

Lessons & Reminders:

A Document of the Proceedings



Environment and Labour
Competitiveness and Compliance Initiative



craft (kraft) n. skill in planning, making or executing // v. to make or produce with care, skill or ingenuity.
Merriam-Webster Online

craft (kraft) n. a trade or occupation that requires skill in the use of the mind and hands // an art viewed as a making that requires developed skills.
Webster's Encyclopedic Dictionary of the English Language

*“An essential aspect of craftsmanship is to know your tools—
what they can do and which work for the task.
Sometimes you may realize ‘I don’t have a tool for that.’
Then you design a new tool.
The important thing is to know what you want to accomplish
and be sure you are using the right tool for the job.”*

Professor Malcolm K. Sparrow
*John F. Kennedy School of Government
Harvard University*

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ABOUT 'THE REGULATORY CRAFT IN NOVA SCOTIA' CONFERENCE

WHAT IS MEANT BY THE TERM 'REGULATORY CRAFT'?

Regulations are vitally important. They protect the public interest and the natural environment. Agencies that make and enforce regulations must therefore approach their work with the care and skill of a master craftsman. This involves thoughtful analysis of problems, goals and potential solutions, and measured actions using the most appropriate tools for the job. Regulators cannot simply draft regulations; they must craft them. They must also carefully craft the means of ensuring the regulations are followed.

WHY DID NOVA SCOTIA ENVIRONMENT AND LABOUR HOLD A CONFERENCE ON THE THEME OF 'THE REGULATORY CRAFT IN NOVA SCOTIA'?

Environment and Labour is Nova Scotia's primary regulatory agency, with a diverse mandate ranging from environmental protection to workplace and public safety. A key element of the Nova Scotia government's Better Regulation Initiative, the department's Competitiveness and Compliance Initiative (CCI) has been finding ways to improve legislation, regulations and government processes to better protect the public interest—while promoting business competitiveness, productivity and economic growth.

CCI held 'The Regulatory Craft in Nova Scotia' to build momentum and enthusiasm for better regulation across all government departments in Nova Scotia—to learn from best practices and share this knowledge with guests from other jurisdictions. The ultimate goal: to continually improve regulatory practice to achieve important results that will improve quality of life and strengthen the economy in Nova Scotia now and in the future.

In addition to the conference on October 3, NSEL held a full-day workshop with its employees on October 4, to further explore the conference themes and find ways to apply them to NSEL operations. (See *Regulatory Craft in Nova Scotia Workshop, A Closer Look: Risk Management and the Regulatory Craft.*)

WHO ATTENDED THE REGULATORY CRAFT CONFERENCE?

Approximately 150 people attended 'The Regulatory Craft in Nova Scotia' conference on October 3. The vast majority were public servants, representing most government departments in Nova Scotia, from the specialist to the managerial and senior bureaucratic levels. Public servants from almost every other Canadian province and territory also joined the conference, as did federal bureaucrats, industry officials and academics.

What key topics did the conference address? The October 3 conference explored the reality that making and enforcing regulatory tools and programs is a distinct discipline that must be approached with rigour, flexibility and creativity. Concurrent sessions shared experiences in such areas as: assessing the impact of proposed regulations, developing new regulatory programs, establishing third-party delivery agencies, creating an integrated regulatory agency, using alternatives to regulation, improving service to business, and improving inspection and enforcement through training. The day concluded with a panel discussion of the impact of regulations on competitiveness.

WHAT DID THE CONFERENCE ACCOMPLISH?

The conference brought together a wide range of people to focus on improving regulatory management. It highlighted the importance of good regulatory practice, informed and inspired people by sharing best practices and success stories, and demonstrated senior management commitment to the Better Regulation Initiative. At the highest level, it was a vital step along the road to creating a cultural change that will lead to more innovative, flexible and successful regulatory programs in Nova Scotia.

According to the official evaluation, the overwhelming majority of participants found the October 3 conference to be an extremely valuable experience. Most participants said the conference furthered their understanding of 'Better Regulation,' provided them with information they will be able to apply in their work, raised their awareness of regulatory management initiatives in other areas, and gave them a chance to meet others with an interest in better regulation. Many said they had gained a new appreciation of the need to analyse the problems and potential solutions thoroughly before applying the tools. Others reported feeling energized and better positioned to move forward with their work.

KEY THEMES

While the presenters at the 'Regulatory Craft in Nova Scotia' conference hailed from many different jurisdictions and backgrounds, certain common themes rang loud and clear throughout the proceedings. These are the key take-away themes:

FOCUS ON OUTCOMES RATHER THAN TOOLS.

In designing effective public policy that protects the public interest while encouraging economic growth, governments must carefully analyse every situation to determine the desired outcome—and work from there to select or design appropriate policy tools. The traditional approach has been to start with the tool, often laws or regulations, and look for problems they might fix. This leaves many gaps where different tools could be applied to produce positive results. It can also produce layers of regulation that are not needed and may actually impede business performance and economic growth.

IMPACT OF REGULATIONS ON SMALL BUSINESS.

Small businesses are often disproportionately impacted by regulatory requirements and their administration. It is often the owner who attends to these, diverting time and attention from core business needs. Streamlining regulations and related processes—and providing a single point of service-oriented contact—are crucial to helping businesses get started, and enabling them to grow and flourish.

CONSULTATION AND TRANSPARENCY. Virtually every speaker emphasized the importance of consulting with stakeholders throughout the policy planning process—from the earliest stages, to help identify and shed light on problems, all the way through evaluating potential solutions to planning how best to implement a new policy. In addition to soliciting ideas, opinions and information from groups affected by the problem and/or proposed policies and regulations, government agencies must also involve the staff members who will be applying and enforcing

the new policy tool. Consultation and planning documents must be available to the public, so the decision-making process is both transparent and defensible.

DISCIPLINED PLANNING PROCESS. To ensure they design effective solutions to important problems, governments must take the time and care to analyse problems and potential solutions thoroughly and rationally. This involves following step-by-step regulatory management procedures.

SYSTEMATIC MONITORING. According to keynote speaker, Professor Malcolm Sparrow, systematic data collection is vital to reveal the patterns that herald emerging problems—otherwise policies will always be solving the problems of the past instead of anticipating and heading off the new and pressing ones.

EFFICIENT AND FLEXIBLE LEGISLATION. In designing regulatory programs, governments should ensure that the legislation (the relevant act) provides the framework for the regulations, without attempting to include actual regulatory requirements in the act itself. It is cumbersome, time-consuming and expensive to amend legislation, so keeping the legislation general is more efficient while allowing for its long-term relevance.

FLEXIBILITY IN REGULATIONS. Regulations should specify requirements, without necessarily prescribing how the requirements must be met. Non-prescriptive regulation allows businesses to devise their own means of meeting the requirements. This flexibility makes it easier, and therefore more likely, for them to comply. It also paves the way to innovation that can in turn improve practice, raise standards and enhance competitiveness. Very specific requirements and 'how-to' directions are better placed in codes of conduct or practice, which are easier to adjust than regulations.

EXPANDING THE TOOLKIT BEYOND REGULATION. Governments are well practiced in making and enforcing regulations—they have less experience with non-regulatory policy tools. Many policy goals, however, are better met by tools other than standard regulation. These include partnerships, self-regulation, voluntary standards, and education. For example, seatbelt legislation, was not as effective as public education campaigns in changing attitudes and influencing people to wear their seatbelts. When approaching problems, governments must look at the full range of tools available to them and select the right tools and mix, or balance, of tools. At times it is necessary to invent new tools.

