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## REGULATORY BUDGETING: LESSONS FROM CANADA

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### INTRODUCTION

American conservatives have not tended to look to Canada for inspiration. Canada has been derided as a land of big government, high levels of taxation and, of course, single-payer health care. Pat Buchanan famously called it "Soviet Canuckistan" in 2002.<sup>1</sup>

But Canada deserves a second look. It has been home to some interesting developments in recent decades. The size of government has fallen from historic highs (total government spending as a share of gross domestic product peaked at 53 percent in 1992),<sup>2</sup> the country's tax system has become more competitive relative to the United States (especially

Introduction	1
Canada's policy transformation	2
What is regulatory budgeting?	3
Regulatory budgeting in British Columbia	4
Regulatory budgeting at the federal level	6
The growing regulatory state in the United States	8
Lessons from Canada	9
Conclusion	9
About the author	10

FIGURE 1:  
British Columbia's regulatory requirement count 5

TABLE 1:  
Key statistics on the One-for-One Rule, 2012-13 to 2013-14 7

with respect to corporate income taxes),<sup>3</sup> and successive governments have pursued pro-growth macroeconomic policies, such as trade liberalization and regulatory reform.

Canada still has a single-payer health-care system, but the nation otherwise has taken important steps to put its economic-policy framework and public finances on solid footing. As a Canadian-born economist for a U.S. think tank put it:

Canada reversed course and cut spending, balanced its budget and enacted various pro-market reforms. The economy boomed, unemployment plunged, and the formerly weak Canadian dollar soared to reach parity with the U.S. dollar.<sup>4</sup>

1. Jonah Goldberg, "Soviet Canuckistan," *National Review Online*, Nov, 12, 2002. <http://www.nationalreview.com/article/205330/soviet-canuckistan-jonah-goldberg>; and Colin Freeze and Graeme Smith, "Head to the Bunkers; the Yankees Are Coming," *Globe and Mail*, Nov. 9, 2002. <http://www.theglobeandmail.com/news/national/head-to-the-bunkers-the-yanks-are-coming/article1028032/>

2. Sean Speer and Charles Lammam, "The Proper Size of Government," *The American*, March 23, 2014. <https://www.aei.org/publication/the-proper-size-of-government/>

3. Duanjie Chen and Jack M. Mintz, "The 2014 Global Tax Competitiveness Report: A Proposed Business Tax Reform Agenda," SPP Research Papers (University of Calgary School of Public Policy), February 2015. <http://www.policyschool.ucalgary.ca/sites/default/files/research/tax-competitiveness-chen-mintz.pdf>

4. Chris Edwards, "We Can Cut Government: Canada Did," Cato Policy Report, (Cato Institute) May/June 2012, p. 1 <http://object.cato.org/sites/cato.org/files/serials/files/policy-report/2012/6/cprv34n3-1.pdf>

As part of this policy transformation, Canadian governments – both at the national and subnational (provincial) levels – have experimented with regulatory budgeting. The goal has been to arrest the growth of, and even begin to shrink, the regulatory state for the sake of encouraging investment and fostering economic activity. Early evidence at the federal level suggests that regulatory reform has been a useful part of Canada’s pro-growth policy agenda. Indeed, Canada’s experimentation with regulatory budgeting has attracted attention in the United States.<sup>5</sup>

This paper outlines Canada’s experience with regulatory budgeting and considers what lessons can be derived for the U.S. context. Regulatory reform, in general, and regulatory budgeting, in particular, can bring greater accountability, discipline and transparency to the policy process. This, in turn, improves conditions for investment and economic activity. The three primary lessons from the Canadian experience are:

1. Political leadership is a critical ingredient;
2. The initial regulatory baseline from which future changes are compared must be comprehensive; and
3. The methodology used to estimate regulatory costs needs to be credible and inclusive.

This paper considers just the main political conditions and policy-design issues that were part of Canada’s experience with regulatory budgeting. It does not address regulatory-budgeting regimes in other jurisdictions, such as the United Kingdom.<sup>6</sup> It also does not consider the extent to which regulatory reform can help to restore the role of the legislative branch with respect to law and rulemaking.<sup>7</sup> These are substantive questions in their own right that have received considerable attention elsewhere and can be part of further analysis in the future. The modest goal here is to bring Canada’s lessons from regulatory budgeting to bear as the U.S. Congress considers how best to reform the federal regulatory system.

## CANADA’S POLICY TRANSFORMATION

Canada’s reputation for big government is rooted in the second half of the 20th century. In fact, the Canadian state was actually smaller than the American government sector

until roughly 1960.<sup>8</sup> However, Canada thereafter followed a divergent path of more spending, higher taxes and regulatory sprawl. Scholar Brian Lee Crowley has documented how the twin challenges of a massive influx of “baby boomers” (the largest such boom in the industrialized world) and the rise of Quebec nationalism contributed to this significant expansion in the size and scope of government.<sup>9</sup>

But this rise in state intervention was not limited to social-welfare spending. Growing interest in the concept of so-called “industrial policy” provided the government with the intellectual basis to permeate the economy with mandates, quotas and subsidies for targeted sectors. It was a recipe for *dirigisme* and poor economic outcomes.

