

Assessing the Public Interest in the 21st Century: A Framework

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A paper prepared for the
External Advisory Committee on
Smart Regulation

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Regulation, chaired by Gaétan Lussier**

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Executive Summary

Regulatory authorities typically justify their decisions in terms of the “public interest”, but the term is difficult to define. This paper looks to three areas for answers, in the hope that these answers will provide a practical guide on thinking through what the public interest might be case by case.

The first is the extensive philosophical literature on the concept. The second is regulatory practice itself, particularly recent regulatory reform efforts that have had to grapple directly with what the public interest means in a new world of technology, environmental threats, and globalized competition. The third is the views of citizens themselves, as they deliberated in a unique process of public consultation summarized in the Canadian Policy Research Networks’ (CPRN) study *Citizens’ Dialogue on Canada’s Future*.

The literature shows five distinctive approaches to understanding the public interest.

- Process: The public interest arises from, and is served by, fair, inclusive, and transparent decision-making procedures.
- Majority Opinion: The public interest is defined by what a reasonably significant majority of the population thinks about an issue.
- Utilitarian: The public interest is a balance or compromise of different interests involved in an issue.
- Common Interest: The public interest is a set of pragmatic interests we all have in common such as clean air, water, defence and security, public safety, a strong economy.
- Shared Value: The public interest is a set of shared values or normative principles.

Regulatory practice and recent reform efforts touch on five broad, related themes:

- Ensuring more flexible and participatory regulatory processes.
- Assessing both the costs and benefits of regulation.
- Highlighting the growing demand for strong regulation in areas that touch directly on health, safety, and the environment.
- Emphasizing the importance of stewardship (particularly in the environmental field) and mutual responsibility of all citizens for good regulatory outcomes.
- Taking a balanced approach to regulatory outcomes in terms of the various interests involved, but also in terms of an equilibrium among individual consumer and citizen interests, commercial interests, and broad Canadian social values.

The CPRN research shows that Canadians accept market models of regulation, but also expect businesses to be accountable for meeting standards. They also demand high and rigorous standards for regulations governing health, safety and the environment. They expect transparency and fairness, and they would only consider harmonizing Canadian standards with American ones if the new standards are more rigorous than the ones in place.

These results suggest a framework for considering the public interest in any regulatory decision, what we call a Public Interest Accountability Framework (PIAF). It is a two-stage framework.

Stage I takes the decision-maker through considerations of process, public opinion, specific interests, common interests, and shared values.

1. Has due process been followed in constructing the regulatory decision-making process, and can we with confidence say that decisions that result from that process have been shaped fairly? Key benchmarks here are accessibility, transparency (distribution and availability of information), mechanisms for participation and deliberation, accountability and neutrality in decision-making.
2. What is the state of Canadian public opinion on the issue? Are there clear majority views on various aspects of the issue?
3. Which specific interests are connected to the issue, and what are their views? How are the costs and benefits of different regulatory options distributed among these groups and more generally among the Canadian population?
4. What are the key common interests or public goods at stake in this area – examples would include health, security, safety, environmental protection, future generations, innovation, competitiveness. How are risks assessed? What is the balance of these common interests?
5. Are there shared values or normative guidelines that affect decision-making in this area? Are there specific legal rights of either individuals or collectivities that should be referred to in the decision-making process?

Stage II encourages the decision-maker to explicitly consider the balancing of interests of individuals as consumers/citizens, enterprise or business interests, and collective interests in explaining the reasons for decision.

We recommend that all major regulatory decision-makers conduct a PIAF assessment to make more explicit and transparent the definition of public interest that guided the regulatory authority towards its conclusions.

Assessing the Public Interest in the 21st Century: A Framework

Leslie A. Pal and Judith Maxwell ¹

Introduction

The focus of this paper is the nature of “the public interest” as a guide or benchmark for regulatory policy. Our purpose is to draw together the many ideas that have been expressed on the public interest from the academic literature, regulatory decisions and the views of the public, and then to create a Public Interest Accountability Framework for use by regulators and policy-makers in their decision-making.

Regulations are rules that impose obligations on individuals, public organizations, or firms. Social regulation typically aims at health, safety, welfare, working conditions and the environment. Economic regulation focuses on healthy markets, typically on the competitive behaviour of firms, efficiency, fair trade practices, and consumer protection (Sparrow 2000). While social regulation tends to apply to risks and threats across all industrial sectors, economic regulation tends to be more sectorally focused (e.g., utilities, financial services, transportation and communication). Economic and social regulation increasingly overlap – for example, environmental regulations on clean air and water affect agricultural and industrial producers, and product safety standards can affect market competition, particularly when producers try to export their products to foreign market. Recently, both social and economic regulatory activity has focused on their effects on innovation. As markets become more global and more competitive, and as technology makes the product cycle shorter and shorter, regulatory authorities around the world and in Canada are asking themselves what the appropriate balance should be between bona fide regulatory objectives such as protecting the public from harm and encouraging (or at the very least, not unduly impeding) innovation and productivity (which also benefits the public).

Broadly speaking, regulatory authorities (these include arm’s length regulatory bodies, government departments, and self-regulating professions) are presumed to be guided by the public interest in making their decisions. Even self-regulating professions such as doctors or lawyers are granted their regulatory powers by the state to set standards and enforce discipline on behalf of the public interest. In practice of course, there may from time to time be abuses, but in principle, these professions are not granted these powers in order to enrich themselves or take advantage of their monopoly. The same is true of regulatory authorities that oversee specific economic sectors such as agricultural marketing boards, the National Energy Board, or the CRTC. While these regulatory agencies properly have some representation from the sectors they are regulating, they are not setting standards in order to benefit those sectors exclusively. They are enforcing regulatory standards in order to achieve broad public policy objectives stated in their legislative mandates, and their decisions are expected to benefit the public at large. The sectors or companies in them may benefit as well of course, but that is not the principal objective of the regulations. More commonly, regulations impose costs on firms (e.g., environmental and safety standards) that may or may not be passed on to consumers.

The challenge in the regulatory arena is that while the public interest is clearly important, it is notoriously difficult to define. Moreover, as a standard or benchmark, the concept of the public interest is especially important for regulators. Parliament, for example, is a representative institution, and so despite partisanship, it can be presumed that legislation is somehow reflective of public opinion, the public will,

¹ We would like to thank Tatyana Teplova for her outstanding research assistance on this paper.

and is in the public interest. Courts are not representative institutions as such, but they are presumed to be impartial to any one side in a dispute, with their decisions guided by the rule of law. This too is seen as an expression of the public interest, since the rule of law (and more importantly, the Constitution) is the very foundation of a democratic society. Regulatory authorities (at least arm's length agencies) usually have some representational aspect (e.g., regional, linguistic), but they are not mini-legislatures. Indeed, members of regulatory authorities are normally selected on the basis of their expertise. However, these regulatory authorities typically make decisions on specific cases that, while guided by law and precedent, involve a substantial degree of discretion. Whatever they decide, they are somehow to be guided by what is in the best interests of the public. So the nature of regulatory decision-making imposes an obligation to be guided by a concept that by its very nature is nebulous and shifts case by case.

