

FINAL REPORT OF EVENT PROCEEDINGS

Early Lessons Learned from CannabisA Critical Conversation for Regulatory Professionals

A Critical Conversation™ from the Regulatory Governance Initiative

April 8, 2019 08:00–12:30 Carleton University School of Public Policy and Administration Richcraft Hall Conference Rooms (2220-2228) 1125 Colonel By Drive Ottawa ON K1S 5B6

Contents

About RGI	2
Agenda	3
Introduction	4
Presentations	4
Canada's public health approach for controlling cannabis: Unpacking the regulatory leadership challenge	5
Cannabis legislation: A provincial perspective	6
Key learnings from an industry perspective	8
Roundtable discussion and priority ranking	10
Question 1: What are the three most important lessons from cannabis since October 2015?	10
Question 2: What are three things we've learned from cannabis that will contribute most to better overall regulatory management?	10
Rapporteur's feedback and conclusions	11
Canada's cannabis timeline: from prohibition to legalization	12
Bios	14
Dr. Robert Slater C.M	14
John Clare	14
Dale Tesarowski	15
Greg Engel	15
Dr. Susan Phillips	15

About RGI

Anchored at Carleton University, the Regulatory Governance Initiative (RGI) builds on the proven track record of Carleton's School of Public Policy and Administration to develop regulatory capacity and competence through three core functions: regulatory policy, governance, and management. Its approach is holistic and problem-driven. The RGI assembles expertise from the humanities, social and natural sciences as needed. For most projects, practitioners in the private, public and non-profit sectors collaborate with scholars from the RGI network.

Today's regulators and regulated communities typically have extensive backgrounds in a variety of scientific, technical and economic fields. However, effective regulatory programs require knowledge of regulatory systems and processes, strong communication and interpersonal skills and ability to innovate in instrument design, program delivery and approaches to compliance. Through each stage of the regulatory lifecycle, regulatory professionals in both public and private sectors must be competent in analyzing, utilizing and communicating evidence to support decision-making and manage risks to improve the health and well-being of Canadians.





Agenda

8:00 a.m. Registration and breakfast

8:30 a.m. Opening remarks

Dr. Graeme Auld, Director, School of Public Policy and Administration, Carleton University

8:45 a.m. Review of agenda, introduction of the background paper

Dr. Robert Slater, Director, Regulatory Governance Initiative, Carleton University in conjunction with the University of Ottawa

,

9:00 a.m. Canada's public health approach for controlling cannabis: Unpacking the

regulatory leadership challenge

John Clare, Acting Director General, Strategic Policy Directorate, Controlled Substances

and Cannabis Branch, Government of Canada

9:30 a.m. Cannabis legalization: A provincial perspective

Dale Tesarowski, Executive Director, Corporate Initiatives Branch,

Integrated Justice Services, Government of Saskatchewan

10:00 a.m. Key learnings from an industry perspective

Greg Engel, Chief Executive Officer, Organigram Inc.

10:30 a.m. Networking break and refreshments

11:00 a.m. Roundtable discussion and priority ranking

Identify the top three priorities to the questions provided.

11:45 a.m. Plenary discussion

12:15 p.m. Rapporteur

Dr. Susan Phillips, Professor, School of Public Policy and Administration, Carleton

University

12:30 p.m. Closing remarks

Dr. Robert Slater, Director, Regulatory Governance Initiative, Carleton University in

conjunction with the University of Ottawa

Introduction

The proceedings began with a review of the agenda and an introduction to the background paper <u>Early Lessons Learned from Cannabis</u> — A <u>Critical Conversation for Regulatory Professionals</u>. The paper helped participants come prepared to engage with each other and to think about the sort of data that regulators need to collect on a systematic basis over the long term.

This Critical Conversation on Cannabis was framed as an opportunity for professional regulators to learn from one of the largest, most complex and most challenging regulatory initiatives undertaken by a government in a single term. Legalizing cannabis is about much more than the legislation and regulation surrounding cannabis. It also offers opportunities to learn lessons for other regulatory fields.

This has been a period of extraordinary activity and great complexity, affecting multiple players in many sectors. During the Critical Conversation, important early lessons learned about cannabis regulation were joined by potentially even more important longer-term lessons. Key players such as government, law enforcement and the cannabis industry shared their ever-increasing knowledge and experience.

To frame the Critical Conversation, participants focused on answering these two questions:

- What are the three most important lessons from cannabis since October 2015?
- What are three things we've learned from cannabis that will contribute most to better overall regulatory management?