Public ownership was one tool employed by Canadian governments to impose state decision-making on private-sector activity and the allocation of capital more generally. The 1975 establishment of Petro-Canada, a state-owned oil-and-gas company, was a major symbol of this newfound technocratic confidence, but hardly its only example.<sup>10</sup> Provincial governments also intervened in the market through public ownership and public-investment funds. The Province of Quebec was the most enthusiastic proponent of economic statism, earning the moniker “Quebec Inc.” for its willingness to allocate resources in the marketplace directly.

Central planning also showed itself in the growth of the regulatory state. A 2001 study published by the Fraser Institute, a market-based think tank in Canada, tracked growth in the number of regulations and their estimated cost on individuals and businesses.<sup>11</sup> The report tallied 117,000 new federal and provincial regulations enacted over the 24-year period between 1975 and 1999 – an average of 4,700 per year. The report’s authors estimated the total direct cost of Canada’s regulatory burden (administrative and compliance) increased by 63 percent over the same period. The absence of any regulatory limits or requirements for cost-benefit analysis allowed this regulatory expansion to proceed unabated.

Notwithstanding the growing evidence of crony capitalism and an enlarged regulatory state, the most evident manifestation of Canada’s flirtations with big government were persistent deficit spending and growing government debt.

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5. Danny Vinik, “A Canadian Idea Rubio likes,” *Politico*, June 25, 2015. <http://www.politico.com/agenda/story/2015/06/a-canadian-idea-rubio-likes-000118>

6. Jeffrey A. Rosen and Brian Callanan, “The Regulatory Budget Revisited,” *Administrative Law Review*, September 2014. [http://www.kirkland.com/files/The\\_Regulatory\\_Budget\\_Revisited.pdf](http://www.kirkland.com/files/The_Regulatory_Budget_Revisited.pdf)

7. Kevin R. Kosar, “How to Strengthen Congress,” *National Affairs*, Fall 2015. <http://www.nationalaffairs.com/publications/detail/how-to-strengthen-congress>

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8. J. Stephen Ferris and Stanley L. Winer, “Just How Much Bigger is Government in Canada? A Comparative Analysis of the Size and Structure of the Public Sectors in Canada and the United States, 1929-2004,” *Canadian Public Policy*, June 2007. [http://http-server.carleton.ca/~winers/papers/Comparative\\_Size\\_Proofs\\_CPP\\_June\\_%2007.pdf](http://http-server.carleton.ca/~winers/papers/Comparative_Size_Proofs_CPP_June_%2007.pdf)

9. Brian Lee Crowley, *Fearful Symmetry: The Fall and Rise of Canada’s Founding Values*, Toronto: Key Porter Books, 2009.

10. Editorial, “Petro-Canada’s Grand Delusion,” *Financial Post*, 2009. <http://www.financialpost.com/opinion/story.html?id=3311dc6e-510e-419c-adc8-ab52647a1912>

11. Lauren Jones and Stephen Graf, *Canada’s Regulatory Burden: How Many Regulations? At What Cost?* Fraser Forum (Fraser Institute), August 2001. <https://www.fraserinstitute.org/sites/default/files/CanRegBurden.pdf>

The federal government ran deficits for 27 consecutive years (peaking at 8.1 percent of gross domestic product in 1984-85) before a fiscal crisis in 1995 precipitated dramatic reforms.<sup>12</sup> Detailing those reforms is beyond the scope of this paper, but it's worth noting that federal program spending (excluding debt interest payments) was cut by 9.7 percent and government employment fell by 14 percent. The result was that total public spending as a share of gross domestic product was reduced by more than one-third and total public debt plummeted from 80.5 percent of gross domestic product in 1997-98 to 45 percent a decade later.<sup>13</sup> It was a dramatic fiscal turnaround.<sup>14</sup>

Initially, the improvement in the country's public finances was not matched by a commensurate slowing of the growing regulatory state. Interest in regulatory reform remained largely a subject for think-tank scholars and small-business lobbyists. The regulatory process lacked transparency and accountability and the economic cost imposed by regulations was inadequately considered in the policy development process. As two economists put it in 2001:

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.<sup>15</sup>

Major reform was needed.

## WHAT IS REGULATORY BUDGETING?

Regulatory budgeting aims to bring greater accountability, discipline and transparency to the regulatory process. Toward these ends, it employs traditional budget concepts to manage regulatory costs. Regulatory budgeting requires government departments and agencies to price their "regulatory expenditures," just as they do fiscal expenditures.

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12. As a January 1995 *Wall Street Journal* editorial said: "Turn around and check out Canada, which has now become an honorary member of the Third World in the unmanageability of its debt problem. If dramatic action isn't taken in the next month's federal budget, it's not inconceivable that Canada could hit the debt wall... it has lost its Triple-A credit rating and can't assume that lenders will be willing to refinance its growing debt." See Editorial, "Canada Bankrupt?" *Wall Street Journal*, Jan. 12, 1995.

13. Brian Lee Crowley and Robert P. Murphy, "Truth in Labeling: Why the Critics are Wrong and Canada's Fiscal Turnaround is Relevant to America Today," MLI Commentary (Macdonald-Laurier Institute), September 2012. <http://www.macdonaldlaurier.ca/files/pdf/Northern-Light-Commentary-September-2012.pdf>

14. There have been some setbacks since this period of sustained fiscal reform. The federal government ran budgetary deficits during the global economic recession. The recent election of a left-wing prime minister in October 2015 likely means a return to protracted deficit spending. Provincial governments have also reverted to deficit spending. Recent credit downgrades in Ontario and Alberta suggests markets are growing concerned with their fiscal profligacy. Perhaps the conditions for a new round of fiscal reform are taking shape.