THE IMPORTANCE OF PARTNERSHIP APPROACHES. By moving beyond adversarial enforcement roles, government can work effectively with industry to solve problems and address challenges. Although sometimes not as palatable to the public as the ‘watchdog’ role, the partnership approach encourages open sharing of information and positive working relationships that can enhance compliance and competitiveness. Working in partnership with industry does not mean that governments do not continue to monitor compliance and enforce infractions with the full force of the law when necessary.

THE COMPLIANCE AND ENFORCEMENT CONTINUUM. Several speakers referred, directly or indirectly, to a compliance/enforcement continuum that ranges from ‘soft’ to ‘hard’ approaches. ‘Soft’ approaches include partnerships and education to encourage compliance. In the event of non-compliance, however, regulators need to move along the continuum to harder approaches, from inspection reports, letters of warning, suspension of license, to litigation. It is vital to apply measures that are appropriate to the situation—not too hard, not too soft, just right... This requires proper training of inspection and enforcement staff. Professor Sparrow referred to this as ‘avoiding the swinging pendulum.’

MEASURING PERFORMANCE. The most important question to ask about any policy tool or regulatory program is ‘Does it work?’ Governments must systematically measure the specific results and broader impacts of their policies and programs. Furthermore, they must establish their performance measures before designing the action plan. This ensures that the action plan is designed to effect the necessary changes. If the action plan comes first, the metrics may end up being designed merely to justify the action plan.

PIER 21 – CALLING THE CONFERENCE TO ORDER

CALL TO ORDER

NANCY VANSTONE, *Chair of Nova Scotia's Better Regulation Steering Committee and Assistant Deputy Minister, Nova Scotia Environment and Labour*

Ms. Vanstone called the conference to order and introduced the first speaker of the day, the Honourable Robert (Bob) Fowler, Deputy Minister to the Premier, Deputy Minister of the Treasury and Policy Board and Deputy Minister, Communications Nova Scotia.

WELCOME

BOB FOWLER, *Deputy Minister to the Premier, Deputy Minister of the Treasury and Policy Board and Deputy Minister, Communications Nova Scotia*

A dedicated public servant for more than 30 years, Mr. Fowler is a passionate believer in a professional public service which strives for excellence. Before accepting his current ministerial appointments, Mr. Fowler was Deputy Minister of Intergovernmental Affairs, and served for periods of time as Deputy Minister of Immigration and Deputy Minister, Health Promotion and Protection. In an executive interchange with the federal public service, he served as Regional Director General of Health Canada's Atlantic Region. Prior to this he worked in a variety of positions and departments in Nova Scotia's civil service.

Mr. Fowler opened by remarking on how great it was to see such a large gathering of people interested in improving regulation. He noted that some observers might be shocked to see such a turnout out discuss such a seemingly dry topic. Dry as it might seem, regulation in fact touches all of us: "It's critical to the quality of our lives and essential to our economic success. Better Regulation is well designed, clearly communicated and managed, and consistently enforced.

Regulation protects citizens, business and the environment without a disproportionate impact on the workload of business."

Mr. Fowler proudly noted the presence of every single department of Nova Scotia's civil service in the room, saying "This conference is the perfect opportunity to share information and build connections across departmental lines." Such connections are critical to success. He also acknowledged members of the National Committee on Regulatory Reform who had joined the proceedings, along with guests and presenters from outside the province and country, and outside the public sector. He passed along sincere regrets from Minister MacIsaac, who would have joined the conference had he not been out of the country.

Mr. Fowler—a champion of Nova Scotia's Better Regulation Initiative— noted the many contributions of many departments to the initiative, which is moving 'full steam ahead.' He urged the audience to continue on course, with a strong understanding of the public value of quality regulations and their effect on lives and businesses. It is necessary, he said, to listen to stakeholders, communities and industry in developing regulatory programs that will benefit society while decreasing costs of regulation to business. He emphasized that these objectives are NOT mutually exclusive.

Mr. Fowler outlined some key ingredients in the success of Nova Scotia's Better Regulation Initiative to date: groundwork laid by the Red Tape Reduction Task Force, development of some of the best tools in Canada—including the technology behind the Nova Scotia Business Registry and network of Access Centres—and capable people committed to good works across departments, in partnership with each other and stakeholders.

Mr. Fowler commended the strong track record to date and the commitment of leaders and elected officials to the process, which is prominent in the government's business plan and fits into the framework set forth in Opportunities for Sustainable Prosperity. He also acknowledged the hard work being done throughout the government to complete its first-ever inventory of regulatory requirements, a necessary first step on the way to achieving a 20 per cent reduction by 2010. He closed his remarks by recognizing the groups who have played such a key role in the Better Regulation Initiative, and thanking Bill Lahey, Deputy Minister of Environment and Labour, his staff, and the Competitiveness and Compliance Initiative (CCI), their vision and hard work in making CCI a leading example of how to improve regulatory systems—and in making the conference a reality.

INTRODUCTORY REMARKS

WILLIAM (BILL) LAHEY, *Deputy Minister of Environment and Labour*

Bill Lahey was instrumental in shaping an integrated regulatory management program at Nova Scotia Environment and Labour, and is the driving force behind the Department's Competitiveness and Compliance Initiative. As a former law professor at Dalhousie University, Dr. Lahey is the consummate teacher, adept at connecting theory to daily activities to make it meaningful to people in their work. His background includes terms as Assistant Deputy Minister of Health, Director of Corporate Services with the former Department of Human Resources, and as a solicitor in the Department of Justice. He was a clerk to the Supreme Court of Canada and a Rhodes Scholar at Oxford University.

Bill Lahey described the conference as 'a milestone event in what we're trying to do...we're becoming a learning environment in the context of regulatory reform' on the way to achieving regulatory excellence. He shared his moment of revelation, which occurred when he was grappling with the challenges of integrating the regulatory programs of such a disparate department as Environment and Labour, with so many spheres of activity. It was around this time that he read Professor Malcolm K. Sparrow's landmark book, *The Regulatory Craft: Controlling Risks, Solving Problems and Managing Compliance*. And, he said, the clouds opened and he could see the path ahead. Practical and easy to read, the book "focuses on what we are responsible for doing... It presents regulatory activity as a distinct activity that needs to be considered and managed as such." Without further ado, he introduced Professor Sparrow to deliver the keynote address.

KEYNOTE ADDRESS: THE REGULATORY CRAFT IN NOVA SCOTIA

PROFESSOR MALCOLM K. SPARROW

John F. Kennedy School of Government, Harvard University

*Malcolm K Sparrow is a professor of the practice of public management at the John F. Kennedy School of Government at Harvard University and author of numerous books on ethics in government, changing approaches to compliance, fraud and, in 2000, *The Regulatory Craft: Controlling Risks, Solving Problems and Managing Compliance*. Before joining Harvard, Professor Sparrow worked for more than a decade with the British Police Service, rising to the rank of detective chief inspector. He is currently focused on risk-control functions of government and the managerial challenges faced by regulatory and enforcement agencies—particularly in the areas of policing, environmental protection, tax administration, customs, occupational health and safety, and control of corruption and fraud. Professor Sparrow is an innovator who has developed new models of performance measurement, information management and analysis to support effective risk control.*

Professor Sparrow captured and held the attention of the audience with his thought-provoking and challenging, yet richly humorous, address. Finely tuned to the needs of the audience, the presentation outlined the challenges governments face in adopting the risk-orientation approach to solving problems, or ‘controlling bad things.’ This approach emphasizes ongoing rational analysis of specific current and emerging problems, aiming towards solving them—versus the all-to-common approach of perfecting or perpetuating existing systems and processes that at best might only manage the problems of the past.

