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**Workplace Hazardous
Materials Information System**



A Retrospective Look

**Consumer and Corporate Affairs Canada
Product Safety Branch
WHMIS Division
March 14, 1989**

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INTRODUCTION

The WHMIS process was a unique, innovative and successful approach to legislative and regulatory development and proved to be a learning experience for all of the parties involved. During the initial stages of consultation and well into its gradual development over the years, it was doubtful whether an agreement would be attainable. Ultimately, a tripartite consensus on WHMIS was achieved.

On Tuesday, March 14, 1989, a meeting was held in Ottawa amongst several key participants of the WHMIS initiative in order to take a retrospective look at the process. The objective of this report is to summarize from that meeting the perceived conditions for the successful use of the consensus approach, to provide some recommendations for modifying, if necessary, this technique based on the WHMIS experience and to identify the types of projects for which the consensus process is suited.

WHMIS: A Retrospective Look

The consensus approach towards legislative and regulatory development was examined in detail and, based on the WHMIS experience, was found to have a variety of advantages and some drawbacks. On the positive side, all stakeholders in the system are given the opportunity to work together towards conceiving, developing and agreeing to solutions to identified problems. The traditional procedure, whereby government develops a regulatory proposal and solicits comments from affected parties prior to making a unilateral (and broadly perceived “divide and conquer”) decision, is generally regarded as less favourable in terms of developing effective legislation, good federal/provincial/territorial relations and good relations between government in general and affected parties. With the consensus process, the parties tend to develop a sense of joint ownership and obligation to the project. This encourages a continued commitment towards participation and compromise in the effort to develop a workable set of rules, adherence to them and effective implementation of the proposal.

Since this form of legislative and regulatory development is rather novel and distinctly different from the customary procedure, considerable effort is required to alter the attitude of officials towards a new legislative and regulatory development procedure. At the political level as well, “rubber stamping” agreements or accepting a *fait accompli* rather than being called upon to settle disputes could be an uncomfortable practice for elected officials used to such refereeing and, indeed, elected and paid to perform the balancing in the broad public interest rather than the narrow interest of competing lobby groups. There is a danger, however, that a hard-won and fragile consensus agreement will not remain intact if Deputy Ministers, Ministers and parliamentary committees exercise their right to modify what has been recommended.

The successful utilization of the consensus approach is dependent on a number of varying factors. The driving force behind the WHMIS initiative, for example, was a sense of urgency. The societal pressure, especially by organized labour, was for the improvement of information flow and the time was appropriate for the regulatory agencies (federal, provincial and territorial), with responsibility for occupational safety and health (OSH), to act upon it. Industry was aware of the need for better access to information and was concerned over the distinct possibility of dealing with different requirements in the thirteen OSH jurisdictions. Provincial governments

did not have the authority to regulate foreign or interprovincial imports and feared that their industries might face economic hardship if external suppliers were to withdraw their products because it would be cheaper to do so than to comply with any legislative requirements for a small market. All parties, therefore, had an incentive to approach the consultation process with a self-interested commitment to reach consensus on a single national hazard communication system. Failing to do so would have resulted in an unfavourable situation for all stakeholders. The degree of cooperation experienced within the WHMIS project arose from the shared interest in achieving the objectives of the exercise. This contrasts to the “unilateral” approach where proponents push their own objectives all the way through the parliamentary process. Industry recognized its responsibility toward the welfare of workers and, in addition, were interested in minimizing costs of any legislative program developed to address this situation. Labour’s objective was to protect the health and safety of its workers through a “right-to-know” approach.

For joint ownership or shared interest to prevail, however, all the objectives and the consequences of failure must be clearly defined and understood in the beginning. In the WHMIS project, the element of faith and confidence which developed between the stakeholders over time also contributed to the final success of the consultation process.

It was well recognized as the WHMIS consultation process moved forward that, for the consensus process to stay alive and progress smoothly, the major players had to be involved throughout the life of the project in order to sustain the essential degree of trust and mutual respect necessary to hold the consensus together. Continuity would also serve to avoid delays and to maintain the momentum of the consensus process. Where this is not possible, solid succession planning on the part of the participants is a possible solution to sustain the process. The participants must also have a mandate from their interest group and must be kept involved and abreast of the discussions and be recognized as effectively representing their constituents so as to increase the political stability of the exercise. The status of governmental representation and their access to the politically responsible is also important in sustaining a viable collective approach to rule making.

