

whether the potential impact of a regulatory proposal and other aspects of the government's regulatory policy have been properly addressed." The manual gives no indication of either the criteria RAD employs or, more importantly, what adverse consequences follow if the RIAS fails to pass muster with RAD. Yet, in general, government agencies have more difficulty controlling other government agencies than entities in the private sector.

55. Political imperatives generally dominate the regulation-making process in Ottawa. Unless the President of the Treasury Board is wholly supportive, the best RAD officials can do is to hold up proposed regulations in an effort to have departments rethink their proposed regulations. Then the outcome depends largely upon the relative power, on the particular issue in question, of the President of the Treasury Board and that of the Minister proposing the regulations. In general, however, RAD is probably stronger by reason of being located inside the Treasury Board Secretariat than was its predecessor located in OPRA.

56. The fundamental characteristics of government by cabinet necessarily limit reforms to the regulation-making process which take the form of administrative directives, because they amount to self-regulation by the Cabinet of the Cabinet. In practice, Ministers are often very reluctant to reduce their discretion in making regulations. Yet they say they are committed to "regulating smarter." It is clear that if regulations are to be more efficient, then the Cabinet will have to impose credible constraints on its own behaviour. This conclusion has influenced many of our recommendations.

The Committee recommends the following changes in the RIAS and the responsibilities and authority of the Regulatory Affairs Directorate:

- 4.8 **Clear definitions of major, small/technical and intermediate categories of regulation should be developed. The proposed threshold for "major" is \$100 million in total costs to society measured in present value terms. The threshold would also include a measure in terms of the costs relative to the output of the sector(s) likely to be most affected by the proposed regulation.**
- 4.9 **For intermediate and major regulations, the RIAS should indicate the planned process of monitoring and evaluation of the proposed regulation.**
- 4.10 **The RIAS requirement for the deletion of regulations should be simplified.**
- 4.11 **The RIAS should disclose the set of alternatives that were considered by the department and rejected, with a brief explanation why the alternative chosen is superior.**
- 4.12 **The RIAS should include an assessment of the proposed regulation's impact on the competitiveness of the firms in the sectors where the majority of the compliance costs are expected to occur.**
- 4.13 **The *Statutory Instruments Act* should be amended to provide that RAD must certify that (1) the methodology employed in preparing the cost-benefit analysis accompanying each proposed major regulation meets professional standards, and (2) that all proposed regulations are properly classified in terms of their impact as small/technical, intermediate, or major. This would be closely analogous to the requirement that the Clerk of the Privy Council certify that proposed regulations are legally correct in form and not *ultra vires*.**
- 4.14 **The President of the Treasury Board should have the power to delay proposed major or intermediate regulations which have not previously been reported in the annual *Federal Regulatory Plan*, except where the regulation is in response to an emergency arising since the deadline for submissions to the last plan.**