While the concept of the public interest is both important and difficult, it is possible to gain some precision and edge by looking in three places for guidance. The first is the extensive philosophical literature on the nature of the public interest. Philosophy and public policy are normally poles apart, but in this instance the subject is preeminently philosophical. The second place is regulatory practice itself, particularly recent regulatory reform efforts (around, for example, clean water) which have reflected more systematically on how the public interest should be defined. The third is deliberative public opinion – the public interest is always a specific *public's* interest, and the public interest as defined in Canada will differ from definitions in other countries. A concept of the public interest that floats disconnected from what Canadians actually think will not be helpful. The CPRN *Citizens' Dialogue on Canada's Future* (MacKinnon et al) provides a unique lens on the public interest defined in terms of how Canadians view government and what they want government regulation to accomplish and how. The *Dialogue* used a method of deliberation and exchange, and so is considerably more sophisticated than mere public opinion polling.

The purpose of these explorations is not a substantive definition of the public interest. It aims instead to provide a practical framework of considerations or tests to more clearly and transparently arrive at a determination of what the public interest might be case by case.

What the Literature Says

Some sort of equivalent to the notion of the “public interest” is as old as political philosophy itself. For example, Aristotle referred to the idea of the “common interest”; Aquinas to the “common good”; Locke to the “public good of the people”; Hume to the “public good”; Madison to the “public”, “common” or “general good”; Rousseau to the “common good” (Diggs 1973: 282). In all these cases, the public interest or common good was equated in some fashion to morality, justice and the best ends of the state or of political society. Even someone as resolutely devoted to individual liberty as John Stuart Mill was prepared to concede the existence of common welfare or general or societal interest. Indeed, so ubiquitous is the notion of a public or common interest, that it has spawned a range of synonyms which seek to capture the same rough idea that there is a common good that embraces an entire community and that is distinct from individual, sectional, or regional interests: “common vision”, “shared vision”, “shared purpose”, “common goals”, “social contract”, “core values”, “general welfare”. In one sense the concept of a public interest is indispensable to a modern democracy, which presumes that public policy is to be undertaken in the interests of the entire community (or at least a substantial majority), not one section of that community.

Nevertheless, despite its importance and apparent centrality to our thinking about public policy, the concept of the public interest is notoriously slippery. Virtually every treatment in the literature – even those that are squarely supportive of the idea – begins with the caveat that the public interest is susceptible to many different interpretations and approaches. Even in societies with a modest degree of diversity in socio-economic, cultural, and ethical backgrounds and views, it will often be difficult to discern how any one policy proposal will be in everyone’s interest. In modern societies, marked by substantial and deep diversity, identifying the public interest is even more challenging. For some authors, it is so challenging that they conclude that it does not in fact exist substantively (see Cochran 1974 for an overview; Herring 1936; Schubert 1960). Herring, for example, noted that the “public interest” was as important a concept for public administration as “due process” was for the legal profession and the judicial system, but he nonetheless concluded that public policy was in the end merely the result of the pulling and hauling of various interests in society, and that the result could not be presumed to be in the “public interest”. Others have argued similarly that while there is no common definition of the public interest and no clear way of discerning what it might be in any concrete case, it is crucial that citizens *assume* that it exists so that they will support democratic decision-making institutions and procedures (Sorauf 1957).

Sceptics of the concept of the public interest are a distinct minority in the literature. Most authors accept the concept’s utility and its reality in public discourse, and try instead to either develop a typology of different definitions or defend a particular definition against others. The following is based on an exhaustive review of the literature on the public interest, and provides a classification that embraces all of the existing typologies (for examples and quotes, see Appendix A). This is not a classification exercise for its own sake – even a quick review of the different definitions illustrates the point that they have very different consequences for how one perceives the policy process and appropriate outcomes of that process.

| Table 1: Approaches to the Public Interest | |
|---|--|
| Process | Focus on procedures as the basis for arriving at decisions in the public interest – fair representation of all interests; transparency; legality; due process, etc. |
| Majority Opinion | The guide to regulatory decisions is what a significant majority of Canadians think about an issue – for example, on cloning. |
| Utilitarian | Tries to balance different interests in the process to arrive at a solution that maximizes benefits for society as a whole but also is a compromise of different direct interests represented in that process – for example, an environmental regulatory decision that is acceptable to all parties making representations to the regulatory agency. |
| Common Interest | The guide here is a pragmatic interest that the public has in common – for example, public goods such as clean air, water, defence, public safety, an innovative economy |
| Shared Value | Shared values as the basis for interests, but also an ethical guide for decision-makers |

Process

A procedural definition of the public interest assumes that decisions and outcomes will be in the public interest as long as appropriate procedures have been followed. In other words, appropriate outcomes arise from adherence to appropriate legal and constitutional principles. This definition does not take a position on outcomes themselves, or propose that those outcomes should themselves have certain features or reflect certain values. This is both a standard of legality and constitutionality, as well as a standard that insists that various procedures need to be followed in order for the public interest to be articulated in and through the process. These might include due process, transparency, fairness, certain voting procedures, adequate distribution of information to the public, equal representation of different interests, funding for intervenor groups, and so on.

Majority Opinion

The majoritarian concept of the public interest is a simple and broadly popular one: whatever is supported by a significant majority of the population that makes up a political community. Obviously, simple and unrestrained majority rule without protections for minorities can turn into tyranny, and so a majoritarian definition of the public interest usually is accompanied by some notion of constitutional limits to protect the rights of minorities. But even if the definition is used in its purest form – a simple

numerical majority – it runs up against the problem that slim majorities represent barely more than 50 percent of the population. So, in practice, a majoritarian definition usually hedges its bets by expecting that the majority be “substantial” in some sense. This approach to the public interest is most clearly seen in discussions of referenda and voting rules. It reflects a basic assumption that the public interest must in some sense be about what the public wants. This can be determined to some extent through public opinion surveys (taking account of course of the numerous limitations of such surveys). A key step in deciding what to do in a controversial area like gun control or genetically modified (GM) foods is to find out the state of public opinion. At the very least, if it can be reliably shown that a large majority of the public thinks in one way or another that can be an important guide to decision-making.

Utilitarian

Another way of conceptualizing this approach to the public interest is to see it as trying to balance interests, to probe for ways of aggregating interests through negotiation and compromise so as to produce the maximum satisfaction (though the result in policy terms may be the least common denominator). The desire here is to overcome the “tyranny” of the majority by taking account of how intensely preferences are felt by different individuals or groups. For obvious reasons, utilitarian or balancing notions of the public interest are very prominent in actual policy-making, where typically a large variety of divergent interests confront each other. Finding numerical “majorities” is often impossible since what the policy-maker faces is a disparate set of minorities. The process of balancing or finding compromise is essentially a utilitarian process of probing the intensity of preferences and finding options that fall within preference orderings and which can therefore be aggregated into a satisficing outcome.

Common Interest

Within a common interest approach, the public interest is defined as something that everyone shares, or that they might realize that they share if they were entirely rational and dispassionate. This approach proposes a substantive, pre-existing content to the public interest that can then guide and inform assessments of claims from competing quarters about what the public interest actually is.

The common interest approach is largely a functional and minimalist approach, but it is still substantive. All members of the public, for example, have an interest in a stable economy, basic rights and freedoms, social stability, reasonably efficient core public services (transportation, garbage collection, public health), a clean environment, safe streets and a reasonable modicum of civil behaviour throughout society. Another way of viewing the common interest is as a set of public goods – goods which cannot feasibly be enjoyed by one person without being enjoyed by everyone. Clean air, clean water, defence, security, safety, access to common property resources like waterfronts or parkland are all examples. A particularly important aspect of a common interest approach to defining the public interest is that it provides a basis for overriding even strongly held minority views and conceivably even majority views. An unpopular war, or a tax increase to produce a balanced budget, could be justified by arguing that the “true” public interest may actually be different from the revealed preferences or current opinion of the majority of society.

