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# Regulatory Reform *Report Card*

## 2019 Grade:

# B

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## Chamber Recommendation

## Grade

1 Establish a government-business regulatory competitiveness working group

*A*

2 Give regulators economic growth and competitiveness mandates

*B*

3 Increase federal leadership to eliminate interprovincial trade barriers

*B*

4 Rebuild stakeholder confidence in cost-benefit analysis

*B-*

5 Improve regulatory consultations

*F*

6 Increase efforts to modernize individual regulatory frameworks

*A+*

7 Increase international alignment, especially in new areas of regulation

*B*

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In May 2018, the Canadian Chamber of Commerce released *Death by 130,000 Cuts: Improving Canada's Regulatory Competitiveness*, a report that examined how Canada's complex network of overlapping regulations from all levels of government has created a costly and uncertain environment in which to operate a business. The report provided recommendations to help produce more modern and efficient regulatory frameworks, which in turn will promote greater economic growth and prosperity while providing necessary protections.

Six months after its release, the federal government cited the report in the 2018 Fall Economic Statement, acknowledging Canada's problematic regulatory environment and promising regulatory reform. Now, over a year after the release of *Death by 130,000 Cuts*, the Canadian Chamber is grading the federal government's response to the Canadian Chamber's regulatory recommendations and providing additional advice on how to continue improving Canada's regulatory culture. Going forward, the Canadian Chamber will publish an annual report card to measure federal progress on regulatory reform.



## ***The federal government gets an overall grade of B in our 2019 Federal Regulatory Reform Report Card.***

***The B grade is based on an evaluation of the government's response to each of the Canadian Chamber's seven recommendations in *Death by 130,000 Cuts*. The individual grades vary from A+ to F, reflecting a series of government decisions that have, in some cases, exceeded and, in others, fallen short of business expectations.***

## Canadian Chamber Recommendation 1:

Establish a government business regulatory competitiveness working group



*Death by 130,000 Cuts* called on the government to convene a business-government working group to develop cross-cutting solutions to improve Canada's regulatory competitiveness.

### Government response: *A*

In the 2018 Fall Economic Statement, the government committed to create such a committee to “assist Ministers and regulators to identify regulatory changes that promote economic growth and innovation.”<sup>1</sup> In May 2019, the President of the Treasury Board announced the creation of an eight-person External Advisory Committee on Regulatory Competitiveness, comprised of business leaders, academics and consumer representatives from across the country, including the current Chair of the Canadian Chamber Board of Directors. The External Advisory Committee's mandate is:

*...to advise the Treasury Board by providing recommendations on how to improve regulatory competitiveness in Canada while protecting health, security, safety and the environment; and supporting the modernization of Canada's regulatory system into one that further enables investment and catalyzes innovation.*<sup>2</sup>

Responding to the Canadian Chamber's recommendation to create this advisory group is a welcome first step for improving Canada's regulatory environment, a long-term undertaking that will require ongoing government-business collaboration. To ensure the government's response to the committee's recommendations are transparent, the Canadian Chamber believes the government should commit to a “comply or explain” approach to the committee's work. This idea — which is when the government must either implement the committee's recommendations or publicly justify why it will not — was highlighted in *Death by 130,000 Cuts* and has been used by the government of Denmark with the work of the Danish Business Authority's Business Forum for Better Regulation and has been highlighted by the OECD.<sup>3</sup>

The External Advisory Committee provided its first set of recommendations [in a letter to the President of the Treasury Board](#) in May 2019.

### What the government should do next

1. Adopt a “comply or explain” principle to the recommendations of the External Advisory Committee on Regulatory Competitiveness.

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<sup>1</sup> Finance Canada, 2018 Fall Economic Statement (November 2018)

<sup>2</sup> Treasury Board Secretariat, External Advisory Committee on Regulatory Competitiveness (May 2019)

<sup>3</sup> Danish Business Authority, Business Forum for Better Regulation (accessed May 2019) <https://danishbusinessauthority.dk/business-forum-better-regulation>

## Canadian Chamber Recommendation 2:

Give regulators economic growth and competitiveness mandates



*Death by 130,000 Cuts* called on the government to add economic competitiveness and innovation considerations to the mandates of health, safety, environmental and other regulators, many of which are not presently giving sufficient consideration to economic and business impacts when making regulatory decisions.

