

# Canada's Regulatory Burden

## *How Many Regulations?*

## *At What Cost?*

*by Laura Jones  
and Stephen Graf*

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## Editor's notes

All of us have read lurid media accounts of unpleasant, freak accidents: the man pruning his shrubbery who cuts through the high-voltage wires and is electrocuted; the spectator at a hockey game hit by a stray puck who later dies from the impact; the drunken guest who stumbles over a wall that is a little too low, falls some distance, and finds herself a quadriplegic. Not only have we read the accounts, but we have been told that "one unfortunate accident is one accident too many. There oughtta be a rule." Well, there is. In fact, there is a rule regulating just about every conceivable human activity or enterprise. But often, we don't realize just how invasive—and costly—those rules and regulations are.

One area where rule-making has reached unprecedented zealotry seems to be in the area of municipal building codes. In my district, I face a barrage of regulations when I contemplate building anything more complex than a flower box. "We could do that," the proposed carpenter will say, "but, of course, to do it to code, there are a few things we'll need to change . . ." It is easy to argue that the "code"—the regulations—is there to protect my safety, but there is a cost to the district's concern for my well-being. Often that cost is high, yet it is a cost that Canadians generally tend to ignore or forget about.

Because of regulations and their cost, there are a lot of things I won't replace or build. I would rather cook in a smallish kitchen with older appliances than invite city inspectors in to cluck and fuss over my outdated wiring and unfortunately situated plumbing. By not undertaking my renovations, I don't employ the tradesperson who would do the work, and I don't buy the necessary supplies at the building centre. In fact, a lot of activity *doesn't* take place in my life because of regulations. By extrapolation, a lot of productive activity doesn't happen in Canada because of regulations.

This special full-edition issue of *Fraser Forum* attempts to measure the cost to Canadians of the regulations that are imposed on us by all levels of government in every facet of our lives. The cost of regulation is much higher than you'd think—right up there with our tax burden. There oughtta be a rule.

—Kristin McCahon

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# Direct & indirect costs of regulation

By the early 1990s, Canadians had become very concerned about their governments' fiscal policies. The reasons were not hard to find: the federal government had not balanced its budget in over 20 years and all of the provinces were also running deficits. Furthermore, government spending as a percentage of gross domestic product (GDP) had risen to a postwar high of 52.6%<sup>1</sup> and Canadian tax burdens were deemed high even by international standards. Public concern over federal and provincial deficit spending, increasing government debt, and high taxes provided part of the stimulus needed to balance budgets, pay down debt, and cut taxes. Today, just one decade later, the federal government and seven of the provinces have balanced their budgets, debt reduction has become a priority, and pressure to cut taxes is strong. Indeed, some provinces and the federal government have cut taxes, although by less than many Canadians had hoped.

Although deficit spending is no longer fashionable, there is another form of government intrusion into our pocket-books that is largely hidden and, as a result, has not been subjected to the same

scrutiny: government regulation. Direct spending, financed by taxing or borrowing, is only one tool that governments can use to achieve their goals. Regulation is another. There are important differences between spending and regulating. Federal and provincial budgeting processes ensure some degree of accountability to the public—media and policy analysts report on and critique budgets when finance ministers announce them and detailed information on government spending is available from the public accounts. There is no such accountability where governments' regulatory activity is concerned.

When governments regulate, they require others to spend for them to achieve public-policy objectives. Only a

small fraction of regulatory costs, the administrative costs, actually appear in governments' budgets. The lion's share of the cost of regulation, the cost of compliance, is passed on to businesses, to lower levels of government, and to consumers as higher prices (see box 1). Governments are not required to estimate and report these compliance costs. This is why some analysts call regulation "hidden taxation" and claim that deficit spending lives on in the form of regulatory compliance costs that go largely unacknowledged (Crews, 2000: 1–7).

Although most of us spend little time thinking about regulation, we live in a highly regulated society. Regulation affects almost every aspect of our lives, including what we listen to on the radio, the price and quality of the food we eat, the safety features in our cars, who is allowed to deliver our mail, where we are permitted to smoke and drink, and how we are restricted in the use our property (see boxes 2 and 3). The total cost of all this regulation is considerable. The direct cost of regulation includes the costs that governments incur to administer regulatory activities and the costs that individuals and businesses incur to comply with government regulation. But, only the costs that governments incur to administer regulation appear in their budgets and these costs are small compared to compliance costs, which have been estimated to be

## Box 1 Costs of Regulation

### Direct costs

- administrative
- compliance

### Indirect costs

- limits people's freedom to make choices
- dampens innovation
- delays product development
- stifles innovation
- slows productivity growth

20 times as high. The Fraser Institute's study, *The Cost of Regulation in Canada* (Mihlar, 1998), estimated that complying with regulation in Canada in 1996 exceeded \$83 billion or just over \$11,000 per family of four (Mihlar, 1998: 3). *Canada's Regulatory Burden*, using more recent data, finds that the private sector spent \$103 billion or \$13,700 per family of four to comply with regulation in fiscal year 1997/1998.

### Indirect Costs

Direct costs are not the end of the story. Regulation also imposes indirect costs<sup>2</sup> on individuals and businesses, costs that are often significant but much harder to measure. One of the

consequences of regulation not captured by measuring its direct cost is the severe limits it imposes on people's freedom to make their own choices. For example, Health Canada only approves drugs that it believes are safe. Before a drug is approved (or if it is never approved), it is not available for general consumption. Yet some people would gladly accept higher risks than those that Health Canada tolerates. Many products are simply unavailable because regulators have decided that they are not safe enough. In these cases, regulations restrict people's freedom to make their own choices based on their own individual circumstances and tolerance for risk. Assigning a dollar value to this loss of liberty is virtually impossible.

Government regulation also dampens innovation, delays development of products, stifles entrepreneurship, and slows growth of productivity. Dr. Murray Weidenbaum describes some of these consequences of regulation in the United States:

A number of individual companies report that they devote large and growing shares of their scientific resources to meeting regulatory requirements or avoiding running afoul of regulatory restrictions. One hidden cost of government regulation is a reduced rate of introduction of new products. The longer it takes for a new product to be approved by a government agency—or the more costly the approval process—the less

## Box 2 The Scope of Regulation in Canada by Activity

### Communications

- Broadcasting
  - Radio (AM, FM)
  - Television
- Telecommunications
  - Telephone
  - Cable TV
  - Satellite

### Consumer Protection

- Disclosure (product content)
- Packaging and Labelling
- Weights and Measures

### Food Production and Distribution

- Agricultural Products
- Marketing
  - pricing
  - grading
  - distribution
  - entry
  - quotas

### Framework Laws

- Competition Policy

### Bankruptcy laws

- Intellectual Property law

### Cultural and Recreational

- Language (bilingualism)
- Sports
- Canadian content in broadcasting

### Health and Safety

- Building Codes
- Animal Health
- Plant Health
- Occupational Health and Safety

### Human Rights

- Anti-discrimination legislation
- Protection of privacy

### Labour

- Hours of work
- Minimum wage laws
- Collective bargaining

### Liquor

- Alcoholic content

### Distribution and sale

### Transportation

- Airlines
- Taxis
- Trucking
- Urban Public Transit

### Energy

- Hydro-electric
- Natural Gas

### Environmental Protection

- Pollution Control
  - air
  - water
- Resource Development
  - minerals
  - forestry
- Land Use
  - planning and zoning
  - development approval

### Others

- Rent control
- General wage and price controls

### Financial Markets and Institutions

- Banks
- Trust Companies
- Pension Funds
- Insurance

### Occupational Licensure

- Certification/Licensure
- Apprenticeship

### Source

Taken from Economic Council of Canada 1979: 11. See also Appendix 1: Classification of risks subject to government intervention in "Reforming Risk Regulation in Canada: The Next Policy Frontier?" by William T. Stanbury. In Laura Jones, ed., *Safe Enough? Managing Risk and Regulation* (Vancouver, BC: The Fraser Institute, 2000): 239–41.

likely that the new product will be created. (Weidenbaum, 1979: 38)

Regulated firms no longer produce only goods and services; they also “produce” regulatory compliance (Chinloy, 1989: 127). Resources devoted to regulatory compliance are no longer available to invest in new plant and equipment. The corresponding slowdown in productivity growth translates directly into lower standards of living than could otherwise be achieved. Again, these costs are difficult to measure but one study cited by the OECD (Weinart, 1997, citing Gray, 1987) attributes the 31% slowdown in productivity in American manufacturing in the 1970s to regulation by the Occupational Safety and Health Administration and the Environmental Protection Agency.

Regulation can impose still other indirect costs on consumers by restricting competition and making prices of goods and services higher than they might otherwise be. Competition can be restricted in two ways. First, regulation can put smaller firms at a competitive disadvantage when they are forced to comply with the same regulations as larger firms because smaller firms lack larger firms’ financial and managerial resources. As a result, there can be increased concentration in an industry. Second, regulation can directly reduce competition. Government controls sometimes restrict price competition and prevent would-be competitors from entering the industry. For example, the federal government does not allow any firm except Canada Post Corporation to deliver first-class mail.

### The benefits of regulation

Does regulation provide Canadian with any benefits? There is no question that regulation creates benefits as well as costs and that some degree of regulation can help markets function (Mitchell and Simmons, 1994: 5). Such regulation includes law enforcement, defining rights to private property, adjudicating disputes, and enforcing contracts (Friedman, 1962/1982: 34). Competition policy, company law, bankruptcy law, and intellectual property rights help markets work (Economic Council of Canada, 1979: 10). Nevertheless, it is beyond the scope of this study to measure the benefits of regulation. In much the same way that fiscal budgets detail what government programs cost without addressing what

### Box 3 Regulation in Our Daily Lives

Canada, like most countries that belong to the Organisation for Economic Cooperation and Development, has become a highly regulated society. The clock radio awakens us with the sound of music subject to Canadian content regulations and runs on electricity provided by a regulated utility. For breakfast, we reach for eggs whose price has been set by a government marketing board. Perhaps we reach instead for a cereal box containing food that is subject to regulation. We only mildly lose our temper while trying to open a bottle of vitamins with the required child-proof cap. We go to the bathroom, where we use toothpaste and other products made by regulated companies.