The crux of Professor Sparrow’s message to Nova Scotia’s regulatory agency was simple:

Pick important problems: fix them.

To this he added the stipulation that, once the problems have been found and fixed:

Tell everybody!

Persuasive performance accounts are critical, he said. They show the public and political leaders that your actions have produced the desired results— while deterring potential rule-breakers into the future.

Professor Sparrow readily admits that picking and fixing important problems is easy to say, hard to do. It is “intellectually demanding, analytically demanding, organizationally awkward and unrelentingly difficult.” He wryly noted that the

regulatory tradition has been to “Think once, then act for about ten years.” To effectively identify and control risks requires us to think, think, think—and constantly adjust to new, and sometimes painful, realities.

On the way to this conclusion, Professor Sparrow highlighted the ongoing tensions some agencies experience between the ‘old model’ and ‘new model’ approaches to controlling risks. The ‘old model,’ ‘hard’ regulatory style is reactive, driven by incidents, often adversarial, and emphasizes enforcement. The ‘new model,’ ‘softer’ regulatory style focuses on working in partnership with regulated parties to help them comply—essentially treating them as customers with the aim of preventing them from breaking the rules in the first place.

Yet neither approach is always effective— and either could be counterproductive, depending on the situation. Meanwhile, the apparent dichotomy creates conflict and confusion within agencies. In fact, as the regulatory pendulum swings from one extreme to the other, compliance suffers and public risks—such as pollution, unsafe work environments and crime—are not well controlled.

Rather than clinging to these polarized approaches on ideological grounds— which amounts to a battle about tools—Professor Sparrow recommends a more balanced, integrated, and practical approach, which recognizes the value of all the different tools, and of different styles,

but brings them under a managerial framework that he calls 'craftsmanship'—the skill of picking the right tool, or combination of tools, based on careful analysis of the specific task. The first step is to agree on the goals in relation to specific, well-analyzed and defined risks. Then, select or design the tools, regulatory style and timing that will be most effective and appropriate for the particular problem and audience. This demands unusual versatility both of methods and of styles..

In keeping with the conference theme, 'The Regulatory Craft in Nova Scotia,' Professor Sparrow highlighted his point with a woodworking analogy about tool selection. Making regulations can be likened to a craft and, "An essential aspect of craftsmanship is to know your tools—what they can do and which work for which task. Sometimes you may realize 'I don't have a tool for that.' Then you design a new tool. The important thing is to be clear about what you want to accomplish and to deploy the right tool for the job." Sandpaper will get you nowhere when a chisel is required.

Crafting regulations to control risks, solve problems or manage compliance can certainly be helped along by researching tools others have used in similar situations—and by a willingness to invent tailor-made or custom tools when an appropriate one genuinely does not exist. This is where innovation comes in. Professor Sparrow noted that, in most regulatory organizations, innovation is the exception rather than the rule. Innovators often act on their own, without support or permission. "We need to embrace a new kind of system that demands and enables innovation daily... not just by the bright young sparks but by ordinary people."

When innovation does occur, many organizations make the mistake of trying to replicate or institutionalize the particular solution that was produced. Professor Sparrow insists it is the process that produced the innovation that needs

to be replicated, not the specific solution itself. Yes, there is value to searching for new uses for innovative tools. BUT this must be balanced with the ground-up approach of identifying important problems, picking priorities, defining how to measure results, then searching for or inventing different methods until you find one that works.

It is critical that regulators set up systems for identifying and solving problems. Tracking data is essential to identify patterns of non-compliance, negative incidents or public harms. Further analysis helps regulators find ways to address the problems the patterns reveal. Such systems also help identify new and emerging problems, which must be duly handled according to the risk-control approach.

Then, of course, comes the challenge of proving that you really are finding and fixing important problems. In calling regulators to account, politicians and public will ask such probing questions as:

Who picked the problems?

What happens to the problems that are not deemed 'important' enough, and which are not picked for special attention?

Who decides what's important?

What are the criteria used in determining priorities, and 'importance'?

What set of specific problems are you actually addressing with this approach right now?

What stage have those various projects reached?

What are the results so far?

What resources have been assigned to these problems?

What is the time frame for solving them?

How will you know when they have been sufficiently reduced for the respective projects to be closed?

Regulatory agencies, if they were engaged in systematic harm-reduction or risk-control, ought to be able to answer these questions. They ought also to consider the implications for their own organizations and operations. As Professor Sparrow notes—and explored more fully during the workshop on October 4—the risk-control orientation poses challenges to organizations. Finding and fixing important problems forces them to form ad hoc teams—perhaps across agencies—to address specific problems, and these teams are then disbanded once the problem is solved. This is contrary to the culture of many public sector organizations, where any kind of success results in more people and more money for the same program next year. The risk-control approach can have an impact on how resources are allocated and how employees are hired, trained and progress in their careers. It requires unprecedented flexibility and imagination, and a managerial commitment to embrace a major change in methods and structures for allocating and evaluating work.

Professor Sparrow closed his address with some sage advice for Canada:

Finish the important business of improving processes and cutting red tape, as per the “Smart Regulation” Canadian tradition.

Don’t imagine that red tape reduction alone will get where you want to be in terms of regulatory effectiveness.

Skip the swinging of the regulatory pendulum—back and forth between approaches that are too hard and ones that are too soft—and the associated five to seven years of misery.

Organize yourselves so you can systematically identify, assess and address important risks, harms or problems.

Use this task-oriented, risk-reduction focus to determine which tools to use, and when, and what kind of relationships to establish with the regulated community.

When you’ve designed and begun to operate a mature risk control operation, let me know!

BREAKOUT SESSIONS

Three sets of three breakout sessions took place in the late morning and early afternoon at Pier 21 and the Westin Nova Scotian Hotel. Together, these nine sessions addressed a broad range of current issues in regulatory management. Senior officials from numerous jurisdictions within and outside Canada shared their experiences, best practices and lessons learned.

THE REGULATORY CRAFT IN NOVA SCOTIA CONFERENCE AGENDA

Pier 21 & Westin Hotel, Halifax, Nova Scotia
October 3, 2006

Registration

Tea & Coffee

Welcome

Robert C. (Bob) Fowler, Deputy Minister to the
Premier & Deputy Minister of Treasury and Policy
Board

Introductory Remarks

William Lahey, Deputy Minister, Nova Scotia
Environment and Labour (NSEL)

Conference Overview

Chris Daly, Director, Competitiveness and Compliance
Initiative, NSEL

Refreshment Break

Regulatory Impact Assessment —

The UK Experience

Dr. Helen Carrier, Senior Economist, Better Relation
Executive, United Kingdom

The Development Process—

Food Safety Regulations

Mike Horwich, Nova Scotia Department of Agriculture

Regulatory Reform in Newfoundland

Vanessa Newhook, Director, Government of
Newfoundland and Labrador

Lunch

Regulatory Management at the US Environmental Protection Agency

Nicole Owens, Director, Regulatory Management
Division, US EPA

Improving Service to Business

Greg Keefe, Deputy Minister, Service Nova Scotia and
Municipal Relations Public Safety

Legislation Modernization in British Columbia

Harry Diemer, President and CEO of the BC Safety
Authority

Refreshment Break

Using Alternatives to Regulation

John Giraldez, Treasury Board of Canada

Achieving an Integrated Regulatory Agency

William Lahey, Deputy Minister, NSEL

Inspection and Enforcement Foundation Training

Victoria Bruce, NSEL, and Peter Craig, Public
Prosecution Service

Refreshment Break

Panel Discussion:

How do regulations impact competitiveness?

