

## CHAPTER 4

# An Assessment of the Federal Regulatory Process and Proposals for Change

---

### A. INTRODUCTION

1. This chapter provides an assessment of the efforts by the Mulroney Government to improve the federal regulation-making process. The organization of the chapter is as follows. Section B provides an assessment of the advance notice and consultation requirements. Section C discusses the weaknesses of the present regulation-making system in terms of counting the costs of proposed regulations. Section D discusses the requirements for economic analysis in regulation making. Section E is an assessment of the policy requiring the periodic evaluation of regulatory programs. Section F provides an assessment of the Regulatory Impact Analysis Statement (RIAS) and the work of the Regulatory Affairs Directorate.

### B. ASSESSMENT OF THE ADVANCE NOTICE AND CONSULTATION REQUIREMENTS

#### 1. Advance Notice

2. The annual *Federal Regulatory Plan* is not a plan at all in the sense of a coordinated and coherent set of proposed actions to be taken by the federal government. It is merely a compilation of lists of regulatory initiatives departments might seek to put into law in the next year.

3. The Plan has another notable weakness. Failure to give advance notice of a proposed regulation—even if it is not required by an emergency or unforeseeable situation—is no bar against its submission to the Special Committee of Council. Indeed, it is estimated that only about 40% of the regulations made in 1991 had been listed in a previous regulatory plan. In the United States, failure to list a proposed regulation in a regulatory agenda and then in the annual regulatory plan would almost certainly result in its rejection by the Office of Management and Budget, which reviews proposed regulations pursuant to Executive Order 12291 of 1981.

#### 2. Consultation Process

4. There seems to be little doubt that the consultation requirement created in 1986 has substantially increased the quantity and quality of consultation on proposed regulations. While this adds to the time and cost of creating new regulations, most program branch officials are convinced that they are able to “regulate smarter” as a result of consultation. However, officials in regulatory departments indicate that some guidance from Treasury Board would be useful to ensure that the type of consultation processes and their scope comply with government policy.