We start our car and the seat belt reminder sounds—courtesy of regulation. We drive to work on tires that have to meet federal minimum safety standards. The car’s exhaust is subject to pollution controls that made the car cost more than we expected. The car can use only unleaded gasoline—another government requirement. We drive at speeds regulated by provincial and municipal ordinances.

We work in structures raised according to building codes. Our working conditions are governed by statute and monitored for compliance by the government. Perhaps our working conditions were also negotiated by our union, which was

certified in a supervised election. Public health inspectors have scrutinized the delicatessen or food court where we eat lunch. The monthly rate for the telephone we use is set by a federal or provincial regulatory agency.

Shopping at the grocery store on our way home, we note the unpronounceable names of chemical preservatives that, by government regulation, are disclosed in fine print. If we decide to eat out instead, we notice that certain doors are kept closed on the orders of the fire marshal. We pay for our meal with cash withdrawn, or credit obtained, from a regulated financial institution.

In the evening, we watch television, including advertising subject to regulation. The price of the fuel we consume to heat our home has been set by a government agency. Perhaps we light a cigarette, whose carton displays a warning mandated by legislation and whose sale is regulated. During the night, the smoke detector and, perhaps, the sprinkler system that had to be installed will stand on guard.

Throughout our day, we are barely aware of the pervasiveness of regulation.

Adapted from Economic Council of Canada, 1979, and Weidenbaum, 2000a.

benefits they provide, this study focuses on what regulation costs without discussing what benefits it provides.

### In this study

The purpose of this study is to provide Canadians with more information about the burden of government regulation. Government regulation hits our pocketbooks as surely as taxes do but there is shockingly little information available about its cost. At a time when deficit spending is out of favour and there is little appetite for tax increases, this lack of accountability could make regulation a tempting way for governments to achieve their goals without substantially increasing their spending. Increasing regulatory activity could easily erase any gains from fiscal restraint. It is therefore important that Canadians understand the cost of regulation so they can have a better sense of the full cost of government.

Section 2 of this study discusses the definition of regulation and describes the different types of regulation. Section 3 looks at trends in the volume of regulation enacted by federal, provincial, and territorial governments in Canada, including information about the number of regulations enacted each year, the number of pages of regulations enacted each year, and the total number of regulations in force. These data give some sense of the regulatory burden faced by Canadians. Section 4 provides more information on the regulatory burden endured by Canadians by calculating regulation's direct costs. Finally, the conclusion contains some policy recommendations.

## Centre for Studies in Risk and Regulation

### **About the Centre**

The Fraser Institute's *Centre for Studies in Risk and Regulation* aims to educate Canadian citizens and policy-makers about the science and economics behind risk controversies. As incomes and living standards have increased, tolerance for the risks associated with everyday activities has decreased.

While this decreased tolerance for risk is not in and of itself undesirable, it has made us susceptible to unsound science.

Concern over smaller and smaller risks, both real and imagined, has led us to demand more regulation without taking account of the costs, including foregone opportunities to reduce more threatening risks. If the costs of policies intended to reduce risks are not accounted for, there is a danger that well-intentioned policies will actually reduce public well-being. To promote more rational decision-making, the *Centre for Studies in Risk and Regulation* will focus on sound science and consider the costs as well as the benefits of policies intended to protect Canadians.

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# What is regulation?

## Defining regulation

Those who dare to define regulation find themselves working in a quagmire. As Margot Priest, W.T. Stanbury, and Fred Thompson (1980: 1) noted two decades ago: "Many individuals write about government regulation, often at great length; few bother to define the term." Some include any government activity that provides benefits or imposes restrictions. But as Doern, Hill, Prince, and Schultz (1999: 5–6) point out, defining regulation expansively leads to the following conundrum:

The wider the definition provided for regulation, the more it becomes equated with government and governance as a whole. But at some point governance is not merely regulation, and government is more than just a regulatory state. It also involves taxation, spending, and ensuring that diverse policy goals and values are implemented in democratic life. (Doern, Hill, Prince, and Schultz, 1999: 6)

Priest, Stanbury, and Thompson (1980: 5) resolve this dilemma by refining the definition of regulation to

the imposition of rules by a government, backed by the use of penalties, that are intended specifically to modify the economic behaviour of individuals and firms in the private sector. (1980: 5)

They distinguish regulation from other instruments through which governments can change economic behaviour to achieve public-policy goals: moral suasion, taxes, subsidies and public provision of goods and services (Priest, Stanbury, and Thompson, 1980: 2). In contrast to these other instruments of public policy, regulation relies on legal commands that are backed by penalties like fines, loss of license, charter or franchise, and even jail terms for non-compliance (Priest, Stanbury, and Thompson, 1980: 3; Strick, 1994: 4). Priest, Stanbury, and Thompson's definition of regulation is very similar to that used in a report to First Ministers written by the Economic Council of Canada. In that report, regulation is:

the imposition of rules intended to modify economic behaviour significantly and which are backed by the authority of the state. Such rules typically attempt to modify one or more of the following: price entry (e.g. permits and licences), rate of return, disclosure of information, attributes of a product or service (e.g. quality, purity and safety), and methods of introduction (e.g. pollution standards, worker health and safety standards). (Ostry, 1978: 15)

Priest, Stanbury, and Thompson (1980) and the Economic Council of Canada (1978) define regulation in economic terms, as they focus on rules backed by the state's authority that are intended to

modify economic behaviour: the producing, consuming, and distributing of goods and services (Strick, 1994: 4). Rules imposed by government that are intended to change economic behaviour are found in two kinds of legislation: (1) statutes, more formally known as primary legislation; and (2) subordinate legislation, items of which are commonly referred to as "regulations."<sup>3</sup> This can be confusing because economic definitions of regulation include only those statutes and items of subordinate legislation (regulations) that are intended to affect economic behaviour and not all statutes and regulations have this intention. Priest, Stanbury, and Thompson explain:

Governments impose a very large number of rules designed to alter human behaviour. Many are based on moral or ethical precepts, for example, those in the *Criminal Code*. While the laws dealing with heroin or robbery have an economic impact, their justification and primary objective is the alteration of behaviour that is not seen as economic in nature. Economic regulation is *intended* to change economic behaviour. In general, the choice set open to individuals or firms is to be constrained. (1980: 5; emphasis in original)

## Categorizing regulation

Policy analysts distinguish two categories of regulation: direct and social.<sup>4</sup> Direct regulation and social regulation focus on different aspects of economic behaviour (Economic Council of Canada, 1979: 44). Direct regulation refers to circumstances where governments control price, rate of return, output, and structure of an industry. Direct regulation targets specific industries and is often combined with public provision of

goods and services. Other names for direct regulation are “economic,” “industry-specific,” and “traditional” or “old-style” regulation (Economic Council of Canada, 1979: 44; Strick, 1994: 8).

Social regulation consists primarily of standards for health and safety, employment, environmental protection, and culture. Its focus is on controlling the attributes of goods and services, infor-

mation disclosure, and the conditions under which goods and services are produced and sold. Unlike direct regulation, social regulation generally cuts across industries (Economic Council of Canada, 1979: 45). Other names for social regulation are “new style” or “new wave” regulation and “health, safety and environmental” regulation. The growth of social regulation and the simultaneous decline in direct regulation

is called “regulatory shift” (Waters and Stanbury, 1999: 153). Pressure to expand social regulation has come from consumer interest groups, environmentalists, and labour unions (Strick, 1994: 8). Some of this social regulation, like the “ladder law” in box 4, does no more than codify common sense. Unfortunately, codifying common sense will not protect people who do not have any from injuring themselves.

## Box 4 The Search for the Holy Grail: Certainty

We have too easily succumbed to the siren song of regulation or rather . . . of comprehensive regulation. We [are] too easily moved by notions of rationalized completeness. (Philip K. Howard, *The Death of Common Sense*, 1994, p. 27.)

Proponents of regulation argue that clear and detailed guidelines are necessary so that people will know exactly what is required of them. Ironically, today’s regulations are simply too detailed for anyone to understand them fully. How can workers, or for that matter, occupational health and safety inspectors, know every detail in each of the 116 regulations that make up Ontario’s *Occupational Health and Safety Act*? In addition, employees, employers, and inspectors are expected to know 61 pages of general rules described in another document entitled *A Guide to the Occupational Health and Safety Act*. If anyone violates the Act or its regulations, or fails to comply with an order from the inspector or the ministry, that individual could be prosecuted. The maximum fine for a corporation convicted of an offence is \$500,000.\*

This drive for certainty has destroyed the function of regulations to act as guidelines. The following regulations on the use of ladders, for example, enacted under Ontario’s *Regulation for Health Care and Residential Facilities*\*\*—illustrates regulatory overkill.

### LADDERS

80 (1) Except for a step stool, a worker shall not stand upon a chair, box, or other loose objects while working.

(2) A chair, box, or other loose objects shall not be used to support a ladder, scaffold, or working platform.

81 The maximum length of a ladder measured along the side rail should not be more than,

(a) six meters for a step-ladder;

(b) nine meters for a single ladder; and

(c) thirteen meters for an extension or sectional ladder.

82 (1) A ladder shall,

(a) have adequate strength, stiffness and stability to support any load likely to be applied to it;

(b) be free from broken or loose members or other faults;

(c) have rungs evenly spaced; and

(d) be equipped with slip-resistant feet.

(2) A wooden ladder shall not be painted or coated with an opaque material.

83. When a ladder is being used it shall,

(a) be placed on a firm footing and secured against slipping;

(b) if a ladder is between six and nine meters in length, be securely fastened or be held in place by one or more workers while being used;

(c) if a ladder exceeds nine meters in length, be securely fastened or stabilized to prevent it from tipping or falling;

(d) when not securely fastened, be inclined so that horizontal distance from the top support to the foot of the ladder is not less than one-quarter and not more than one-third of the length of the ladder; and

(e) if the ladder is likely to be endangered by traffic, have a worker stationed at its foot to direct such traffic or have barriers or warning signs placed at its foot.

84. (1) When a step-ladder is being used as a self-supporting unit, its legs shall be fully spread and the spreader shall be locked.

(2) No worker shall stand on the top of a step-ladder or shall use the pail shelf as a step.

Rules can’t save us from ourselves. The codification of common sense, as in the forgoing “ladder law” won’t prevent people with little common sense from injuring themselves, and, in fact, may make the workplace less safe if the exercise of common sense is replaced by the notion that safety is somebody else’s responsibility.