Jim Meek (Bristol), Stéphane Robichaud (Canadian
Federation of Independent Business) & Elizabeth
Beale (Atlantic Provinces Economic Council)

Wrap-up

Nancy Vanstone, Assistant Deputy Minister, NSEL &
Chair, Better Regulation Steering Committee

BREAKOUT SESSION

THE DEVELOPMENT PROCESS—FOOD SAFETY REGULATIONS IN NOVA SCOTIA

PRESENTER

MIKE HORWICH, *Director, Food Protection, Nova Scotia Agriculture*

Mike Horwich has worked in the field of public health protection for nearly 30 years—in Nova Scotia's departments of Health, Environment, Agriculture and Fisheries. For the past 10 years, he has focused on food safety. In his current position, he administers a 'pasture-to-plate, boat-to-throat' food protection program. He has been involved in developing environmental health legislation, regulations and standards, nationally and provincially.

Mr. Horwich entertained and educated his audience about Nova Scotia's path to effective food safety regulations. Proclaimed in November 2005, the new food safety regulations replaced a patchwork of 75 sets of regulations, administered by three levels of government (four different departments at the provincial level alone). The mish-mash of rules, unclear authority, and inability to prosecute, left industry players confused and less able or willing to comply. Public health inspectors were uncertain how to enforce compliance in this environment, while outdated regulations meant food safety risks were escalating. As Mr. Horwich noted, "We didn't have rules to deal with tofu!"

To fix the situation, the Government of Nova Scotia made the strategic decision to give one government agency overall responsibility for food safety—Nova Scotia Agriculture. This would enable a 'farm to fork' approach of ensuring food safety from source to consumer.

Mr. Horwich and his colleagues took on the task of shaping a new regulatory program for food safety. They determined desired outcomes at the outset and consulted with industry partners and public health inspectors throughout. An optimum 'product' would protect public and food safety, level the playing field for industry by providing consistent rules across the province, reduce red tape and associated costs for industry, and complement new national food safety guidelines. It also incorporates scientific evidence and risk management principles. For example, more resources are directed to higher risk areas, while very low-risk operations are exempt. As Mr. Horwich pointed out, this exempts children's neighbourhood lemonade stands which, technically, were included in the old regulations.

The new regulatory program has three levels: legislation, regulations, and the code of practice. The regulations are non-prescriptive, so industry players have flexibility in how they meet the requirements. This approach allows for innovation that can improve practice industry wide. It also means that practice can be changed simply by adjusting the code—much less arduous than changing the regulations. At the same time, public health inspectors were trained to be flexible in their approach—with education being the primary mode of compliance promotion and penalties applied only when 'softer' methods failed. Because it is non-prescriptive, the model also allows public health inspectors to use their discretion.

The new food safety regulatory program is in full effect, endorsed by industry and inspection staff alike, who are all pleased with how much easier the rules are to understand, apply, monitor and enforce. In fact, it positions Nova Scotia as a national leader in food safety.

BREAKOUT SESSION

REGULATORY IMPACT ASSESSMENT—THE UK EXPERIENCE

PRESENTER

DR. HELEN CARRIER, *Senior Economist, Better Regulation Initiative*

Helen Carrier is a senior economist in the UK Department for Trade and Industry. She is currently seconded to the Better Regulation Executive/ Cabinet Office to provide analytical input into proposed revisions to the existing regulatory impact assessment framework.

Dr. Helen Carrier shared the story of regulatory reform in the UK. It began in 2005, with the government's acceptance of two key reports: the Hampton Review on Inspection and Enforcement and the Better Regulation Task Force's 'Less is More' report. The Better Regulation Executive embarked on an agenda to improve policy making to support a sustainable, globally competitive economy. They set ambitious targets for red tape reduction, backed by simplification plans that would resonate with business and produce measurable, meaningful results.

To achieve these aims, they realized they must measure and understand the existing stock of regulations and manage the flow and quality of new regulations. They knew they must also effect a culture change among regulatory departments—including breaking down silos across departments and groups—and overhaul the unwieldy regulatory impact assessment process.

Regulatory impact assessments (RIAs) have long been key tools for guiding policy development in the UK. As public documents that can be challenged, they are fundamental to the consultation process. However, over the years more and more policy tools and requirements were added to the RIAs, making them unclear and difficult to complete. Instead of using them in the early stages of regulatory development, many RIAs were completed 'after the fact' simply to fulfill the requirements. The RIA process is being re-vamped to ensure the assessments are completed earlier

and address the full range of impacts of policy options. An online toolkit is being developed to help people complete the new, much shorter and more focused impact assessments (IAs). A single online entry point and better-trained staff will also simplify the process.

The Better Regulation Executive placed a very high priority on thorough assessment of proposed regulations on the business environment. Two tools are used in this regard: the Competition Assessment and the Small Firms Impact Test. Small firms are particularly important, as small and medium enterprises represent about 90 per cent of UK business—and regulatory burdens weigh more heavily on smaller organizations. Now, when a new policy is in the works, small firms are consulted their details are stored on an innovative database which they have volunteered to join. Firms are responding very positively to this opportunity to feed into the earlier stages of the regulatory process. If the impact appears significant or complex, the firms are consulted to further explore the impacts. Small firms' input is considered throughout the process and reflected in the final IA.

In the area of competition, the filter for screening proposed regulations for competition impacts was re-designed to capture more potential competition concerns. It now probes potential direct and indirect impacts of regulatory proposals on the number and range of suppliers, and their ability and incentive to compete. It has proven effective in several cases already.

Initial efforts are showing positive results, and saving businesses millions of dollars. Dr. Carrier concluded that ongoing vigilance is essential, and that more work needs to be done to fine tune the IAs and cost-benefit analysis procedures. At the same time, alternatives to regulation need to be considered more fully and a culture of continuous improvement must be fostered. Success to date indicates the UK has a strong role to play in sharing best practices internationally.

BREAKOUT SESSION

REGULATORY REFORM IN NEWFOUNDLAND

PRESENTER

VANESSA NEWHOOK, *Director, Red Tape Reduction Division, Department of Business, Government of Newfoundland and Labrador*

Vanessa Newhook has extensive public service experience. Before accepting her current role, she worked on a cross-government program-evaluation project. She has worked as a budget analyst with the Treasury Board Secretariat, human resources planning consultant with the Human Resource Planning project, and as a financial analyst with the Office of the Comptroller General.

Like many jurisdictions, over the past few years Newfoundland and Labrador has turned its attention to streamlining and improving its regulatory environment. The initial focus of regulatory reform was to ease the burden of red tape on businesses—particularly small and medium-sized enterprises (SMEs)—in order to foster productivity and competitiveness of firms in the province.

A red tape reduction task force was struck in February 2005. The task force reviewed regulatory reform initiatives in other jurisdictions, as well as past initiatives in Newfoundland and Labrador, to identify potential solutions. They also consulted with the public, including industry and communities—and within government—to find out what the priorities should be for regulatory reform.

The task force efforts showed the way forward. In mid-2005, the province moved the red tape reduction initiative to the Department of Business. At the same time, the initiative's aims were expanded beyond SME's to encompass many more facets of the economy. All departments, agencies, boards and commissions would be included in the sweeping reforms. The task force also recommended adoption of the British Columbia model. This involves taking a detailed inventory of regulatory requirements—called 'The Count'—to quantify regulatory burden and create a yardstick for measuring reduction.

