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REGULATORY INSTITUTIONALISM IN CANADA

BY BROGAN POWLESLAND



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P O L I C Y S E R I E S

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EXECUTIVE SUMMARY

It is an easy task for governments to create regulation. Indeed, it could be argued that in some instances, it is too easy. Regulation often comes about as a knee-jerk reaction to an event, but can have long-lasting consequences that go beyond its intention. Often, these are unintended consequences that come from trying to apply a quick fix to a complicated situation. Regulatory Impact Analysis (RIA) has not been effective in ensuring that small businesses and individuals receive a fair hearing about proposed regulation. Regulatory standards provide a means to ensure that all regulation meets a certain standard before it can be passed as law. It ensures that all new legislation passes a checklist of principles that lawmakers should consider when writing new legislation. Regulatory standards could help ensure that there are fewer hidden surprises in new legislation, and that most consequences that come from new regulation can quickly be identified during the drafting of legislation.

- Regulation has many unforeseen, negative consequences that are often never considered during the legislative process.
- Individuals and small businesses currently have little control and few rights over the regulatory process. This seems illogical as each regulation, no matter how small, diminishes an individual's autonomy and affects small businesses disproportionately to large businesses.
- Efforts to slow the growth of regulation and to raise information about proposed regulation through Regulatory Impact Statements seem to have been ineffective.
- To ensure than an individual's autonomy is not excessively diminished, each regulation should be judged based on a series of principles.
- These principles should be drafted based on a list of objectives that are trying to be achieved. Opportunity for those who need it should be paramount to these objectives.
- To ensure that a government does not excessively regulate, each legislative body should adopt a set of principles and objectives, preferably not too dissimilar to the principles and objectives of other legislative bodies in the same country.
- Individuals and small business owners need to have the right to challenge bad regulation through the judiciary.

INTRODUCTION

An ever-evolving leviathan requires an equally ever-evolving harpoon. If the leviathan is changing to avoid being contained, new tools are necessary to ensure that the right balance is found between state and citizen.

In order for an economy to grow, the enterprise of individuals are required to innovate, yet government regulation discourages this innovation. When a government creates new regulation, it stops a consenting individual from being able to act in the way that they choose. This is undesirable and should be avoided as much as possible, except for instances where this is necessary for society to function as a whole.

Right now, individuals have very little protection against excessive regulation. This can become problematic if proper research is not undertaken on legislative proposals.

More fairness in the drafting of regulation should ensure that an individual has the ability to fight back against regulation that unfairly attacks their freedom to achieve. Business owners who are directly affected by the ill-effects of regulation often have a better idea of how regulations affect them than most bureaucrats.

This paper will examine the negative effects of excessive regulation, while analyzing how regulation is currently affecting business owners and individuals. The present regulatory environment and the culture of bureaucracy will also be addressed.

Additionally, the principles of what makes good regulatory fairness legislation will also be explored. If legislation is to try to fight nanny state regulation, legislation enforcing regulatory fairness must have solid grounding.

Lastly, a new policy tool, Regulatory Standards, will be proposed. Regulatory Standards offer an opportunity to protect Canada from mistakes that bureaucrats and politicians continue to make.

WHY IS REGULATION UNDESIRABLE?

Regulation is not bad legislation in and of itself. It does, however, create a burden that has to be lifted by someone, and it is that burden that needs to be avoided whenever possible. Regulation is the bane of freedom and personal responsibility. It stops people from acting in ways that they may wish to act. To this end, the more regulations that a state upholds, the less freedom an individual has to act in a way that they choose to. This limits an individual's freedom to achieve.

Regulation is usually legislated to target producers. The reasons for legislating regulation can be endless and change on a daily basis, depending on what the current event of the day is.

When a government creates regulation, there can be unforeseen negative consequences. These consequences ultimately mean that producers face higher costs for their daily and annual activities. As a result of increasing costs, producers face a choice of either increasing their prices or cutting costs. However, raising prices makes consumers more likely to find other suppliers, which makes producers reluctant to raise prices if unnecessary.

