

August 4, 2010

William Short
Clerk, Standing Committee on Finance and Economic Affairs
Committees Branch
Whitney Block Rm. 1405
99 Wellesley St. W.
Queen's Park
Toronto, Ontario, M7A 1A2

RE: Bill 68, Open for Business Act, 2010

Dear Mr. Short:

The Ontario Chamber of Commerce (OCC) is a federation of 160 local chambers of commerce and boards of trade in the Province of Ontario, representing 60,000 businesses of all sizes, in all economic sectors covering every area of the province. The OCC's mandate is to advocate strong and effective policies on issues that affect its membership throughout Ontario's business community.

Business regulations play a vital role in disseminating the principles of social and environmental stewardship throughout the economy. Through stimulating improvements in areas such as public health and safety and environmental conservation they encourage greater economic productivity and make Ontario a more attractive place to invest in new ideas and ventures. Properly planned regulations provide a predictable and level economic playing field for business and, coupled with the right combination of incentives, can provide Ontario businesses with a competitive advantage over their counterparts in other jurisdictions.

Rather than contributing to a more robust economic climate in the province, the existing regulatory framework is an impediment to sustained economic growth. As the economy has diversified and society has become more complex, the government's responsibilities have increased accordingly. Despite periodic cutbacks and downloading, the three orders of government in Canada have undergone a continuous expansion over the past several decades, leading to an accumulation of bureaucracy and intersecting mandates. In Ontario, this process has had a negative impact on economic prosperity. Due to an insular focus and lack of co-ordination between the various levels and branches of government, Ontario businesses are forced to contend with a regulatory framework which is overly prescriptive, unduly heavy, and exceedingly difficult to navigate, all of which impact business' bottom line.

The situation facing the province stems from a routine lack of communication and collaboration between ministries in developing and implementing regulations and a consistent lack of interaction between public officials and the business community, with the result that new regulations often lack a sound economic rationale. The existing structure makes it difficult for businesses to obtain clear guidelines and assistance for complying with regulations, and requires them to divert substantial

resources to meeting regulatory obligations. Although the cost of complying with regulations is difficult to measure, a conservative estimate puts the cost of regulatory compliance to Ontario businesses at \$10.9 billion annually, or 1.8% of provincial GDP. One thing is for certain - government regulation has reached a point where it far exceeds business' capacity to comply, and government's capacity to administer, communicate and enforce.

The OCC has been a continuous voice for a more competitive regulatory regime for the province. It has identified the areas of government activity that have the most disproportionate impact on business and are in the greatest need of reform. Environmental assessment, workplace health and safety, and food safety disclosure are examples of unmanageable regulatory prescriptions that place an excessive compliance burden on business and are in need of coordinated government action to simplify and streamline requirements. Likewise, as currently configured, the WSIB system and the government's broader public sector procurement program, OntarioBuys, give rise to an anti-competitive economic environment that prevents many companies from earning a fair return. Finally, Ontario businesses continue to cite barriers to interprovincial trade, including outdated VQA wine delivery regulations, as an impediment to maximizing economic productivity.

The government has taken concrete steps to reduce its regulatory footprint through the Open for Business program (OFB). The goal of OFB is to advance innovation, job creation, and economic prosperity by adopting a more flexible and responsive regulatory framework for protecting public health and safety. The government plans to achieve this through improving practices that are essential to the effective design and implementation of regulations. The three main thrusts of Open for Business are: i) modern government; ii) modern services; and iii) a new relationship with business.

Several OFB initiatives respond directly to the barriers identified by the OCC. Under the modern government initiative, the government has committed to reducing duplication with federal and provincial regulations and municipal by-laws, and to identifying areas for harmonization. It has pledged to reduce the regulatory burden by 25% by March 2011, and introduce a cap and trade system for new regulations. The government is taking a long overdue step by signaling that improved regulatory management is a priority for the province. However, simply reducing the amount of regulation in the province by an arbitrary number does not guarantee that the remaining regulations will be administered in a manner that is more conducive to economic growth. In order to achieve the greatest impact for its effort, the government must concentrate on adopting a more sustainable approach to the culture of regulatory management which ensures that all regulations are deliberately designed to augment and capitalize on the economic context in which businesses operate.