Presentations

Presenters

- John Clare, Acting Director General, Strategic Policy Directorate, Controlled Substances and Cannabis Branch, Government of Canada
- Dale Tesarowski, Executive Director, Corporate Initiatives Branch, Integrated Justice Services, Government of Saskatchewan
- Greg Engel, Chief Executive Officer, Organigram Inc.

The presenters shared their particular perspectives and experience on the cannabis regulatory regime. There was an opportunity to engage with and ask questions of these presenters, participate in small group roundtable discussions and draw conclusions about portable learnings this file has to offer.



Canada's public health approach for controlling cannabis: Unpacking the regulatory leadership challenge

John Clare, Acting Director General, Strategic Policy Directorate, Controlled Substances and Cannabis Branch, Government of Canada

Mr. Clare began his <u>presentation</u> by emphasizing that cannabis legalization is a process, not an event. It signaled a radical departure based on an entirely new legislative and regulatory framework. Among the key challenges he listed was the novel nature of the exercise and the question that drove initial discussions: Where do we start?

The initiative's complex operating context was underscored by a lack of clarity surrounding which stakeholders and partners needed to be engaged and how the engagement process was to be managed. Finally, the question of the tight timeline to meet an October 17, 2018, launch focused everyone involved on determining how to get everything done in the allotted time.

Mr. Clare cited the tight timeline and firm deadline as key factors in the success of legalization. He pointed to more typical regulatory initiatives where "finishing is the hardest thing to do." A firm deadline meant that policy-makers were forced to make "trade-offs in what is usually a risk-averse environment." Mr. Clare pointed to the tight timeline and immovable deadline as ultimately being extremely beneficial when it came to focusing key players, and he added that "other parts of government could benefit from adopting a similar approach."

Overall lessons learned

Mr. Clare summarized his presentation under four categories: talent, recruitment, relationships and the future.

Complex Operating Context

 To begin, there were three federal Ministers mandated to legalize, regulate and restrict access to cannabis...



... of which are responsible for very diverse organizations, representing a range of interests

He recommended finding the best talent and prioritizing diversity of experience to avoid working in an echo chamber. A fun, creative and hardworking culture was also deemed essential.

Recruitment was focused on "a vast army of co-conspirators" who all were motivated by a common purpose. Key to recruitment was information-sharing and actively engaging with critics.

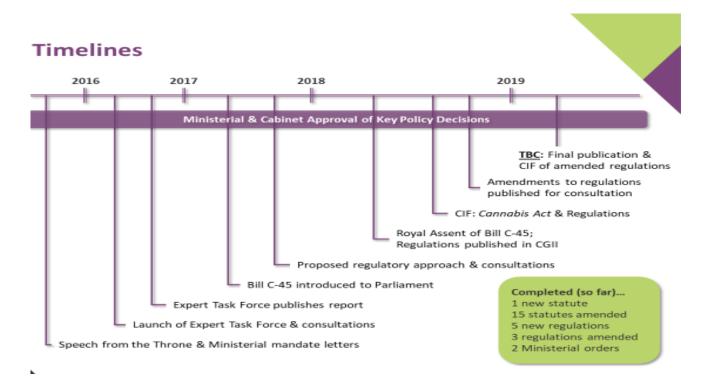
Building credibility and trust was presented as the most effective way to build relationships, along with understanding the interests of "those you serve and those on whom you depend." Having a clear path backed by careful records and data was also critical.

Mr. Clare looked to future challenges by characterizing the current situation as akin to evolving from a startup to a maturing organization while simultaneously preserving a culture of agility and creativity. He reminded the audience that the current and future operating environment will remain complex, dynamic



and entirely novel because in this legislative and regulatory framework there are so many important elements that are new for regulated parties, regulators and the courts.

Market forces are also seen taking time to stabilize as the regulated market begins to supplant the illicit market. Regulators were also advised to be aware that there will be constant domestic and international scrutiny for the foreseeable future.



Cannabis legislation: A provincial perspective

Dale Tesarowski, Executive Director, Corporate Initiatives Branch, Integrated Justice Services, Government of Saskatchewan

Mr. Tesarowski's <u>presentation</u> began with him encouraging the audience to view his remarks as constructive criticism and said that while he had differences of opinion with his federal counterparts, the overall working relationship was "absolutely terrific."