15. Jones and Graf, 2001.

Regulatory budgeting is based on the premise that regulatory costs – the administrative costs incurred by the state to enforce a regulation and the compliance costs incurred by individuals and businesses to conform to a regulation – are conceptually similar to government expenditures through the budget process. While governments regularly follow accounting standards and principles with respect to fiscal spending, regulatory costs or "expenditures" tend not to be transparent or to require comparable prioritization and trade-offs.

The regulatory budget thus operates analogously to the fiscal budget. Each year, the government establishes an upper limit on the economic costs of its regulatory activities. It then apportions that expenditure cap across the government to various departments and agencies, who are expected to live within their respective regulatory budgets.

How the government chooses to define "regulation" for the purposes of establishing a budget is a critical design feature. It could be sketched broadly to incorporate all impositions that stem from legislation, regulation and other policies, or it could be more limited in scope, to include only regulations and their accompanying requirements. Decisions must be made as to whether to carve out specific kinds of regulatory requirements, such as those associated with international treaties or that have health or safety implications. An even narrower approach would be to impose limits on administrative and compliance costs only for new laws or those that are reauthorized.

Irrespective of the baseline, the regime requires that departments and agencies can only exceed their budgetary limit by offsetting the costs of new regulations with "savings" realized by eliminating existing regulatory requirements. The expectation is that this comprehensive process provides incentives to review the existing stock of regulatory requirements regularly. It also rewards simplifying or removing outdated and ineffective regulations.

An alternative to full regulatory budgeting is a partial model, whereby a government chooses to freeze regulatory expenditures at current levels. This would require that offsetting reductions in the administrative and compliance costs of current regulations must be identified and implemented whenever new regulations are enacted. The upside of this approach is that it reduces the administrative burden on the system; the only information required is a cost estimate of new regulations relative to the burden imposed by the regulations slated for elimination. This incremental model still would allow for greater control over total regulatory costs, but would diminish the potential for a more active and effective management of the regulatory budget.

Estimating the cost of regulations is the linchpin to regulatory budgeting.<sup>16</sup> It is not a simple undertaking. Under various methodologies, cost-estimate inputs could include direct compliance expenditures, such as paperwork, new equipment or employee training; opportunity costs that result from time and resources dedicated to compliance rather than other productive activities; or the costs of resources that businesses and trade associations expend to influence regulation. There also are limitations inherent in the fact that cost estimates tend to be static. They frequently fail to account for new technologies that may lower compliance costs or for new policies in other jurisdictions that may interact with or influence those compliance costs. Even the most vocal champions of regulatory budgeting concede that regulatory cost estimates are imperfect and greatly influenced by the underlying assumptions.

But cost estimates do not need to be infallible for the system to work. They just need to be seen as defensible, unbiased and a reasonable basis for making trade-offs with respect to regulatory processes. Part of the preoccupation with the limitations of regulatory budgeting stems from an overly generous assessment of the precision of fiscal budgeting. There are countless examples of fiscal projections at the macro-level and for individual spending and tax measures that prove to be inaccurate, sometimes wildly so. This hardly makes the entire budgeting process invalid. As a former economist with the Office of Management and Budget has said:

These practical problems [of cost measurement]... are not insurmountable and mainly differ in degree from their fiscal analogue. For example.... the spending forecasts for fiscal budgets do not have to be perfectly accurate for the fiscal budget process to be effective in controlling spending. As long as they are not systematically underestimated, projected cost ceilings serve as a constraint. Likewise the spending forecasts for regulatory budgets do not necessarily have to be accurate for the regulatory budget process to act as a constraining device for regulatory spending.<sup>17</sup>

The key to an effective regulatory budgeting model is to determine how comprehensive the baseline will be and what methodology will be used to calculate the overall regulatory cost. The bias should be toward a comprehensive baseline and an inclusive cost estimate. This will help ensure the system is robust and less susceptible to bureaucratic gaming. Canada's experience with regulatory budgeting provides

practical insight into these two fundamental design questions, as well as the importance of political buy-in and leadership.

## REGULATORY BUDGETING IN BRITISH COLUMBIA

The provincial government of British Columbia was Canada's first to make regulatory reform part of its policy agenda. In 2001, the province elected a new market-oriented government – headed by the Liberal Party and its leader, Gordon Campbell – following several years of poor economic performance (or what became known as the province's "dismal decade"). Regulatory reform was a major part of the government's pro-growth agenda. In fact, its election manifested a commitment to reduce the province's regulatory burden by one-third in three years.

Canadian economist and small-business advocate Lauren Jones has documented the extent to which the province's regulatory burden was contributing to its economic malaise. As she notes, restaurants were told what size televisions they could have in their establishments, and forest companies were told what size nails they could use to build bridges over small streams.<sup>18</sup>

It was in this context that the B.C. government launched its ambitious regulatory-reform agenda. It is worth delving into the details of what the B.C. government actually did.

The first signal of the government's commitment to regulatory reform was the appointment of Kevin Falcon, a young, dynamic conservative, as the Cabinet minister responsible for deregulation. Such a high-level position had never before existed. The move marked a powerful sign of the primacy the Liberals placed on regulatory reform and the government's commitment to reduce the province's regulatory burden.