As part of its efforts to modernize government, the government introduced the Open for Business Act - Bill 68 - which aims to modernize the regulatory framework through harmonizing legislation across all levels of government, streamlining approvals, and improving the quality of services to business. The legislation includes specific measures for addressing two of the most significant hurdles faced by business – the process for obtaining environmental approvals and that for resolving employment standards claims. The more than 100 amendments put forward by 10 ministries in the Open for

Business Act go a long way towards fixing, but are by no means a complete solution to, the culture of regulatory unaccountability in the provincial government.

In order to ensure that all new and existing regulations provide a coherent and consistent framework for economic activity, the government must build on the process of legislative harmonization initiated by Bill 68 to establish a clearly defined internal responsibility system that makes inter-departmental collaboration a permanent feature of the regulatory planning process. Adopting an integrated mechanism for inter-departmental collaboration would enable ministries to share information, assess the feasibility of proposed regulations in light of competing mandates, and consolidate regulations into a manageable form. To ensure the optimal outcome, regulations must be subject to a rigorous analysis that considers issues such as the constitutionality of the proposed regulation and conflict with other existing and/or proposed regulations from provincial or federal levels of government. As the OCC has shown, creating clearer lines of responsibility between provincial, municipal and federal governments is necessary to achieve an effective resolution to outstanding cross jurisdictional issues such as Environmental Assessment, Food Premises Inspection, and VQA wine delivery.

In addition to a more collaborative planning process, there is also a need for an acceptable mechanism to reconcile conflicting requirements at the post-implementation stage, such as a provincial regulatory ombudsman. This measure is necessary to ensure that oversights during the planning process do not translate into unnecessary costs for business. To ensure that existing regulations do not outlive their usefulness, the government should also introduce a five-year mandatory review of all regulations. It should be noted that the government has already adopted a five-year review requirement for regulations under the Accessibility for Ontarians with Disabilities Act (AODA). The AODA model could simply be extended to other government departments.

One of the three main thrusts of the government's Open for Business program is the development of a new relationship between government and business characterized by greater openness and responsiveness. Through improving collaboration with business the government is hoping to achieve a clearer understanding of business needs, perspectives, and priorities. The OCC is encouraged by the government's new Business Sector Strategy, through which the government is interfacing with industry leaders from several sectors to devise solutions for addressing the top priorities identified by business. We are also encouraged by the government's commitment to implement government-wide business consultation standards and best practice guidelines, and to establish formal channels for providing business feedback and suggestions. If implemented, these changes would result in a tangible, measurable impact for business in Ontario. In working towards this goal, the government has acted upon specific OCC recommendations to give greater structure to the consultation process through adopting twice annual effective dates for the commencement of new regulations and a minimum requirement of 45 days to review and comment on new regulatory proposals.

While these are welcome steps, nothing short of a wholesale transformation of government practice will achieve the results necessary to guarantee Ontario's long-term economic competitiveness. Instead of imposing regulation on business and forcing it to adjust, the government must aim to justify every new regulation created through a thorough system of checks and balances that guarantees adequate

due diligence. The government must continue to work closely with business on the basis of such a system to identify the large volume of obsolete and inefficient regulations with a view to eliminating repetition, resolving contradictions, and making regulations more responsive to the needs of business. For starters, the government should increase the minimum requirement for stakeholder consultation from 45 to 60 days, and enforce it through legislation, to provide stakeholders with sufficient notification of new regulatory proposals.

With respect to strengthening stakeholder accountability, the government's commitment to developing a best practices guide on alternatives to regulation is an extremely positive measure. This initiative would provide an important opportunity to work with businesses to replace the existing fleet of heavily prescriptive regulations with more flexible, outcomes-based alternatives which, rather than stifling innovative behaviour, would draw on the ingenuity of economic actors to achieve cutting edge sustainability practices and lead to a larger pool of best practices to draw on.

In order to augment the new culture of collaboration, the government has pledged to take a more objective approach to regulation by introducing a Risk and Competitiveness Impact Assessment for the development of new policies and regulations. This tool would enable a multi-dimensional assessment of the risks, impacts, costs and benefits of new regulatory proposals to determine the overall economic impact of government interventions and provide a sound rationale for new regulations. The creation of quantifiable measures for weighing policy alternatives on a cost/benefit basis is vital to responsible government decision-making, and the OCC encourages the government to fast track the development of a comprehensive Risk and Competitiveness Impact Assessment.

In order to ensure that more objective criteria are built into the entire government planning cycle, the government must develop a comprehensive system of measurement that will allow it to set clear, objective targets and measure progress towards regulatory reform. To make sure that the full cost of government regulation is taken into account, a database must be created to count policies, legislation, and regulation across government. Better information will allow the government to enhance public transparency through the completion of an annual regulatory plan outlining performance targets, timelines, and progress for reducing the regulatory burden across government. To ensure adequate monitoring and oversight, the results of this process should be published in Annual Reports, drawing on quarterly reports from each ministry.

