

EXPECTATIONS FOR SASKATCHEWAN REGULATORS

January 21, 2019
Government of Saskatchewan

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The purpose of these expectations

The Government of Saskatchewan is committed to serving the people of Saskatchewan through programs that protect public health, that promote the welfare of residents, that respect the environment and our natural resources and that encourage economic growth as well as personal freedom and responsibility. These programs include providing financial or other forms of assistance, offering protective services, monitoring economic and social activities, assisting in education, training people and directly regulating economic and social activities.

In carrying out programs, the Government recognizes that certain activities may have to be limited or prohibited, that personal freedom may be restricted and that costs may be imposed. The overall aim, however, is to promote the best possible public good within the limits set by the Government's resources and its legal and constitutional authority.

Regulating activities may have unintended consequences, such as imposing unnecessary costs on those being regulated, discouraging innovation and establishing rules that are inflexible or incomprehensible to those being regulated. If unaddressed, these consequences can slow economic growth and create dissatisfaction and attempts to avoid compliance.

The expectations that are set out in this document are prepared for the purpose of seeing that the Government's objectives of public benefit and economic growth are met, that negative consequences are avoided as much as possible and that the actions of regulators are well managed. All those who are engaged in regulating activities should be aware of these expectations, should ensure that the legislation governing their regulatory programs and their activities in administering that program reflect these expectations and should find ways to apply them to the programs they are administering.

Regulatory activity traditionally involves establishing rules that are to be complied with, monitoring the actions of those regulated to determine if there is compliance and, if there is non-compliance, taking steps to enforce those rules. While the expectations in this paper were designed for regulators, they have an application to almost every program and activity that the Government is engaged in.¹

These expectations are intended to be a guideline and not as a set of inflexible rules. They are meant to be applied using common sense and with an awareness of the unique circumstances and mandate of each regulator.

¹ Some tribunals, commissions and regulators are established to operate at arm's length from government and to exercise their role in a nonpartisan, expert and independent fashion. These expectations are not directed at them. But they may, in their discretion, take them into consideration.

Expectations for the design of regulatory programs

A well designed regulatory program is essential to achieve its objectives. A well designed program will also assist the regulator in administering the program and allow those who are being regulated to better understand the program and their duties and rights. This will encourage compliance and cooperation between the regulator and those being regulated.

The following are expectations to be considered when designing a regulatory program:

1. *Establish clear objectives*

Why is the regulatory program being established? What issues or concerns arose that the program was created to address? What outcomes does the regulator intend to achieve? Are there alternatives to regulation? What are other jurisdictions doing to address these issues or concerns? What will be the impact on those being regulated? The regulator should have a mission statement or statement of purposes that addresses these questions in clear and accessible language. The objectives should be prepared with the understanding that the minister responsible for the regulator, Cabinet and the Legislative Assembly oversee the regulator. In establishing objectives, a regulator should consult with those who may be affected by the regulatory program, including Indigenous peoples, and with other ministries and branches of government that may have expertise or experience to provide or that may be regulating some part of the matters to be regulated by the regulatory program.

The regulator should focus on the source of any harms or non-compliance rather than attempting to control harms by setting vague or unreachable goals. The excellent regulator will set the right focus and develop the right measures that aim at reducing or removing the harms and will develop measurable outcomes that can be used to monitor the effectiveness of the regulatory program.

2. *Set out clear powers and responsibilities*

Every regulator must have its powers and responsibilities clearly set out in its governing legislation. A regulator does not have any inherent powers beyond those given to it by the legislature.² When designing the regulatory program, a regulator should carefully consider what powers it will require. The regulator should also understand what responsibilities it will have and ensure that a reference to these is incorporated in its legislation.

² Regulators should note the following statement:

Aside from a few prerogative powers of the Crown, all of the powers exercised by the executive derive from Parliament. Acts of Parliament frequently grant powers to particular persons to do particular things: to make regulations, to decide individual cases, to perform various duties . . . Whoever is the delegate, the source of his (or her) power or duty is Parliament. In particular, members of the executive (whether the cabinet, “the government” or civil servants) do not possess any inherent power due to their position or office. [Jones and de Villars, *Principles of Administrative Law*, (3rd ed.), p. 24]

Significant powers, such as those dealing with inspections, investigations and compliance measures, must be set out in the regulator’s Act and not in regulations or subordinate documents.

A well designed regulatory program will have proper means to ensure compliance, keeping in mind that the primary purpose of compliance powers is to further the objectives for which the regulatory program is designed rather than punishing non-compliance.³

3. *Reflect proper accountability*

Every regulator is ultimately accountable to elected officials, including the minister responsible for the regulator, Cabinet and the Legislative Assembly. This accountability should be reflected in the regulator's legislation, including the duty to prepare regular reports for tabling in the Legislative Assembly and to have its financial statements properly audited.⁴

While regulators must acknowledge the role of elected officials and follow all ministerial decisions that are lawfully made, they are responsible for making decisions that are legal, ethical, reputable and consistent with their responsibilities. They should be guided by applicable legislation, the common law, their professional ethics and their duties as public servants. Regulators should give honest and impartial advice. They must advise if a proposed action or decision is illegal or improper and also consider if there are any alternative solutions that could be used to address the issues being raised.

Some tribunals, commissions and regulators are established as quasi-judicial or independent agencies. They are expected to make decisions and exercise their discretion based on expertise, the relevant law and the mandate for which they were established and free from other influences. As well, their relationship with a minister and Cabinet is different from that of a regulator located within a ministry.