Shared Value

This approach to defining the public interest is similar to the common interest approach in that it is substantive. But whereas the common interest is based on shared *interests* that we have as members of society, the final concept of public interest focuses on shared values that are the bedrock and foundation of our shared interests. In this sense, a shared value concept of the public interest is the most profound expression of the idea, since interests (even common interests as defined above) are more variable and

less transcendent than values. For example, in a deeply religious society in which all members shared the same faith, the values of that faith would infuse and shape almost every public policy, even while the interests of the community (economic, foreign policy) might change and shift depending on circumstances.

The idea of the public interest being grounded in broad, socially shared values would seem at odds with an increasingly diverse society. It also would seem quite dangerous as a basis for public action, since if public policy can be justified on the basis of shared values, it can sweep almost anything else before it. Despite the diversity of contemporary Canada, claims about shared values are made routinely, and quite rightly. No political community can exist without some shared values. It may be that these values are not shared by each and every individual, but they are seen to transcend simple majority support and are viewed as moral injunctions or ethical standards that *should* be shared and indeed *are* shared by a significant majority in the population. Examples in Canada would include: the Charter of Rights and Freedoms and the values that it incorporates; diversity; equality; reasonable access to public services; opportunity; participation; the dignity of human life.

A further challenge with shared values is the fact that there can be inherent conflicts, which have to be reconciled in specific circumstances. For example, most Canadians would include both equality and respect for diversity as shared values, but there are times where the two are in tension, as in cases of the equality rights of women from diverse ethnic backgrounds. As we shall see in the section on public views, Canadians are generally more oriented towards community than Americans are, and so are prepared to support stronger regulatory authority in some areas (for example, gun control). The *Citizens' Dialogue* report provides important signposts on contemporary Canadian values and how they reflect a shift in what is perceived to be the public interest.

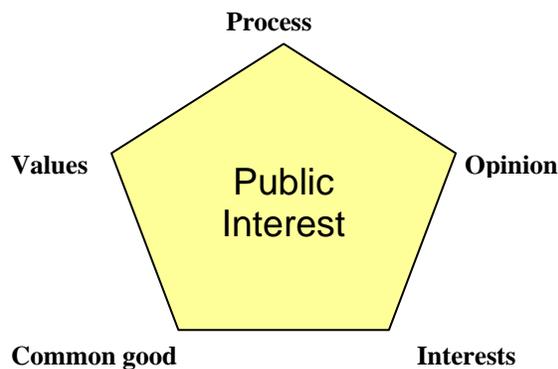
Conclusion

The review of these different categories and definitions of the public interest yields several conclusions:

- With the exception of the *process* definition of the public interest, all of the others presume some shared values or interests. The *majority opinion* and *utilitarian* definitions require empirical analysis of what people's actual revealed preferences are, and in the utilitarian case, demand some sort of balancing to register the greatest possible satisfaction with outcomes. The *common interest* and *shared value* definitions focus attention on interests that people might not be aware that they actually have. Common interests are functional interests that all share or should share if they are to go about their daily lives pursuing narrower interests. They can also be conceived of as public goods. Shared values can in fact be a *higher good* of which people, even the majority in the community, may not be aware of or in agreement with at any given point in time.
- All the important definitions share the idea that the "public interest" is a generalizable interest to the entire community, or at least most of it. The interests of a segment of the community (a business sector, a regional group) can sometimes be equated with the "public interest", but a case needs to be made that a sectional benefit actually is in the interest of all.
- The public interest refers to "members of the public" – that is to "unattributable persons," to persons with no specific affiliation or designation. The public interest cannot be equated, in the first instance, with a specific and identifiable segment of the population (e.g., women, Aboriginals, Albertans). What can be done (as mentioned above) is to argue that the interests of these specific groups in a specific case are consonant with the public interest, or that supporting the pursuit of that sectional interest will benefit all of society.

In practice, most of these approaches or definitions are used simultaneously or sequentially in any given case to determine the public interest. Whatever the public interest is in a specific case, it is not going to be discovered if the processes of discovery and decision are closed to significant groups, if information is not shared, if due process and legal rights are not respected. It is inconceivable that any regulator or policy maker trying to make a decision in the public interest would not consider what the majority of Canadians actually think about the issue, what on balance different groups in the process think, what shared or underlying interests there might possibly be in the longer term, and subject all of this (more in some cases than others) to a normative test in light of deeply held and broadly shared values.

We can view the connection among these definitions as the first building block for a Public Interest Accountability Framework (PIAF).



If we take the example of genetically-modified (GM) foods, how would these definitions contribute to a fuller understanding of the public interest? They provide a set of benchmarks or filters.

1. Has due process been followed in constructing the regulatory decision-making process, and can we with confidence say that decisions that result from that process have been shaped fairly?
2. What is the state of Canadian public opinion on GM foods? Are there clear majority views on various aspects of the GM food issue?
3. Which specific interests are connected to the issue, and what are their views? How are the costs and benefits of different regulatory options distributed among these groups and more generally among the Canadian population?
4. What are the key common interests or public goods at stake in this area – efficient food production; quantity and quality of food available to consumers; prices; safety; innovation and research in the industry?
5. Are there shared values or normative guidelines that affect decision-making in this area?

These are basic considerations, but they nonetheless have to be balanced in each specific case. Current regulatory practice shows a strong determination to come to grips with these types of questions in order to determine the nature of the public interest.

Trends in Regulatory Practice

From the point of view of regulatory practice, the public interest comes into play primarily as a *justification* for regulatory action. The presumption is that an activity, product or practice is in the first instance to be left alone, governed only by the same laws that apply to everyone else. When an activity, a product, or a practice attracts regulation and the imposition of rules and obligations, there must be a public interest in that imposition. The constraints, obligations and coercion that come with most regulation must be justified as being in the public interest. It is the scope and nature of the public interest that should also be the basis for the scope and nature – the limits – of the regulatory activity. It is the mix of public interest considerations that has to be balanced by the regulator. To use GM foods again as an example, the public has an interest (a common interest, to use the terminology from the previous section) in both food safety and in a healthy economy generated by technological innovation. Development and sale of GM foods cannot be a matter of indifference to government because of the potential safety issues involved (the public interest), but the limits and nature of that regulation will depend on the balance of safety (social) and economic considerations. A final challenge is that even once the public interest might be defined with some confidence, circumstances and technologies are always changing, so the application of that public interest test must evolve and adapt to differing circumstances.

The reform of regulatory practice has been on the public agenda for at least a decade, and has become even more intense in recent years with concerns about water safety, utility pricing and corporate behaviour. This paper has reviewed dozens of reports and reviews of Canadian, US and OECD regulatory practices (listed in the bibliography) to see if there are common themes about modern regulatory practice and the nature of the public interest. Our review uncovered five broad themes.