### Government response: *B*

In the 2018 Fall Economic Statement, the government recognized the importance of the Canadian Chamber's recommendation and committed that:

*The Government intends to review legislation to assess whether opportunities for legislative changes exist to further solidify that regulatory efficiency and economic growth is an integral part of regulators' mandates... Enshrining this requirement in legislation would ensure that the economic impacts of new, revised or cumulative regulations are key considerations for regulators. The Government will undertake work this fall to determine where these changes may have the greatest impact.*

Despite the promise to undertake work in fall of 2018, implementation of this commitment has languished. At the end of June 2019, the government [gave notice in Canada Gazette I that it intends to consult further](#) on this issue, until September 2019, to determine "the development of key principles related to efficiency and economic growth that would become part of the required analysis that regulators must perform as part of the regulatory development process."<sup>4</sup>

The recommendation in *Death by 130,000 Cuts* was based on the [U.K. Growth Duty](#), which imposes a legislated requirement on U.K. regulators to consider the desirability of promoting economic growth and of ensuring any regulatory action taken is necessary and proportionate. As one of the most important and necessary recommendations in *Death by 130,000 Cuts*, the B grade reflects that the government did not implement this measure before the 2019 federal election, a year after it was first promised.

### What the government should do next

1. Legislate economic growth and competitiveness considerations into regulator mandates as soon as possible.
2. Implement the change in a manner similar to the U.K. Growth Duty, which, along with legislation, provides detailed statutory guidance to regulators to provide clarity on how they must fulfill their new responsibilities.<sup>5</sup>

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<sup>4</sup> Government of Canada, Canada Gazette, Part I, Volume 153, Number 26: Government Notices (June 29, 2019)

<sup>5</sup> U.K. Department for Business, Energy & Industrial Strategy, Growth Duty: Statutory Guidance (March 2017)

## Canadian Chamber Recommendation 3:

Increase federal leadership eliminating interprovincial trade barriers



*Death by 130,000 Cuts* called on the government to provide more leadership to eliminate costly interprovincial trade barriers with a specific focus on improving the Canadian Free Trade Agreement (CFTA) and making meaningful progress toward eliminating regulatory differences through the Regulatory Reconciliation and Cooperation Table created by the CFTA.

### Government response: *B*

In Budget 2019, the federal government demonstrated leadership on interprovincial alcohol trade by removing the requirement that alcohol moving from one province to another be sold or consigned to a provincial liquor authority. Provinces and territories are still responsible for regulating the sale and distribution of alcohol within their own territories, but the change enables the provinces to allow direct-to-consumer sales across provincial borders. Outside of alcohol, federal leadership on interprovincial trade barriers is less impressive.

The B grade reflects that, despite its strong support for the removal of interprovincial trade barriers, the government has utilized few other federal levers to encourage the provinces to be bolder in their approach to interprovincial trade negotiations.

The Canadian Chamber continues to call for governments to be more ambitious in their regulatory reconciliation efforts and to move towards the mutual recognition of provincial certifications, registrations and standards. Several provinces have less than one full-time staff position dedicated to the work of the Regulatory Reconciliation and Cooperation Table.

### What the government should do next

1. Call a First Ministers meeting with the explicit goal of agreeing to negotiate broad-based mutual recognition of provincial certifications, registrations and standards.
2. Use the federal seat at the Regulatory Reconciliation and Cooperation Table to push for a more ambitious approach to regulatory alignment and encourage the provinces to dedicate more resources towards these efforts.



## Canadian Chamber Recommendation 4:

### Rebuild stakeholder confidence in cost-benefit analysis



*Death by 130,000 Cuts* called on the government to improve inconsistent cost-benefit analyses for regulatory proposals before they are submitted for Cabinet approval. Despite extensive guidance provided by the Treasury Board Secretariat to departments and agencies, government consultations have revealed that a majority of stakeholders find that cost-benefit analyses are not always consistent.

### Government response: *B-*

In September 2018, Treasury Board Secretariat implemented updated regulatory guidance policies for departments and agencies informed by industry consultation: the [Cabinet Directive on Regulation](#) and the [Policy on Cost Benefit Analysis](#). Although industry has welcomed the updated policies, the Canadian Chamber remains concerned that regulators may disregard some elements of these guidance policies, as has been the case in the past. The B- grade reflects these concerns and that the government has not proposed any tools to make departments and agencies more accountable for their analysis.