\* Ontario Ministry of Labour, *A Guide to the Occupational Health and Safety*, Queen’s Printer, 1993.

\*\* See Ontario Ministry of Labour, *Regulation for Health Care and Residential Facilities—made under the Occupational Health and Safety Act*, Toronto: Queen’s Printer for Ontario, July 1995, pp. R-38 to R-39.



# Regulatory activity in Canada

Previous attempts to quantify regulatory activity in Canada have identified a clear growth trend. The Economic Council of Canada (1979: 15) reported that the number of federal regulatory statutes in force increased from 25 in 1870 to 140 in 1978 while the number of provincial regulatory statutes in force increased from 125 to 1,608 over the same period. Between 1970 and 1978, the federal government enacted 25 new regulatory statutes while provincial governments enacted 262 new statutes. The Council attributed the regulatory explosion of the 1970s to the growth of social regulation. Stanbury studied the next period of time and found that, between 1979 and 1991, the federal government enacted 33 new regulatory statutes (Stanbury, 1992: 15). In 1996, The Fraser Institute took a different approach to quantifying the growth of regulation by publishing counts of the number of regulations made each year by governments in Canada (Mihlar, 1996: 10): the federal government and provincial governments in Canada, excluding Quebec, filed an average of 4,549 regulations each year from 1975 to 1994.

In this section, the information found in The Fraser Institute's 1996 study is updated and expanded to show, for the period from 1975 to 1999:

- the number of regulations in force, excluding regulations that amend

other regulations, according to federal, provincial, and territorial indexes of regulations.

- the number of regulations passed each year by federal, provincial and territorial governments
- the number of pages of regulations that appear in official federal, provincial, and territorial periodicals of regulations usually called Gazettes.

## Number of regulations

The black bars in figures 1 to 13 show the number of regulations (subordinate legislation) made in each year by the federal government and by each province and territory. Over the 24-year period between 1975 and 1999, over 117,000 new federal and provincial regulations were enacted, an average of 4,700 every year. Since 1975, the federal government alone has made 25,000 regulations (see table 1). While these data provide some sense of the amount of regulatory activity in Canada, they must be interpreted with some caution. As explained in section two, the data include regulations containing rules that are not intended to change economic behaviour and they exclude statutes containing rules that are intended to change economic behaviour. Moreover, one should not assume that all regulations generate equal amounts of regulatory activity.

## Pages of regulations

The grey bars in figures 1 to 13 show the number of pages it takes to publish the number of regulations shown by the black bars. Because governments can make a small number of long regulations or a large number of short regulations, pages of regulations are graphed next to the black bars showing numbers of regulations. Since 1975, federal, provincial, and territorial governments in Canada have published over 505,000 pages of regulations (tables 1 to 13; Nunavut, for which there is no table or graph, published 14 regulations in 17 pages in 1999 [Department of Justice, Nunavut Territory, May 2000]). The federal government alone has published 110,000 of these pages (table 1). Federal, provincial, and territorial volumes from 1975 to 1999 contain, on average over 20,000 pages per year, and measure almost 31 metres or 10 stories when stacked.

In theory, the greater the number of pages, the greater the amount of regulatory activity (Priest and Wohl, 1980: 86). But, several caveats must be kept in mind when using data about pages of regulations to quantify the amount of regulatory activity in Canada. As with the number of regulations, pages of regulations will include regulations that are not intended to change economic behaviour and exclude statutes that are intended to change economic behaviour. In addition, federal, territorial, and some provincial volumes of regulations are published in both English and French, inflating the number of pages they contain. Their page layouts, page sizes, typefaces, and type sizes vary over time and among jurisdictions. Furthermore, variations over time and among jurisdictions in what regulations include affect what the volumes contain. For example, regulations do not include appointments,

except in Nova Scotia and Saskatchewan. Regulations also do not include proclamations that bring into force, repeal, or suspend statutes or parts of statutes from operation, except in British Columbia, Nova Scotia, and Saskatchewan.

Normally, regulations must be published shortly after they have been registered. However, Cabinet may do away with publishing some or all parts of regulations if it or the civil service thinks that their length makes them unsuitable or too expensive to print, as long as they are available, or will be made available, to those whom they affect. Yukon's government frequently publishes the orders-in-council that bring regulations into force without appending the regulations themselves (Regulations Clerk, Yukon Territory, personal communication, July 10, 2000). The civil service may also eliminate from published versions maps, illustrations, plans, diagrams, photographs, charts, tables, and similar things that the regulations include. For these reasons and because human error might have occurred, this study likely under-estimates the number of regulations made and pages of regulations published from 1975 to 1999.

### Number of regulations in force

The black lines in figures 1, 7, 10, and 11 show how many regulations, excluding amending regulations, are in force at the federal level, and in Ontario, Alberta, and British Columbia, according to indexes of current regulations (tables 1, 7, 10, and 11). Alberta is the only jurisdiction that shows a declining trend in the total number of regulations in force. In the 1990s, the number of regulations in force in Alberta declined by over 40%, to fewer than 1,000. At the federal level, and in Ontario and British Columbia, the number of regulations in force increased. The increase was most dramatic in British Columbia, where the number of regulations in force has increased by almost 50% since the mid-1980s, from fewer than 1,600 to well over 2,200. The number of federal regulations in force has also continued to grow, though less spectacularly. The data for Ontario show an increasing trend between 1975 and 1999, as well as a cyclical pattern that might be explained by that province's consolidating and replacing its regulations in 1980 and 1990.

As with the other measures of regulatory burden, some caveats apply to using

the total number of regulations in force as an indicator of regulatory activity. First, indexes of regulations are frequently incomplete. Second, not all regulations that are technically in force are in active use. In Alberta, the civil service accelerated the decline in the number of regulations in force when, between 1995 and 1998, it isolated regulations that were no longer in active use and saw to their formal repeal (Registrar of Regulations, Province of Alberta, personal communication, June 20, 2000). Third, some amending regulations would have been drafted as new regulations and vice-versa but for their drafters' convenience (Registrar of Regulations, Province of Ontario, personal communication, August 1, 2000).

Most regulations made each year amend other regulations. That is why, for example, there were "only" 2,900 federal regulations in force (excluding amending regulations) in 1999, even though the federal government made 25,000 regulations (including amending regulations) from 1975 to 1999. It is important to recognize that individuals and businesses in the private sector find regulations' constant and rapid amendment more onerous than their mere existence, as it aggravates uncertainty (Economic Council of Canada, 1979: 3).

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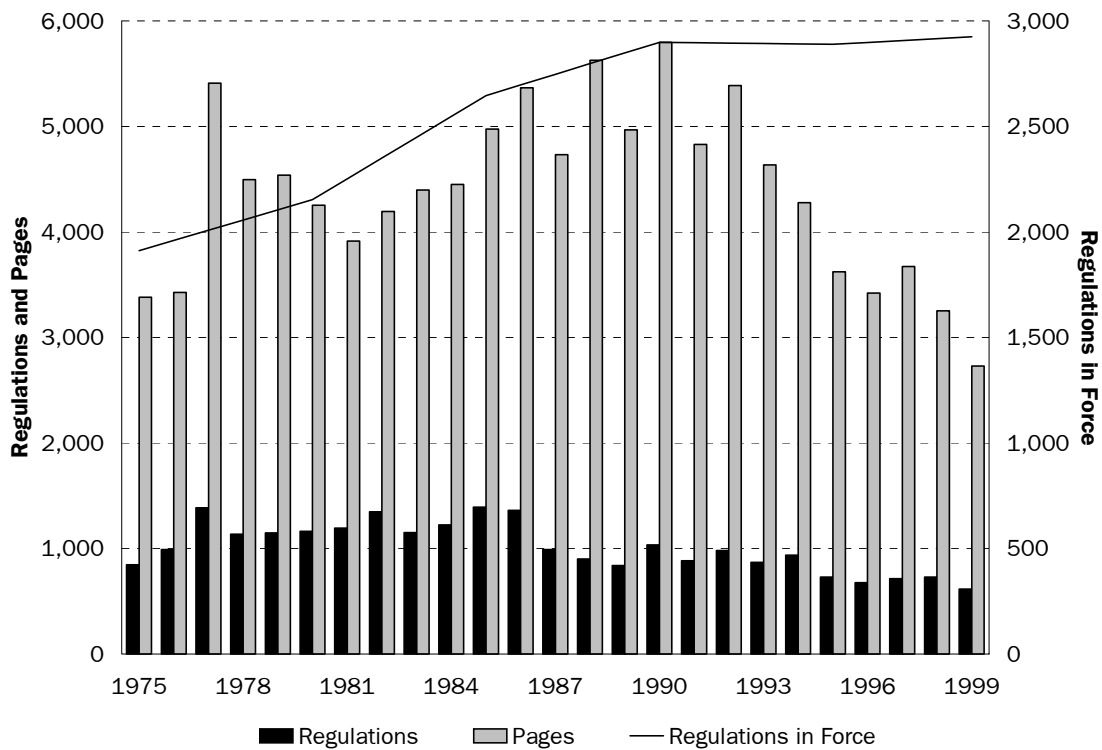
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**Table 1 & Figure 1** Number of federal regulations, pages, and regulations in force (1975–1999)

	Regulations	Pages	Regulations in force		Regulations	Pages	Regulations in force
1975	846	3,381	1,912	1988	901	5,626	2,798
1976	990	3,428	1,960	1989	840	4,967	2,848
1977	1,387	5,410	2,008	1990	1,035	5,798	2,899
1978	1,137	4,496	2,057	1991	884	4,830	2,897
1979	1,149	4,539	2,105	1992	981	5,388	2,895
1980	1,164	4,253	2,153	1993	870	4,636	2,893
1981	1,193	3,915	2,252	1994	938	4,277	2,891
1982	1,348	4,195	2,350	1995	729	3,622	2,889
1983	1,151	4,397	2,449	1996	676	3,422	2,898
1984	1,223	4,451	2,547	1997	715	3,674	2,907
1985	1,392	4,975	2,646	1998	729	3,253	2,916
1986	1,363	5,367	2,697	1999	616	2,730	2,925
1987	991	4,732	2,747				

Source: *Canada Gazette*, Part II.