Process and Participation

Almost all the studies we examined emphasized the importance of ensuring that the regulatory process was appropriate, accessible, fair and effective. With the possible exception of regulations that touch directly on safety and health (discussed below), there was a clear sense that the old command and control style of regulation did not work well in most instances, and needed to be replaced with more flexible and responsive forms of regulation (e.g., compliance contracts; performance monitoring). Part of the concern with old style regulation was effectiveness – many studies suggested that command and control types of regulation were too cumbersome to begin with, and especially inadequate when facing rapidly changing markets and technologies. As an Ontario review of environmental regulation put it:

This shift involves moving beyond traditional, narrow approaches to environmental responsibilities. Leading jurisdictions acknowledge the inadequacy of the traditional model – often described as command and control – as the primary or stand-alone approach to dealing with the changing and increasingly complex environmental challenges of today and the future. Leading jurisdictions are actively engaged in trying to move to the next level of dealing with the environment, sometimes referred to as a new vision of environmental management. (Ontario Ministry of Environment 2001)

Effectiveness however is linked in many of the reports to a notion of public confidence, and moreover, confidence among a more sophisticated public. A review of the regulation of health professionals in Ontario, for example, noted that the public “itself has changed since the RHPA [Regulated Health Professions Act] was introduced in terms of demographics, economic and social composition, and general sophistication in making choices about health care options.” (Health Professions Regulatory Advisory Council 2003). Regulatory bodies can only do their work if they enjoy public trust, and efficacy in regulatory procedures is thus not an end in itself but a key mechanism in ensuring that the public continues to support regulatory efforts. The emphasis on open processes, accessibility,

transparency and especially of public participation was evident across a wide variety of regulatory fields (see Appendix B).

One aspect of this emphasis on process is public participation; the other is a new appreciation of the way in which the public has changed. Many reviews mentioned a greater appetite for participation in the regulatory process, coupled with a greater demand for personal autonomy in making decisions that would normally come under a regulatory umbrella. This is a complicated issue, since Canadians are clearly not demanding less regulation in areas like the environment or GM foods. There seems to be an appreciation that the Canadian public is more sophisticated and educated, and that regulatory authorities need to justify their decisions more clearly to the public, both to garner confidence and to provide information so that the public can judge some aspects of issues for itself. Moreover, while the public demands strong regulation in some key areas, it still seems to want to carve out spaces within those regulatory practices where people can make their own informed choices (e.g., labelling GM foods).

Costs of Regulation

A related concern to regulatory processes was regulatory efficiency. Most studies and reviews assumed that regulatory activity delivered benefits to the public and to enterprises, but a central question is at what cost? What is the balance of costs and benefits in regulatory activity? Most studies argued that there had to be more attention paid to cost-benefit analysis of regulatory activity, and greater sensitivity to the hidden economic costs of regulation. This is directly linked to the issue of regulatory process since, if those processes are more open and transparent, they are likely to give a better airing to the full range of costs as well as benefits involved in regulatory initiative.

Health and Safety Concerns

The two previous themes are consistent with a good deal of the debate over reformed or improved regulation in the last decade. Governments around the world have come to realize that there are costs as well as benefits associated with regulations, and that the public interest rests clearly in ensuring the most effective regulatory regimes for the least cost. Put another way, the benefits of regulation have to be maximized. The debate about regulatory processes is also of some long-standing – the issue here is both broader participation and more effective and flexible means of regulation. Taken together, these themes are consistent with a critical view of regulatory activity, and one might assume a tendency to reduce or lighten the regulatory burden.

In recent years, however, as a result of events like the Walkerton water contamination (followed by similar incidents in other parts of the country), and rising sensitivity to environmental stresses and the impacts of biotechnology, regulators realize that they are facing rising demands from the public for stronger regulatory oversight of key areas that affect public health and safety. British Columbia, for example, in 2003 launched a new comprehensive Drinking Water Protection Act with a significantly stronger enforcement and licensing system. The Canadian Biotechnology Advisory Committee has urged the government of Canada to use the precautionary principle as a guide in deciding on the health implications of GM foods, e.g. (erring on the side of caution in uncertain decision environments).

The greater willingness to see strong regulation in areas that touch directly on health, safety and the environment is a special challenge for regulators, who accordingly are paying more attention to risk analysis. In areas where risks are difficult to assess, especially in the environmental field, regulators are adopting some version of the precautionary principle.

Stewardship and Mutual Responsibility

A fourth theme that emerged in the studies and reviews was stewardship and the mutual responsibility that all players – governments, stakeholders, and citizens – have in implementing regulatory frameworks. This represents an important shift in regulatory thinking, suggesting both an ethic of care as well as one of cooperation. A stewardship approach would seem most relevant in the environmental area, but actually represents a more holistic view that can in principle be applied to various policy areas. The government of British Columbia, for example, in discussing reforms to the health system, noted that one of its goals was “Achieving sustainability and appropriate use of health system by sharing responsibility among government, providers, patients and the public.” (British Columbia Ministry of Health Planning 2002)

Balanced Approach

The final theme that emerged from our review of current regulatory practice is one of balance. It is broadly recognized that modern regulation requires the balancing of different interests, of different “public goods”, of different ends and objectives. We consider this to be important since it underscores both the complexity of regulatory decision-making, and the fact that this type of decision-making requires trade-offs between objectives or ends that are each, in their own way, intrinsically important: innovation v. health and safety; environmental protection v. economic growth.

Regulators also strive for another type of balance – among individual interests, the interests of businesses or enterprises, and broad Canadian social values. The specific balance, and the weight that any one of these considerations bears, varies by policy area. For example, in economic regulatory fields such as telecommunications, the key balance is one between the interests of individuals as consumers (e.g., low prices, good quality products, reasonable competition among suppliers) and the interests of firms (e.g., reasonable prices and profits). These have a bearing in environmental regulation as well, but social values (e.g., future generations) are more visible. In areas such as biotechnology, regulators have to balance the interests of individuals in accessing certain technologies, the interests the firms in the field have in innovation and research, and social values regarding experimentation on human beings.

These five themes touch directly on the issue of public interest, and in some important respects echo points drawn from the literature on public interest reviewed in the first section of this paper.

- A simple but powerful way of defining the public interest is in terms of appropriate processes in which different members of the public can express their views. The reviews and studies on current regulatory practice consistently make a similar point – regulatory decision-making must be procedurally fair, open, transparent, and accountable. This does not always guarantee that decisions will be made in the public interest, but appropriate processes are the first, essential step towards effective regulation in the public interest. An added dimension is that citizens will not trust a process that is closed, opaque, and unaccountable.
- The increasing concern with the costs of regulation reflects a public interest focus as well – indeed Canada’s Regulatory Policy states that “ensuring that the public’s money is spent wisely is also in the public interest.” It also reflects the theme of balance – in this instance ensuring that there is reflection on the balance of costs and benefits.
- The emphasis on health and safety, on stewardship, and on mutual responsibility also signal a shift in thinking about the public interest. On the one hand, it suggests greater willingness to use more robust regulatory measures in instances where risk to health, safety and the environment is high. On the other hand, it signals a sense that the public needs to have a voice in establishing the larger regulatory framework, precisely because it has a strong

interest in these and other areas. This goes beyond consultation to public involvement. In large part, if regulatory decisions are to be in the public interest, they have to be consistent with what the public itself perceives as the public interest and the appropriate scope of government action and regulation. This is not the end of it, however, since regulation must apply common interest and shared value standards as well. However, the first step is public views. The next section deals with the public's views, as explored in the CPRN *Citizens' Dialogue*, and provides an optic on what the Canadian public sees as the appropriate scope of regulation, and the key values that it wants regulatory authorities to guard.