Where increasing the price of a good or service is not feasible, and business expenses have to be cut, employee wages may decrease, or simply not increase over time. This is especially true for small businesses who struggle to compete with large businesses.¹ The Canadian Federation of Independent Business (CFIB) estimates that for businesses that employ less than 5 employees, the cost of regulation for each employee is \$6,683.² For businesses that employ more than 100 employees, that amount is as low at \$1,462 for each employee. When business owners were asked what they would do if regulatory costs were reduced, 40% said they would increase employee wages and benefits, 27% said that they would hire additional employees and 25% said that they would increase employee training.³ The costs of regulation are directly stopping business owners from doing right by their employees.

The results from the CFIB business surveys show that business owners feel that they are limited by a number of factors brought about by government, the main factor being government regulation. The CFIB January 2015 report on the year ended 2014 found some worrying facts:

- Regulation cost Canadian businesses \$37.1 billion.⁴
- Excessive regulation added significant stress to the lives of 78% of business owners.⁵
- 87% of business owners believe that the burden of regulation is growing.⁶
- 42% of business owners would not advise their children to start a business due to excessive regulation.⁷
- If 33% of business owners had known the burden of regulation, they may not have gone into business.⁸

In fact, the impact of regulation is now bad enough that CFIB has suggested that it is now time to place further constraints on regulators. Regulatory Standards are such a constraint.

BUILDING THE UBER ECONOMY

A sign of a good regulatory economy is to look at the treatment of Uber in that regulatory environment. Uber is a smartphone application that allows consumers to order a ride to any destination within their jurisdiction, and allows drivers to pick jobs as they come available.

Uber has brought innovative ideas and technology to the transportation industry. When a consumer orders an Uber, they receive the driver's name, driver's picture, the vehicle model, and number plate. They also receive an estimated fare. Upon entering the vehicle, passengers can find the shortest route by GPS to ensure that drivers are not taking the 'scenic route'. Once arrived at the destination, a receipt is sent to the passenger via email and text.

Uber also makes use of price surging, a protocol created when there is high demand for Uber, the price of an Uber ride will increase to encourage more drivers to get on the road. Consumers are notified when surge pricing comes into effect on the app.

As a result of this innovative way of doing things, passengers and drivers have been flocking to Uber. Uber is currently running in 53 countries and in more than 200 cities worldwide.

Unfortunately, out-of-date transport regulation has made the implementation of Uber difficult in many municipalities. These out-of-date transport regulations are to blame for shutting down Uber in some cities. Some reasons for this range from unnecessary caps on taxi licences, privilege given to established taxi firms, safety regulation not applicable to Uber, and price regulation.

But the breadth of regulation that affects Uber goes well beyond just transport regulation. As Uber drivers are typically self-employed, other laws also become important, such as fair tax law, accessible and inexpensive dispute resolution, self-employed individual's access to social services, and fair labour and contract law.

For this reason, a very simple litmus test can be applied to see how regulated a country or city is just by looking at how Uber operates in that jurisdiction.

REGULATORY IMPACT ANALYSIS STATEMENTS (RIAS)

At present, the Federal government completes a Regulatory Impact Analysis Statement (RIAS) for each proposed regulation.

There are many benefits to having a RIAS program. On paper, stakeholders are consulted early on about regulation, and politicians are usually armed with information about legislation in a timely fashion.

Unfortunately, there are weaknesses in this program. It is a process that allows the government to say that it is making progress with regulation reduction without actually doing so. While these RIAS are well-intended, they do achieve their aims.

Current medium to high impact RIAS are composed of the following sections:

- Executive Summary;
- Issue;
- Objectives;
- Description;
- Regulatory and non-regulatory options considered;
- Benefits and costs;
- Rationale;
- Consultation;
- Implementation, enforcement, and service standards;
- Performance measurement and evaluation.

While this looks good on paper, the implementation of this has not been satisfactory.