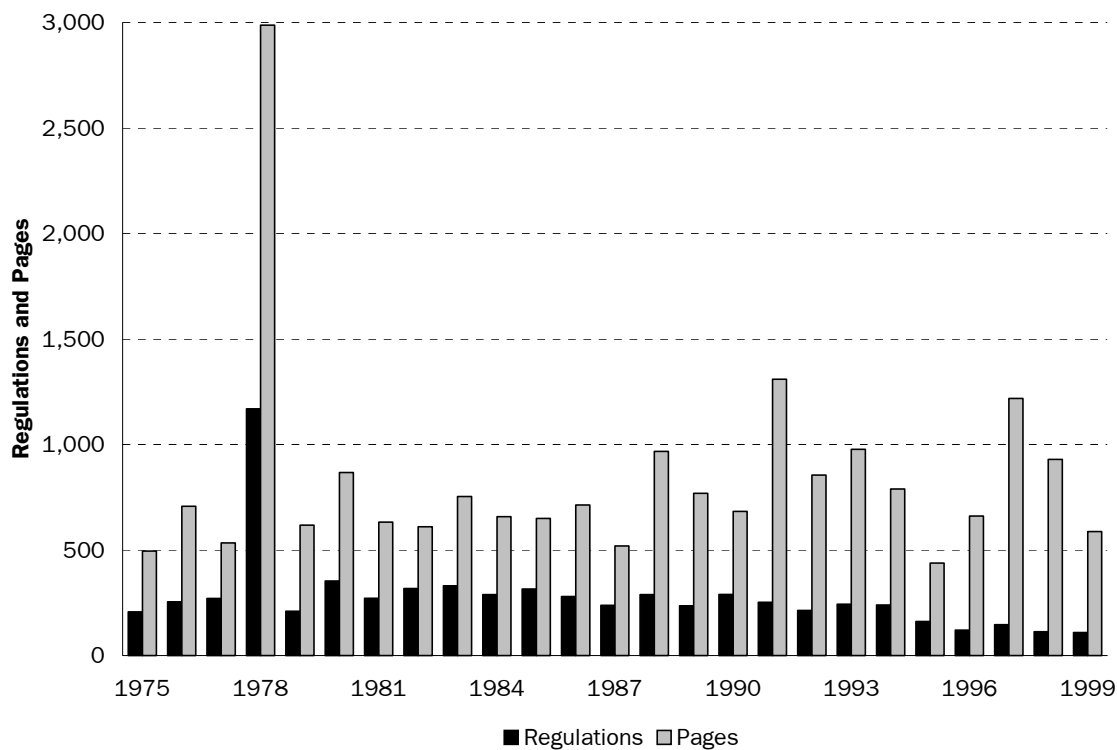
Note: Federal regulations may be called Statutory Instruments, Statutory Orders or Regulations.



**Table 2 & Figure 2 Number of regulations and pages in Newfoundland and Labrador (1975–1999)**

Regulations		Pages	Regulations		Pages
1975	207	495	1988	289	968
1976	255	708	1989	236	769
1977	271	534	1990	290	684
1978	1,170	2,988	1991	253	1,310
1979	210	619	1992	214	855
1980	353	868	1993	243	978
1981	272	633	1994	240	790
1982	318	611	1995	162	439
1983	331	754	1996	121	661
1984	289	658	1997	147	1,219
1985	315	650	1998	114	930
1986	280	714	1999	110	588
1987	239	520			

Source: *The Newfoundland Gazette*, Part II.

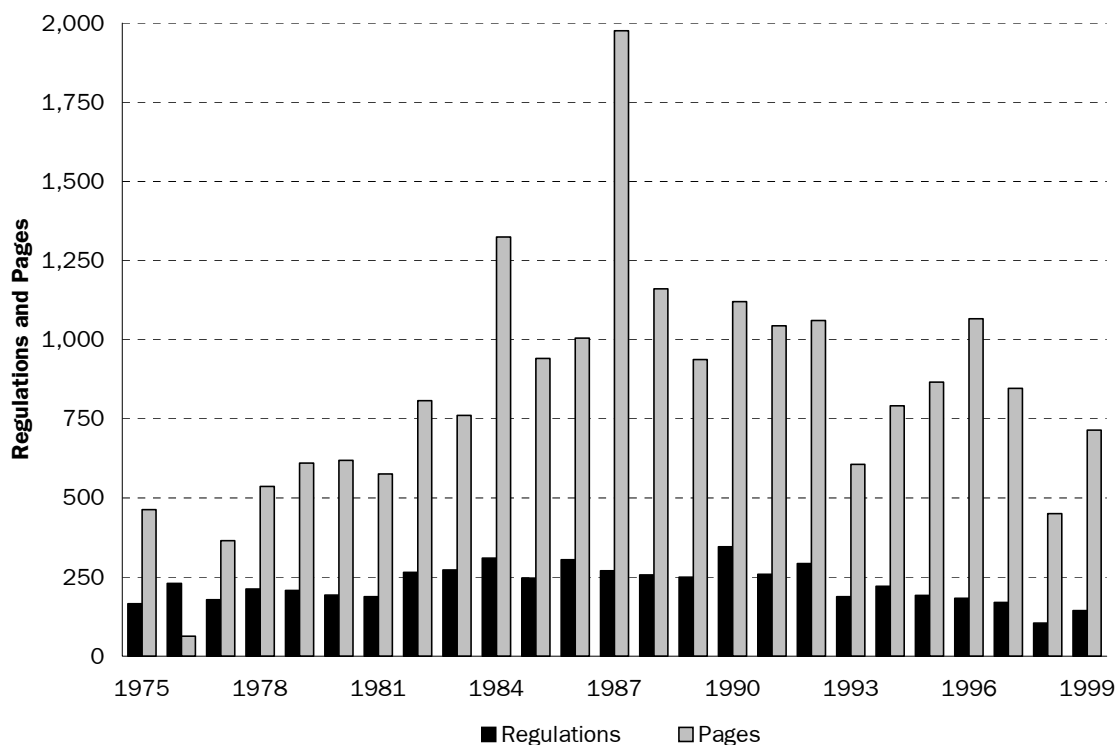




**Table 4 & Figure 4 Number of regulations and pages in Nova Scotia (1975–1999)**

Regulations		Pages			
1975	166	463			
1976	230	63			
1977	179	365			
1978	212	536			
1979	208	610			
1980	193	619			
1981	188	576			
1982	265	807			
1983	273	761			
1984	310	1,324			
1985	247	941			
1986	305	1,005			
1987	270	1,976			
			1988	257	1,161
			1989	250	937
			1990	346	1,120
			1991	259	1,044
			1992	293	1,060
			1993	188	606
			1994	221	791
			1995	192	866
			1996	183	1,066
			1997	170	846
			1998	105	450
			1999	144	714

Source: Royal Gazette, Part II.





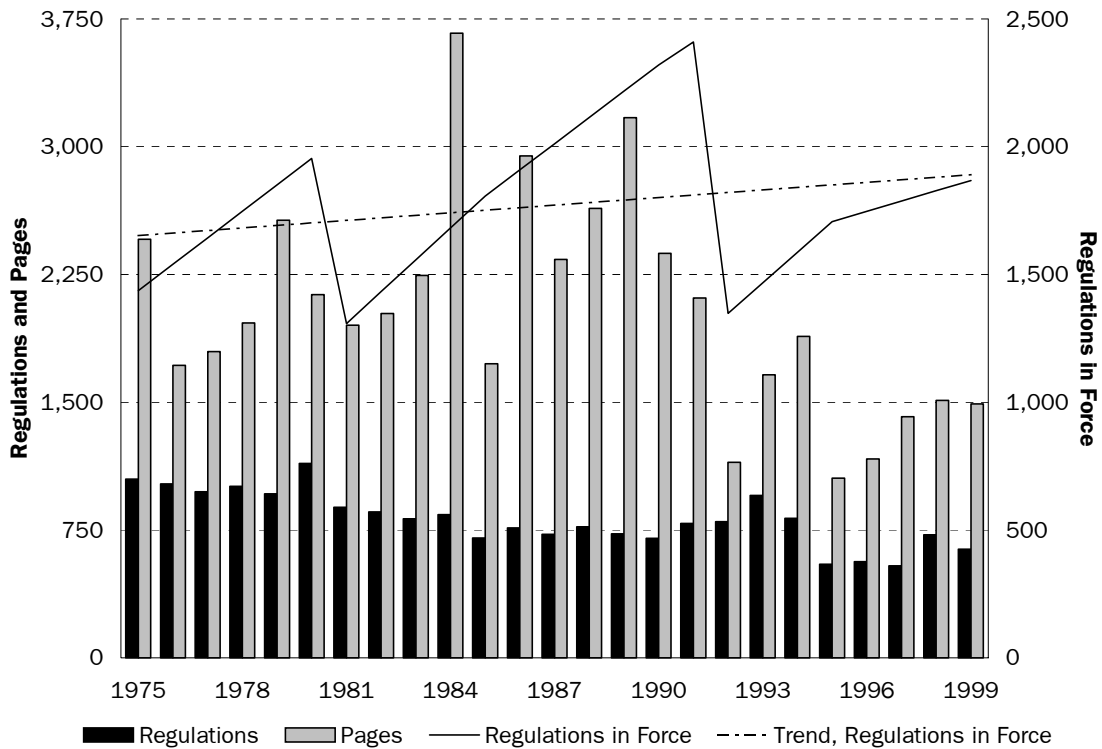




**Table 7 & Figure 7** Number of regulations, pages, and regulations in force in Ontario (1975–1999)

	Regulations	Pages	Regulations in force		Regulations	Pages	Regulations in force
1975	1,049	2,457	1,437	1988	769	2,638	2,115
1976	1,021	1,717	1,540	1989	727	3,170	2,217
1977	975	1,797	1,644	1990	702	2,374	2,320
1978	1,007	1,965	1,747	1991	789	2,112	2,410
1979	962	2,568	1,851	1992	799	1,148	1,348
1980	1,141	2,132	1,954	1993	953	1,661	1,468
1981	884	1,952	1,308	1994	819	1,887	1,587
1982	857	2,021	1,433	1995	549	1,055	1,707
1983	815	2,245	1,558	1996	564	1,168	1,747
1984	840	3,667	1,682	1997	540	1,415	1,788
1985	703	1,726	1,807	1998	722	1,511	1,828
1986	763	2,946	1,910	1999	637	1,490	1,868

