

REVIEW OF THE
REGULATORY ACCOUNTABILITY AND REPORTING ACT

November 29, 2021

Digital Government and Service NL

The Honourable Sarah Stoodley, Minister

Background

In January 2015, the Council of Atlantic Premiers announced the Atlantic Red Tape Reduction Partnership. The goal of the partnership was to identify business regulations and administrative processes that could be harmonized and streamlined to create a more competitive economic environment across Atlantic Canada.

To further the goal of red tape reduction, in March 2015 the governments of Nova Scotia and New Brunswick signed a Memorandum of Understanding (MOU) which would create a joint Regulatory and Service Effectiveness Office (“Joint Office”). The Joint Office would be for the purpose of recommending best practices and pursuing opportunities to reduce regulatory barriers between the provinces.

Concurrently, Nova Scotia established its own Office of Regulatory Affairs and Service Effectiveness, with a mandate to quantify and reduce the burden of regulation on Nova Scotia businesses, and also to engage with other provinces for improved alignment of provincial regulatory programs. The first Chief Regulatory Officer of Nova Scotia was appointed in May 2015 to helm this office.

Nova Scotia and New Brunswick were then joined by Prince Edward Island, as formalized in an amendment to the MOU signed on November 6, 2015. The Joint Office was enshrined in legislation titled the **Regulatory Accountability and Reporting Act**, passed in December 2015 by Nova Scotia. Mirror legislation of the same title was then passed in New Brunswick and Prince Edward Island in June 2016.

Newfoundland and Labrador also sought to join this initiative, and passed its own **Regulatory Accountability and Reporting Act** (“the Act”) in December 2016. A second amendment to the MOU was signed by all four provinces in September 2017. The Act came into force on January 26, 2018, following its proclamation by the Lieutenant-Governor in Council. The Premiers also adopted a Charter of Governing Principles for Regulation, which is attached as Appendix A.

The Joint Office is a collective term for the collaborative efforts of the four provinces under the auspices of the Act. Responsibility for coordinating Newfoundland and Labrador’s involvement in the Joint Office was initially assigned to the Policy Innovation and Accountability Office, which was then part of Cabinet Secretariat. In January 2020, this responsibility was transferred to the Intergovernmental Affairs Secretariat.

The Minister of Digital Government of Service NL remains the minister responsible for the Act. The present report has been produced in accordance with section 9(1) of the Act, which requires a comprehensive review of the Joint Office and the provisions and operations of the Act to be undertaken within three years of the Act coming into force. The Act further states that the minister shall, within a year after the review is undertaken

or within the further time that may be authorized by the House of Assembly, report on the review, including a statement of any changes that the minister recommends, to the House of Assembly.

Activities of the Joint Office

Pressure Welder Mobility

Through the coordination of the Joint Office, the provinces' boiler and pressure vessel regulatory authorities collaborated to successfully develop a program offering pressure welders a process to receive performance qualifications that are recognized in multiple participating jurisdictions. These now include all four Atlantic Provinces as well as Nunavut and Northwest Territories. Welders in these jurisdictions can apply through a user-friendly online portal called the Pressure Welder Mobility System (PWMS).

The PWMS is a database that provides a voluntary membership platform for pressure welders in participating jurisdictions. Membership is open to eligible pressure welders, pressure welding contractors, pressure welding test centers, jurisdictions or other organizations engaged in pressure welding of boilers, pressure vessels and pressure piping in accordance with the requirements of the American Society of Mechanical Engineers.

In addition to improving mobility for workers, the system offers contractors and test centers the advantage of being able to review the database to determine the availability and qualification of welders in their area. Anticipated benefits to industry involve a more streamlined and efficient process for both workers and employers in the pressure welding trade, creating more opportunities for work and improving economic competitiveness.

Alignment of Minimum Wage Increase Dates

In December 2017, the Council of Atlantic Premiers agreed to explore opportunities to align minimum wage rates in the region, with a goal of assisting workers and employers by providing predictability and consistency throughout Atlantic Canada. In collaboration through the Joint Office, the provinces agreed to align the timing of changes to the minimum wage.