Effective communication is essential to ensuring that a commitment to regulatory reform in principle is translated into entrenched government practice that has a real and lasting impact on economic productivity. In order to cultivate a culture of economic sustainability in the province, the government should ensure that all provincial policy makers, public servants, and regulatory enforcement employees are educated on government objectives. In connection with this, the government must set appropriate performance and behavioural expectations, including incorporating sustainability targets into performance assessment.

Finally, to ensure that the current momentum towards regulatory transformation is sustained, the government should develop a long-term strategy for regulatory management reform that takes into

account best practices in other jurisdictions and identifies “made-in-Ontario” solutions to compliance and enforcement challenges. Through broad-based consultation with its membership, the OCC will be preparing an in depth report on smart regulation that will examine the issues and principles remaining to be resolved once the Open for Business program expires in March 2011. The report, which will be released in October 2010, will contain practical recommendations for building on the momentum created through the OFB initiative to provide the government with the essential elements of a long-term strategy for regulatory transformation in the province.

In summary, to ensure that OFB achieves the intended results, the government should commit to the following actions:

- Establish a mechanism or process, reinforced by legislation, for strengthening communication and co-operation between provincial government departments, and between the provincial, municipal and federal levels of government, to establish consensus and clear lines of responsibility for the administration of all new government regulations, in order to create a uniform and predictable economic playing field in the province
- Focus efforts to streamline and enhance the culture of regulatory management on those areas that are most susceptible to overregulation and incongruity with business, such as environmental assessment, food safety disclosure, interprovincial VQA wine delivery, workplace safety and insurance, and OntarioBuys.
- Minimize the impact of government regulations on business by introducing an effective and efficient process for resolving post-implementation conflicts between regulations and by legislating a five-year mandatory review of all new regulations.
- Demonstrate that all new regulations are based on a sound rationale by imposing a statutory requirement for broad based consultations of at least 60 days with business stakeholders on any proposed new regulations and by including a cost-benefit analysis that adequately measures the cost of implementing, enforcing, and maintaining the regulation, the economic impact, and the benefit to be gained from the regulation.
- Translate the Open for Business vision into very specific and defined measures, consistently implemented and coordinated throughout all provincial ministries and departments, and from the highest policy development levels to the front line public servants and officials, that clearly demonstrates a bureaucratic “economic sustainability culture” of supporting rather than inhibiting business.
- Educate all provincial policy makers, public servants, and regulatory enforcement employees on Open for Business objectives to ensure that an economic sustainability culture is formally internalized in the provincial government, including setting appropriate performance and behavioural expectations and sustainability targets into performance assessment.
- Develop a long-term strategy for regulatory management reform that takes into account best practices in other jurisdictions and identifies “made-in-Ontario” solutions to compliance and enforcement challenges.

The goals of social and environmental sustainability are necessary pillars of economic sustainability. However, if they are not balanced with a concern for profitability, then economic sustainability will be

unattainable. True sustainability is built on the triple bottom line of people, planet, and profit. In order to guarantee Ontario's long-term economic vitality, government objectives must be articulated through efficient, effective, and relevant regulations that take into account the views and perspectives of all stakeholders, not least the business community. The Open for Business program and Bill 68 evince the government's willingness to take the bold steps necessary to tackle the longstanding and complex issue of regulatory management in the best interests of the province. By taking the preliminary steps outlined in this letter, the government can build on the momentum generated by Open for Business to set the stage for an in depth transformation of the provincial regulatory culture that will guarantee a prosperous economic future for Ontario.

Thank you for taking the time to review our concerns. If you have any questions or comments, you may direct your staff to contact Stuart Johnston, Vice President Policy and Government Relations at (416)-482-5222, extension 232, or stuartjohnston@occ.on.ca.

Yours sincerely,



Len Crispino
President & CEO

cc: The Hon. Dalton McGuinty, Premier of Ontario
Tim Hudak, MPP, PC Leader, Leader of the Official Opposition
Andrea Horwath, MPP, NDP Leader
The Hon. Sandra Pupatello, Minister of Economic Development and Trade
Peter Shurman, MPP, PC Critic, Economic Development and Trade
Howard Hampton, MPP, NDP Critic, Economic Development and Trade
OCC Members