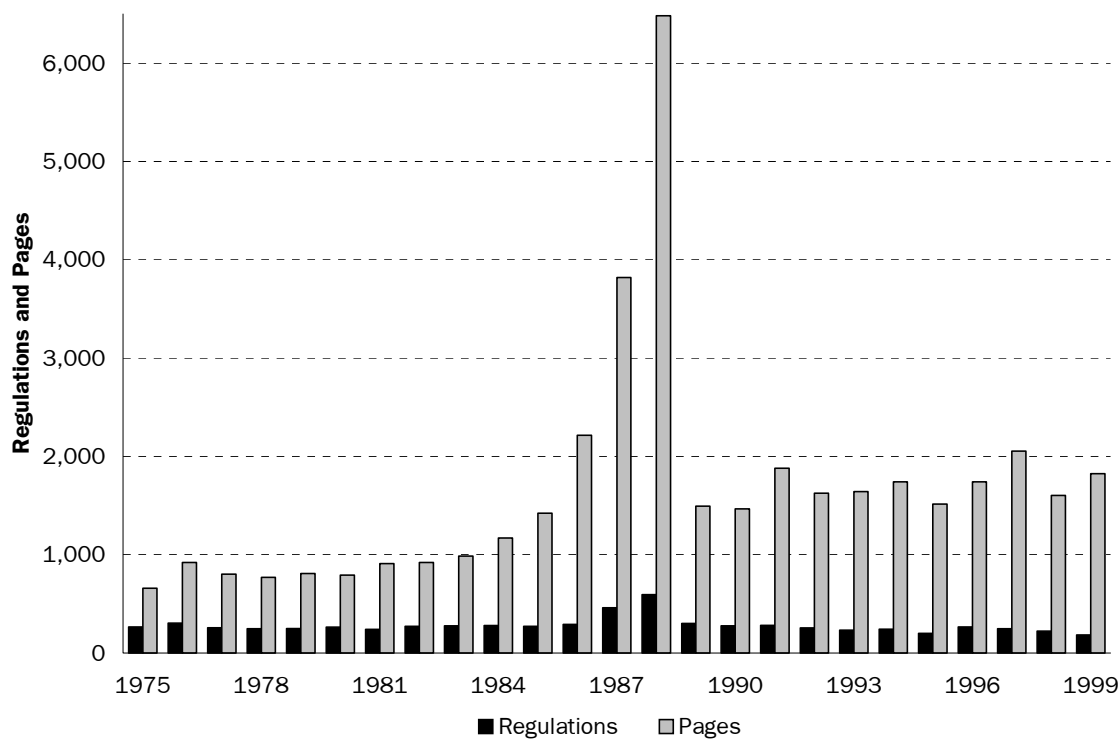
Source: *The Ontario Gazette*.



**Table 8 & Figure 8 Number of regulations and pages in Manitoba (1975–1999)**

Regulations		Pages	Regulations		Pages
1975	264	658	1988	593	6,482
1976	304	921	1989	302	1,493
1977	256	801	1990	276	1,467
1978	246	768	1991	280	1,880
1979	248	808	1992	254	1,625
1980	262	791	1993	231	1,641
1981	241	910	1994	242	1,740
1982	271	922	1995	199	1,515
1983	276	986	1996	265	1,741
1984	279	1,170	1997	247	2,055
1985	270	1,421	1998	222	1,602
1986	291	2,215	1999	183	1,825
1987	460	3,819			

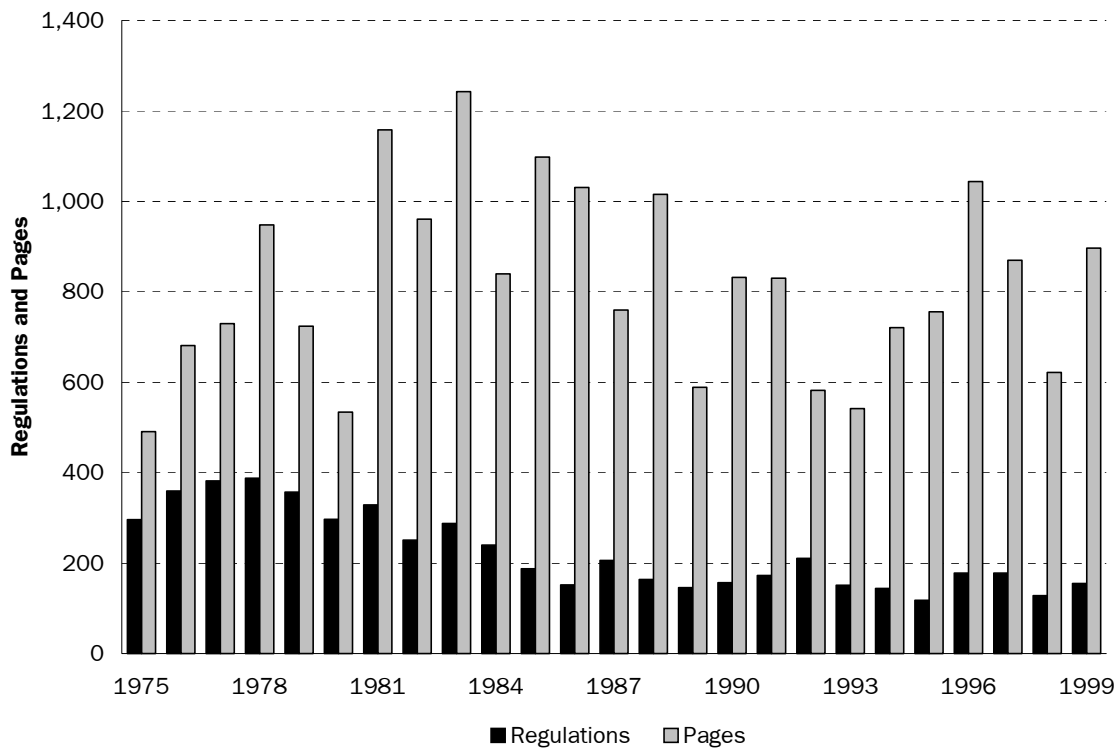
Source: *The Manitoba Gazette*, Part II.



**Table 9 & Figure 9** Number of regulations and pages in Saskatchewan (1975–1999)

Regulations		Pages			
1975	296	491			
1976	360	681			
1977	382	730			
1978	388	948			
1979	357	724			
1980	297	534			
1981	329	1,158			
1982	251	961			
1983	288	1,243			
1984	240	840			
1985	188	1,098			
1986	152	1,031			
1987	206	760			
			1988	164	1,016
			1989	146	589
			1990	157	832
			1991	173	830
			1992	211	582
			1993	151	542
			1994	144	721
			1995	118	756
			1996	178	1,044
			1997	178	870
			1998	128	622
			1999	155	897

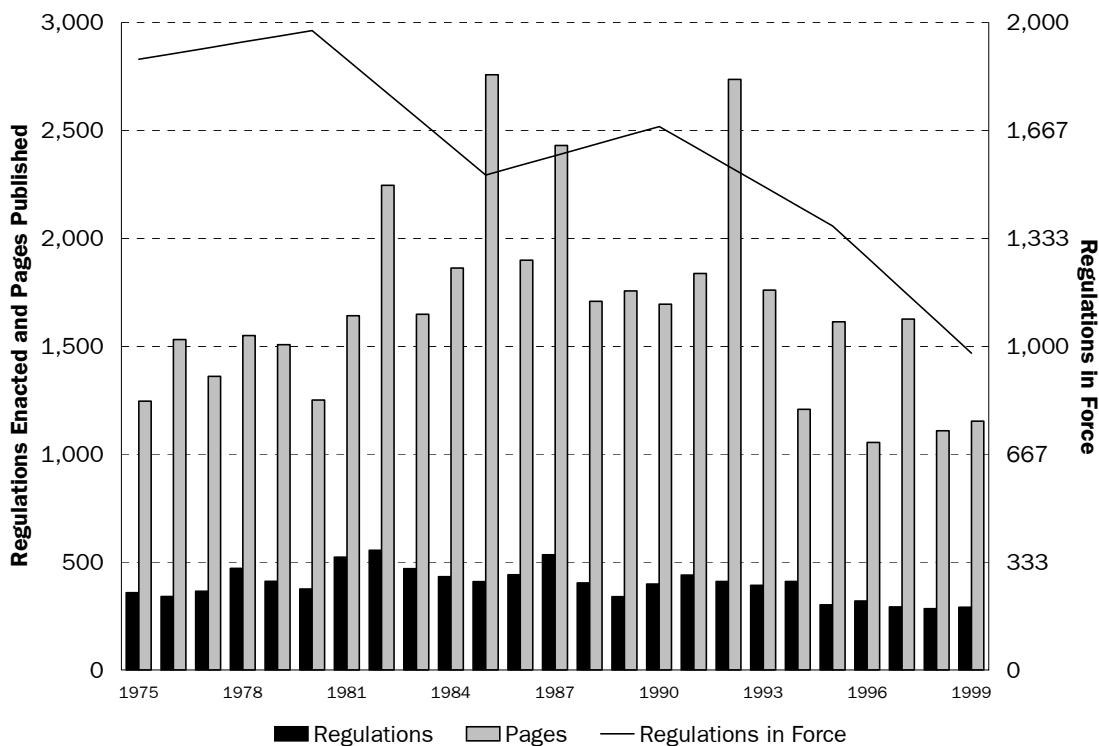
Source: *The Saskatchewan Gazette*, Parts II–III.