The new minister's first step was to conduct a count of the province's "regulatory requirements" for the purposes of producing the one-third reduction target. Establishing the so-called "baseline" is a critical determinant of an effective reform agenda. A narrow baseline with significant carve-outs for certain types of regulations (for instance, ones related to health and safety) or that excludes nonregulatory "red tape" (such as legislative impositions) undermines the effectiveness of a regulatory budgeting exercise.

To its credit, the B.C. government opted not to limit its baseline to the number of regulations, on grounds that each individual regulation could impose numerous requirements. For

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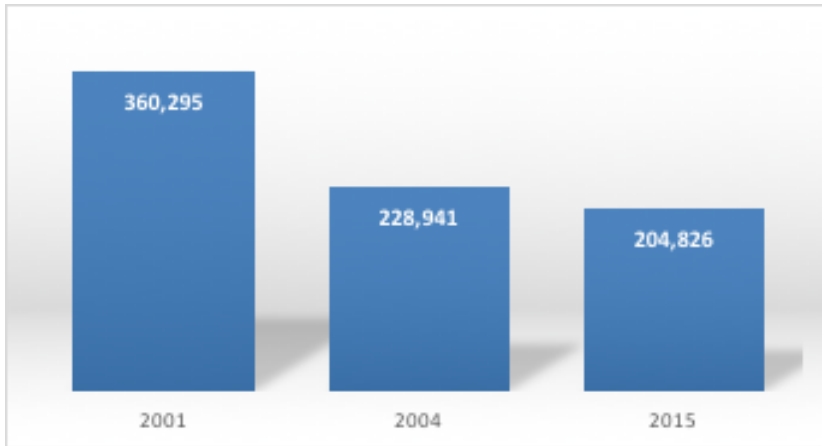
16. For more on regulatory budgeting, see Jeffrey A. Rosen and Brian Callanan, "The Regulatory Budget Revisited," *Administrative Law Review*, September 2014. [http://www.kirkland.com/files/The\\_Regulatory\\_Budget\\_Revisited.pdf](http://www.kirkland.com/files/The_Regulatory_Budget_Revisited.pdf); See also Nick Malyshev, "A Primer on Regulatory Budgeting," *OECD Journal on Budgeting*, 2010. <http://www.oecd.org/gov/budgeting/48170563.pdf>

17. Clyde Wayne Crews Jr., "Promise and Peril: Implementing a Regulatory Budget," *Competitive Enterprise Institute*, April 1996. <https://cei.org/PDFs/promise.pdf>

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18. Laura Jones, "Regulatory Reform: Lessons from Canada," *Real Clear Policy*, Dec. 21, 2015. [http://www.realclearpolicy.com/blog/2015/12/21/regulatory\\_reform\\_lessons\\_from\\_canada\\_1499.html](http://www.realclearpolicy.com/blog/2015/12/21/regulatory_reform_lessons_from_canada_1499.html)

FIGURE I: BRITISH COLUMBIA'S REGULATORY REQUIREMENT COUNT



Source: Regulatory Reform BC, March 2015

instance, B.C.'s Workers Compensation Act included a mere nine regulations, which translated into a whopping 35,308 regulatory requirements. The government chose a broad definition of a "regulatory requirement" to encompass any "compulsion, obligation, demand or prohibition placed by legislation or regulation on an individual, entity or activity."<sup>19</sup> This provided a robust baseline for regulatory reform.

Each ministry (comprising various departments and agencies) was directed to conduct its own count of all the regulatory requirements contained in statutes, regulations and policy. A central regulatory-requirement-count database, administered by the newly created Deregulation Office, was established for baseline and reporting purposes. The initial count found roughly 360,000 regulatory requirements.

This calculation of the province's regulatory requirements was comprehensive, but crude. A simple counting exercise (the B.C. government actually used interns for the initial cataloguing) provides for a degree of precision that was credible, especially given the new government's short timeline to achieve its regulatory-reduction target. But the failure to distinguish between types of regulatory requirements; the extent to which they had broad-based applications or affected only a small number of citizens or businesses; and their respective economic impacts represented significant limitations on B.C.'s experience.

19. Laura Jones, "Strengthening of Economic Competition and Regulatory Improvement for Competitiveness in Mexico: A Case Study on British Columbia, Canada: Successful Practices and Policies to Promote Regulatory Reform and Entrepreneurship," OECD, 2009. <http://www.oecd.org/gov/regulatory-policy/44981275.pdf>. The definition has since been revised to become even more comprehensive. The province's latest regulatory policy statement stipulates that a regulatory requirement is: "An action or step that must be taken, or piece of information that must be provided in accordance with government legislation, regulations, or associated policies and forms, in order to access services, carry out business or pursue legislated privileges." Regulatory Reform BC, Regulatory Reform Policy, updated October 2015. [http://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/regulatory-reform/pdfs/reg\\_reform\\_policy\\_oct\\_2015\\_update.pdf](http://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/regulatory-reform/pdfs/reg_reform_policy_oct_2015_update.pdf)

The onus fell on departments and agencies to review their respective regulatory requirements to determine which ones should be reformed or repealed and to follow a prescribed "regulatory criteria checklist" when proposing new legislation, regulations or rules.<sup>20</sup> The checklist set out several questions in 11 different categories: reverse onus, cost-benefit analysis, competitive analysis, streamlined design, replacement principle, results-based design, transparent development, time and cost of compliance, plain language, simple communications and, finally, sunset review/expiry principle. Each Cabinet minister was required to complete the checklist on behalf of his or her department, justify the case for enacting a new regulation and, in turn, set out how many regulatory requirements would be added and eliminated and the net impact on the department's overall regulatory burden.