The federal government's decision to develop its own policy framework without the full partnership of provincial and territorial governments was Mr. Tesarowski's primary criticism. Having strong intergovernmental relations institutions is important in helping governments overcome the pressures of "lock-in" that drive them to replicate existing internal policies as opposed to finding more innovative and aligned solutions.

Mr. Tesarowski made the case that being a stakeholder rather than a full partner forced Saskatchewan to consider only "what was working, not what could work, so the liquor and alcohol models were seen as



the only option." From Saskatchewan's perspective, the first critical juncture followed the 2015 Speech from the Throne, when the Government of Canada opted to develop its policy framework in relative isolation through its own Task Force on Canadas Legalization and Regulation.

Treating provincial and territorial governments as stakeholders rather than full partners contributed to the ensuing decentralization of cannabis policy at the operational level. Through its initial discussion paper, the task force encouraged the provinces and territories to consider replicating their existing approaches to alcohol and tobacco, which meant going their own separate ways on cannabis because of differing regimes for alcohol and tobacco across the country.

These different approaches to alcohol and tobacco regulation were well-worn paths unto themselves. The decision to send cannabis down the same separate routes only served to reinforce the decentralized approach to these sorts of issues. Moreover, Mr. Tesarowski argues, now that a patchwork of regulatory regimes has been established, governments are highly unlikely to pursue, let alone achieve, greater policy alignment in the future.

Mr. Tesarowski also noted how a lack of true partnership led some provincial and territorial governments to establish operational policies that ran counter to federal ones. For example, Manitoba and Quebec prohibit growing cannabis plants in private dwellings, despite the federal framework's allowance of up to four plants.

Overall lessons learned

In terms of Canadian cannabis legalization, the primary objectives involve improved public health and public safety. Few provincial or territorial officials argued that the replication of imperfect alcohol and tobacco policies for the purposes of cannabis regulation was the best outcome available — particularly if they were given more time to explore alternatives.

Most were persuaded by conclusions from the medical community, for example, that the age of consumption should be much higher than that set for alcohol. Yet they defaulted to existing, familiar frameworks.

Policy alignment is not a desirable end unto itself. But when governments in a federation agree on an ambitious policy change, some amount of policy coordination is required to ensure smooth implementation. This was evident in the case of cannabis legalization in Canada.

The federal government's choice to launch policy development in the absence of provincial and territorial governments, and the aggressive timelines it imposed, made this sort of policy coordination very difficult and unattractive. Provincial and territorial governments calculated it was simply easier to replicate their own existing alcohol and tobacco policy frameworks. Policy-makers, citizens, businesses and other stakeholders will soon see the impacts of the resulting misalignment of cannabis regulatory policies across Canada.





Key learnings from an industry perspective

Greg Engel, Chief Executive Officer, Organigram

Mr. Engel's <u>presentation</u> began with a brief overview of the path to cannabis legalization in Canada. He cited various court decisions, beginning with *R. v. Parker* (2000) and "the constitutional right to choose cannabis as a medicine without fear of criminal prosecution."

In 2001, the Marihuana Medical Access Regulations allowed individuals to grow medical cannabis for personal use or designate someone to grow it on their behalf. By 2015, it was no longer an offence to possess marijuana derivatives, which led to Health Canada issuing a Section 56 exemption under the *Controlled Drugs and Substances Act* allowing licensed producers to produce and sell cannabis oil and fresh marijuana in addition to dried marijuana.

Mr. Engel drew a line from the legitimization of medical marijuana to today's regulatory regime for recreational cannabis. In 2016, a national poll by Nanos Research found that seven out of 10 Canadians were in favour of legalizing marijuana.

The rest of Mr. Engel's presentation was framed by the three goals of the *Cannabis Act*, which created a strict legal framework for controlling the production, distribution, sale and possession of cannabis across Canada. The Act aims to accomplish three goals:

- Keep cannabis out of the hands of youth.
- Keep profits out of the pockets of criminals.
- Protect public health and safety by allowing adults access to legal cannabis.

"Public safety, especially regarding our youth has to be a priority," Mr. Engel said. "No system of growing and selling cannabis can work without explicit, strict and enforceable rules on product quality, consistency, safety and security."

Organigram works in partnership with regulatory bodies to drive best-in-class policy solutions. As a company and through its association, the Canadian Cannabis Council, Organigram is working with federal authorities, provinces and municipalities to continue to ensure harm-reduction and responsible consumption is reflected in the implementation of the new regulatory regime.

