

2. Review of New Regulation:

Historically, in most jurisdictions, new regulation has been reviewed primarily with regard to legal standards and to ensure that it implements public policy. More recently, they have imposed requirements for regulatory impact analysis to ensure that regulation meets certain standards of design, efficiency and effectiveness. Many jurisdictions have struck committees of the legislature, of the private sector, or within caucus to review whether new regulations meet these requirements.

In British Columbia, the Regulatory Impact Statement Act (RISA) of 1999 requires government to establish policies to guide regulatory policy decisions. Business has complained about the quality of regulatory impact statements and inadequate consultation.

RECOMMENDATION:

- **The *Regulatory Impact Statement Act* should be repealed.**
- **New Regulatory Reform Policy which reflects the new mandate and principles will apply immediately.**
- **All proposed new legislation and regulations will be reviewed. Government Caucus Committees and Cabinet will determine whether they comply with the new Regulatory Reform Policy.**

3. Moratorium on New Regulation

New York State and US Presidents have imposed moratoria on new regulations. New York officials report that the moratorium was very effective. The number of proposed rules fell by one-half and has remained at the level even though the moratorium was lifted over 5 years ago.

RECOMMENDATION:

A moratorium should be considered for all new regulations that impose significant costs or compliance burden with the following exceptions:

- **regulations necessary in an emergency (e.g. public health; safety)**
- **regulations necessary for criminal justice purposes;**
- **regulations necessary to implement tax policy.**

VI. POLICY FOR REVIEW OF EXISTING REGULATION

Most jurisdictions have reviewed, or are reviewing existing regulation. Some jurisdictions (e.g., Newfoundland and New South Wales) have done so by imposing a staged repeal of all existing regulations as defined by the *Regulations Act*. This is sometimes referred to as the guillotine approach. Alberta used a variation by asking each department to identify and propose sunset reviews of their regulations. However, most deadlines have required extension. A broad-brush "guillotine" is also extremely labour-intensive and could detract from other priorities. Another approach would be to have a staged review with priorities set with very stringent deadlines as follows:

RECOMMENDATION:

1. **Priorities for review should be the economic development ministries and regulation which has significant impact on provincial competitiveness;**
2. **Ministers should prepare plans within a 60-day period for cutting the regulatory burden by 1/3 within 3 years.**
3. **A private sector Red Tape Reduction Task Force should be appointed and chaired by the Minister of State for Deregulation to advise him on priorities for review and repeal.**
4. **The Minister of State for Deregulation should advise on priorities, based on the recommendations received from the Red Tape Reduction Task Force, Ministers and Caucus, and should track implementation.**

SIGNIFICANT IMPLICATIONS:

LEGISLATION REQUIRED?

The *Regulatory Impact Statement Act* will require repeal. Legislative requirements and legal issues that arise during the review of existing legislation or during any moratorium that may be imposed on new regulation will be reviewed.

CONSULTATION?

PUBLIC:

The Minister of State for Deregulation and the Minister of Competition, Science and Enterprise have consulted with members of the current Business Task Force on Regulatory Impact and with a wide range of groups.

INTER-MINISTRY, INTER-AGENCY AND INTER-GOVERNMENTAL CONSULTATION

All ministers have received instructions from the Premier on the deregulation commitment and a subsequent letter from the Minister of State for Deregulation regarding the 30-day ideas for immediate action. All ministries and agencies that administer, recommend or make regulatory policy decisions will be affected. Comments made during review by all Government Caucus Committees and by the Core Review and Deregulation Task Force are reflected in the submission.

Communications Issues that May Arise:

The communications objectives will include:

- Communicating the objectives of deregulation and cutting red tape;
- Communicating the process, including the roles of Minister, Cabinet Committee, and private sector task force; and
- Reporting progress.

It will be important to communicate how the deregulation initiative fits with efforts in other jurisdictions, with other New Era commitments and other initiatives, such as the Waste Buster website and the Core Services Review (see below).