Cabinet ministers were thus responsible to justify the introduction of new regulatory requirements using these criteria and to match each new requirement with a plan to eliminate at least two offsetting requirements. This decentralized model helped create internal buy-in and placed the decision-making about which regulatory requirements to eliminate with departmental experts. It also shouldn't be underestimated how much political leadership was needed from the premier and ministers to support the overall goal of deregulation. The bureaucracy ultimately abandoned its resistance when it realized that the political arm of the government would not relent.

The results were impressive. The provincial government achieved a 37 percent reduction by its three-year deadline. It subsequently established a "no net increase" pledge that

20. Ibid.



has been extended several times.<sup>21</sup> The most recent extension was made early in 2015 and reaches to 2019.

The B.C. government's focus on regulatory reform was not fleeting. Not only did it achieve its short-term target, but it kept the reforms in place to curb "regulatory creep"—that is, the gradual return of the red-tape burden. The outcome has been that B.C. has reduced its regulatory requirements on individuals and businesses by 43 percent over the past roughly 15 years. In turn, the province has been cited as a world leader in regulatory reform, in general, and regulatory budgeting, in particular.<sup>22</sup>

## REGULATORY BUDGETING AT THE FEDERAL LEVEL

The national election of Stephen Harper's Conservative Party in 2006 put small-business issues at the center of the federal government's agenda. Chief among them was regulatory reform.

Harper was a proponent of markets and understood that the regulatory state disproportionately burdens small businesses. His new government experimented with different "red-tape reduction" initiatives early in his tenure. In order to rationalize the system, these efforts focused more on housekeeping than structural reform and involved eliminating specific irritants and unenforced or obsolete regulatory requirements. The government thus could highlight progress, even if small businesses discerned only a limited change in their interaction with the federal state.

The regulatory reform-agenda grew more ambitious in 2010 and 2011, as the government grappled with a budgetary deficit. It sought structural reforms with limited fiscal costs. Regulatory budgeting soon emerged as one of its top policy priorities.

It is important to note that Prime Minister Harper was a direct champion of regulatory reform.<sup>23</sup> He was personally involved in its conception and, during its development, met frequently with small-business stakeholders. A commitment to cut "red tape" and enact structural reforms was reflected in successive Speeches from the Throne (similar to the president's State of the Union); back-to-back Conservative

Party election manifestos; and multiple federal budgets. There could be no mistake that the political arm of the government was determined to deliver substantive reforms.

The federal government's adoption of regulatory budgeting drew from the experience in British Columbia. The Harper government understood that having a comprehensive baseline and inclusive costing methodology were critical design questions that needed to be addressed. It's fair to say the government's initial plan got it effectively half right.

The federal government went with a narrower baseline than in British Columbia. The inventory was limited to the burden imposed by regulation. It did not account for broader "regulatory requirements" that stem from legislation, regulation and other policies. The decision was driven, in part, by political pressure to show early progress on the regulatory file and by bureaucratic resistance to a broader count. The government subsequently came to regret this decision. As part of its 2015 election manifesto, it promised to expand the baseline to incorporate requirements from legislation and other policies, but the Conservatives lost that year's parliamentary elections.

Even with the narrower baseline, the Harper government was able to identify a considerable number of regulatory requirements on individuals and businesses. A decentralized approach was taken to calculate the baseline, with departments and agencies reporting to a central agency. The resulting Administrative Burden Baseline totaled 129,860 federal requirements, comprising regulations and related forms.<sup>24</sup> It is broken down by department and agency and made available publicly, and it is to be updated annually to maintain transparency and track the government's progress.

Beyond simply calculating the existing stock of regulations, the baseline quantified their economic impact. The purpose was to ensure that regulatory budgeting accounted for both the size and scope of the regulatory burden. The estimate was conducted using the Standard Cost Model, which seeks to estimate the amount of time and resources that businesses spend complying with regulations.<sup>25</sup> The Standard Cost Model is a broadly accepted measurement, which also is now used in the Netherlands, Denmark and Norway as part of those nations' regulatory reform programs. It provides for granular estimates of administrative burdens imposed on businesses, down to the level of individual activities. The result was that the federal government's measurement of the regulatory baseline was more inclusive and sophisticated than in British Columbia.

