



Regulators Under Stress

This is no time for further cuts

I represent a client who has a patent for a new product that can make a real contribution to food safety but he needs the federal regulator to do a health hazard assessment. When I finally got through to the right office, I am told: "We can't help you right now. We only have two scientists left that can do that kind of risk assessment: one is on French and the other is on stress leave." I am not making this up.

For reasons of public health and trade, the food industry is highly regulated. Except for maybe the *Income Tax Act*, it's hard to imagine any area of the law that is more intimately personal in the daily lives of Canadians than food law. Food law regulates the agriculture and food industry and it's the second largest sector of the Canadian economy. A timely and effective regulatory system is critically important for the health and safety of Canadians and for the Canadian economy.

But all along the food chain, at the federal and provincial levels, the regulatory systems are seriously stressed and struggling to provide the timely approvals that industry needs and the public deserves. For instance:

- a division of the Canadian Food Inspection Agency is doing the best that it can but the waiting list for routine label approvals is 12 months long;
- the target approval time at the Pest Management Regulatory Agency for the simplest "me-too" pesticide registration for a product that is not even regulated in the U.S. is 10 months, others can take years;
- Alberta's lab system is so underfunded it takes several months before BSE screening tests are carried out, seriously complicating trace back;
- in 1998, a new food product is promised a health hazard



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assessment by Health Canada by 2000; the industry is recently advised that resources are limited, the file is "not a departmental priority" and the assessment still has not begun.

But the problem is deeper than backed-up approvals; these are just the most visible symptoms of an underfunded and over-worked system.

The root of the problem is the failure of most governments to adequately recognize the central importance of regulatory policies and practices. Policies and programs that redistribute income, provide grants for research, fund regional economic development or provide financial support to various groups, individuals and industry sectors get all the attention. They involve major new policy thrusts, photo ops and the new big ideas so loved by the policy wonks. Regulatory agencies work behind the scenes doing routine inspections and tests, making and enforcing deeply technical and complex rules or are suddenly thrust into the public spotlight to manage some major public health crisis. Either way, there are no "good news stories" or happy photo ops. Think of Health Canada's Dr. Paul Gully trying to cope with the SARS crisis or the CFIA's Dr. Brian Evans with the latest BSE crisis.

It is in the area of science-based regulations where the problems are most acute because Canada's regulatory system (recently described by a senior public servant as the most rigid and time consuming in the western world) can't keep up with the pace of scientific change. Science and technology are changing daily while our regulatory system routinely takes over two years for even modest technical amendments.

In its first week of office, the Martin government announced a new Expenditure Review Committee mandated to undertake a full review of all government expenditures. All programs will be assessed against seven tests. There should be an eighth test: Public Health and Safety. Will reductions

in this program area or activity put Canadian health and safety at risk or undermine the capacity for crisis management? The government will argue that this factor is already implicit in the “public interest test” but it should be made explicit, as several provincial

cost-cutting exercises (Walkerton) and the federal 1995 Program Review experience have demonstrated.

There are several other measures that the Martin government could take to improve regulatory policy and they

include:

- creating an expedited process for non-controversial amendments that would shorten the process to four months;
- bringing some real intellectual rigour to the issue of harmonization with the U.S. (and the provinces) and make some hard decisions;
- fostering a regulatory enforcement culture that puts the public interest first but ensures that the regulators do not hide behind their role to justify arrogance, unwarranted delay or inappropriate enforcement, especially when no public policy objective is achieved;
- introducing the Treasury Board to the concept of surge capacity for regulatory agencies that often have to manage crises. No one questions that fire departments have some redundancy built into their staffing levels so that they are able to respond to crises; why wouldn't we routinely provide this for public health agencies like the CFIA and Health Canada?

It is telling that Canada's standing in the latest survey on national productivity was recently downgraded because of deterioration in our public sector institutions. In a globalized economy, companies will move production to low-cost countries and move capital in nanoseconds. It's our regulatory system that stays. If it is seen to be responsive, credible, trusted and timely, our science-based regulatory system will foster innovation in Canada and provide us with a real competitive advantage.

The food industry needs to get itself organized to make it clear to governments that this is no time for further cuts to the regulatory system.

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