As Ms. Newhook explained, a regulatory requirement in itself is not red tape. Some regulatory requirements are necessary—but others are not necessary and can negatively affect job creation, business growth and people's lives. Red tape barriers can involve legislation, regulation fees, permits, licenses, paperwork, standards, processing time, guidelines, filing and certification requirements, and reporting, investigation, inspection and enforcement practices.

Newfoundland and Labrador's inventory of regulatory requirements—which focused on external client impacts and spanned all government departments and legislation—identified 312,517 requirements. They set a target to cut this number by 25 per cent over three years, and maintain a 'zero per cent' increase in the future. A key strategy for achieving this goal was the condition that two existing requirements be eliminated for every new requirement, until the target is reached. Every department and agency was challenged to find ways of reducing red tape by 25 per cent, starting with the 'quick hits'—redundant or obsolete requirements that could be easily eliminated. As of March 21, 2006, they had achieved a reduction of 2.68 per cent—representing nearly 8,400 eliminated requirements. They are finding that, in the process of cutting unnecessary regulatory requirements, they are also improving efficiency and effectiveness in many areas.

There are many challenges ahead. Reducing red tape is not easy. It is a massive undertaking that takes time, careful attention, collaboration and substantial resources to do properly. More staff awareness, and staff training, is required, as well as enhanced IT infrastructure to better connect the regions of the province. Achieving the 25 per cent reduction target within the three-year time frame will require ongoing support of elected officials and senior bureaucrats. It will also require consistent and effective communications within government and with stakeholders and the general public, to share success stories and maintain support for the initiative.

BREAKOUT SESSION

REGULATORY MANAGEMENT AT THE US ENVIRONMENTAL PROTECTION AGENCY

PRESENTER

DR. NICOLE OWENS, *Director, Regulatory Management Division (RMD), US EPA*

Nicole Owens directs the division that manages the EPA's action development and review process. The RMD also provides comprehensive training for EPA staff and managers, and procedural and analytical support to help the EPA consider the impacts of its action on small businesses, local governments and non-profits. Prior to joining the RMD, Dr. Owens was director of the Innovation and Emerging Challenges Division of EPA's National Centre for Environmental Economics.

The US EPA develops policy and regulations on a massive scale. As Dr. Owens explained, the agency employs 18,000, and has hundreds of rules in various stages of development. EPA is responsible for regulations under a large number of environmental laws. In addition to being numerous, many EPA rules are complex, dealing with cutting edge science and technology and/or cutting across several laws. They can be expensive both to write and follow—although cost-benefit analyses show that, as a whole, EPA rules render benefits that substantially outweigh the costs. EPA rules can also be controversial. Overseen by the White House and Congress, they are closely monitored by external groups. About 80 per cent of EPA rules are challenged in court.

To ensure its rules reflect its environmental protection priorities, and that significant issues are raised early and resolved efficiently, the EPA involves senior management early in the process. Quality is safeguarded through a step-by-step regulatory development process: prioritize, plan, analyze, evaluate, decide, collaborate, and communicate. To manage the sheer volume of activity, the EPA uses a sophisticated task management system to track milestones and deadlines in the development of each rule. They also have a tiering system for assigning priority to proposed new regulations, to justify assignment

of staff and other resources to finalizing the rule within and outside the agency.

Public consultation is key throughout the process. Every proposed rule is published in the Federal Register where it can be viewed by any member of the public. More than 600,000 comments flowed in on a clean air rule alone. Every comment is recorded and considered, and the EPA response is published in the 'docket'—the ongoing file of action and commentary on each rule. This and other documents go into the 'Administrative Record' that forms the basis of the EPA's final decision and provides justification to defend EPA rulings when they're taken to court.

Every proposed rule is analyzed thoroughly, to ensure that it is simple, timely, flexible, clear and concise, easy to implement and enforce, and legally defensible. This includes scientific and economic analyses, stakeholder input, and practical considerations. The Office of Compliance participates in every rule, and every rule undergoes a legal review to ward off litigation. Special consideration is given to minimizing negative impacts of regulations on small businesses—although public health and safety concerns must be addressed regardless of market impact. Following analysis and evaluation regulatory options, the preferred option undergoes a final internal review. Some rules are referred to the Office of Management and Budget to assess their economic significance. If the cost will exceed \$100 million, a regulatory impact assessment must be completed. When a rule is finalized and has passed all the many checks and balances, the EPA Administrator signs and it is published in the Federal Register. The final step in the regulatory develop process is a comprehensive effort to inform the public of the new rule. This, however, is not the end of the story. The EPA continually monitors the impacts and effectiveness of its rules. For the EPA, the stakes are very high: protection of human health and the environment. These precious resources deserve utmost attention to detail and quality, every step of the way.

BREAKOUT SESSION

IMPROVING SERVICE TO BUSINESS

PRESENTER

GREG KEEFE, *Deputy Minister, Service Nova Scotia and Municipal Relations*

Greg Keefe has 30 years of public sector experience in Nova Scotia, serving in many senior roles. These include Executive Director of the Revenue, Compliance and Registry Services Division, Executive Director of Program Management and Corporate Services for Service Nova Scotia and Municipal Relations, and Registrar of Motor Vehicles. He served as Acting Deputy Minister of Service Nova Scotia and Municipal Relations for two years before accepting the role of Deputy Minister in 2004.

Deputy Minister Keefe opened with Nova Scotia's vision for government service to business. The province is working to create a business-friendly culture, where government employees are focused on meeting client needs to help them achieve success and actively encourage client feedback to ensure continuous improvement. This involves providing comprehensive business information, streamlined and automated transactions, clear communications, and better regulations. Clients will eventually be able to access a profile of their government interactions, including current status of all permits, applications, and expiries. At the same time, government will be able to provide the client with up-to-date, sector-specific information based on their profile.

This vision has developed over the past decade, beginning with the Licenses Permits and Approvals Task Force in 1997 and the Red Tape Reduction Task Force, which released its final report in 2004. Against this backdrop, Service Nova Scotia launched the Nova Scotia Business Registry to provide a single point of access for new startups. In 2004, the results of the national 'Taking Care of Business' survey, and input from the Canadian Federation of Independent Business, reaffirmed the need for streamlined business services. The research revealed that small and medium-sized enterprises had limited ability to advocate and were hampered by

unclear and inconsistent application of the rules, too many forms, and multiple points of contact in a fragmented system. The department's analysis of the innkeeper sector underscored the point: to open an inn, the innkeeper must do business with nine government bodies, complete or access 48 forms and documents, and provide 463 pieces of information. As it turns out, much of the information is duplicated many times across these forms.

Based on this research and additional consultations, Service Nova Scotia—under the umbrella of the Better Regulation initiative—launched the Small Business Solutions Initiative. This took a phased approach, starting with making it easier to meet current requirements, then reducing requirements, then integrating service delivery. Key elements include online information and e-forms, in-person and toll-free phone service, and a trained staff of customer service representatives. The aim is to complete service on first contact.

As of October 2006, Service Nova Scotia had launched three pilot business 'service counters' across the province, a business service Web portal organized by business life cycle, and a single toll-free number for businesses to call for all their service needs. Service Nova Scotia is also refining 'service bundles,' outlining the steps they will take and services they will provide in various business sectors and situations. The experience gained through the pilot 'service counters' will guide the future development of additional business service sectors.