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21. Regulatory Reform BC, "Measuring Progress on Regulatory Reform," March 2015. [http://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/regulatory-reform/pdfs/march\\_2015\\_rr\\_overview\\_by\\_ministry\\_web.pdf](http://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/regulatory-reform/pdfs/march_2015_rr_overview_by_ministry_web.pdf)

22. Laura Jones, "Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?" Mercatus Center, George Mason University, November 2015. <http://mercatus.org/sites/default/files/Jones-Reg-Reform-British-Columbia.pdf>

23. Harper called burdensome regulations a "silent killer of jobs" in a January 2011 speech. See Maria Babbage, "Conservative Bill to Tackle Red Tape for Small Businesses," *Globe and Mail*, Jan. 29, 2014. <http://www.theglobeandmail.com/report-on-business/small-business/sb-growth/tory-bill-to-tackle-red-tape-for-small-businesses/article16567508/>

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24. Department of Finance, *Budget 2015, Government of Canada*, p. 133. <http://www.budget.gc.ca/2015/docs/plan/budget2015-eng.pdf>

25. Organisation for Economic Cooperation and Development, "International Standard Cost Model," Paris: OECD, 2004. <http://www.oecd.org/gov/regulatory-policy/34227698.pdf>

The establishment of a defensible baseline provided the basis for the government’s regulatory budgeting policy. It mandated in internal policy what has come to be known as the “One-for-One Rule,” whereby departments and agencies are required to offset each new regulation by eliminating one from the existing stock. The effect is to ensure that no new net administrative burden is imposed on businesses.<sup>26</sup>

The government tested out the regime, including experimenting with the scorecard process, for approximately two years. This led to some minor tinkering to improve implementation (including granting departments and agencies up to 24 months to repeal offsetting regulations) and public reporting.

Early signs are positive. The One-for-One Rule has contributed to a net reduction of 19 regulations. It also has led to considerable savings in financial cost and time allocation for individuals and businesses. There also is evidence that departments and agencies have adopted simpler and smarter regulatory policy.<sup>27</sup> The decentralized process and the adoption of the Standard Cost Model rewarded departments and agencies that reform regulations to reduce the administrative burden on businesses rather than simply repealing them when needed.<sup>28</sup>

While the One-for-One Rule functioned as an internal directive during its initial two-year experiment, the ultimate goal was to codify the policy in legislation. The Harper government subsequently tabled legislation in January 2014 that was passed and came into force in April 2015. The codification of the One-for-One Rule makes Canada the first country to give such a rule the weight of legislation. It is worth noting that the legislation had broad-based political support and is likely to remain in effect under Canada’s new center-left government.

26. The formula for calculating the administrative burden cost of a regulation is the sum of the annual cost of each administrative activity within the first 10 years after the regulation is registered (cost = employee time × wage × number of businesses). This methodology is based on the internationally recognized Standard Cost Model, with adjustments to “discount” future costs, to present estimates in constant 2012 Canadian dollars, and to convert the results into annualized estimates. See “Red Tape Reduction Regulations,” *Canada Gazette*, June 27, 2015. <http://www.gazette.gc.ca/rp-pr/pl/2015/2015-06-27/html/reg11-eng.php>

27. Treasury Board Secretariat, “2013-14 Scorecard Report: Implementing the Red Tape Reduction Action Plan,” Government of Canada, January 2015. <http://www.tbs-sct.gc.ca/hgw-cgf/priorities-priorites/rtrap-parfa/report-rapport/2013-14/asr-fea-eng.pdf>; and Treasury Board Secretariat, “2012-2013 Scorecard Report: Implementing the Red Tape Reduction Action Plan,” Government of Canada, January 2014. <http://www.tbs-sct.gc.ca/rtrap-parfa/report-rapport/asr-fea-eng.pdf>

28. An example of a smart reform catalyzed by the government’s “One-for-One” Rule is the federal Department of Health has begun to allow regulated pharmacy technicians to oversee the transfer of prescriptions from one pharmacy to another – a task that was previously restricted to pharmacists. This regulatory change is estimated to save individuals and businesses approximately \$15 million per year. See Treasury Board Secretariat, 2013-14 “Scorecard Report: Implementing the Red Tape Reduction Action Plan.”

**TABLE I: KEY STATISTICS ON THE ONE-FOR-ONE RULE, 2012-13 TO 2013-14**

Key Measures	Year One	Year Two	TOTAL
Net regulations eliminated	5	14	19
Administrative burden increased (“in”) (C\$)	\$0.5M	\$2M	\$2.5M
Administrative burden decreased (“out”) (C\$)	\$3.5M	\$20M	\$23.5M
Total administrative burden saved annually (C\$)	\$3M	\$18M	\$21M
Total hours saved to business annually	98,000	165,000	263,000

Source: Treasury Board Secretariat 2015. Administrative burden and hours saved figures are rounded.

It is also important to note that the government’s regulatory-reform agenda was not limited to regulatory budgeting. It included other structural reforms designed to ensure a greater focus on “red tape” in the policy-development process and to provide more transparency with respect to medium- and long-term regulatory planning. These reforms included the adoption of a “small business lens,” under which departments need to show the extent to which new legislation or regulations may affect small businesses. It also included publication of departmental “forward regulatory plans,” covering how regulations are expected to change over the following 24 months, so that businesses and other stakeholders could contribute proactively to the policy process.

The entire reform package, including the One-for-One Rule, is subject to an annual scorecard report that assesses the progress of these initiatives.<sup>29</sup> The scorecard is scrutinized before its release by an external panel of small-business representatives to ensure it is rigorous and not prone to bureaucratic or political gaming.<sup>30</sup> The reporting process has been generally well-received by stakeholders and think-tank scholars.<sup>31</sup>

Preliminary reporting of the government’s overall regulatory-reform agenda is positive. Government estimates are that the program has saved Canadian businesses more than C\$32

29. Treasury Board Secretariat, “2013-14 Scorecard Report: Implementing the Red Tape Reduction Action Plan.”

30. The advisory panel concluded in its 2015 assessment of the government’s scorecard: “Based on the information provided, the nature of the review undertaken and, in the overall context of the related and pertinent issues described above, the Committee is of the view that the scorecard and the statements made therein are reliable and fairly (i) represent progress to date; and (ii) reflect the ongoing commitment of the government to set in place a solid foundation for a comprehensive process of regulatory red tape reduction for the long term.” See Treasury Board Secretariat, “2013-14 Scorecard Report: Implementing the Red Tape Reduction Action Plan,” p. 6.