**Table 10 & Figure 10** Number of regulations, pages, and regulations in force in Alberta (1975–1999)

	Regulations	Pages	Regulations in force		Regulations	Pages	Regulations in force
1975	358	1,246	1,887	1988	404	1,709	1,619
1976	341	1,531	1,905	1989	340	1,757	1,649
1977	365	1,361	1,922	1990	398	1,695	1,679
1978	471	1,550	1,940	1991	440	1,838	1,618
1979	411	1,508	1,957	1992	410	2,737	1,556
1980	375	1,251	1,975	1993	393	1,761	1,495
1981	523	1,642	1,886	1994	410	1,208	1,433
1982	555	2,246	1,797	1995	302	1,613	1,372
1983	470	1,649	1,707	1996	320	1,055	1,274
1984	433	1,863	1,618	1997	293	1,626	1,176
1985	409	2,758	1,529	1998	284	1,109	1,077
1986	442	1,899	1,559	1999	291	1,153	979
1987	534	2,430	1,589				

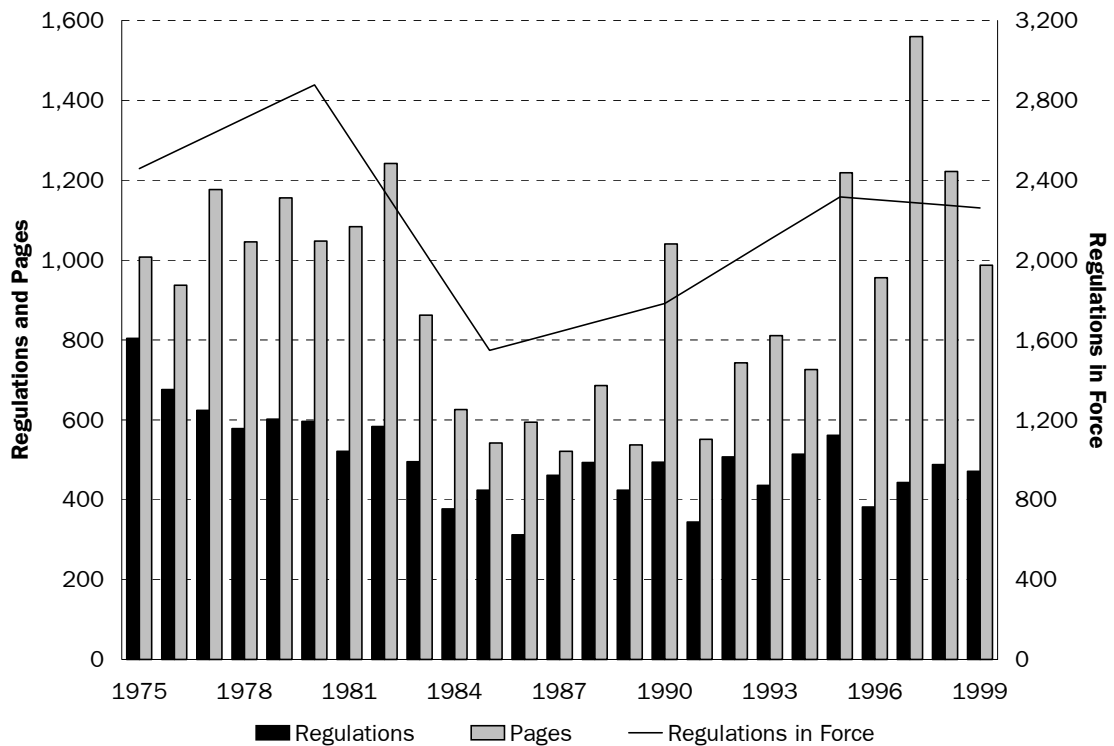
Source: *The Alberta Gazette*, Part II.



**Table 11 & Figure 11** Number of regulations, pages, and regulations in force in British Columbia (1975–1999)

	Regulations	Pages	Regulations in force		Regulations	Pages	Regulations in force
1975	804	1,008	2,459	1988	493	686	1,689
1976	676	937	2,543	1989	424	537	1,736
1977	624	1,177	2,627	1990	494	1,041	1,783
1978	578	1,046	2,710	1991	344	551	1,890
1979	602	1,156	2,794	1992	507	743	1,997
1980	596	1,048	2,878	1993	436	811	2,103
1981	521	1,084	2,612	1994	514	726	2,210
1982	583	1,242	2,346	1995	561	1,219	2,317
1983	495	862	2,080	1996	382	956	2,303
1984	377	626	1,814	1997	443	1,560	2,290
1985	424	542	1,548	1998	488	1,222	2,276
1986	312	594	1,595	1999	471	987	2,262
1987	461	521	1,642				

Source: *The British Columbia Gazette*, Part II.

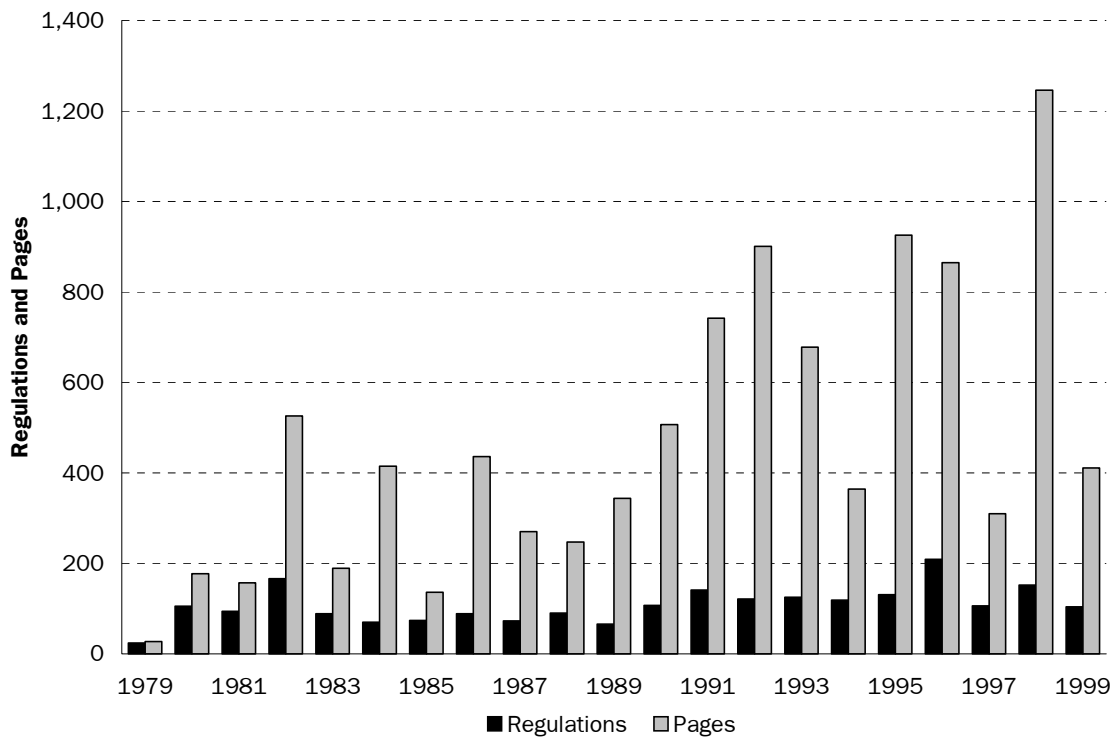




**Table 13 & Figure 13** Number of regulations and pages in the Northwest Territories (1979–1999)

Regulations		Pages	
1979	24	27	
1980	105	177	
1981	94	157	
1982	166	526	
1983	89	189	
1984	70	415	
1985	74	136	
1986	89	436	
1987	73	270	
1988	90	247	
1989	66	344	
1990	107	507	
1991	141	742	
1992	121	901	
1993	125	678	
1994	119	364	
1995	131	926	
1996	209	865	
1997	106	310	
1998	152	1246	
1999	104	411	

Source: Northwest Territories Gazette, Part II.



# The cost of regulation

In fiscal year 1997/1998, the federal government and provincial, territorial, and local governments in Canada spent \$5.2 billion administering their regulatory activities, down only slightly in real terms from \$5.3 billion in fiscal year 1995/1996 (table 14). Federal administrative costs alone increased by 50% in real terms between fiscal years 1973/1974 and 1997/1998. Provincial and territorial administrative costs of regulation increased by 80% in real terms over the same period.

Administrative costs in the public sector, however, are only the tip of the regulatory iceberg. The bulk of the cost of regulation is incurred by individuals and businesses in the private sector to

implement, monitor, and demonstrate compliance. In fiscal year 1997/1998, the private sector spent an estimated \$103 billion to comply with federal and provincial government regulation (table 14, figure 14). To put this amount in perspective, consider that it is only slightly less than what governments collected in personal income taxes in the same year (\$114 billion). The estimated cost to the private sector of compliance to regulation in fiscal year 1997/1998 exceeds corporate income taxes collected (\$27 billion) and even pre-tax corporate profits (\$86 billion) in that year (figure 15).

The cost of regulatory compliance—though often imposed on businesses—

is borne largely by consumers (Weidenbaum, 2000: 14) since businesses pass on much of the cost of regulatory compliance as higher prices for goods and services (Crews, 2000: 8). In 1997, regulatory compliance cost individual Canadians an estimated \$3,425, or \$13,700 per family of four (table 15). According to Statistics Canada's 1997 survey of household expenditure, the average household size in Canada (10 provinces) is 2.59 (Statistics Canada, 1997: 36). The cost of regulatory compliance absorbed an estimated \$9,300 per household or 24% of an average household's after-tax expenditure of \$39,313. The embedded costs of regulatory compliance thus exceeded spending on every item except shelter in Canadian households' after-tax budgets in 1997 (Statistics Canada, 1997: 62; figure 16).