As prescribed in regulations under the provinces' respective pieces of labour standards legislation, NL and Nova Scotia now each increase the minimum wage on April 1st of each year in an adjustment calculated by the percentage change in the national Consumer Price Index (CPI), while New Brunswick bases its April 1st increases on its provincial CPI. Prince Edward Island also implements its minimum wage increases on April 1st, but the changes are made by order of an Employment Standards Board. Note

that the NL minimum wage regulations are subject to review within 2 years of their last amendment, and may change based on recommendations of the review.

Increasing the minimum wage on the same date increases economic competitiveness as it provides greater consistency and efficiency for multi-province firms. Tying the increases to the Consumer Price Index allows for more certainty in business planning and helps minimum wage earners by preventing decreases in their purchasing power.

Physician Regulation

In July 2019, the Council of Atlantic Premiers directed the Joint Office to explore opportunities for comprehensive regional alignment of physician regulation as a foundation for enhancing access to patient care and safety across the region.

These efforts have been ongoing, as several meetings have been held amongst the registrars of the physicians' colleges and the regulatory leads for of Newfoundland and Labrador, Prince Edward Island, and Nova Scotia, working on identifying opportunities for alignment.

Areas of potential collaboration include emergency licensure, a common certificate of professional conduct, and virtual care. Dialogue with the Joint Office is ongoing with respect to which areas of possible alignment can be achieved amongst the participating colleges. Implementation of many of the potential changes in this sector would be within the scope of the physicians' colleges.

Harmonization of the Technical Safety Trades

The Council of Atlantic Premiers committed in December 2017 to work towards aligning the regulatory and policy requirements for the technical safety trades in the Atlantic region. Technical safety is a broad field including several different trades relating to the safe use and operation of key infrastructure such as elevating devices (e.g. elevators and escalators), amusement rides, boilers, pressure vessels and compressed gas systems, electrical systems, and petroleum storage. Through the coordination of the Joint Office, the four Atlantic governments have been engaged in discussions regarding how best to approach aligning where possible the regulatory requirements for these trades

This area of work, as with many others, has been impacted by the COVID-19 pandemic, which for the past two years has led to a focus of resources on immediate local concerns. The process of perusing harmonization of the technical safety trades will be an ongoing area of work for the foreseeable future, as there are many potential areas of alignment and it is expected to be a process of continuous improvement.

Conclusion

The Atlantic Provinces Economic Council (APEC), a non-partisan research institute, published a report titled “Trade Barriers in Atlantic Canada: Opportunities for Regulatory Reform” in 2016. This report found that Atlantic firms are placed at a competitive disadvantage relative to firms in larger provinces, due to the market’s small size and further fragmentation by trade and regulatory barriers. These interprovincial trade barriers can result in increased costs, reduced efficiency, lower revenue, impeded client service, and reduced investment.

Reducing these barriers has significant potential to boost the region’s output. For this reason, the mandate of the Joint Office remains an important one that should continue to be pursued. The Office has largely been a successful project, as several important initiatives under its auspices have been either commenced or successfully completed.

The capacity of the Atlantic provinces to collaborate effectively through the Joint Office has been somewhat impaired by the challenges and shifting priorities which have been caused by the COVID-19 pandemic. However, productive discussions with our counterparts have been occurring regularly throughout 2021, and progress continues on various initiatives under the Joint Office’s purview.

In accordance with section 10 of the Act, the Act will expire five years after it comes into force, which will be upon January 28, 2023. Leading up to and beyond that point, we will consult with our regional counterparts to determine the path forward for continued collaboration on regulatory modernization and harmonization. This review recommends no changes to the Act.

Appendix A: Premiers' Charter of Governing Principles for Regulation

Leading jurisdictions on regulatory reform and modernization adopt principles that guide regulators. The following statement of principles reflects the Maritime Premiers' vision for regulation in Nova Scotia, New Brunswick and Prince Edward Island and takes into account leading national and international practices.