It should be noted, however, that the lack of appropriate human resources devoted to a long-term project could also endanger its continuity as it can create an unacceptable workload for participants. In addition, the impact of a legislative date or “deadline” can lead to the resolution of issues on a crisis management-type approach.

Based on the WHMIS experience, certain modifications for future consensus-based consultations should be considered. For example, broadly-based representation is necessary to help minimize repercussions from disgruntled parties who, although affected by proposals of the consensus, have had little say in their development.

In this regard, in order to facilitate moving the discussions in an organized fashion, formal rules should be set up initially at the steering committee level regarding the makeup of representation. Flexibility should be allowed for additional representation if other directly affected groups or parties become visible. In order to keep the process manageable, additional representation should be handled by channelling emerging new interests to the appropriate stakeholder. This will help ensure that the fundamental concept of ownership will not be diluted during the process but continue to be used as a key factor in achieving consensus solutions to emerging problems or questions.

Pre-publication of the proposed regulations in the Canada Gazette Part I for public comment provided an opportunity for participation at the regulation stage for affected parties who were not directly involved earlier. In the WHMIS project, however, several associations came late with their problems, although they had many opportunities to interact sooner in the development of the system since WHMIS was on the regulatory agenda at a time early enough to enable interested parties to become involved.

In any future consensus development of regulatory systems, some changes to the process should be considered to address problems identified during this successful initiative. For example, for best utilization of resources in order to avoid the duplication of tasks, steering committees should make policy decisions prior to working groups developing the details. To prevent problems when agreements reach the legislative drafting stage, government lawyers

should get involved sooner in the process at a time when agreements begin to solidify, so that the legal status of what is being proposed in a consensus agreement is confirmed. The non-government participants recommended that governments should also consider providing financial aid to groups lacking expert representation on technical issues or the resources to continue their full involvement in the process over extended periods of time. To show fairness and even-handedness, it was suggested that perhaps this funding should be extended to all stakeholders, including industry.

Within the federal government, more than one department being involved at the regulatory policy level of WHMIS created some difficulties in developing an acceptable federal approach. Improved interdepartmental communication would be beneficial. The appointment of a federal coordinator early in the process with direct access to deputy ministers of all departments involved in the consultation might be a partial solution. Government departments, particularly central agencies such as Justice must be sensitized to the needs of the consensus process and develop a better understanding and appreciation of it. Consideration should be given to the use of “simple English” style regulations while, at the same time, recognizing that the legislation must be enforceable in a court of law. Standard-type drafting may not be a necessary criterion for good law.

Narrow, well-defined issues, which all parties agree need to be addressed, are best suited for the consensus process. This enables potentially large numbers of stakeholders or interests to focus their efforts towards resolution of problems. The consensus process should be targeted towards specific, worthwhile projects that are expected to gain the commitment of all parties. The issue must be politically saleable with all interests being served and it must also shy away from over-regulation.

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APPENDIX 1

Key Features of Successful Consensus Development

1. All parties have a common understanding of the problem and an understanding and appreciation for the positions of the participants involved. There should be a recognized need for a regulatory approach which will benefit all parties.
2. All parties have a self-interested commitment to reach a consensus agreement and have a shared interest in achieving all of the objectives of the exercise which are clearly defined and understood in the beginning.
3. Representatives have a mandate from their respective constituencies for effectively represent their interests. Constituents are kept properly involved and informed of the discussions on a regular basis.
4. Government representatives have sufficient access to the politically responsible in order to sustain a viable collective approach to rule making.
5. Major participants are involved throughout the life of the project with their own succession plans in mind as a back-up measure in order to sustain the essential degree of trust and mutual respect necessary to hold the consensus together.
6. Sufficient appropriate human resources are devoted to the project to prevent an unacceptable workload for participants over lengthy periods of time.
7. Formal rules are initially set up at the steering committee level regarding the make-up of representation which will be as encompassing or broadly-based as possible without compromising the effectiveness and pace or the consultations that may occur if too many participants are involved.
8. Flexibility is provided for additional consensus group representation if other directly affected groups or parties become visible to ensure that proper consultation occurs with them. To keep the process manageable, additional representation is handled by channelling emerging new interests to the appropriate stakeholder.
9. Consensus process is set up to ensure that the system works in an orderly, step-by-step manner in order to maintain effective communication between groups. For best utilization of resources to avoid duplication of tasks, the steering committee makes policy decisions prior to working groups developing the details. The committee and working groups focus rapidly on areas of agreement and build from there.