Views of the Canadian Public

Clearly, public views should have an influence on the definition of the public interest. And there are several ways to assess public views. Matthew Mendelsohn provides a useful overview of the public opinion polling evidence over recent years in a separate paper (*Attitudes Toward Regulation in Canada: The Results of a Review of Publicly Available Data Sources* (2004)). In this section, we summarize the results of a deliberative dialogue undertaken by Canadian Policy Research Networks with its partner Viewpoint Learning in late 2002. This approach goes somewhat deeper and is more forward-looking than the polling data, but Mendelsohn's conclusions are complementary to those set out below.

The purpose of the dialogue was to give citizens a chance to create a vision for the kind of Canada they want for 2012. They were asked to define the roles and responsibilities of governments, business, communities and families with respect to four important policy domains – economic development, international development, poverty and social marginalization, and managing environmental and health risks.² The results have both general implications for the public interest and very specific recommendations with respect to the regulatory role of governments.

General Implications

Canadians accept the fact that markets and competition play a larger role in their lives than in the past. They believe that business and markets serve both public and private interests. For them, economic and social goals are intertwined and complementary. This is a change from earlier decades when business was often seen to be in opposition to civil society. Now, they believe that markets “need some brakes on them,” but that business has a right and a responsibility to make a profit. At the same time, however, a business must contribute to the communities in which it operates (by partnering on important community projects, for example). Governments, for their part, are expected to put some brakes on markets, taking ultimate responsibility for the health and safety of Canadians and for the protection of the environment.

Thus, Canadians start from the position that the interests of the different actors in society must be balanced to achieve the public interest.

Specific Recommendations for Regulatory Systems

Canadians also adopt a “market model” of regulation. They do not believe that governments should be telling businesses, or others, *how* to meet regulatory standards. Rather, they should be holding businesses accountable for producing results which meet the standard. They believe that business will then be encouraged to innovate to meet the standard at the lowest cost. Thus, regulators should be focused on setting high standards for the final result, not setting rules for how to get there. As they reflected on this model of regulation, Canadians also began to see the merit of using market instruments. For example, they were quite taken with the notion that full-cost pricing of water would foster conservation, and thereby serve the public interest.

Canadians expect governments to set high and rigorous standards with respect to health, safety and the environment, and they want those standards to be enforced vigorously. Anyone who fails to meet

² The dialogue involved 408 Canadians selected at random to form a representative sample of the population. They met in groups of 40 in 10 cities for a full day, working in part in self-moderated small groups and in part in plenary group with professional facilitators. See, MacKinnon MP et al, *Citizens' Dialogue on Canada's Future: A 21st Century Social Contract* April, 2003 www.cprn.org

requirements should be punished, and “the punishment should fit the crime”. They also expect these systems to be transparent, and accountability is a high priority.

Transparency is essential because Canadians recognize that there are tensions within each decision. For example, they were torn between the individual’s right to choose an experimental drug and the public interest in ensuring safety before the drug is approved for public use. In the end, they opted to give a terminally ill patient the right to use the drug, as long as the patient took full responsibility for the outcome. In general, however, they decided that the public should wait until the drug had been fully tested.

Canadians’ desire to set high standards also generated considerable discussion about whether standards should be harmonized with those in other countries, especially the United States. A strong minority argued for harmonization with the US, but in the end the consensus position was that as a general rule, regulations should be “made in Canada”. There were two ideas behind this consensus view. The first was the notion that harmonization would weaken standards; and the second was a strong sense that Canadian social values are different from those in the US, and that therefore the balance of interests is likely to be different in this country. (In other words, Canadian standards could be expected, in most circumstances, to lean more toward collective than individual rights relative to American standards.)

In sum, Canadian views on regulation would suggest considerable change in regulatory systems as they exist today, change that is:

- A shift away from command and control regulations;
- A move toward higher standards and stiffer penalties for those who fail to meet them; and
- A general preference to make regulations in Canada, unless the harmonization with regulations in other countries could be shown to lead to a) higher standards and b) more cost-effective regulation.

Public Interest Accountability Framework (PIAF)

The first section of this paper showed that the concept of the public interest is crucial for democratic (particularly regulatory) decision-making. The second section explored contemporary regulatory practice and reform, and what it says about evolving concepts of the public interest. The third section provided evidence that Canadians themselves have relatively clear ideas about basic priorities and how these should be addressed by governments, markets and civil society.

It is remarkable, given the importance of the concept of public interest as a guide and a touchstone for regulatory decision-making, that it is universally valued but so poorly articulated and defined in any given instance. Canada is acknowledged as a world leader in regulatory frameworks and reform, but neither the federal government's Regulatory Policy nor the Regulatory Impact Assessment Statement (RIAS) explain or define what the public interest is. Indeed, the RIAS provides a methodology that is largely focused on cost-benefit and process analysis (in terms of our discussion in section 1), without addressing the larger shared value or common interest notions of the public interest. In practice, of course, regulatory agencies implicitly define the public interest through the trade-offs and choices that they make. However, we believe that it is possible to be more systematic and more explicit. There are some limited examples, such as the statement by the National Energy Board in the box below.

The National Energy Board: An Example of Mandate Clarification

Our Purpose

We promote safety, environmental protection, and economic efficiency in the Canadian public interest while respecting individuals' rights and within the mandate set by Parliament in the regulation.

Our Vision

To be a respected leader in safety, environmental and economic regulation.

Our Goals

NEB-regulated facilities are safe and perceived to be safe.

NEB-regulated facilities are built and operated in a manner that protects the environment and respects individuals' rights.

Canadians derive the benefits of economic efficiency.

The NEB meets the evolving needs of the public to engage in NEB matters.
(National Energy Board 2002)

Given the continued and in some instances growing importance of regulation to Canadians (particularly in the health, safety and environmental fields), given the discomfort with some types of technological advance (e.g., biotechnology), and given the importance of ensuring public trust in the regulatory decision-making process, we suggest that the External Advisory Group on Smart Regulation recommend to governments and regulators in Canada a Public Interest Accountability Framework (PIAF). As part of its Regulatory Policy, the government should require all regulatory authorities to add a new dimension to their decisions in which they communicate their analysis of the public interest in the case at hand. The PIAF, as described below, would parallel the RIAS (Regulatory Impact Analysis Statement). But whereas the RIAS (or some updated form) concentrates attention on the "how" of regulating, the

PIAF focuses attention on the “why.” To our knowledge, no jurisdiction in North America or in the OECD has an explicit public interest guide or framework (as opposed to occasional references to the public interest in regulatory legislation). Canada could be a leader in this area.

The Framework we are suggesting proceeds in two, mutually reinforcing stages. Stage I is a statement of the evidence gathered in the case, designed to ensure engagement with each of the basic dimensions of the public interest with respect to a specific issue. Stage II addresses the same questions but through the explicit optic of the challenge of balancing individual interests, enterprise interests, and social values. Stage II analysis is designed to bring trade-offs to the surface, and be the basis for a clearer statement of the public interest in relation to the issue.