One suggestion from *Death by 130,000 Cuts* is to establish an independent review panel to evaluate whether regulators have undertaken a fair cost-benefit analysis of industry costs of a particular action. This is the approach used in the U.K.'s [Regulatory Policy Committee](#), which has been instrumental in improving regulatory analysis in that country. The Regulatory Policy Committee is described as:

*The committee is formed of independent experts from a range of backgrounds, including the private and voluntary sectors, business, the legal profession and academia... We assess the quality of evidence and analysis used to inform regulatory proposals affecting the economy, businesses, civil society, charities and other non-government organisations. Our independent advice helps ensure that ministerial policy decisions are based on accurate evidence.<sup>6</sup>*

### What the government should do next

1. Augment new federal regulatory guidance policies with the creation of an independent panel similar to the U.K. Regulatory Policy Committee to review and help improve regulatory cost-benefit analysis.

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<sup>6</sup> Government U.K., Regulatory Policy Committee, About Us (accessed June 2019)

## Canadian Chamber Recommendation 5:

### Improve regulatory consultations



*Death by 130,000 Cuts* called on the government to engage earlier with businesses on an issue before deciding if regulation is the appropriate policy tool. It also recommended that if regulations are necessary, the government should work more closely with business on developing regulatory measures.

### Government response: *F*

While the new Cabinet Directive on Regulatory Management introduced in September 2018 has a strong emphasis on stakeholder consultation, it does not require regulators to publicly justify their choice of regulation over other approaches. The directive states that, "when appropriate, the results of an instrument choice exercise should be included as part of the Regulatory Impact Analysis Statement to demonstrate through evidence and analysis that a regulation is the best tool to achieve the public policy objectives."<sup>7</sup>

There are signs that departments and agencies will continue to favour regulatory approaches over other policy instruments. One example is the government's new approach to air passenger rights.

*In 2008, the Government of Canada introduced Flight Rights Canada, an air passenger rights initiative based on a voluntary code of conduct for airlines. In 2009, Canada's largest carriers all agreed to the code and adjusted their tariffs to address flight and tarmac delays, cancellations, overbooking and lost or damaged baggage.<sup>8</sup>*

*In November 2016, as part of its Transportation 2030 plan, the federal government stated that it wanted to pursue legislation and regulation to strengthen air passenger rights. Eight years after the introduction of Flight Rights Canada would have been an appropriate time to engage with air carriers about updating the code of conduct to continue to protect travellers through a cooperative, non-regulated approach. Instead, the government made it clear from the beginning that it would be pursuing new regulations. New Air Passenger Protection Regulations are scheduled to come into effect in 2019 despite industry concerns that the cost-benefit analysis does not accurately reflect the cost increases the regulations will have on travellers and that the implementation timeline is too ambitious when considering the changes that will be required to air carrier information technology infrastructure, employee training and communication procedures.*

There is also evidence that some regulators will continue to use consultation as an exercise to justify their preferred regulatory options rather than to try and improve them. For example, in December 2018, Health Canada launched consultations on draft regulations on cannabis edibles, derivatives and topicals. During the consultation, industry raised significant concerns regarding several aspects of the regulations, including packaging rules that will significantly increase industry and consumer costs as well as environmental waste. Many industry stakeholders proposed alternative approaches to lower costs and reduce waste while still achieving health and safety objectives. When the final regulations were released, none of the industry feedback on packaging rules or other major elements were reflected. Instances such as this leave many stakeholders questioning why they should invest time and effort to try to improve regulations if regulators are going to proceed with their initial proposals.

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<sup>7</sup> Treasury Board Secretariat, Cabinet Directive on Regulation (September 2018)

<sup>8</sup> Government of Canada, Air Passenger Rights (Accessed June 2019) <https://travel.gc.ca/air/air-passenger-rights>



The most recent example of consultation dysfunction in 2019 is the government's development of a new environmental assessment regulatory regime. In 2018, the federal government introduced Bill C-69 to replace the Canadian Environmental Assessment Act 2012 with a new federal environmental assessment process for major infrastructure projects. While the business community was largely supportive of the need to improve environmental assessments, the government proposed a complex and uncertain process that would deter investment and make it more difficult for the private sector to proceed with large infrastructure projects. In response to industry concerns, the government asked for business input and collaboration, and industry made a good faith effort to work with the government to improve the legislation and the new regulatory processes it would create. While the mining sector achieved some positive changes through the amendments, most of the improvements suggested by a wide array of industries were dismissed by the government, which proceeded to pass the flawed legislation in June 2019.