The long-term keys to success, according to Mr. Keefe, are continued government support for the proposed approach, and full interdepartmental and intergovernmental collaboration and planning. The initiative must be appropriately staffed and funded. They must set aggressive yet realistic targets and timelines, and measure and validate the results. Ongoing commitment and refinement will ensure that firms are empowered, rather than impeded, in starting and growing their businesses in Nova Scotia. The overall effect will be a more vibrant and competitive business climate and a prosperous economy.

BREAKOUT SESSION

PUBLIC SAFETY LEGISLATION MODERNIZATION IN BRITISH COLUMBIA

PRESENTER

HARRY DIEMER, *President and CEO, BC Safety Authority*

Harry Diemer was executive director responsible for public safety policy development and technical services delivery for the Government of British Columbia for 13 years. During that time he oversaw the creation of new technical public safety legislation and led the migration of technical services to the newly created private-sector BC Safety Authority. He has headed this not-for-profit, self-funded authority since 2003.

In the mid-1990s, Harry Diemer and his B.C. government public safety staff were feeling the pressure. They were attempting to enforce five separate acts governing such technologies as elevators, boilers, ski lifts, amusement rides and railways. The legislation was complex, prescriptive and inflexible, and imposed unmanageable administrative burdens on industry. The treasury board wanted cost-recovery, but wouldn't allow fee hikes. As Mr. Diemer explained, "we couldn't enforce the regulations...we were only doing knee-jerk reactions to incidents." Management and staff didn't feel good about their performance. Complex procedures slowed them down, which meant that clients' projects were often delayed because inspections were not timely. Mr. Diemer urged his deputy minister to move on modernizing the legislation.

A review of the safety system recommended many changes, including smart regulation, red tape reduction, and separating governance from service delivery by creating the BC Safety Authority to deliver inspection, enforcement and other technical services—while continuing to play a role in regulatory development and regulatory impact assessments. The new legislation set forth the framework for creating the safety system into one streamlined 'Safety Standards Act.' Directives that needed to be flexible were taken out of the act and put into the regulations. The

regulating agency was given discretion as to the means of assessing risk and ensuring compliance. The focus of the safety system was shifted from process to outcomes, which also gave industry flexibility to devise their own ways of meeting the requirements.

Streamlined legislation that gives industry some flexibility to take responsibility for risks they create is easier to follow and enforce. BC Safety Authority staff now focus on customer service—making it easy for clients to comply by being responsive, diplomatic and available. As a result, the Authority is building more positive working relationships with clients that in turn lead to improved compliance and—they plan to prove in the future—public safety. In the event of non-compliance, the Authority follows a set continuum of enforcement tools that begins with persuasion, and only goes further to warning letters, legal action, or license suspension or revocation, when all less punitive actions have been tried and failed. By skillfully applying a wide range of regulatory tools, they are meeting a quadruple bottomline of safety, economic success for the province, employee satisfaction and customer service.

In removing the service from government, BC learned many lessons, starting with the three 'Cs': consultation, consultation and consultation! Consulting with the industry players every step of the way was critical to the success of the venture. The surprise lesson was that, rather than costing less, service delivery costs actually increased by 25 per cent. Mr. Diemer called these 'diligence costs' that were part of a larger cultural shift to working harder to do the best possible job. They are also finding that numbers of reported non-compliant incidents have gone up—because they are digging deeper and have established 'no-fault' accident reporting, information now flows freely to them. They are building a performance measurement system and a complex risk-assessment and -control system to improve their effectiveness. As Mr. Diemer remarked, "Regulatory practice is a mindset—it needs substantial effort."

BREAKOUT SESSION

ACHIEVING AN INTEGRATED REGULATORY AGENCY

PRESENTER

WILLIAM LAHEY, *Deputy Minister, Nova Scotia Environment and Labour*

Bill Lahey was instrumental in shaping an integrated regulatory management program at Nova Scotia Environment and Labour, and is the driving force behind the Department's Competitiveness and Compliance Initiative. For more on Mr. Lahey, see page X.

In the late 1990s, two Nova Scotia government departments became one. The Department of Environment and the Department of Labour merged to create Nova Scotia Environment and Labour (NSEL). With the merger, explained Mr. Lahey, the new department became Nova Scotia's major regulatory agency, with an extremely broad, diverse mandate. However, the two founding departments had different practices and different approaches to compliance. There was no common policy framework to ensure consistency across the new department's many divisions and four inspectorates. The department needed an integrated approach to regulatory management that balanced program with departmental objectives, advanced consistency by respecting differences and promoting innovation, and targeted resources to the most important risks.

Meanwhile, changes were underway outside the agency. The Government of Nova Scotia, like many jurisdictions, was looking to streamline and improve regulations, beginning with the Red Tape Reduction Task Force in 2000. The government's 2003 'Blueprint for a Building a Better Nova Scotia' and 2005 'Better Regulation Initiative' took the province even further along the path from de-regulation (trend of the 1980s to reducing regulation), through regulatory reform (begun in the 1990s, focusing on results and expanding toolkit), to its current focus on improved regulatory management. This current phase in the evolution

of the province's regulatory style emphasizes social and economic objectives, problem-solving, finding the optimal mix of tools to achieve desired outcomes, consistency across regulatory programs, and continuous measurement and review.

Against this backdrop, NSEL developed its Competitiveness and Compliance Initiative (CCI), to provide its staff with a consistent 'go forward' framework for analysing issues and designing solutions. Some of CCI's underlying principles are that good regulations can contribute to public protection, competitiveness and economic growth; barriers to competitiveness are barriers to compliance; quality of regulation is more important than quantity; and regulatory practice matters as much as law-making.

CCI seeks to integrate the pursuit of environmental, employee and public protection with economic prosperity, within an overarching philosophy of sustainable development. Its underlying premise is that, to be sustainable, development must take place in accordance with environmental and social commitments, as well as with economic objectives.

CCI is building a culture of continuous regulatory improvement that integrates protection and prosperity. It does this through four streams: a common regulatory framework to provide consistency and quality in instrument choice and in regulatory design and practice across the department; a science strategy to ensure decisions are based on the best available knowledge; a learning strategy to provide staff with the knowledge and skills they need to practice better regulation; and compliance promotion. This includes capacity building within regulatory sectors, as well as efforts to make regulations easier to understand and follow—often through re-vamping programs, simplifying language and streamlining processes.

In 2005, the Government of Nova Scotia endorsed CCI as part of its Better Regulation Initiative, and is applying its principles across all departments to achieve even greater consistency. NSEL, meanwhile, has made great strides in learning from its successes, applying best practices, investing resources strategically, focusing on regulatory practice as a specific activity, building outcome-focused partnerships and broadening its approach. Future efforts will strengthen the department's ability to set and monitor performance measures and conduct ongoing reviews.

BREAKOUT SESSION

USING ALTERNATIVES TO REGULATION

PRESENTER

JOHN GIRALDEZ, *Policy Analyst, Regulatory Affairs Division, Treasury Board of Canada Secretariat*

As an economist with the Regulatory Affairs Division of the Treasury Board of Canada's Secretariat, John Giraldez is highly experienced in such policy areas cost-benefit analysis, triage framework and instrument choice. He is co-chair of the Innovation, Productivity and Business Environment Theme Table, as well as the Environmental Sustainability Theme Table. Prior to his current role, Mr. Giraldez held senior policy positions at Agriculture and Agri-Food Canada and the Canadian Food Inspection Agency.