International research notes that in OECD countries that have Regulatory Impact assessment, there is often inadequate capacity within government departments to thoroughly analyze economic and non-economic evidence, leading to unsatisfactory regulatory assessment.⁹ This is due to a number of factors, including a lack of data, not engaging with key stakeholders, not defining when a policy is a success, not considering alternative regulation or alternatives to regulation, and not learning from past mistakes and successes.

DEFINING SUCCESS AND CONSIDERING WAYS TO ACHIEVE SUCCESS

International research has taken the view that government agencies in Europe and North America have not been adequately defining success in their regulatory impact analysis.

Since 2008, The Mercatus Center has been evaluating the quality of proposed regulatory impact analyses for economically significant rules in the U.S. They found that defining the goals and measures to assess the results of the regulation, and defining the data that the agency will use to indicate results of the regulation to be the two lowest scoring factors within their evaluations.¹⁰ The next lowest has been the analysis of the systemic problem that the regulation is seeking to solve.

This means that the regulatory analysis being completed by the civil servants in the U.S. are not actually considering what the problem they are trying to address is. If they cannot accurately figure out what the problem is, and they cannot define what would demonstrate a regulatory success, then the results of the regulation can never truly be known.

Furthermore, if the civil servants are unable to define the regulatory issue and what would constitute a regulatory success, then they are unable to consider alternative regulatory responses, or innovative ones, in particular.

The ability of the U.S. to complete a thorough regulatory impact analysis has only one redeeming light and that is that it is better than Europe's. A paper that looked at studies of the European system suggests that important components of regulatory impact assessment are more often than not missing, such as estimated costs and benefits.¹¹ The same paper also suggested that regulatory oversight in Europe may be getting worse over time, as the monetization of costs and benefits all decreased over a period of time, as did the suggesting of regulatory alternatives. These effects meant that European politicians had even less information about the regulations they were making, and were presented with fewer alternatives.

Canada started completing RIAs in 1986. Although a broader format for RIAs was introduced in 1999, and then again in 2008, very little research has been completed into the depth of RIAs that have been completed, or into the effectiveness of them making a difference to the policy. As Canada's RIAs program is not as broad or academic as the European or U.S. system of regulatory analysis, it would be interesting to see how much value Canadian policy makers are actually getting out of it. Based on the discontent that business owners are feeling for regulation, it is likely less valuable than it seems.

BUREAUCRATS AND STAKEHOLDERS

No matter how reasonable the regulatory framework is, it is useless if the people who are administering it do not understand the significance of their task. One of the largest concerns that business owners have is that they feel bureaucrats do not understand them. International research on bureaucrats has often shown that they do not understand business. When New Zealand business owners were surveyed in 2014 by the New Zealand Productivity Commission, only 23% agreed with the statement that "Regulatory staff are skilled and knowledgeable".¹² Only 25% agreed with the statement that "Regulators understand the issues facing your organisation".

While Canada does not have a Productivity Commission that collects this data, data collected by the CFIB is just as damning. 82% of business owners disagree with the statement: "Government considers the impact on my business when it imposes regulations".¹³

CFIB's 2014 report on the Impact of Regulation on Canadian Individuals shows that the problems associated with bureaucracy is not just isolated to small businesses. While in 2014, 81% of business owners said that "excessive regulations add significant stress to my life", 45% of individuals also agreed with this same statement.

The same report also noted that governments have a long way to go with the way they communicate. Approximately 89% of individuals believe that "Governments could better communicate regulations in plain language" and 71% of business owners disagree with the statement that "Governments effectively communicate new regulations to my business." If governments cannot communicate regulations in a plain, understandable way, then it is foreseeable that the legislated regulations will not be followed.

WHAT ARE THE OBJECTIVES AND PRINCIPLES OF REGULATION?

Best practice for any regulatory system, whether that be a system based on Regulatory Impact Statements, or regulatory standards, is a system that describes what objectives they are trying to build their regulatory system around, and a system that builds principles that it can judge regulation with.