Premiers' Charter of Governing Principles for Regulation ("Charter")

Regulation is a powerful and sometimes necessary instrument of public policy that can support efficient and effective markets and protect consumers, workers, and the health, safety and environment of citizens and communities. But it has limits. And there are often better instruments of public policy than regulation.

Experience shows that unnecessary or outmoded regulation can distort markets, unduly burden citizens, businesses and governments, and impede economic growth. Given this, regulation should never be an instrument of first resort, and should be deployed only when necessary and where there is clearly no better policy alternative.

A. Statement of Fundamental Intent on Regulation

- 1. The Government will regulate to achieve its policy objectives only**
 - a. having demonstrated that satisfactory outcomes cannot be achieved by alternative self-regulatory or non-regulatory approaches;
 - b. where analysis of the costs and benefits demonstrates that the regulatory approach is superior by a clear margin to alternative, self-regulatory or non-regulatory approaches;
 - c. where the regulation and the enforcement framework can be implemented in a fashion which is demonstrably proportionate, accountable, consistent, accessible, targeted and predictable; and
 - d. where the regulation and associated process is consistent with the Guidelines set out in section B below.

- 2. There is a general presumption that regulation should not impose costs and obligations on business, social enterprises, individuals and community groups unless a robust and compelling case has been made to do so.**

B. Guidelines for Developing and Assessing Regulation

- 1. The policy need should be clearly articulated at the outset**
 - illustrate how the need relates to relevant policy goals

2. Regulation should be the only effective and necessary way to meet the policy need

- a full range of regulatory and non-regulatory instruments and options is identified (e.g. do nothing; educate; improve information sharing; use the market; use financial or other incentives; self-regulate; voluntary codes of practice)
- regulation is shown to be clearly and demonstrably superior to other alternatives
- other alternatives are shown not to be effective in achieving a satisfactory outcome
- assessment of alternatives is based on best available evidence

3. Regulation should be a tempered response

- is proportionate to the issue being addressed
- is targeted to the area of need
- is the lightest form of regulation required to achieve the policy outcome
- does not unduly burden those being regulated
- takes into account the entire burden and impact of existing regulation on the regulated in considering the adoption of new regulation
- is considered and predictable and, barring compelling urgency, is not a rushed response to current events

4. Regulation should be accountable

- the costs and burdens of regulation are measurable
- the impact of regulation is assessed before it is adopted and outcomes are monitored afterward
- regulators and the regulated are accountable for an effective regulatory system and compliance, respectively
- regulation and the measurement of its performance and impact is evidence-based, objective and free from bias
- existing regulation should be systematically reviewed for compliance with the Charter

5. Regulation should be accessible and easy to comply with

- the process of making and monitoring regulation represents affected parties and is transparent
- representations from affected parties are solicited and considered in a timely and meaningful way in making and monitoring regulation
- regulation does not introduce unnecessary complexity by duplicating legislation or conflicting or overlapping with other regulations, requirements or forms already in place
- regulation should be written to be understood and complied with by the regulated as opposed to serving the administrative or drafting convenience of the regulator

- regulation should not be harder to comply with than equivalent regulation in relevant jurisdictions
- regulation should consider the critical importance of strong customer service values and standards in achieving high regulatory performance

6. Regulation should consider economic impact

- promotes a fair and competitive market economy
- promotes ease of interprovincial commerce
- presumed not to have the effect of creating an obstacle to internal or international trade
- presumed that the measured cost or burden of new regulation is at least offset by a reduction in the cost or burden of existing regulation

7. Good regulatory governance

- the responsibility of regulating, and of demonstrating that regulation is justified under this Charter, is that of the department, agency or office whose mandate includes the policy need the regulation seeks to address
- the Office of Regulatory Reform and Service Effectiveness is an independent advisory office of government, reporting to the Premiers, which oversees and advises on the application of the Charter and the adoption of regulatory best practices in Nova Scotia, New Brunswick and Prince Edward Island