## Methodology

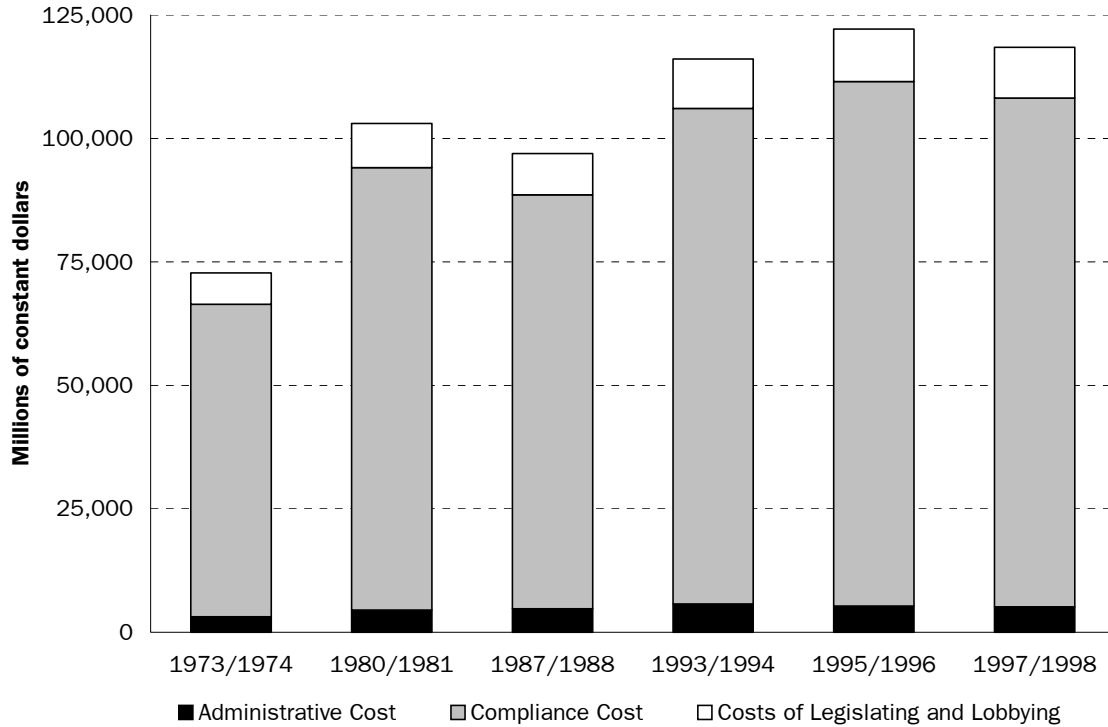
Data on the costs to the public sector of administering regulation were provided by the Office of the Senior Social Scientist, Statistics Canada. The costs to the private sector of compliance were then

**Table 14 Costs of administering and complying with regulation (in millions of constant dollars)**

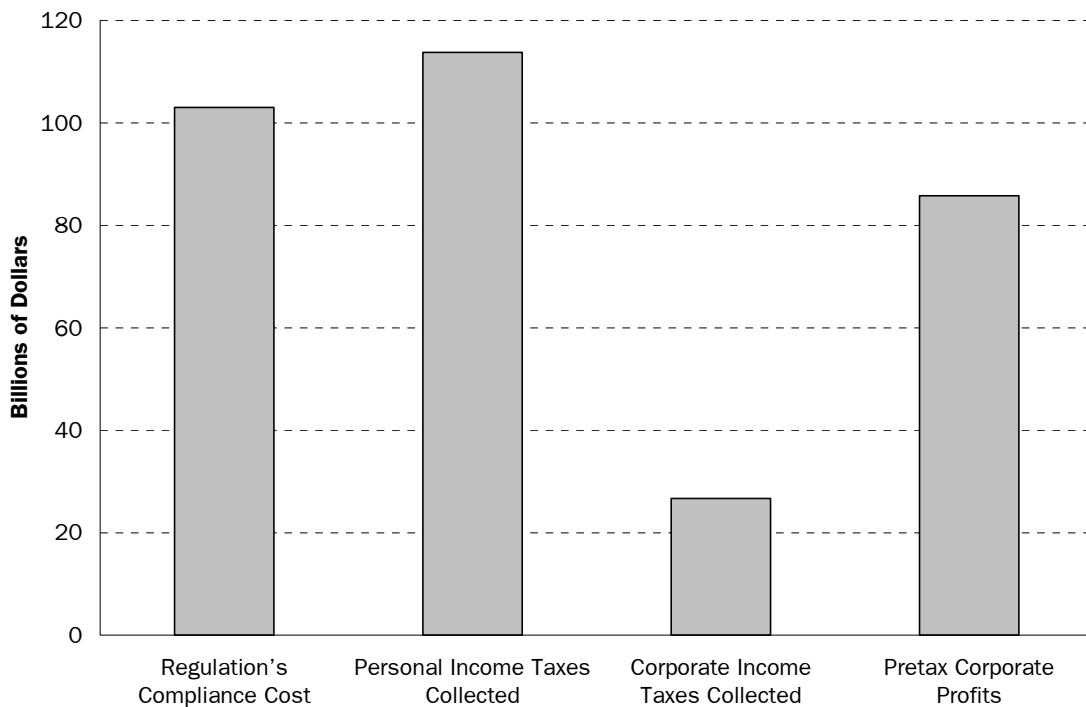
	Fiscal Year					
	1973/1974	1980/1981	1987/1988	1993/1994	1995/1996	1997/1998
Expenditures by provinces and territories (net of transfer payments)	891	1,484	1,649	1,629	1,568	1,605
Expenditures by local government	101	196	242	295	304	294
Expenditures by federal government (net of transfer payments)	2,171	2,799	2,896	3,808	3,439	3,251
Total administrative cost	3,164	4,479	4,787	5,733	5,310	5,151
Compliance cost	63,272	89,579	83,769	100,321	106,205	103,010
Total direct cost	66,436	94,058	88,556	106,053	111,515	108,161
Cost of political activity related to regulation	6,327	8,958	8,377	10,032	10,621	10,301



**Figure 14** Direct costs of regulation and costs of legislating and lobbying (In millions of constant dollars)



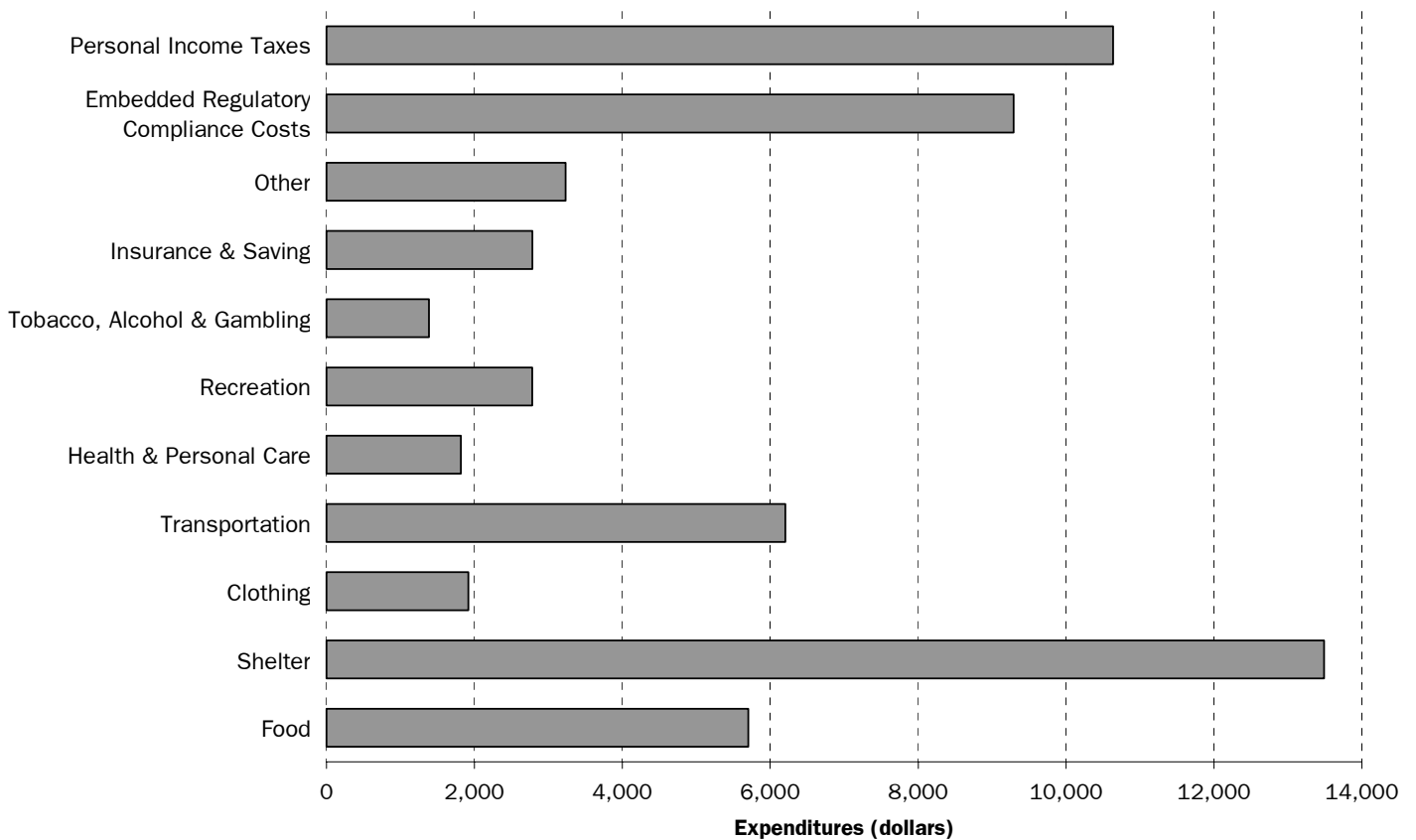
**Figure 15** Cost to the private sector of complying with regulation compared to taxes and corporate profits



**Table 15 Cost per household and per capita of complying with regulation**

Fiscal year	Economy-wide cost in millions of constant dollars	Cost per household (family of four) in constant dollars	Cost per capita in constant dollars
1973/1974	63,272	11,212	2,803
1980/1981	89,579	14,563	3,641
1987/1988	83,769	12,621	3,155
1993/1994	100,321	13,928	3,482
1995/1996	106,205	14,423	3,606
1997/1998	103,010	13,700	3,425

**Figure 16 Average expenditure per household (1997)**



estimated using a multiplier derived by Weidenbaum and DeFina (1976), who estimated that for every dollar that the public sector spent to administer regulatory activity, the private sector spent \$20 to comply with government regulation. To derive this estimate, they gathered and aggregated available estimates of the compliance costs of American federal regulatory programs.<sup>5</sup> Weidenbaum and DeFina assumed that the compliance costs of American federal regulatory programs for which estimates were unavailable were zero. Consequently, their multiplier, 20 to 1, is conservative.

Weidenbaum and DeFina set out to estimate regulation's total cost. As a result, their standard of comparison was *no* regulation, not even regulation that facilitates markets.

Since 1976, other policy analysts have updated Weidenbaum and DeFina's multiplier. The private sector is estimated to have spent \$17.5 for every dollar that the public sector spent to administer regulatory activity in the late 1980s and early 1990s (*Regulatory Affairs*, 1996; Moore, 1995). However, the Center for the Study of American Business has recently returned the multiplier to 20 to 1 (Douglass, Orlando, and Warren, 1997). These ratios of compliance cost to administrative cost are readily applicable to Canada's economy, as Canada and the United States have similar regulatory regimes (Stanbury and Thompson, 1980). Therefore, this study uses a 20-to-1 ratio to esti-

mate compliance costs from administrative costs in fiscal years 1973/1974, 1980/1981, 1995/1996, and 1997/1998, and a 17.5-to-1 ratio in fiscal years 1987/1988 and 1993/1994.