Public Interest Accountability Framework

Stage 1: Review of the Evidence on the Public Interest

| Key elements | Core questions | Possible benchmarks |
|---------------------------|--|---|
| Process | Was due process followed? Was there reasonable access by all relevant stakeholders? | Transparency Mechanisms for participation Neutrality in decision-making |
| Public Opinion | Are there majority views? Are there strong minority views? | Polling data |
| Specific Interests | Who are they? Have the risks been assessed? What is the distribution of costs and benefits among groups for any regulatory option? | |
| Common Interests | What are they? Have the risks been assessed for each balance? What are the trade-offs? | |
| Shared Values | Are there shared values affecting this decision? Are there conflicts among these values? Are there legal rights to consider? | |

Stage 2: Assessment of the Evidence: Balance of the Interests

| | Main Interests (in rank order from top to bottom) | Balance |
|--|--|----------------|
| Individual Interests (as consumers and/or citizens) | e.g. Choice, low prices, access, innovation, privacy | |
| Enterprise Interests | e.g. Profits, innovation, competition, access to markets | |
| Collective Interests | e.g. Safety, access, conservation, costs to future generations | |

PIAF Stage I

1. Has due process been followed in constructing the regulatory decision-making process, and can we with confidence say that decisions that result from that process have been shaped fairly? Key benchmarks here are accessibility, transparency (distribution and availability of information), mechanisms for participation and deliberation, accountability and neutrality in decision-making.
2. What is the state of Canadian public opinion on the issue? Are there clear majority views on various aspects of the issue?
3. Which specific interests are connected to the issue, and what are their views? How are the costs and benefits of different regulatory options distributed among these groups and more generally among the Canadian population?
4. What are the key common interests or public goods at stake in this area – examples would include health, security, safety, environmental protection, future generations, innovation, competitiveness. How are risks assessed? What is the balance of these common interests?
5. Are there shared values or normative guidelines that affect decision-making in this area? Are there specific legal rights of either individuals or collectivities that should be referred to in the decision-making process?

PIAF Stage II

The practice of regulation involves making trade-offs among equally legitimate and important values or objectives. In economic regulation, for example, the interests of enterprises and markets are balanced against the interests of consumers. In environmental regulation, the interests of current generations are balanced against the interests of future generations. In all regulatory decision-making, the public interest is arrived at by balancing the interests/rights of individuals (as consumers/citizens), of enterprises (the economy), and of society (social values). That balance of course shifts over time due to changing context (especially economic) and changing public values. Individuals have legal and constitutional rights as well as needs (for safety and security, then self-actualization and fulfillment). Enterprises are the bedrock of the economy, which in Canada is organized primarily through competitive markets. Enterprise/economic rights include property, free and fair trade, profits, contracts. Finally, there are social standards or values that have to be balanced against individuals and enterprises/markets. These include collective goods such as clean air, water, green space, safety, public aesthetics; social practices

worth preserving such as civility in daily life and trust; public services that are effective, efficient and professional; social values that Canadians broadly share (see *Citizens' Dialogue*).

A Stage II PIAF analysis revisits the definition of the public interest in a specific issue through an explicit examination of the trade-offs between individual, enterprise, and social interests. The utility of the analysis can be demonstrated by considering three different regulatory arenas: telecommunications, GM foods, and safe drinking water.

| Telecommunications | |
|----------------------------|---|
| Individual | Main interest as consumer is choice; low prices; access; competition and innovation in the marketplace. Main interests as citizen is in free speech, privacy. |
| Enterprise | Profits; competition; access to markets domestically and abroad. |
| Social | Concerns about content that offends public tastes. Maintenance of Canadian cultural contributions through telecommunications. |
| GM Foods | |
| Individual | Safety; affordable food; information to make choices. |
| Enterprise | More efficient food production; profits; innovation and marketing; control over research and patents. |
| Social | Concerns about agricultural workers; international equity (seed problem). |
| Safe Drinking Water | |
| Individual | Safety. |
| Enterprise | Relatively little. |
| Social | Water as a public good; accessibility; provision by public agencies or regulated utilities. |

Concluding Comments

The public interest hovers over all the regulatory processes of federal, provincial and local governments, but it is rarely defined, or even discussed directly in legislation or in regulatory decisions. Our assessment of the evidence suggests that the public interest cannot be defined as one general principle to apply to all regulatory policy or decisions. Rather, it is something that is embedded in the evidence and the reasoning of regulators as they write their decisions.

As pressures mount to make regulatory processes more transparent and accountable, we believe that decisions will have to address the public interest in more direct and concrete terms. The way to do this, we believe, is to position regulatory decisions in a multi-dimensional framework – recognizing that no one consideration is likely to determine the outcome.

In sum, Canadians expect their regulators to strike a balance among interests. The challenge therefore is to make that balancing transparent. This way, people with conflicting views will be able to see how their own interests have been reflected in a decision, even if in the end, it was not the interest that dominated the outcome. That, it seems to us, is the pathway to regulating in the public interest in the 21st century. This is why we are proposing a Public Interest Accountability Framework.

Appendix A

How the Literature Defines Public Interest

Process

The "public interest" can have several radically different meanings, as follows:

..... The decision which results when proper procedures are used.

(i) Simple conceptions: due process of law, majority rules, etc.

(ii) Pluralistic conceptions: observance of the procedural rules of whatever legal or political process happens to become the decision-maker for a given issue. (Leys and Perry 1959: 44)

"The public interest in a problem is limited to this: that there shall be rules, which means that the rules which prevail shall be enforced, and the unreasonable rules shall be changed according to a settled rule. . . . The public is interested in law, not in the laws; in the method of the law, not in substance; in the sanctity of contract, not in a particular contract; in understanding based on custom, not in this custom or that. It is concerned in these things to the end that men in their active affairs shall find a modus vivendi; its interest is in the workable rule which will define and predict the behaviour of men so that they can make their adjustments" (Lippman 1995: 104, 105)

"Decisions that are the product of a process of full consideration are most likely to be decisions in the public interest. . . . people accept democratic decision making processes because these provide the maximum opportunity for diverse interests to seek to influence governmental decisions at all levels" (Schubert 1960: 204, 205).

"The primary determination of the public interest for public servants is by the action of his political and hierarchic superiors, acting through the conventional channels, by legislation, and court decisions where applicable." In areas where the public servant has discretion, he must consider the consequences to those immediately affected by the proposed action, but he must remember there are others unorganized and unrepresented and "as far as he can perceive the consequences to them, he must be their representative" (Monypenny 1953: 441)

The third approach is to look at the need for machinery for representation of interests and for weighing and deciding issues. There is a public interest in the availability of adequate organization and process, measured by the needs and ideals of society, for representing claims and resolving issues. This is to say, as Locke said, that society needs a common legislator and adjudicator, or, as we could say in more modern terms, that there is a public interest in fair and effective government, including public administration. This interest may lead to arrangements for adjudication, administration, legislation, or to suprallegislative arrangements which we call constitution making. (Redford 1958: 114)

Processual Meanings. One can, of course, simply define the public good as the product of a particular process, such as a democratic process. (Powell & Clemens 1998: 11-12)

Majority Opinion

Anything that is in the long run detrimental to the majority of citizens cannot be in the public interest, unless it is essential to the protection of those individual rights included in the minimal consensus. This principle of long-run majority benefit follows from the principle of majority rule, which is in turn derived from the axiom that each man has an "ultimate" value equal to that of each other man. The principle of long-run majority benefit also provides the basic link in a democratic society between the public interest and the private interests of the citizenry. (Downs 1962: 9)

"The interest of the community then is, what? — The sum of the interests of the several members who compose it." (Bentham 1948: 2)

At this level of reality, a number of variations in policy making are discernible. Quite obviously, the direct interest of dominant minority or majority groups may prevail and even become the accepted view of the public interest. (Redford 1958: 111)