One of the most important parts of any regulatory objective list is that there is a definitive goal that we are trying to achieve, and that goal has to achieve some economic or social end. If regulation does not do this, it is not worth legislating. Unnecessary regulation will only make the regulatory environment more excessive, which will harm businesses, their employees, and consumers. As businesses become unable to meet a growing list of regulations, they will be forced to close down, leaving their employees without work and leaving consumers with less choice.

To this end, society must always be willing to have an open discussion about regulation and whether it is going to achieve what we want it to. This ensures that policy is always relevant and that those affected by proposed regulation have the opportunity to have their say.

Evidence in policy making needs to do two things:

- To prove that there is a problem
- To prove that the problem can be fixed with the suggested policy

There are other desirable ends that should also be taken into account, such as, for regulation to ultimately increase economic predictability. Economic predictability increases business and consumer confidence, as they are much more likely to understand the economic environment and be able to make more rational decisions from such information. Small businesses in particular need to be aware earlier rather than later, of changes that could increase their costs so that they are able to be aptly prepared for it.

In keeping with the aims of each regulation, the regulation should take the benefit of the regulation into account, and weigh it against the costs of the regulation. The cost should not be limited to what is seen, but also what is unseen, and what opportunities have been lost as a result of the regulation.

There is one final objective, and to some extent, is influenced by the four other objectives. Our regulatory system must ensure that those who need opportunity do not lose it. Every individual in need should have the right to seek the opportunity that they need to survive. This objective also gives a target to who regulation should benefit. Regulation is often legislated to protect those who desire protection, but do not necessarily need it, and may later find themselves being hurt by the regulation. Regulation that is made to protect people most in need should not be made worse off because of it.

This objective is especially important when considering small businesses and the self-employed. Small businesses and self-employed individuals can be greatly affected by costs, and increasing regulation can make it difficult for individuals to start a business or become self-employed. A regulatory system must be set up in a way so that individuals are able to make entrepreneurial opportunities for themselves.

It would then seem to me that there should be five objectives of good regulation:

- Our regulatory system must ensure the protection of public health, welfare, and safety while promoting economic growth, innovation, competitiveness and job creation;
- It must ensure an open exchange of ideas;
- It must advance predictability and reduce economic uncertainty;
- It must take into account benefits and costs, both quantitative and qualitative; and
- It must ensure that those who need opportunity do not lose it.

A clear theme emerging from the objectives is that regulation must not only achieve a definitive goal, but must be effective in achieving that goal.

The goal of regulation is to achieve an economic and/or social good. Not only should the regulation be able to achieve the desired good, but it should be the most effective way to achieve that good, with the fewest unintended negative consequences possible.

Another important question is to ask whether the social and economic benefits of the regulation outweigh the social and economic costs. There is little point in legislating regulation if the costs of implementing such regulation outweigh the benefits. This means that there should be research into the foreseeable costs and benefits. It also means that there needs to be investigation around what unintended effects new regulation might have to certain interest groups. Likewise, regulation should ensure that individuals do not lose their opportunity to seek beyond the status quo. All individuals should have the right to seek their version of the happy life, free from needless regulatory constraints.

So far, this gives us a list of principles that read like this:

- Regulation should solve an identified problem that is statistically causing some significant economic or social cost. This problem should be a threat to public health, welfare, or safety. Solving this problem should universally enhance individual autonomy.
- There must be evidence that the regulation will solve the given problem. There must also be a way of proving that the given problem is solved, that the regulation is responsible for that, and that no further regulation will be needed.
- On balance, those that are supposed to benefit from the regulation should benefit, but not at the expense of an individual's opportunity to pursue their vision of the happy life.

These three principles form a very simple preliminary check on whether thoughts on a proposed regulation should be pursued.

There are other principles that should also be referred to when looking at the precise implementation of the regulation. Alternatives to regulation should be

explored. Just because a problem exists does not mean that regulation is necessarily the best way to solve that problem. The problem may be better solved by another course of action, such as through subsidies, taxes, tax credits, or tax relief. Also, it would be good to see if current regulation is being enforced correctly, and if not, why it is not.