Mr. Engel says the current focus of his company's regulatory-related work is on proposed advertising standards, brand development, distribution via retail and mail order, age validation and methods for measuring impairment.

Overall lessons learned

Mr. Engel's primary concern with the current regulatory regime centered on what he sees as its success in allowing legal access to cannabis contrasted with its less impressive record of keeping cannabis out of the hands of youth and diverting profits from the illicit market. He made reference to illicit suppliers offering free joints and business cards to customers lining up at legal cannabis stores to illustrate the pervasiveness of the illicit market.

This level of competition is replicated across the internet. Mr. Engel showed screen shots of an illicit operator's website that offers cannabis delivery across Canada. These kinds of operators have a highly



developed marketing and sales operations and are able to accept online payment. They are also able to offer edibles and other products not available on the legal market.



Mr. Engel argued that regulators must acknowledge this and see providing legal operators, like Organigram, with more flexibility and support as a critical element in efforts to dismantle the illicit market. Allowing for responsible branding and advertising creatively targeted at adults to compete with the efforts of the black market was presented as an important tool for the legal market to compete with the illegal market.

The implementation of the proposed amendments to the *Cannabis Act* related to derivatives and edible products in the fall of 2019 was described as a "huge step towards competing with the illicit market, which has a broad and comprehensive product offering today. As a company and an industry, we applied the efforts to expand the product offering to adult consumers."

Mr. Engel called for expanded educational efforts to highlight the risks associated with products sold through illicit sources. Targeting unlicensed, illicit retailers and online operations through financial means was presented as another key step. Banks and municipalities also need to target landlords of illegal storefronts, he said.



Roundtable discussion and priority ranking

Dr. Slater set the stage for roundtable discussions at each table of participants. To frame the Critical Conversation, each table of participants focused on answering these two questions during a 40-minute roundtable session:

- What are the three most important lessons from cannabis since October 2015?
- What are three things we've learned from cannabis that will contribute most to better overall regulatory management?

Each table presented their answers to the framework questions and identified the top-three priorities to enable answering the questions provided. All participants then voted on the answers from all groups using green stickers to signal agreement and red stickers to signal disagreement. A group discussion ensued.

The following text is a summary of the answers that were presented. The overall tone of the discussion was collegial and constructive. Participants voted overwhelmingly to support most answers — 90% of the answers received a yes vote, 10% received a no vote.

Question 1: What are the three most important lessons from cannabis since October 2015?

Seventeen suggestions were made with the majority falling into four categories. Suggestions that received fewer than three votes are not included here.

- Clear mandate time-driven decision-making. [8 votes]
- Hard to anticipate all consequential impacts in other sectors. [5 votes]
- By focusing on implementation, things moved quickly but may have caused education challenges. [3 votes]
- Allow for adaptive regulatory management. Build it and live it. [3 votes]

Question 2: What are three things we've learned from cannabis that will contribute most to better overall regulatory management?

Fourteen suggestions were made with the majority falling into seven categories. Suggestions that received fewer than three votes are not included here.

- Building flexibility into the legislation, given constraints in time and information. [6 votes]
- Youth access needs more consideration. [6 votes]
- Adaptive regulation. When to adjust. How to adjust. Expectation of change. [6 votes]
- Leadership. Drive momentum. Federal role. Drive momentum, especially in financial domain. [6 votes]
- Good rules need good enforcement. [4 votes]
- Importance of relationship building and commitment to the outcome. [3 votes]
- Ongoing monitoring and adjusting to reflect changes over time (science, technology, unintended consequences). [3 votes]





Rapporteur's feedback and conclusions

Dr. Susan Phillips, Professor, School of Public Policy and Administration at Carleton University

"As an issue, cannabis is a marriage, not a fling. We are building a new relationship, but there is no chance of divorce," said Dr. Phillips as she opened her summary.

She highlighted six themes to frame her remarks:

- Time
- Knowledge
- Partners
- Markets
- Adaptive management

Time

The tight timeline was a key feature of all the discussions. It increased pressure on policy-makers, but it also enabled bold action and kept everyone focused on delivering a new regulatory regime on time.

Knowledge

Regulations were built to a large extent on borrowing from existing alcohol and tobacco regimes. This led to a bias that favoured a more conservative approach.

Partners

A lack of time was cited as one of the primary reasons provincial and territorial stakeholders were not treated as full partners. This was seen as detrimental by the majority of participants. An inability to fully partner between different orders of government was also blamed for a lack of more creative approaches to regulation.