Significant Implications of the Recommended Option:

With respect to coordination with other government initiatives:

- The Minister of State for Deregulation is a member of the Core Review and Deregulation Task Force and as such, will keep other members apprised of deregulation activities, and will be aware of related Core Services Review matters.
- The Minister of State for Deregulation will work with the Minister of Management Service, who is responsible for the Waste Buster website, to ensure the submissions on regulation that are received through the Waste Buster website are referred to the Minister of State for Deregulation.

RECOMMENDED DECISIONS:

The following approach to carrying out the deregulation commitment is recommended

I. APPROVE DEFINITION OF REGULATION:

A. SCOPE:

1. Regulatory reform and red tape cutting should be included as well as deregulation.
2. Red Tape should be defined as:
 - non-essential procedures, forms, licences and regulations that add to the cost of dealing with government.
 - anything obsolete, redundant, wasteful or confusing that diminishes the province's economic competitiveness, and stands in the way of job creation or wastes taxpayers' time and money.
 - Red Tape does not include measures that are truly needed to protect public health, safety, the environment and consumers.

2. DEFINITION OF REGULATION:

1. Regulation should be broadly defined as regulations, legislation and interpretative or administrative policy, and enforcement.
2. Regulation should include regulation of public and private sector activities, with initial emphasis on the regulation of the private sector and priority placed on economic ministries and program areas with significant impacts on provincial competitiveness.

3. OBJECTIVES AND BENEFITS OF REFORM:

1. Cutting the regulatory burden by 1/3 over 3 years.
2. The philosophy in government should be shifted to results-based regulation predicated on scientific foundation and wherever feasible to include market incentives.

2. APPROVE THE MEASUREMENT FOR REDUCTION OF REGULATORY BURDEN:

1. The baseline for assessing the reduction of regulatory burden should be based on the number of regulatory requirements imposed through legislation, regulations and interpretative or administrative policy. Progress will be tracked and reported regularly.
2. If approved, Ministers will be asked to begin the count immediately with results to be completed within 45 days.

3. APPROVE POLICY FOR NEW REGULATION:

New regulation should be controlled through the following measures:

1. New regulation should meet certain criteria:
 - cost-benefit analysis should indicate that there are net benefits;
 - competitive analysis;
 - replacement principle - cannot impose a new regulatory requirement without removing two requirements;
 - shift in approach to results-based regulation based on scientific evidence where possible, and the use of market incentives where feasible;
 - plain language;
 - sunset provision;
 - eliminate duplication or overlap with other jurisdictions;
 - developed in a transparent way so that interested parties have an opportunity to present views;
 - reverse onus - ministries must justify the need for regulation;
 - timeliness.
2. The *Regulatory Impact Statement Act* should be repealed.

3. New Regulatory Reform Policy will apply immediately to proposed regulation of public sector and private sector activities.
4. All proposed new legislation and regulations will be reviewed. Government Caucus Committees and Cabinet will determine whether they comply with the new Regulatory Reform Policy.
5. A moratorium should be considered for all new regulations that impose significant cost or compliance burden with the following exceptions:
 - o regulations necessary in an emergency (e.g. public health; safety);
 - o regulations necessary for criminal justice purposes;
 - o regulations necessary to implement tax policy.

IV. APPROVE POLICY FOR EXISTING REGULATION:

1. Priorities for review should be the economic development ministries and regulation which has significant impact on provincial competitiveness;
2. Upon receiving direction from the Minister of State for Deregulation, Ministers should prepare plans within a 60-day period for cutting the regulatory burden by 1/3 within 3 years.
3. A private sector Red Tape Reduction Task Force should be appointed and chaired by the Minister of State for Deregulation to advise him on priorities for review and repeal.
4. The Minister of State should advise on priorities for the review of existing regulation, based on recommendations received from the Red Tape Reduction Task Force, Ministers and Caucus, and should track implementation.

SIGNATURE:

(original signed)

Kevin Falcon Minister of State for Deregulation