The federal tendency to regulate first and the inconsistency of regulators considering stakeholder evidence has made it clear there is still a need for greater regulatory accountability across departments and agencies. *Death by 130,000 Cuts* suggested creating a separate Cabinet position to improve regulatory oversight and competitiveness, and the need still exists.

## What the government should do next

1. Split the position of President of the Treasury Board into two positions, separating fiscal and regulatory oversight. Create a Minister of Regulatory Efficiency to provide government-wide political leadership on regulatory reform and competitiveness.
2. Amend the Cabinet Directive on Regulation to state that departments must perform an instrument choice exercise in consultation with stakeholders and include outcomes of that consultation in all Regulatory Impact Analysis Statements.



## Canadian Chamber Recommendation 6:

### Increase efforts to modernize individual regulatory frameworks



*Death by 130,000 Cuts* called on the government to direct more resources towards implementing best practices and simplifying existing regulatory frameworks.

### Government response: *A+*

This is where the government has focused most of its regulatory reform effort. In 2018, the Treasury Board Secretariat [initiated a process of coordinating three-year targeted regulatory reviews](#) of individual sectors. These reviews have led to the development of regulatory roadmaps that lay out the government's plans to implement a range of legislative and regulatory changes in each of the sectors that were reviewed.

The first round of regulatory reviews focused on agri food and aquaculture, health and bio-sciences and transportation and infrastructure. The regulatory roadmaps for those sectors were [announced in June 2019](#). The government has also announced the next round of reviews, which will focus on clean technology, digitization and technology neutrality and international standards.

Business stakeholders have been highly engaged in the regulatory reviews, which have successfully started the process of addressing regulatory irritants. However, these regulator-industry discussions have not yet resulted in the removal of major regulatory irritants. Moving forward, the Treasury Board Secretariat will need to establish a structure for departments and agencies to report on their progress to ensure the roadmaps remain a priority.

If the roadmaps are successful in modernizing regulatory frameworks, there is a strong case to make the review and roadmap process a permanent feature of Canada's regulatory environment.

### What the government should do next

1. Require departments and agencies to regularly report on their progress in implementing regulatory roadmaps and include industry perspectives on that progress.
2. Make the regulatory reviews and roadmaps model a permanent feature of Canada's regulatory frameworks to ensure Canadian regulations remain relevant and up-to-date.



## Canadian Chamber Recommendation 7:

Increase international alignment,  
especially in new areas of regulation



*Death by 130,000 Cuts* called on the government to develop new regulations in alignment with the U.S. or other international standards by default when in Canada's interest. It also recommended that when the government pursues "Canada-specific" regulations, that the costs to business of deviating from U.S. or international standards be quantified in the regulatory analysis.

### Government response: *B*

The new September 2018 Cabinet Directive on Regulation encourages regulatory cooperation by noting that:

*Departments and agencies are to assess opportunities for cooperation with other jurisdictions, domestically and internationally, on regulations and associated regulatory activities. This includes examining alignment of regulatory approaches and outcomes with key trading partners, in order to reduce the regulatory burden on Canadian business, while maintaining or improving the health, safety, security, social and economic well-being of Canadians, and protecting the environment.<sup>9</sup>*

While the increased profile of regulatory cooperation in the directive is welcome, the B grade reflects that it falls short of requiring that regulatory cooperation be a pre-requisite or default when designing new approaches and instruments, as the Canadian Chamber and many other stakeholders have recommended during consultations.<sup>10</sup>

The Canada-U.S. Regulatory Cooperation Council (RCC), launched in 2011, continues its work to align Canada and U.S. regulatory approaches through stakeholder-driven, regulator-to-regulator work plans. RCC progress has slowed over the last several years, and it has become increasingly difficult for business to follow and track the progress of these cross-border regulatory efforts.

### What the government should do next

1. Amend the Cabinet Directive on Regulation to require that if regulators pursue a "Canada specific" regulatory approach that deviates from U.S. or international standards, that the additional costs of deviation to Canadian companies be included in the Regulatory Impact Analysis Statement.
2. Develop a dashboard that easily allows stakeholders to track the progress of Canada-U.S. Regulatory Cooperation Council work plans and connect with regulators on both sides of the border conducting the work.

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<sup>9</sup> Treasury Board Secretariat, Cabinet Directive on Regulation (September 2018)

<sup>10</sup> Treasury Board Secretariat, What we Heard: Online Consultation on the Draft Cabinet Directive on Regulation

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