Different sets of stakeholders should continue to be acknowledged, along with different regional and cultural needs. Indigenous communities were seen as requiring special forms of engagement based on respect for traditional values and the fundamental connection between Indigenous peoples and plant-based medicines.

Markets

The promise to drive out illicit operators remains unfulfilled. Optimists argue that the experience of other regimes in places like Colorado points to a withering of illicit suppliers over time. However, many questioned the likeliness of this illicit suppliers fading out, given current price differentials between more expensive legal products and cheaper illegal products. Marketing restrictions on legal products were also blamed for hamstringing legal operators.

Adaptive management

The rapid pace of change in the cannabis sector is expected to continue. How should policy-makers plan in advance to adjust to a shifting landscape and continue to refine regulations?

Adaptive management was presented as the best starting point. Policy-makers should expect to learn a great deal as regulations are put into practice and the private sector and civil society adjust to the new regulatory environment.



There is substantial evidence that once a regulation is in place, it tends to endure, and there is typically little support for making changes until they are unavoidable. This is why adaptive management usually offers the best approach. It is the practice of collecting performance data at every step of the regulatory lifecycle, from planning to designing, implementing, evaluating and adjusting.

Canada's cannabis timeline: from prohibition to legalization

1800s

The Government of Canada uses hemp to help stimulate the economy by handing out hemp seeds to farmers with hopes that they would cultivate the plant for its many uses. By 1822, the provincial parliament of Upper Canada begins to set money aside to incentivize hemp cultivation and purchase machinery for its processing.

1922

Pioneering feminist Emily Murphy publishes an inflammatory book, *The Black Candle*. She claims that marijuana turns its users into homicidal maniacs.

1923

Cannabis is added to the schedule of the *Opium and Drug Act*.

1932

Canadian law enforcement seizes marijuana for the first time.

19609

Popular counterculture movements in Canada and the U.S. bring psychedelic drugs and cannabis into popular use. But anti-cannabis laws are enforced strongly, resulting in a dramatic increase in arrests and convictions.

1969

The Canadian government establishes a commission of inquiry into the non-medical use of drugs, known as the Le Dain commission after its chair, Gerald Le Dain.

1972

The Le Dain commission recommends decriminalizing simple cannabis possession and cultivation for personal purposes.

1976

The Netherlands effectively decriminalizes marijuana.

1977

Then-prime minister Pierre Trudeau tells a group of students, "If you have a joint and you're smoking it for your private pleasure, you shouldn't be hassled."

1978

New Mexico passes the first state law recognizing the medical value of marijuana.



1996

California becomes the first state to legalize medical marijuana.

1999

Two Canadian patients get the federal OK to smoke cannabis.

2000

The Ontario Court of Appeal rules Canadians have a constitutional right to use cannabis as a medicine.

2001

Canadian Medical Marijuana Access Regulations grant legal access to cannabis for individuals with HIV/AIDS and other illnesses. Authorized patients can grow their own cannabis or obtain it from authorized producers or Health Canada.

2012

Ballot measures in Colorado and Washington legalize recreational use of small amounts of marijuana.

2013

New regulations change the Canadian medical marijuana access rules, shifting to licensed commercial growers for supply and away from homegrown.

Justin Trudeau, while campaigning for leadership of the Liberal Party, says he is in favour of legalizing cannabis.

Uruguay becomes the first country in the modern era to legalize cannabis.

2014

Patients and producers authorized under the old regulations are required to destroy stocks of marijuana and cannabis seeds, although a Federal Court granted a temporary injunction allowing continued use of home-grown medical marijuana until legal arguments can be heard.

The federal government says the unforeseen growth of its medical marijuana program has "seriously compromised" the goal of providing the drug to patients while ensuring public safety. It says the number of people authorized to possess marijuana under the federal program has risen from fewer than 100 in 2001 to 37,000.

2015

The Liberal Party of Canada makes legalizing cannabis part of its election platform.

2016

A national poll by Nanos Research finds that 7 out of 10 Canadians are in favour of legalizing marijuana.

2017

Bill C-45 is introduced in Parliament. It would allow people aged 18 and older possession of up to 30 grams. Provisions are not made for legal sales, and the bill would allow provinces to restrict possession, sale and use.

2018

October 18, the Cannabis Act comes into force.



Bios

Host

Dr. Robert Slater C.M.