31. The advisory panel has used the opportunity to press the government expand its definition of “red tape” beyond regulations. Treasury Board Secretariat, “2013-14 Scorecard Report: Implementing the Red Tape Reduction Action Plan,” p. 4. As mentioned elsewhere, this recommendation was reflected in a 2015 campaign commitment by the Conservative Party of Canada in the recent federal election to adopt the B.C. government’s broader definition.

million in administrative burden, as well as 750,000 hours spent dealing with “red tape” each year.<sup>32</sup>

Canada’s experience with regulatory budgeting at the federal level reinforces the lessons from British Columbia. The prime minister’s direct and active involvement set the conditions for broad internal support and ensured that the file was focused on structural reform, rather than what some stakeholders called a “pruning” exercise. An early focus on the comprehensiveness of the baseline and the inclusiveness of the regulatory cost estimates also were critical for external validation and support. The system is imperfect, but it is a step in the right direction and should improve over time through an ongoing process of trial and error.

## THE GROWING REGULATORY STATE IN THE UNITED STATES

Canada’s experience with a sprawling regulatory state is hardly unique. The United States has witnessed a similar phenomenon. If anything, it has been worse.

The R Street Institute’s Kevin R. Kosar has documented the proliferation of federal regulations in recent decades.<sup>33</sup> His analysis finds that, on average, more than 4,000 new regulations take effect each year and another 2,700 are proposed. This accumulation of more and more regulations has caused the *Code of Federal Regulations*, the corpus of federal rules, to balloon to more than 170,000 pages. Compliance is estimated to cost individuals and businesses nearly \$70 billion annually and about 10 billion hours each year.

This does not even account for the resultant institutional diminishment of Congress, relative to the executive branch, with respect to responsibility for policymaking. As Hudson Institute Senior Fellow Christopher DeMuth has put it: “Washington is in a regulatory growth spurt.”<sup>34</sup>

Thus, the need for reform is well-founded. The questions are whether reform is possible (or a “hopeless cause,” as Kosar asked in a May 2015 essay for the Brookings Institution<sup>35</sup>) and what type of reform ought to be undertaken. There are a significant number of proposals already under consideration.

One idea that has received growing attention is a proposed requirement for congressional approval of the most significant regulations (often described as those that would impose \$100 million or more in economic costs) before they take effect. The REINS Act (Regulations from the Executive In Need of Scrutiny) and the idea of legislative pre-review of new regulations is not novel. Connecticut, for instance, has a Legislative Regulation Review Committee that approves regulations before they take effect. There is growing support for establishing this sort of regime at the federal level. Several legislative attempts have been made toward this end and Mitt Romney incorporated such a commitment as part of his 2012 presidential election platform.<sup>36</sup>

Another is to establish a regulatory-budgeting regime, which has been the subject of several congressional bills.<sup>37</sup> In 2014, Sen. Marco Rubio, R-Fla., and Rep. Steve Scalise, R-La., proposed legislation to have Congress annually set a regulatory cost cap for each federal agency and the government overall.<sup>38</sup> The bills also would have established a new independent agency, the Office of Regulatory Analysis, to oversee the budgeting process, analyze regulatory costs and identify ways to make rules more efficient and less costly. The comprehensive regulatory requirement baseline would have covered all “federal rules,” including any rule that stems from legislation or regulation, information-collection requirements, guidance or directives, and that imposes \$25 million or more in annual costs on regulated entities.

The costing methodology proposed in the bills would capture “all costs” imposed on regulated entities (defined as companies, nonprofit organizations, and local and state governments), as well as the administrative costs incurred by the federal government.<sup>39</sup> This appears to be an inclusive methodology and the involvement of an independent third-party would certainly bolster its credibility. The only major question is what would constitute “all costs.”

Regardless which model the U.S. Congress ultimately chooses, it is right to focus on regulatory reform as part of a low-cost, pro-growth agenda. That the federal government enacted 84 new regulatory requirements in 2014 that each exceeded \$100 million in estimated burdens on the economy, is strong evidence that the time for reform has come.<sup>40</sup>

32. “Red Tape Reduction Regulations,” Canada Gazette, June 27, 2015. <http://www.gazette.gc.ca/rp-pr/p1/2015/2015-06-27/html/reg11-eng.php>

33. Kevin R. Kosar, “Three Steps for Reasserting Congress in Regulatory Policy,” R Street Policy Study (R Street Institute), March 2015. <http://www.rstreet.org/wp-content/uploads/2015/03/RSTREET34.pdf>

34. Christopher DeMuth, “The Regulatory State,” *National Affairs*, Summer 2012. <http://www.nationalaffairs.com/publications/detail/the-regulatory-state>

35. Kevin R. Kosar, “Is Regulatory Reform a Hopeless Cause?” Brookings.org, May 2015. <http://www.brookings.edu/blogs/fixgov/posts/2015/05/28-is-regulatory-reform-hopeless-kosar>

