



**Submission to the Standing Senate Committee on  
National Finance on Bill C-21, *An Act to control the  
administrative burden that regulations impose on  
businesses***

April 8, 2015

The Canadian Chamber of Commerce appreciates the opportunity to provide its perspective to the Standing Senate Committee on National Finance as part of its study of Bill C-21, *An Act to control the administrative burden that regulations impose on businesses*.

In its 2011 submission to the Red Tape Reduction Commission, the Canadian Chamber expressed its appreciation that the federal government acknowledged the significant administrative and cost burdens regulations impose on businesses as well as how they can impede their competitiveness. We also supported the government's recognition that changes were needed.

The burden of regulation can be particularly heavy on small- and medium-sized businesses (SMEs), which are the engines of our economy, providing just shy of 90 per cent of all private sector jobs in Canada<sup>1</sup>. We asked that the government “think small first” where the owner/operator is responsible for compliance along with all other aspects of the business.

Bill C-21 recognizes the concerns of SMEs regarding the burden of regulation by enshrining two Treasury Board rules as legal obligations for government officials to consider when contemplating the creation of new regulations:

#### **“One-for-One” Rule**

1. When a new or amended regulation increases the administrative burden on business, regulators are required to offset – from their existing regulations – an equal amount of administrative burden cost on business.
2. It requires regulators to remove a regulation each time they introduce a new regulation that imposes new administrative burden on business.

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<sup>1</sup> Key Small Business Statistics, August 2013, Industry Canada

- Regulators are required to provide offsets *within two years* of receiving final approval of regulatory changes that impose new administrative burden on business.
- The value of the administrative burden cost savings or cost increases to business are made public in the Regulatory Impact Analysis Statement when the regulatory change is published in the *Canada Gazette*.

## **Small Business Lens**

The **Small Business Lens** requires that regulators consider small business realities and consult early with small businesses in designing regulations. This is intended to hardwire increased sensitivity to the impact on small business into the regulatory development process.

The Small Business Lens applies to regulatory proposals that impact small business and that have nationwide cost impacts of over \$1 million annually. The Lens places the burden of proof on regulators to demonstrate that they have done what they can to minimize direct administrative and compliance costs on small business without compromising the health, safety and security of Canadians or the Canadian environment or economy.

## **Interpreting Bill C-21**

Our concern lies with how the federal government will interpret Bill C-21 when considering new regulations and legislation that is implemented through regulation. To date, we have seen troubling examples where the One-for-One rule is deemed not to apply to proposed regulations although they introduce new administrative burdens on small business. Canada's Anti-Spam Legislation (CASL) is an example. CASL's Regulatory Impact Analysis Statement states that:

"The 'One-for-One' Rule does not apply to this proposal, as there is no change in administrative costs to business. The Regulations define key terms and do not impose any reporting or other administrative requirements on businesses.

The Small Business Lens does not apply to this proposal as the Regulations would not increase administrative or compliance burden on small business. The Regulations provide exclusions to the compliance requirements of the CASL."

The additional obligations imposed upon businesses by CASL are dismissed as irrelevant even though the new regulations clearly impose additional administrative and financial burdens on businesses.

The Commercial Electronic Messages provisions of CASL oblige businesses to obtain consent to send a message electronically to a potential client – the receiver of the message must “opt-in”. In order to comply with this legislation, all businesses had to reconstruct their marketing strategies, policies and procedures and retrain staff.

Investments in technology and processes were required. Many businesses have deemed the exemptions to the regulations as too narrow or inconsistent for their purposes. For many SMEs, the complexity of CASL’s rules, fear of prosecution and penalties that could kill their businesses have forced them to resort to other means of communication, including telemarketing, making these companies less efficient and putting them at a competitive disadvantage to similar companies in other jurisdictions who continue to legally “spam” Canadian businesses and consumers with impunity.

Reforms to the Temporary Foreign Worker Program (TFWP) and the International Mobility Program (IMP) provide another example of where the government has decided that the “One for One Rule” does not apply in its Regulatory Impact Analysis Statement. The fact is the changes have worsened an already poor administration of labour market impact assessments (LMIAs) and LMIA-exempt work permits. The processes at Service Canada and at the processing centres of Citizenship and Immigration Canada (CIC), governing the IMP and the high-skilled stream of the TFWP, have become extremely costly in time, money and effort for employers.

The LMIA is a lengthy and expensive process for employers seeking short-term entry of either high-skilled or low-skilled workers. Each application for each foreign national costs an employer \$1,000, regardless of whether the LMIA issued is “positive” (allowing the employer to request a work permit) or “negative” (refusing the request). There is currently no service standard for processing an LMIA, despite the introduction of a relatively high fee per application. The majority of LMIA requests historically have come from Canadian SMEs.

The new regulations are cumbersome, expensive and administration is inconsistent and Canadian employers' ability to recruit the talent they need in Canada is undermined as a result.

The Canadian Chamber supports Bill C-21 in principle. However, given the real impact on businesses of new regulatory obligations, we recommend that Bill C-21 be amended to include an obligation on the federal government to conduct a more transparent examination of the impacts of its regulations before deeming that the "One for One" Rule and Small Business Lens do not apply. This includes seeking out – and having regard for – the perspectives of the businesses affected.