To make Bentham's calculus accord more with ordinary usage, one might say that a policy is a little in the public interest or very much in the public interest depending on how large a majority the policy favored. Or, to use a formulation that Kenneth Arrow later developed, we could tell a legislator to choose "the social state yielding the highest possible social welfare within the environment." (Powell & Clemens 1998: 10)

Consensual majoritarian: The same set of preferences may be held by most of nearly all members of the polity; the preferences of the minority are treated as irrelevant, no matter what their "intensity," e.g., the extent to which they would exchange valued goods for satisfaction of their preferences. (Mitnick 1976: 19)

If something is in the public interest it will also be in the interests of a majority of members of the public. (Cox 1973: 238)

Utilitarian

The "public interest" can have several radically different meanings, as follows:

Utilitarian or aggregationalist conceptions: the maximization of particular interests. (Leys & Perry 1959: 44)

For them ... the supreme virtue of a democratic system of government is the multiplicity of points of access that it affords for the manifold conflicting interests which necessarily arise in a pluralistic society. The function of government officials is to facilitate the continuous readjustment of conflicting interests, with a minimum of disturbance of existing equilibria. (Schubert 1960: 136)

The public interest is "determined and established" through the free competition of interest groups. "The necessary composing and compromising of their differences is the practical test of what constitutes the public interest" (Binkley & Moos 1950: 7)

The public interest "must necessarily represent a working compromise and be subject to continuous definition, as the need arises, in the process of achieving an often delicate balance among conflicting interests" (Boudreau 1950: 371)

The public interest is the "policy resulting from the sum total of all interests in the community — possibly all of them actually private interests — which are balanced for the common good" (Marks, Raimond and Fortinsky 1972: 51)

The interest of the community then is, what? — The sum of the interests of the several members who compose it" (Bentham 1948: 2)

To put it briefly, the process of compromise and accommodation, so characteristic of democratic politics, becomes the enunciator of the public interest. (Sorauf 1957: 623)

Common Interest

The public interest is used to describe where the net interests of particular individuals may not be advanced, but where something necessary to the cohesion or development of the community is secured, the interests which people have qua member of the public or the community. It is this idea of public interest as an interest in our role as members of the community which is perhaps the key to seeing public interest as a subspecies of arguments about the collective welfare. (Bell 1993: 30)

If this is not to happen, if the members are to maintain a social framework which enables all of them to live as well as possible, they must think and act not merely as private individuals but as community members. That means giving precedence to the community's interest over their sectional and personal interests whenever these conflict. To do this is a requirement of another moral principle to which every member is committed in virtue of his membership. It is distinct from, although implied by, the principle of 'fellowship'. This is the principle of 'social responsibility'. As a member a person is responsible to his fellow members not only for giving precedence to the community's interest over his personal and sectional interests but to doing whatever he can to assist in promoting the community's interest. The same applies to the sectional interests of groups and classes within the community. They must be adapted to, and not pursued at the expense of, the community's interest. (Milne 1999: 42)

A decision is said to serve special interests if it furthers the ends of some part of the public at the expense of the ends of the larger public. It is said to be in the public interest if it serves the ends of the whole public rather than those of some sector of the public. (Banfield 1955: 322)

The kinds of instance in which 'the public interest' gets used can be put into two groups, and although the demarcation line is not sharp at the edges it is useful enough for the purpose of dividing up my discussion. The first class of cases I shall call negative applications of 'the public interest'. In these cases what is said to be 'in the public interest' is preventing someone from doing something which will have adverse effects on an indefinite group of people. 'Negative' planning, which has as its aim the prevention of eyesores such as corrugated iron sheds in front gardens and flashing neon lights in the Cotswolds, is a perfect example of action of a negative kind based on 'the public interest'. So is the operation of the criminal law, at any rate considered in prospect when 'future victims' are still an indefinite group. 'Positive' applications, on the other hand, occur when a facility is actually provided for an indefinite group of people. A local authority, for example, acts 'positively' in the public interest when it provides such things as parks and roads. The exact point at which a public authority imposes so many restrictions on, say, the development of a site that it moves from a 'negative' to a 'positive' application of 'the public interest' can be argued over, but the central cases are clear enough. (Barry 1963: 208)

To say an action is in the public interest is to judge it consistent with a political situation that is beneficial to everyone, if not immediately at least in the long run, and whether or not everyone realizes it. (Cassinelli 1962: 42)

A second approach to the reality of the public interest is to look for the widely and continuously shared interests which arise directly out of organic developments and shared purposes. These are interests which are so widely shared that they can be, by virtue of this fact alone, called common or public interests. Examples are the interest of people generally in education, peace, a good traffic control system, and the avoidance of boom and bust in the economy. (Redford 1958: 111)

The public interest may be presumed to be what men would choose if they saw clearly, thought rationally, acted disinterestedly and benevolently." (Lippman 1956: 40)

Shared Value

To achieve a better balance in the public interest it is necessary to strengthen and extend democratic rights. It is also necessary to develop and maintain public resources to diffuse democratic practices in society and facilitate the public's involvement in these. The goal is to ensure the development of people's utilities and capacities or powers in a democratic, equitable way, one that balances with the maximization of utilities. The means to do this, in addition to the support of democratic institutions and practices, requires state policy, regulation and program support. Ethics and morality are essential given the need to achieve fairness, balance, and to address inequalities within the context of the broader goal of creating conditions whereby individuals are able to develop both their powers/capacities and utilities. (Reddick 2002: 32)

We may summarize at this point by saying that those who are motivated to seek the public interest would undertake action designed to maximize freedom and justice. The ethical element in motivation translates or expresses itself in an ethic of consequences in terms of public interest. (Griffiths 1962: 19)

There is a genuine public interest which we might call the "reverse function" of the state, an embodiment of values and interests that bind together the many conflicting and contending groups. Most of these cluster around basic national loyalties, and this reserve function therefore usually becomes conscious and articulate only in times of great emergency such as wars and economic or natural disasters. We may be near to one of those periodic articulations at this time. When presidential candidates and leading politicians and scholars speak of "national goals", of the need for better education, better scientific training, conservation of national resources, more financial and personal sacrifices for defense, and altogether some change in the accepted standards of contemporary American society, they do transcend the mindless balance of conflicting group pressures, even though in practical conduct they may yield to the one or to the other. (Friedman 1962: 85)

For perhaps the greatest number of its supporters the public interest has come to mean commonly-held interests or values, which if they are not universally accepted are at least very widely held. (Sorauf 1957: 619)

The view I wish to defend is that "the common good", under whatever name, is a fundamental concept of social morality. (Diggs 1973: 284)

Appendix B

Trends in Regulatory Practice

Process and Participation

This new vision builds on the strengths of traditional regulation, but also integrates it with a broader, more comprehensive approach. This approach emphasizes continuous improvement for all sources of pollution, multimedia and cumulative impacts, and broader public participation and access to information. It typically includes less overall emphasis on the role of government as doer, traditional regulation and enforcement, and a greater emphasis on the role of government to provide overall system management, through a range of partnerships, processes, structures, and tools. (Ontario Ministry of Environment 2001)

Public Participation and Transparency: There must be open discussion and communication of the source protection planning process and its results, from development to implementation. Stakeholders and the public will have opportunities for meaningful input. (Advisory Committee [Ontario] on Watershed based Source Protection Planning 2003)