John Giraldez explored the steps and challenges of selecting effective policy tools. These 'instruments for government action' range from laws to economic, public and peer pressure—yet many governments focus on laws and regulations as their primary tools. He says this bias is often due to a particular agency's culture, or lack of exposure to or experience with non-regulatory tools. It is, however, vital for governments to expand their toolkits to encompass the full range of policy tools, so they can skillfully apply the right mix of tools to any given policy objective.

The tools in the kit can be arranged along a continuum. At one end are informal and voluntary measures—such as education programs, various forms of self-regulation, partnerships, and capacity-building programs. Along the spectrum are more formal voluntary measures, such as letters of intent, memorandums of agreement and contracts. At the far end, more 'coercive' instruments of the state include laws, regulations, taxation and various economic instruments.

Using a formal analytical framework (or procedure) ensures a disciplined approach to analyzing problems and assessing and selecting the appropriate tools. Such frameworks produce better outcomes and ensure that decision making that is both transparent and defensible. Mr. Giraldez

presented a basic analytical framework. The first step is to identify and define the problem, including issues, risks and causal factors. Then, set the objective. Consider whether or not the government should intervene, and what are the consequences of not intervening? What are the ultimate goals and desired outcomes, and which are most achievable at a reasonable cost? If the government should step in, it must find the best points for intervention. This includes identifying key players, necessary changes in technology or behaviour, and processes or sequences of events that could be changed. The potential impact of external forces on risk and objectives must be carefully considered as well. For example, bringing external players to the table to help develop and implement the policy could improve the outcome. The government must then consider the various instruments at its disposal and select the tools or combination that will work the best. Finally, it sets performance indicators and puts the plan into action.

Of course, consultation is critical at every step of the process. Mr. Giraldez discussed the importance of well-planned consultation, starting with clearly defined goals and parameters. Is the purpose to share information, build support, or achieve consensus? How will divergent views be addressed and how will various players be advised? Will there be difficult choices or trade offs?

In closing, Mr. Giraldez reiterated that governments can't deal with every situation. When it is clear they must step in, proper analysis and consideration of the full range of tools is crucial at the earliest stages of policy development. Regulation is but one tool and should be chosen only after a close examination of all the options. This broader approach to policymaking requires new skills and a culture change in government, but the emphasis on consultation and partnerships will result in more positive and productive relationships between government, communities and industries.

BREAKOUT SESSION

INSPECTION AND ENFORCEMENT FOUNDATION TRAINING IN NOVA SCOTIA

PRESENTERS

VICTORIA BRUCE, *Training Consultant, Nova Scotia Environment & Labour, and*

PETER CRAIG, *Senior Crown Attorney Public Prosecution Service, Nova Scotia Justice*

Victoria Bruce has 12 years of experience in the field of adult education. She has worked with NSEL as training coordinator, consultant and facilitator since 2004, and led the development of the Inspections, Investigations and Prosecutions Training Program. Peter Craig, provincial offence prosecutor for the Public Prosecution Service, worked with Ms. Bruce on the training program.

In 2005, Nova Scotia Environment and Labour (NSEL) embraced the challenge of developing its own department-wide inspection and enforcement training program for 180 inspectorate staff members in its four main regulatory arms (Alcohol and Gaming, Environmental Monitoring and Compliance, Occupational Health and Safety, Public Safety). The Office of Competitiveness and Compliance, which manages the department's Better Regulation initiative, urged the department to develop this training as a way of improving the quality of its regulatory programs.

As the presenters noted, staff members rarely need to launch investigations or legal action, so they don't have much practical experience. Training is essential to ensure they proceed correctly when such situations do arise. Divisions had been delivering their own prosecution training, and staff did participate in an RCMP course in Cape Breton—but this was very costly and focused on criminal prosecutions. The new Inspections, Investigations and Prosecutions Training Program—based on extensive research—ensures that all staff receive the same information in the same manner, and that the information is specifically tailored to the NSEL mandate.

Victoria Bruce and Peter Craig, as part of the Inspections, Investigations & Prosecutions Committee, partnered with the Nova Scotia Community College (NSCC) Customized Training Branch to develop the program. As the presenters explained, NSEL and NS Justice had the subject-matter expertise, but NSCC (and Ms. Bruce) had the adult education expertise. NSEL staff delivered the modules, so participants would relate to the presenters—and vice versa—for maximum effectiveness.

The seven-day program teaches NSEL inspectorate staff how to effectively conduct inspections and investigations. Because it teaches government employees how to prepare to take a matter to court, it could apply to other provincial departments. The four modules cover:

ROLE: Staff need to know how to assess and monitor possible safety risks, what they are authorized to do, and where they fit in terms of jurisdictional overlaps. They also need to know how to conduct themselves professionally in enforcement situations.

PROCESS: This module teaches practical skills in taking notes and statements, conducting interviews, and inspections versus investigations. It provides context to ensure staff proceed correctly, particularly if the situation could evolve into a criminal investigation.

INVESTIGATION: Participants learn who to caution, when and why; definitions of search and seizure; and how to obtain warrants, handle evidence, and procure photos and diagrams for evidence.

PROSECUTION: This module covers courtroom basics, including the role of the Crown and the investigator and rules regarding admissibility of evidence, expert witnesses, and disclosure of all aspects of the investigation. It includes steps to determining if a situation should proceed to prosecution, and how to draft charging documents clearly.

The course provides comprehensive, customized training to better prepare enforcement staff to do the most difficult part of their jobs. It also created goodwill within the department, as participants were pleased a course had been developed specifically to meet their needs.

PANEL DISCUSSION: “HOW DO REGULATIONS IMPACT COMPETITIVENESS?”

The October 3 conference closed with a panel discussion to explore regulatory issues—and their impact on business and society—from the perspectives of the public, and the business and economic development communities. Three experts comprised the panel, speaking in the following order:

JIM MEEK, *Journalist and Editor, The Inside Out Report*

As editor of ‘The Inside Out Report,’ Atlantic Canada’s in-depth journal of public opinion, Jim Meek has his finger on the pulse of the population’s thoughts and feelings. Among his many roles, Mr. Meek is a columnist with ‘The Chronicle Herald’ and ‘Progress Magazine’ and an instructor at the University of King’s College School of Journalism. A Harvard Fellow, he has won national awards for his coverage of the energy industry and public policy issues.

STEPHANE ROBICHAUD, *Vice President (Atlantic), Canadian Federation of Independent Business (CFIB)*

Stephane Robichaud has worked with CFIB for more than a decade, beginning in 1995 as a legislative analyst. Prior to that, he held positions in the New Brunswick Department of Economic Development and Tourism, including project officer on the Quebec file. Mr. Robichaud has a keen interest in local economic development, support mechanisms for youth, new tools for business to access capital, and questioning traditional roles of government.

ELIZABETH BEALE, *President and CEO, Atlantic Provinces Economic Council (APEC)*

As president of APEC for the past ten years, Elizabeth Beale advises senior levels of government on regional planning and economic strategies for Atlantic Canada. She also works closely with the business community and other stakeholders to identify economic growth opportunities in the region. Ms. Beale is a member of the National Statistics Council, a governor of Dalhousie University, director of the Telecom Applications Alliance, member of the Red Tape Reduction Committee in New Brunswick, and a member of the Minister’s Advisory Council on Science and Technology for Natural Resources Canada.

PANELISTS' PRESENTATIONS

JIM MEEK opened the discussion by explaining that his focus, through The Inside Out Report, is on understanding public values and how they relate to public projects. "Values motivate behaviour," he said, adding that the government values he'd observed over the day—such as better regulation, improving service to business, and balancing competitiveness and compliance—do not actually align with public values. These he later described as more akin to the EAC (Ecology Action Centre) than AIMS (the Atlantic Institute for Market Studies).