10. Government lawyers are involved in the process at a time when agreements take shape so that the legal status of what is being proposed in a consensus agreement is confirmed.
11. Governments consider providing some financial aid to representative groups to enable their continued and equal representation over the life of the project.
12. Communication links between government departments involved are well-defined and understood and established early to prevent unnecessary delays in the process.
13. A federal government coordinator is appointed early in the consultation process with direct access to deputy ministers of all departments involved.
14. The project considered for consultation involves a narrow, well-defined issue to enable the many participants involved to focus their efforts towards resolution of problems.
15. Issue for consultation is politically saleable with all interests being served and avoids over-regulation.

APPENDIX 2

**Recommendations Pertaining to the Consultation Process
Based on the WHMIS Experience**

- 1. Steps should be taken to ensure that all, major affected parties are represented in the consultation process.**
- 2. Ministers should be kept advised of the consultation process and its status at all stages of the exercise.**
- 3. The project should be resourced sufficiently to achieve the desired outcome.**

APPENDIX 3

What is the Workplace Hazardous Materials Information System?

WHMIS is a uniform national standard designed to provide information about hazardous materials used in Canadian workplaces. This system, which recognizes workers' right-to-know about hazards of workplace materials and industry's need to protect confidential business information, was developed to protect the three million Canadian workers regularly exposed to hazardous materials on the job. WHMIS is unique in that it represents a consensus between industry, labour and federal and provincial governments through six years of extensive consultation and negotiations. The interpretation and continued development of WHMIS is maintained through an on-going consensus process.

WHMIS is a complex set of interlocking federal and complementary provincial and territorial legislation and regulations which together establish a pan-Canadian system to provide information on hazardous materials destined for the workplace. The federal *Hazardous Products Act* (HPA) places WHMIS requirements on suppliers and importers of hazardous workplace materials while federal and provincial occupational safety and health (OSH) legislation establishes employer requirements of WHMIS. However, enforcement of the OSH as well as the HPA WHMIS requirements are being undertaken in each and every jurisdiction by the agency responsible for OSH.

Through the federal HPA, WHMIS ensures that information concerning the hazards of materials produced or sold in, imported to, or used within workplaces in Canada is provided by suppliers to employers. The inclusion and classification of products covered by WHMIS (called controlled products) is based on the application of specific hazard criteria defined in Part IV of the federal *Controlled Products Regulations* (CPR) which are included in any of the classes listed in Schedule II of the HPA. Suppliers must convey information to workplaces by means of prescribed labelling on hazardous materials or on their containers which alert employers and workers to the dangers of products and basic safety precautions. They must also transmit material safety data sheets (MSDSs) disclosing hazard and precautionary information in the form of technical bulletins. The content and conditions for supplier labels and MSDSs are outlined in the CPR.

Through comparable provincial and federal occupational health and safety (OSH) legislation, based on a national model OSH regulation, employers are required to develop appropriate workplace labelling and other forms of warning about hazardous materials produced in their workplace processes, make MSDSs available to their employees, and provide worker education on the safe use of hazardous materials. WHMIS is designed to ensure that all employers in Canada receive the information they need to provide for and to maintain a safe and healthy workplace, as well as to educate and train their employees in the proper use of hazardous materials in the workplace.

Since balancing the worker's right-to-know with the need to protect genuine confidential business information was a basic consideration during the development of WHMIS, the system provides a mechanism that permits suppliers or employers to withhold certain information in specified circumstances. A self-financing Hazardous Materials Information Review Commission (HMIRC) has been established under the authority of the federal *HMIR Act* to review and rule on claims for exemption from disclosure and appeals to their rulings. Similar OSH legislation in the provinces and territories refers employers, wishing to file claims on confidential business information specified by their legislation, to the HMIRC.