36. Andrew Zajac, “Romney Rules Attack Shows Impact Varies on who’s Counting,” *Bloomberg*, Oct. 18, 2012. <http://www.bloomberg.com/news/articles/2012-10-18/romney-rules-attack-shows-impact-varies-on-who-s-counting>

37. Sam Batkins, “What would a Regulatory Budget Save? About \$100 Billion,” American Action Forum, Sept. 1, 2015. <http://americanactionforum.org/insights/what-would-a-regulatory-budget-save-about-100-billion>

38. See: S. 2153 and H.R. 5184 (113<sup>th</sup> Congress).

39. U.S. Congress, “S.2153 – National Regulatory Budget Act of 2014,” 113<sup>th</sup> Congress (2013-2014). <https://www.congress.gov/bill/113th-congress/senate-bill/2153/text>

40. Kevin R. Kosar, “Three Steps for Reasserting Congress in Regulatory Policy.”



## LESSONS FROM CANADA

As policymakers in Washington consider adopting regulatory budgeting, what can they learn from Canada's experience?

The key takeaway is that regulatory budgeting, in particular, and regulatory reform, in general, can be useful to bring greater accountability, discipline and transparency to the policy process. This, in turn, can improve conditions for more investment and economic activity.

The three primary lessons from the Canadian experience are:

1. Political leadership is a critical ingredient;
2. The initial regulatory baseline from which future changes will be compared must be comprehensive; and
3. The methodology used to estimate regulatory costs needs to be inclusive and credible.

To the extent that regulatory budgeting has been effective in Canada, it is in large part attributable to strong and persistent political leadership. In both British Columbia and at the federal level, the political arms of government prioritized regulatory reform as key planks of their respective policy agendas. Prime Minister Harper's ongoing personal focus, for instance, sent a powerful message to Cabinet ministers and the federal bureaucracy that indolence would not be tolerated.

But it's important to remember that it was not a top-down exercise. It was a decentralized process that empowered departments and agencies to manage their regulatory allocations and it rewarded them for enacting smarter and simpler reforms. The combination of central leadership and decentralized implementation secured broad buy-in from both politicians and civil servants. Put simply: political leadership is a necessary but not a sufficient condition for a regulatory-budgeting regime to be successful.

Establishing an appropriate regulatory baseline is a critical determinant of the model's effectiveness. A base that is too narrow – for instance, one that carves out a wide range of regulations or limits the process to new regulations – is bound to be ineffective and prone to bureaucratic gaming. Even where these obvious pitfalls are successfully avoided, there remain critical design questions that must be addressed as the baseline is established. The B.C. government chose a comprehensive baseline of “regulatory requirements” that included all impositions on individuals and businesses stemming from legislation, regulation and other rules. The federal government opted for a narrower baseline limited to regulations and their accompanying requirements; it ultimately came to determine that was a mistake. The key is to ensure the ini-

tial baseline is sufficiently comprehensive that the model is well-rooted and reflective of the real burden that individuals and businesses face, while protecting against loopholes and circumventions.

Estimating the cost of regulations is the linchpin of regulatory budgeting. There are various methods to estimate regulatory expenditures and a wide range of inputs – direct and indirect – can form part of that estimated cost. Whatever methodology is selected must have a credible and reasonable basis. The B.C. government chose a crude methodology that simply counted the number of regulatory requirements and required departments and agencies to offset any new ones by repealing or eliminating existing requirements. This model had the upside of being straightforward and clear, but the downside of being overly simplistic. The federal government adopted the Standard Cost Model to quantify the financial costs of different regulations. It is a more complicated methodology and may be more prone to disagreement, but it has the benefit of being more reflective of the actual costs of regulations. The goal ought to be a methodology that is as inclusive of as much of the cost that individuals and small businesses are forced to incur as possible, and is sufficiently defensible that the system can function with credibility.

## CONCLUSION

U.S. federal policy may indeed have lessons to derive from Canada's experience with fiscal reform. The Macdonald-Laurier Institute's report “Northern Light: Lessons for America from Canada's Fiscal Fix,” for example, provides a practical blueprint for how the U.S. federal government can improve the country's public finances.<sup>41</sup>

But the lessons to be derived from Canada extend beyond budget cutting. The nation has also made some progress in other policy areas, such as regulatory reform. This short paper has outlined Canada's experience with regulatory budgeting for an American audience and set out the key

lessons as Congress considers options to arrest the growth of Washington's sprawling regulatory state.

Regulatory budgeting is not a silver bullet. But it can bring greater accountability, discipline and transparency to the regulatory state. In turn, it could improve conditions for more investment and economic activity. An effective regulatory-budgeting regime can draw from Canada's experience of trial and error.

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41. Brian Lee Crowley, Robert P. Murphy, and Niels Veldhuis, “Northern Lights: Lessons for America from Canada's Fiscal Fix,” Macdonald-Laurier Institute, 2012. <http://www.macdonaldlaurier.ca/mli-library/books/northern-light-lessons-for-america-from-canadas-fiscal-fix/>

Political leadership is an essential yet insufficient condition. The initial policy design is also critical. The regulatory baseline must be comprehensive and the methodology used to estimate regulatory costs needs to be inclusive and credible. If Congress gets these basic features right, it can begin gradually to arrest the growth of the regulatory state.

#### ABOUT THE AUTHOR

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