4. *Ensure compliance with laws*

Every regulatory program must operate in compliance with constitutional and legal principles. In designing the regulatory program, the regulator must take care to ensure that the program is within the scope of the province's constitutional powers, that it respects Indigenous rights and that it complies with laws of general application to the government, including laws governing Saskatchewan's finances, records retention and preservation under archives legislation, the collection of revenues and the collection and disclosure of personal, health or other confidential information. Every regulator should be aware of these laws when designing its regulatory program.

³ Prosecuting for contravention of provincial regulatory schemes is time consuming and expensive. Suspending or cancelling a licence, permit or benefits under legislation is often more effective and timely in achieving compliance.

⁴ Section 13 of *The Executive Government Administration Act* SS 2014, c E-13.1, requires every ministry, secretariat and agency of the executive government to prepare an annual report for tabling in the Legislative Assembly. Note that the Act does not apply to Crown corporations. As a result, Crown corporations must include these matters in their legislation.

Expectations for administering the regulatory program

1. *Predictable and consistent outcomes*

The regulator should be predictable and consistent in the manner in which it administers its program and in the decisions it makes. Those being regulated should know what to expect from the regulator and be able to make their plans accordingly. This does not mean, however, that the regulator will treat every person without variation. In dealing with any regulated person, the regulator must consider the regulated person's specific circumstances and make any reasonable accommodation or changes, as long as the regulator's mandate is met.

2. *Be fair, proportionate, equitable and respectful*

The regulator must be fair, proportionate and equitable in the manner in which it treats regulated persons. It should base its regulatory decisions on the past actions and compliance record of the person being regulated and on the level of risk to the public and to others who may be directly affected by actions of the person being regulated. When dealing with regulated persons and the public, the regulator should be respectful, open and professional. This should especially be kept in mind when dealing with difficult or strained situations.

3. *Provide notice for proposed decisions and for representations by regulated persons*

The regulator should provide notice to an individual regulated person of the decision or action it proposes to take and give that person an opportunity to explain its position respecting the proposed decision or action. When making its decision, the regulator must take into consideration the regulated person's representations. If the regulator considers that it must act immediately to protect the public or a vital interest, it should still provide the regulated person with notice of its decision and give the regulated person an opportunity to present its case within a reasonable period after making the decision. The right to notice and representations and the procedures for them should be set out in the regulator's legislation.⁵

If a proposed decision or action has an application to a broad group of persons or an area of Saskatchewan, the regulator should consider how it can most appropriately draw its proposed decision or action to the attention of those who may be affected.

A regulator should listen to all interested parties on an ongoing basis and encourage comments and suggestions.

⁵ A power to take immediate action without providing advance notice must be set out in the regulator's Act.

4. *Explain decisions*

Every regulator should provide notice of each of its decisions to the persons affected by the decision and explain the reasons for the decision. The reasons should address the concerns and representations presented to it.

5. *Respect confidentiality*

All personal, health and sensitive commercial, scientific, technical and economic information provided in confidence, as well as all information, the disclosure of which could reasonably be expected to result in an undue benefit or loss to a person, should be kept confidential and not be disclosed or shared unless permitted by law or with the consent of the person providing the information. Persons providing the information should be informed by the regulator respecting how the regulator will deal with that information.⁶

6. *Eliminate unnecessary or duplicative actions*

Every regulator should regularly review its practices and eliminate unnecessary or duplicative actions. Is the information being requested necessary? Is it available from another source or by another means? Is the same information being requested on multiple occasions? Can information be provided in more accessible ways, including electronically? Can the steps the regulator takes in making a decision or taking an action be streamlined and can the actions that a regulated person must comply with be simplified?

7. *Have materials available in an accessible and clear format and provide access to those being regulated*

Every regulator should have its decisions, policies, procedures and guidelines available for review in a clear and accessible fashion. This should include making that information available electronically on a publicly available website. Information respecting the regulator and its policies should be easy to locate, well organized and written in understandable terms. As well, every regulator should provide accessible, timely support to help regulated parties understand and meet their regulatory obligations.

In addition, regulators should provide simple and straightforward ways to engage with those they regulate.

⁶ The regulator should be aware of how confidential information is to be dealt with in *The Freedom of Information and Protection of Privacy Act*, *The Local Authority Freedom of Information and Protection of Privacy Act* and *The Health Information Protection Act* and develop procedures for properly handling that information.

8. *Develop skills of staff*

Every regulator should ensure that its staff members have the training, resources and support they need to carry out their roles. Staff should be aware of the regulator's mission statement or statement of purpose, its objectives, its powers and its procedures. Staff should also be assisted in knowing how to deal with regulated persons and the public and how to deal with confidential information.

9. *Innovate and adjust to changing circumstances*

Every regulator should be innovative, looking for more efficient and economical ways to carry out its responsibilities and for ways to support or encourage economic growth. As well, every regulator should have the capacity to adjust to changing circumstances. New technology, new social and cultural practices and new judicial decisions can affect the manner in which the regulator administers its program.

10. *Undertake regular reviews*

Every regulator should regularly review its procedures, its outcomes and its legislation to assess whether they are up to date, workable and consistent with best practices and its needs. Are its powers adequate and consistent with its duties and the general law? Are the outcomes it is looking for being met? Is its mandate still relevant?

The regulator should review its governing Act on an ongoing basis and keep in mind that all of its business-related regulations are subject to a mandatory 10-year review.

In undertaking its reviews, the regulator should consider the best practices within Saskatchewan and also those of other jurisdictions.

11. *Advise the minister on a timely basis*

Every regulator should advise its responsible minister of any emerging issues on a timely and ongoing basis. The regulator should advise the minister respecting any concerns being raised by regulated persons and the public and respecting any issues respecting its resources and any pending or completed legal actions it is involved with. It should also make the minister aware of any issues respecting its resources and powers and its relationship with regulated persons.