### Costs of legislating and lobbying

Governments and the private sector each incur costs when regulation is made. Governments incur costs when they decide to regulate. Simultaneously, individuals and groups who are likely to be affected by regulation that the government is contemplating incur additional costs to retain experts to lobby politicians and bureaucrats (Strick, 1994: 115). Although the cost of this political activity is difficult to measure, Wiedenbaum estimates that it adds approximately 10% to compliance costs (Weidenbaum, 1979: 38). This means that governments and the private sector spent an estimated \$10 billion on political activity related to regulation in fiscal year 1997/1998 (table 14). These costs are over and above what governments spend to administer regulatory activities, and what the private sector spends to comply with government regulation (Dr. John C. Strick, personal communication, August 15, 2000).

In Canada, the *Lobbyists Registration Act* requires individuals who are paid to lobby federal politicians to register and disclose information such as the name of the client or corporate or organizational employer, the names of the parent or

subsidiary companies that would benefit from the lobbying activity, the subject matters lobbied, and the names of the federal departments or agencies contacted (Industry Canada, 2000). Under revisions to the *Act* brought in 1996, there are three categories of lobbyists. Consultant lobbyists lobby on behalf of a client and may include government-relations consultants, lawyers, accountants, or other professional advisors who provide lobbying services for their clients. Between 1998 and 2000, the number of consultant lobbyists increased 20% from 584 to 702 (table 16). In-house lobbyists are corporate employees managing public affairs or government relations who spend a significant amount of time lobbying. The number of in-house lobbyists has fallen from 367 to 335 (around 9%) between 1998 and 2000. The decrease is attributed to corporate mergers and re-evaluations by company officials of the need to register when lobbying is less than 20% of an employee's duties. Finally, non-profit organizations must register when one or more employees lobby federal politicians and when the lobbying activity of these employees is a significant part of their duties. The number of organizations registered increased roughly 15% from 322 in 1998 to 370 in 2000. The total number of registered lobbyists increased by 10% over that same three-year period (table 16). While it is impossible to know the exact cost of all of this lobbying, it is clear that time and energy devoted to trying to influence legislation and regulations comes at the expense of more productive activities.

**Table 16 Lobbyists active as of March 31**

	Consultant	In-house	Organizations	Total
2000	702	335	370	1,407
1999	618	352	362	1,332
1998	584	367	322	1,273

# A modest proposal to reform regulation

Adding regulation's compliance cost to government spending gives a more complete estimate of the size that government has already attained in Canada's economy (Crews, 2000: 7). The Fraser Institute has calculated that in fiscal year 1997/1998, government spending—\$386 billion—equaled 44% of GDP.<sup>6</sup> Regulation's estimated compliance cost in that year—\$100 billion—amounts to another 12% of GDP. Altogether, then, governments' reach extended to an astonishing 56% of Canada's economy in fiscal year 1997/1998 (figure 17, table 17).

Most regulatory decisions in Canada today are implemented in a knowledge vacuum: governments and the private sector alike are often oblivious to the costs that regulation imposes on society (Mihlar, 1997; Mihlar, 1999). To remedy this situation, policy analysts frequently recommend that governments enhance regulatory accountability through comprehensive regulatory reform.

One such comprehensive proposal is regulatory budgeting, which formally limits the compliance costs that governments' regulatory activities can compel the private sector to incur (Hughes, 1996: 3–4). Regulatory budgeting

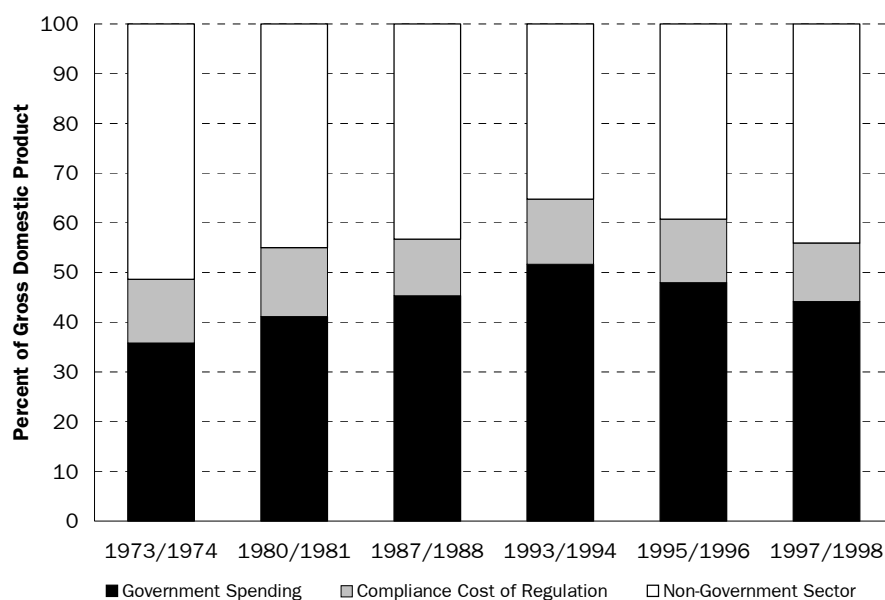
would enhance accountability by asking governments to prioritize their regulatory activities (Crews, 1996), presumably on the basis of cost-effectiveness (Morrall, 1992: 19).

Another comprehensive proposal to reform regulation is to entrench cost-benefit analysis. Ostensibly, this would prevent governments from adding new regulation unless net benefits would result (Hahn and Litan, 1997: 22). Regula-

tion's benefits, however, are difficult to measure and, what is more, governments have strong incentives to overstate benefits and understate costs in order to defend and expand their regulatory activities. As a result, efforts to improve regulatory accountability by conducting cost-benefit analyses for new regulatory initiatives might well be rendered futile by widespread scepticism about the analyses' quality (Lutter, 1999: 41).

Comprehensive proposals to reform regulation are contentious and difficult to implement. A more modest proposal—and a more realistic first step towards reforming regulation—would be to require governments to publish a catalogue of regulatory compliance costs in a detailed and all-inclusive but easily used document (Crews, 2000c: 35). The value of such a catalogue is readily appreciated by considering that, even if governments only collected negligible amounts in taxes, it would still be worthwhile to keep track of them (Crews, 1996). In addition, cataloguing data on compliance costs is the first step toward regulatory budgeting.

**Figure 17 The size of government in Canada's economy**



**Table 17 The size of government in Canada's economy**

	Fiscal Year					
	1973/1974	1980/1981	1987/1988	1993/1994	1995/1996	1997/1998
Gross domestic product (GDP) in millions of current dollars	129,196	315,245	558,106	724,960	807,088	873,947
Government spending in millions of current dollars	46,289	129,720	252,950	374,503	387,142	385,903
Government spending as a percentage of GDP	35.8	41.1	45.3	51.7	48.0	44
Cost of complying with regulation in millions of current dollars	16,524	43,624	63,450	94,913	102,849	103,010
Cost of complying with regulation as a percentage of GDP	13	14	11.4	13.1	13	12
Government spending plus cost of complying with regulation as a percentage of GDP	49	55	56.7	64.8	61	56

Independent estimates of the cost of regulation like this study can provide only the driving force behind enhancing regulatory accountability. Improving disclosure of compliance costs calls upon governments themselves to estimate how much it takes to comply with their initiatives (Hughes, 1996: 3), monitored all the same by aggressive commentary from policy analysts to prevent systemic under-estimation (Crews, 1996).

At the outset, it would be necessary to rely on a variety of sources like industry and academia in addition to government departments and regulatory agencies to accumulate data on the cost of complying with regulation. Over time, constant review would develop a standard methodology for collecting and comparing cost information (Hughes, 1996: 41). To be credible in a policy environment, it would have to be clearly defined and consistently applied (Hughes, 1996: 28). In the meantime, the process would reveal just how much is not known about the cost of regulation in Canada.

What about regulation's indirect costs? As discussed in the introduction to this study, regulation's indirect costs include loss of choice for consumers and of productivity for businesses. A case can be made that governments should avoid cataloguing regulation's indirect costs, on grounds that they are virtually impossible to measure (Weidenbaum, 1979: 38; Crews, 1996). Nevertheless, regulation's indirect costs should at least be acknowledged as failing to do so would massively understate the economic impact of regulation (Crews, 1999: 20). Indeed, indirect costs might exceed the direct costs of administration and compliance (Crews, 1996).

It is time to stop governments from hiding the full costs of regulation. Requiring governments to put on record the off-budget costs that are incurred in complying with government regulation would benefit Canadians enormously. Public disclosure of the cost of regulation in Canada would then be on a par with public disclosure of taxes.

**Notes**

- 1 CANSIM Series D14816, D15055, D15056, and D15072.
- 2 Weidenbaum calls these indirect costs the induced costs of regulation (Weidenbaum, 1979: 36–37).
- 3 Regulations can be called by-laws, commissions, forms, letters patent, ordinances, orders, proclamations, rules, resolutions, tariffs of costs or fees, or warrants. Unlike statutes, which are enacted by democratically elected legislatures, regulations are made by government departments and by Crown corporations called regulatory agencies on authority delegated them by legislatures in statutes called enabling Acts (Department of Justice, 1996: 15). Orders made by courts and administrative tribunals during disputes between two or more people are not regulations, although authors who define economic regulation more expansively than Priest, Stanbury and Thompson (1980) might include them.
- 4 In the United States, the Office of Management and Budget (OMB) tracks the burden of regulation from paper-work. As a result, some American studies of

regulation have separated “paperwork regulation” into its own category (see, for example, Hopkins, 1996). The principal cost in this category is that of complying with the tax code but it also includes the cost of complying with health-care regulatory cost-control systems and cost of meeting federal mandates placed on lower levels of government.

- 5 Weidenbaum and DeFina treat spending on capital outlays as expenses (one-time uses of resources) even though capital’s useful life exceeds one year by definition (that is the way capital outlays are treated in the public accounts).
- 6 CANSIM Matrix 6528, and Series D14816, D15884, and D15689.

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