Recommendation 1. Structure, organization and operation of the federal food regulatory system. Good governance is essential for creating and maintaining a regulatory regime that protects the health and safety of citizens and of the environment. As well, it inspires confidence in its efficiency and effectiveness. Good governance entails both legislated accountability and a commitment to transparency, and effective separation of regulatory functions from other potentially conflicting functions of government. (Canadian Biotechnology Advisory Committee 2002)

While an independent, coordinated and efficient regulatory system is of prime importance, so too is the trust of the public and stakeholders in that system. To this end, we urge the government to enhance the system's accountability and communication to the public, including creation of a single authoritative spokesperson to oversee and coordinate the communication of government policies and practices with regard to GM foods. (Canadian Biotechnology Advisory Committee 2002)

The federal government should improve the ways it communicates with, and involves, the public in the regulation of GM foods and the development of associated policies. The government does not provide clear information explaining how GM products are regulated and decisions are made, the roles of the regulatory bodies, or the information considered during safety assessments. Federal regulators need to be more active and transparent in publicly communicating such matters, including the scientific basis for regulatory decisions. While we recognize that regulators are restricted in disclosing "confidential business information", measures should be taken to ensure that the maximum amount of appropriate information is made public. (Canadian Biotechnology Advisory Committee 2002)

If the same government agency that is charged with the responsibility to protect the public health and environmental safety from risks posed by technologies also is charged with the promotion of that same technology, and if its safety assessments are, by official policy, balanced against the economic interests of the industries that develop them, this represents, from the point of view of both the public and the industrial stakeholders, a significant conflict of interest. Each stakeholder is placed in the position of having to ask, with respect to each regulatory decision, whether its own interests have been unduly compromised by the interests of the other. The concern of the Expert Panel in this issue is not primarily from the point of view of the legal or ethical issues it raises. These are vitally important, but beyond the scope of the Panel's mandate. The Panel's interest is primarily from the point of view of how such regulatory conflict of interest compromises the

integrity of regulatory science and decision making, as well as public perception of that integrity. (Royal Society of Canada 2001)

Costs of Regulation

The economics of regulation have come to play an increasingly larger role in policy decision-making. The most conceptually simple considerations usually focus on a cost/benefit analysis of regulation to those involved, e.g. professions, consumers and taxpayers. The benefit analysis includes two distinct, yet related, spheres of inquiry: the micro; and the macro. The micro sphere deals with issues associated with effectiveness of practice, including effectiveness of a profession's treatment modalities and its relationship to harm. The macro sphere addresses the larger concerns associated with the effectiveness of regulation. In addition to questions of cost benefit, economic issues also include trade and mobility issues. Trade and mobility issues are not only questions which impact international agreements such as NAFTA, but also inter-provincial relations as well. Alberta's legislation specifically addresses a number of economic considerations. For example, costs and benefits related to: practitioner availability; impact on education/training programmes; expected effects on enhancement of quality of service; expected effect on prices, access and service efficiencies; and trade and mobility issues. Similarly, a number of American jurisdictions also expressly consider economic issues when considering questions of regulation. (Health Professions Regulatory Council [Ontario] 2003)

Cost Effectiveness and Fairness: The costs and impacts on individuals, land owners, businesses, industries and governments must be clear, fair and economically sustainable. Source protection planning must access all information that is practical and reasonable and use technologies and risk management practices to maximize the protection of public health. Continuous Improvement: Source protection planning is built on a commitment to continuous improvement, including peer review that requires ongoing support of all stakeholders to ensure successful implementation based on assessment, monitoring, evaluation and reporting, followed by appropriate modifications to the plan. (Advisory Committee on Watershed based Source Protection Planning 2003)

Health and Safety Concerns

However, they [the public] are also quite convinced regulation should be increased. This runs counter to most Canadians' general view about government regulation and the need to make government less intrusive. Biotechnology, they agree, is a different order of activity that requires a different level of scrutiny because of the risks associated with it. They want strong mandatory regulation by government, utilizing effective technologies. They would also like Canada to work with other countries to develop common standards. These results indicated a moderately higher level of discomfort with GM food than in past waves. That translates into less willingness to buy GM foods and reduced appeal of some GM food applications. (Canadian Biotechnology Advisory Committee 2002)

Stewardship and Mutual Responsibility

Stewardship implies a commitment to shared responsibility for the resource by all levels of government, communities and individuals. This requires a thorough understanding of natural water systems and human impacts upon them. Stewardship means taking personal responsibility for resource use and getting involved in area-based planning, local stream clean-up activities, and other grass-roots initiatives. (British Columbia Ministry of Environment, Lands and Parks 1999)

Recommendation 5. Environmental stewardship

The current approach to the assessment of environmental risk and ecosystem impacts of GM plants could be improved. There is a need for increased investment in research into both the short- and long-term impacts of GM and other novel crops on the environment. Currently, environmental impacts are primarily assessed using small-scale confined field trials that may be too small in area

to detect impacts that would appear in larger areas or too short in duration to detect effects that would emerge in the longer term. The ability to assess the environmental impacts of large-scale planting of transgenic crops is also hampered by the lack of baseline data on the environmental impacts of agriculture generally. These and other gaps need to be addressed if the monitoring of bioagricultural practices is to be effective. We also note that studies into the environmental impact of GM crops must examine not only the potential risks but also the potential benefits and how the risks can be minimized and benefits maximized. (Canadian Biotechnology Advisory Committee 2002)

Most countries face similar stewardship challenges. They must regulate virtually the same products. They face the same issues with respect to privacy and inappropriate content on the Web. They must all protect their people and their farm products from diseases — many of which spread rapidly throughout the world. Increasingly, countries are seeking common solutions to these stewardship challenges. (Government of Canada 2002)

Managing the environment is a collective effort. The government may lead but all Nova Scotians must be full partners with us in a shared commitment to responsible stewardship. I invite you to share our vision for how that commitment can be turned into responsible actions for the future. (Government of Nova Scotia 2003)

The top priorities Canadians set for the federal government in dealing with biotechnology have remained quite consistent and include protecting human health and the environment against risk and conducting long-term research into the impacts of the technology. In general, Canadians have begun to place more emphasis on the importance of stewardship than the importance of encouraging or promoting the development of biotechnology. Though they believe in both, strong stewardship values have become a *sine qua non*. That leads people to placing a higher priority than has been the case on enforcing regulations and working with other countries to develop common standards. (Pollara Research and Earncliffe Research and Communications 2001)

Balanced Approach

Maintaining a healthy environment for current and future generations requires the collaboration of citizens, organizations and businesses, and all levels of government. Using a balanced, coordinated approach, we can protect the health, prosperity, and environmental integrity of our communities. Individuals can conserve energy, choose environmentally responsible products, and modify their behavior. Organizations can develop environmental management plans, reduce emissions and waste from their operations, and adopt environmentally responsible practices. The government can continue to lead by administering legislation, establishing public policy, delivering programs and services, participating in regional, national, and international environmental initiatives, and managing its own operations responsibly. (Government of Nova Scotia 2003)

The issue of when and how to use the precautionary principle, both within the European Union and internationally, is giving rise to much debate, and to mixed, and sometimes contradictory views. Thus, decision-makers are constantly faced with the dilemma of balancing the freedom and rights of individuals, industry and organisations with the need to reduce the risk of adverse effects to the environment, human, animal or plant health. Therefore, finding the correct balance so that the proportionate, non-discriminatory, transparent and coherent actions can be taken requires a structured decision-making process with detailed scientific and other objective information. (The European Union 2001)

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