To this end, alternatives to regulation need to be explored. Amending current regulation could be a better alternative to creating new regulation, as in some situations, it may not seem necessary to create a whole new form to achieve one desired effect. It could also be possible to achieve the desired outcome through deregulation rather than increased regulation.

With implementing any policy, there are likely to be some consequences that may be unexpected. Legislation should be drafted and implemented in such a way that minimizes the possibility of any unintended consequences.

One such example is the legal definition of harm. We have a definition of harm that has been well established in common law. It has been repetitively tested by the courts, and is the best and most institutionalised method of preserving our rights and liberties. It would not be wise for the legislature to change what harm encompasses, or to change the meaning to suit one particular agenda.

It is also necessary to address the definition of harm within these principles:

- The definition of harm should be preserved. It must remain conventional and consistent with centuries of western legal tradition. The legal definition of harm should not be changed to move the legislation or regulation forward, or to penalise individuals providing opportunity.

This also emphasises that regulation should preserve the rule of law and be consistent with the current system of laws. It would be silly to create regulation that is at odds with other pieces of law. However, committing to this creates a number of obligations.

Regulation should increase certainty by using precise language, not ambiguous language. Simple

language should be used so that all individuals can understand their regulatory obligations. Imprecise language, ambiguity, and incomprehensible jargon makes complying with regulation more tough, which could deter lawful people from having opportunity and/or make it harder for individuals and businesses to know when they are complying with regulation. Good regulation should be clear about what actions are legal and what actions are expected by those affected. In all, the avoidance of ambiguous regulation ensures a degree of economic predictability.

Regulation should not be retrospective. It would be disastrous to impose regulatory obligations in the past, as there is no possibility that any entity could purposely pass. Instead, regulators should ensure that enough notice is given for businesses and individuals to prepare for the incoming regulation. This is very important in ensuring that regulation is fair.

Regulation should be drafted so that:

- The rule of law is preserved or enhanced.
- The wording of the legislation is precise, with no ambiguity, and is simple to understand. The regulation should be clear about what actions or consequences are required to comply with the regulation.
- Reasonable notice is given so that businesses and individuals can adjust to the new regulation.

There are other principles that should also be acknowledged in the name of equal opportunity and fairness.

Regulation should apply to all people equally. It would undermine the rule of law if regulation specifically targeted a specific cross-section of society, as it would be saying that it would be legally permissible for one individual to perform an action, but not legally permissible for another individual to perform that same action. Good law should acknowledge that all individuals are equal under the law.

Regulation should not favour one competitor over another. Competition is a vital part of a

functioning market economy. It is not the role of the government to decide that one competitor should have a competitive advantage over another competitor – the free market is a better mechanism for ensuring that consumers achieve the highest benefit possible. As previously discussed, excessive regulation has a disproportionate negative effect on small businesses, contractors, and franchisees, as compliance costs are more likely to have a higher opportunity costs. Policy makers must be wary of this when they are thinking of new ways to regulate market activities.

Regulation should not favour any particular means of achieving results. Regulation should aim at achieving results, not banning innovative ways of achieving results. To this end, regulation should not favour nor disfavour the use of any particular technology or methods of production.

Regulation should:

- Recognise that all individuals are equal under the law.
- Not favour any competitors.
- Not favour any particular technologies or means to public benefits.

The final point that should be made is that policy objectives can often be achieved with more than one policy. When dealing with policy, there are often many unintended consequences that cause some negative effect. This is why it is important to analyse alternative routes to achieving the desired effect.

Thus, I present five objectives to aim for when considering regulation, and seven principles that should help to achieve those five objectives.

Objectives:

- Our regulatory system must ensure the protection of public health, welfare, and safety while promoting economic growth, innovation, competitiveness and job creation.
- It must ensure an open exchange of ideas.
- It must advance predictability and reduce economic uncertainty.
- It must take into account benefits and costs, both quantitative and qualitative.

- It must ensure that those who need opportunity do not lose it.