Dr. Robert Slater is Adjunct Professor in the School of Public Policy and Administration at Carleton University where he is also the Executive Director of the Regulatory Governance Initiative.

Dr. Slater occupied several senior positions during a 32-year career at Environment Canada, including the role of Senior Assistant Deputy Minister for eight years. He was instrumental in establishing the National Roundtable on the Environment and the Economy, the International Institute for Sustainable Development and the UNU Institute for Water, Environment and Health. He played a lead role in the renegotiation of the Great Lakes Water Quality Agreement, Acid Rain Agreements with Provincial Governments, the Canada-United States Accord on Air Quality, and the Green Plan. He led preparations for Canada's role in the UN Conference on the Environment ("Earth Summit") in Rio de Janeiro in 1992. He was responsible for legislative initiatives leading to the Canadian Environmental Protect Act (CEPA) and the Species at Risk Act (SARA) and led the development of regulations limiting lead in gasoline and bringing auto emissions standards in line with those in the U.S.

He chaired the International Joint Commission's Great Lakes Water Quality Board from 1976 to 1982. After he left the public service, he founded a consulting company in the field of sustainable development which operated internationally and was a member of the National Roundtable on the Environment and the Economy for six years. Before joining the public service, he was co-founder of Pollutech, an environmental consulting company.

He was awarded degrees from Imperial College of Science and Technology and was appointed a Member of the Order of Canada in 2009.

Presenters

John Clare

Mr. Clare is Acting Director General, Strategic Policy Directorate, Controlled Substances and Cannabis Branch, Government of Canada.

Mr. Clare has varied experience working in legislative and regulatory policy and has held a range of positions over his 15 years at in the Government of Canada, including Director of Privacy and Data Protection Policy in the Department of Innovation, Science and Economic Development (formerly Industry Canada), and the Director of Energy Policy at Natural Resources Canada. He has a degree from the University of Alberta.





Dale Tesarowski

Mr. Tesarowski is Executive Director, Corporate Initiatives Branch, Integrated Justice Services, Government of Saskatchewan.

Called to the Bar in Manitoba in 1982, Mr. Tesarowski worked at Legal Aid and the Crown's office in Manitoba until 2006, when he left to join Saskatchewan Justice as its criminal law policy specialist. He was called to the Saskatchewan Bar in 2006. Mr. Tesarowski is the National Co-Chair of the Coordinating Committee of Senior Officials Impaired Driving and Cyber Crime Working Groups and the CCSO Youth Justice committee.

He co-chairs Saskatchewan's cannabis legalization implementation team, which was awarded the Deputy Minister of Justice's Award for its work. Mr. Tesarowski was also Provincial Co-Chair of the Information Sharing Issues Working Group, dealing with information sharing and privacy law issues in Saskatchewan. In November 2015, he became a member of the North American Council on Juvenile Justice.

Greg Engel

Mr. Engel is Chief Executive Officer, Organigram Inc.

Mr. Engel has served in a number of senior-level and executive positions in related industries over the past 25 years in Canada, the U.S. and internationally. Most recently he was chief executive officer for Tilray Canada Inc., an early medical marijuana leader and the first Canadian company to export medical cannabis products to Europe.

Engel is a native of Picton, Ont., and earned an Honours Bachelor of Science in Microbiology from the University of Guelph in 1987 and then studied marketing at Queen's University. He also attended York University's Schulich School of Business.

Rapporteur

Dr. Susan Phillips

Dr. Phillips is a Professor in the School of Public Policy and Administration at Carleton University.

Her research focuses on public policy and regulation of philanthropy and the nonprofit sector, financing of charities and nonprofits, cross-sectoral collaboration, community foundations and place-based philanthropy. In particular, her work concentrates on comparative analysis of the policy, regulatory and financing frameworks that enable (or constrain) the work of civil society organizations and philanthropy, and the implications for public management.

Dr. Phillips' related areas of research focus on women in leadership in the public and nonprofit sectors, policy and program evaluation, and regulation as a policy instrument. Beginning her academic career in geography and urban planning, she also maintains an interest in urban governance.

Dr. Phillips is a Research Fellow of the Carleton Centre for Community Innovation (3CI) and is centrally involved with the Regulatory Governance Initiative (RGI) and the Centre for Women in Politics and Public Leadership. She is a board member of the International Research Society for Public Management, a member of the Policy Advisory Boards of Imagine Canada and Volunteer Canada, and Past Fellow of the Wellesley Institute and the Canada School of Public Service.