People usually want strong regulation of certain things, such as protecting the environment, forcing public utilities to use renewable energy sources, or regulating gas prices. They don't trust business and want government to be a watchdog. "BUT," said Mr. Meek, "you can make bad public policy based on public opinion."

Mr. Meek described two very different regulatory styles and public reaction to them—the Utility Review Board, versus the Nova Scotia Offshore Petroleum Board. In the absence of competition in the power utility sector, the Utility Review Board plays an adversarial game to keep the utility in line—a role which the public approves. In contrast, the offshore petroleum board works with that industry in a collegial manner to correct and improve practice. Yet, "When you try to do something new in that industry, it's a holy war." Mr. Meek suggests that a public perception that the petroleum board is not a tough enforcer makes its job that much harder.

While governments can't devise public policy that precisely reflects public opinion, Mr. Meek advised that they always make certain that public policy respects public opinion. If they fail to do so, they will get into trouble.

*"You can't devise public policy
to reflect public opinion,
but public policy must respect public opinion,
or you will get in trouble."*

Jim Meek, *The Inside Out Report*

STEPHANE ROBICHAUD weighed in on the side of small business. CFIB is a champion of small business that works hard to raise awareness of the unintended impacts of regulation on small business.

CFIB has 105,000 members across Canada, 5,000 in Nova Scotia, from which it seeks weekly input about the issues they face. The federation released a red tape report last year that estimated an annual cost to business of \$33 billion due to red tape.

In Nova Scotia, 53 per cent of employment is provided by small business, and 9 of 10 companies employ less than 20 people. As Mr. Robichaud explained to the audience, small businesses are most heavily impacted by red tape—it is the owner who usually handles the regulatory burden, which according to Mr. Robichaud can take 7 hours of

a 37-hour week. A recent CFIB survey showed that red tape ranks nearly as high as taxes among concerns of business owners. On top of this, 70 per cent of respondents feel that government does not appreciate the level of regulatory burden they carry.

On a hopeful note, Mr. Robichaud said the red tape issue has evolved over the past 12 years. There is greater recognition of the need to streamline regulation, and commitment on the part of government and business to work together on win-win solutions. There is a need for more measurement to assess “are we doing better or worse?” He notes, too, that while business/regulatory impact assessments are critical, they can’t be a burden on the public service. In closing, he pointed to the contextual reality—the fact that sometimes political forces drive regulations into place too quickly to allow these assessments.

*“If you have the political will
to deal with red tape,
you’re on the right track.”*

Stephane Robichaud,
Canadian Federation of Independent Business

ELIZABETH BEALE began by expressing how pleased she is to be working with Nancy Vanstone and the Competitiveness and Compliance Initiative, and acknowledging the food for thought brought forward by her fellow panelists.

Ms. Beale has a front-row seat on regulatory issues due to her involvement in the New Brunswick red tape initiative. She feels the work on red tape reduction has been a valuable starting point. It highlights, however, the need to take a big-picture look at the mass of regulatory issues and find ways to improve the overall regulatory framework—not just reduce and streamline the regulations within it.

She addressed the question posed to the panel: “Does regulation have a direct impact on competitiveness?” Good regulations are essential to the marketplace, she said, while poor regulations lead to slow approvals, duplication of effort and inconsistencies that retard the process of business investment and delay innovation—the very elements we need to be competitive. In fact, she noted, potential investors in the offshore sector have been complaining that our regulatory framework is not up to par with other jurisdictions.

“We need to think about whether we offer an appropriate or effective regulatory framework,”

said Ms. Beale, “and ask ourselves how we can strengthen our regulatory framework to match protection objectives with dynamic business growth.”

It’s a great challenge, because we are not just dealing with the status quo, but a constantly changing world economy and technology. To be successful, we need to be more focused on partnerships, system-wide, to coordinate not just among government departments, but across the Atlantic Provinces. “We can’t impose undue burdens on the flow of people, services and goods across provincial borders.”

The four provinces need to come together, with stakeholders, to resolve regulatory issues. In so doing, the governments must make concerted efforts in a number of areas:

- to ensure the clarity of regulations, so business knows how to implement the requirements;
- to become more attuned to and appreciative of the regulatory burden on business;
- to ensure transparency;
- to focus on impacts and results of regulations;
- to systematically establish benchmarks against which to measure success;
- to report on success or lack of success.

*“The work on red tape is a good starting point,
but we need to look at how to
improve the overall regulatory framework.”*

Elizabeth Beale,
Atlantic Provinces Economic Council

DISCUSSION

Following the presentations by the panelists, a number of audience members posed questions or raised issues. Several very important points emerged in the discussion:

1 One individual pointed out that regulatory issues in the offshore are complicated by the Offshore Petroleum Board's dual role as management board as well as a regulatory board. He commented that we need to look for ways to improve the regulatory framework for competitiveness without sacrificing the public interest. He also noted the importance of celebrating successes, such as the efficiency with which Deep Panuke met its regulatory requirements by completing them concurrently rather than sequentially.

2 Another audience member brought up the point that, in some cases, red tape reduction has proven to reduce public protection—and must therefore be approached carefully, especially in areas regulated by Environment and Labour: "We can't sacrifice protection."

3 In response, Stephane Robichaud (CFIB) insisted: "We can't assume that the existing regulation actually provides the protection that we think it does." He continued by saying that ongoing consultation is essential to fine-tuning regulation so we end up with a less burdensome but more effective system.

PANEL DISCUSSION WRAP-UP

Nancy Vanstone wrapped up the panel discussion. She reiterated the crucial importance of regulation in civil societies, to protect workers, citizens and the environment. Good regulation is essential to competitiveness, providing a level playing field for business and ensuring a skilled workforce and safe work environments.

While recognizing the importance of regulation, she noted that we need to focus more on the unintended impacts of regulation on business—impacts that can impede productivity, profitability and competitiveness. In light of concerns expressed regarding the unintended negative impacts of red tape reduction, Ms. Vanstone clarified that Nova Scotia's aim to reduce 'red tape' by 20 per cent by 2010 is focused on reducing the administrative burden of regulation—not regulation itself.

PIER 21—CLOSING THE CONFERENCE

CLOSING REMARKS

NANCY VANSTONE, *Chair, Nova Scotia's Better Regulation Steering Committee and Assistant Deputy Minister, Nova Scotia Environment and Labour*

Nancy Vanstone brought the very productive day to a close by summarizing some of the key themes and examples of achievement. In particular, she echoed Professor Sparrow's message to be certain we are focused on the right problems—and that we understand the problem before jumping into the solution!

She admitted that this is not always easy, but that we must meet the challenge. We must use technology and systems to gather information—to reveal patterns that point the way to emerging problems, and inform analysis of the problem and decisions regarding tools and solutions. We must also develop methods for prioritizing problems, engaging the public and stakeholders, maintaining transparency, and measuring the real impacts of regulatory changes. She emphasized the importance of in-depth analysis at the front end of the process, and the need to communicate regulatory processes and changes in plain language.

Ms. Vanstone closed by expressing her hopes and enthusiasm for the future. "We can all take what we've learned back to our departments, with a new focus on the problems, and new strategies and insights as we look for and create the right tools to solve them. We must make this new mindset a habit, and build a culture of improvement in the quest to create good public policy. And the discussion begun today must keep going on into the future, to keep a keen focus on our regulatory craft in Nova Scotia."