Principles:

- Regulation should solve an identified problem that is statistically causing some significant economic or social cost. This problem should be a threat to public health, welfare, or safety. Solving this problem should universally enhance individual autonomy.
- There must be evidence that the regulation will solve the given problem. There must also be a way of proving that the given problem is solved, that the regulation is responsible for that, and that no further regulation will be needed.
- On balance, those that are supposed to benefit from the regulation should benefit, but not at the expense of an individual's opportunity to pursue their vision of the happy life.
- The definition of harm should be preserved. It must remain conventional and consistent with centuries of western legal tradition. The legal definition of harm should not be changed to move the legislation of a regulation forward, or to penalise individuals providing opportunity.

• When considering regulation:

- Alternatives to regulation should be explored.
- Alternative regulation should be explored.
- The negative unintended consequences of regulation should be discovered, analysed, and minimised to the highest possible extent.
- The policy that gives the most benefit for the least cost should be pursued.
- The benefits of any policy should outweigh any and all costs.

• Once the regulation is decided on, it should:

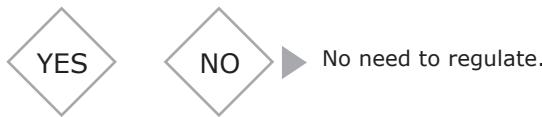
- Recognise that all individuals are equal under the law.
- Not favour any competitors.
- Not favour any particular technologies or means to public benefits.

• Regulation should be drafted so that:

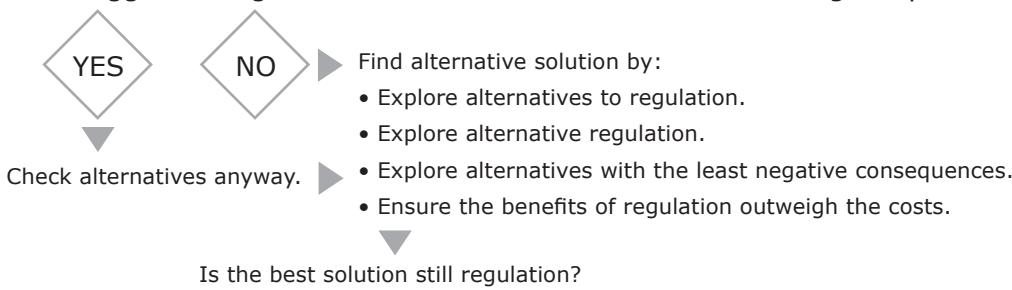
- The rule of law is preserved or enhanced.
- The wording of the legislation is precise, with no ambiguity, and is simple to understand. The regulation should be clear about what actions or consequences are required to comply with the regulation.
- Reasonable notice is given so that businesses and individuals can adjust to the new regulation.

This can also be exemplified by this simple flowchart:

Test 1: Has a statistically significant problem been identified? Is this problem a threat to public health, welfare, or safety? Would solving this problem universally enhance individual autonomy?



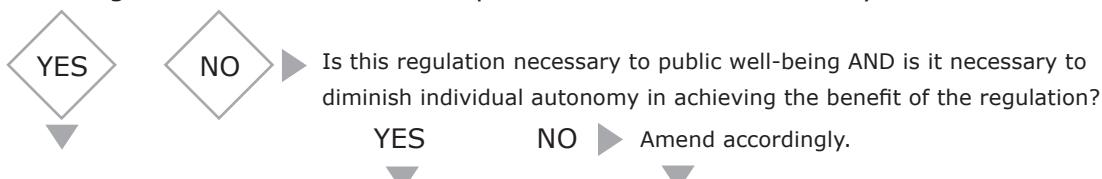
Test 2: Is the suggested regulation the best course of action to solving the problem?



Test 3: Does the best course of action solve the problem and is there a way of proving that the problem is solved? Do the benefits outweigh costs?