Historical Perspective of WHMIS

January 1979	Working group of the Occupational Safety and Health Committee of the Canadian Association of Administrators of Labour Legislation (CAALL OSH) was formed to review current legislation in Canada for labelling hazardous substances.
May 1981	Federal-provincial-territorial Task Force chaired by Consumer and Corporate Affairs formed to study the feasibility of labelling hazardous workplace substances.
April 1982	CAALL OSH Committee submitted a final Task Force report on labelling to the CAALL Executive. Members agreed to extend the concept to a material information delivery system for hazardous materials. Labour Canada was asked to establish a tripartite consultative process to develop a proposal for the system.
December 1982	First meeting of the tripartite WHMIS Steering Committee, chaired by Labour Canada, was held. Working groups were established with participation by industry, labour and government representatives.
April 1985	The steering committee publishes: "Workplace Hazardous Materials Information System - Report of the Project Steering Committee."
May 1986	Deputy Ministers of Labour and heads of OSH agencies agreed to the formation of an Intergovernmental Implementation Coordinating Committee (ICC).
December 1986	Federal/Provincial ministerial meeting agreeing to the establishment of WHMIS as a national information standard.

- January 1987 Consultative process begun involving federal, provincial and territorial governments, industry and labour on drafting of federal WHMIS legislation under the *Hazardous Products Act (HPA)*, and complementary Model OSH Regulations to be used as a basis by all OSH agencies.
- June 1987 Federal legislation under Bill C-70 to amend HPA, the *Canada Labour Code* (Part IV) and other related federal legislation, and to introduce *Hazardous Materials Information Review Act* (HMIRC) receives Royal Assent, enabling implementation of WHMIS on a national basis by 31 October 1988.
- January 1988 *Controlled Products Regulations* and the *Ingredient Disclosure List* under HPA, and confidentiality criteria regulations under HMIRA and amendments to the *Canada Occupational Safety and Health Regulations* under the *Canada Labour Code* (IV) published in final approved form in Part II of the Canada Gazette.
- March 1988 Five additional regulations for WHMIS made pursuant to the *Canada Labour Code* (IV) and applicable to specific industry sectors were also published in final approved form in Part II of the Canada Gazette.
- Spring 1988 Consultative process continued, involving government, industry and labour, for the development of model occupational safety and health regulations for WHMIS workplace requirements, and for the development of policy for the implementation of the information system.

WHMIS Post-Mortem Meeting - Participants

McDonald Club - March 14, 1989, Ottawa

Jean Bélanger

President

The Canadian Chemical Producers' Association

Herb Buchwald

Past: Executive Director, Alberta Occupational
Health and Safety Division

Present: General Manager - Health Care
Occupational Safety and Health Association

Morley Brownstein (chairperson)

Chief, WHMIS Division

Consumer and Corporate Affairs Canada

Tony Campbell

Assistant Deputy Minister

Regulatory Affairs

Office of Privatization and Regulatory Affairs

Alan Cotterill

Senior Project Officer

WHMIS Division

Consumer and Corporate Affairs Canada

Lise Desrosiers

Executive Assistant to the Clerk of the
Privy Council

Privy Council Office

André Lachance

Past: Director, Product Safety Branch
Consumer and corporate Affairs Canada

Present: Director
Information and Technology
Exploitation Branch

Consumer and Corporate Affairs Canada

Gordon Lloyd

Director, Legislation and Technical Group
The Canadian Manufacturers' Association

Jill Maase

Past: Special Assistant to the Minister of
Consumer and Corporate Affairs Canada
Present: Senior Consultant
S.A. Murray Consulting Inc.

Jim McLellan

Past: Federal WHMIS Coordinator, Labour Canada
Present: Director General
Occupational Safety and health Branch
Labour Canada

Tom Pieper (Secretary)

Officer, WHMIS Division
Consumer and Corporate Affairs Canada

Dorothy Richardson

Past: Federal WHMIS Coordinator
Present: Executive Director
National Round Table on the Environment
and the Economy

Claude St-Pierre

Past: Directeur, Hygiène au travail
Commission de la santé et de la sécurité du
travail du Québec
Present: President
Hazardous Materials Information Review Commission

Rob Sutherland-Brown

Counsel
Legal Services Branch
Consumer and Corporate Affairs Canada