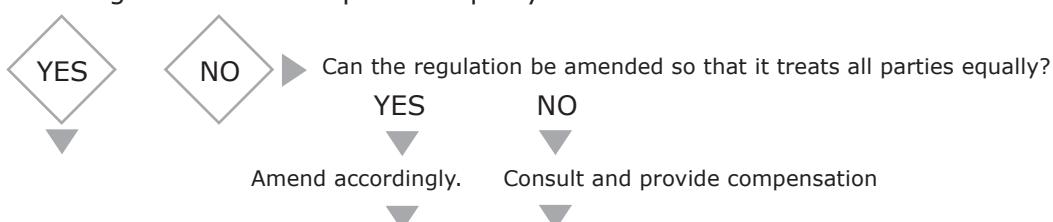
Test 4: Does the regulation either enhance or preserve individual autonomy?



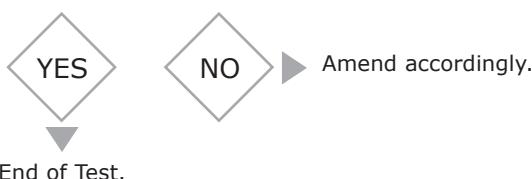
Test 5: Does the regulation preserve current legal rights and the rule of law?



Test 6: Does the regulation treat all parties equally?



Test 7: Is the regulation easy to understand? Is the wording of the bill precise, with no ambiguity? Is it clear what must be actioned or achieved? Is reasonable notice given?



End of Test.

REGULATORY STANDARDS

Regulatory standards seem like the best way to improve the quality of regulation. A Government Bill is currently in circulation in New Zealand.¹⁴ Solving this problem should universally enhance individual autonomy.

What are regulatory standards?

Regulatory Standards would change the institutional process to which regulation is legislated. It would bring a new set of criteria that regulation would have to pass to be able to be legislated, thus requiring more reflection from legislators to judge the potential consequences of their policy. This will be in the form of a legislator, such as a Member of Parliament, having to sign a certificate stating the full consequences and intentions behind their bill, and stating that they are compatible with the regulatory criteria. Where a bill is incompatible with the criteria, this must be stated on the certificate and explained. This certificate must be produced during the drafting of the bill, and presented as part of the submission process. Courts will be granted the power to state that legislation is incompatible with the regulatory standards, much like how they can declare legislation to be incompatible with a state's constitution. This could considerably change the culture around legislating regulation.

What criteria could the regulatory standards consist of?

Essentially, you could put in any set of criteria or principles and turn them into the regulatory standards. These principles could include any of those previously discussed. New Zealand's proposed set of principles included consistency with the rule of law, protection of liberty, compensation for any property loss, no hidden taxes, preservation of the judiciary, and good law-making.¹⁵

SUGGESTED PRINCIPLES

- Regulation should solve an identified problem that is statistically causing some significant economic or social cost. This problem should be a threat to public health, welfare, or safety. Regulation should universally enhance individual autonomy.
- There must be evidence that the regulation will solve the given problem. There must also be a way of proving that the given problem is solved, that the regulation is responsible for that, and that no further regulation will be needed. If the regulation is legislated, and it does not solve the problem in the way described, the repeal of the regulation should be considered.
- The parties who benefit from such regulation should be identified. The parties who lose from such regulation should also be identified and consulted. This consultation should lead to minimising the potential cost of regulation. On balance, those that are supposed to benefit from the regulation should benefit, but not at the expense of an individual's opportunity to pursue their vision of the happy life.
- The definition of harm should be preserved. It must remain conventional and consistent with centuries of western legal tradition. The legal definition of harm should not be changed to move the legislation of a regulation forward, or to penalise individuals providing opportunity. Further to this, legislation must not impede the ability for an entity to lodge legal cases for legitimate legal concerns.
- When considering regulation:
 - Alternatives to regulation should be explored.
 - Alternative regulation should be explored.
 - The negative unintended consequences of regulation should be discovered, analysed, and minimised to the highest possible extent.
 - The policy that gives the most benefit for the least cost should be pursued.
 - The benefits of any policy should outweigh any and all costs.
- Once the regulation is decided on, it should:
 - recognise that all individuals are equal under the law.
 - not favour any competitors.
 - not favour any particular technologies or means to public benefits.
 - in situations where regulation does favour certain parties, compensation must be granted to those who lose at the expense of those who gain.
- Regulation should be drafted so that:
 - the rule of law is preserved or enhanced. Regulation should not conflict with any other laws.
 - the wording of the legislation is precise, with no ambiguity, and is simple to understand. The regulation should be clear about what actions or consequences are required to comply with the regulation.
 - reasonable notice is given so that businesses and individuals can adjust to the new regulation.

COMPENSATION AND THE RULE OF LAW

The compensation of any lost property rights becomes an essential part of any lawmaking when moving from a principled stage to an implementation stage. This needs to be made as universal as possible, be simple to pursue, and apply equally to all entities. In an ideal system, the people who benefit from a policy should be the entities who compensate the parties that a policy cost. Laws should never remove a party's ability to seek compensation for harm.

SIGNING OF THE CERTIFICATE

The legislator in charge of pushing a proposed bill will have to explain thoroughly why their bill meets each of the regulatory standards. If the regulation does not meet the standards, they will have to justify why. Should such a regulation not be justified in this way, and the certificate is just signed, then the signed certificate would become challengeable in court. Should the court find negligence with the legislator, this means that the regulation would then become unpassed and would have to be repassed with a more honestly signed certificate.

This is a direct challenge on the power of Parliament to create its laws. Although Regulatory Impact Statements are a mid-way point, there are several implications of such a policy that does not deter the creation of regulation for the sake of regulation, or simply of bad regulation.

The advantage of regulatory standards is that they provide legal recourse should bureaucrats not analyse or prepare the law correctly, or implement the law in ways that was not spelled out during the signing of the certificate. The challenge often faced in writing policy is that the legislation must not only be simple enough for the general populace to understand, but also for bureaucrats to understand and implement correctly.

Should the standard of policy not be met, a judge would be right in striking down the law, or lifting the law until the problem associated with it is rectified. This ensures that law is written to a single, understandable standard.

HOW COULD REGULATORY STANDARDS BE IMPLEMENTED IN CANADA?

The most important part of regulatory standards is to create a solid regulatory framework that is both uniform and standard across all local bodies, provincial legislatures and on federal legislatures. This framework should be consistent with the regulatory principles, perhaps even the principles that I have discussed previously.

It could even be worth codifying such principles as part of the federal constitution, and ensuring that any legislature abides by the process set out in the regulatory framework. There are risks associated with this. The standards must be as objective as possible, and must be able to be applied to each Canadian legislature. As the principles that I have outlined above are purely objective, I believe that they could be used.

The standards implemented should remain unchanged as much as possible. This is to ensure that legislatures can become accustomed to these standards and so the standards remain easily understood. Were the standards to be consistently changed every political term, they could lose meaning to both the legislature and those impacted by regulation. The regulatory standards could also risk becoming a political football, used only for the gain of the incumbent political party. The standards should be used first and foremost as a mechanism to stop excessive regulation from affecting an individual's freedom to achieve. For this reason, I would strongly suggest making the standards either constitutional or requiring a special majority vote to change.

There is also one other benefit of making regulatory standards part of a constitutional framework. The culture of nation has often reflected that of its constitution, and visa versa. If a healthy skepticism of excessive regulation became part of the Canadian culture, it could be highly beneficial to economic growth and to individuals with the ambition and drive to achieve.

The New Zealand Bill proposed a ten-year phase in policy, where all new legislation would be subjected

to Regulatory Standards immediately after passing, while legislation previously passed would have to be re-examined and have a certificate signed by the current government. The purpose of this is two-pronged. The first purpose is that means that all new legislation has to be up to the standard. The second means that when the phase-in period is over, the country will have a new regulatory framework that is suitable for building a modern economy.

I would instead suggest a fifteen-year period to phase in the changes. A fifteen-year period is superior to ten-years for a number of reasons. The first of these is that Federal Canada has a significant amount of law that has wide-ranging and far-reaching consequences.

Any changes to legislation required to sign the certificate will need to be well thought out to ensure that the consequences of the changes are in the spirit of the standards. If the changing of the current regulation is rushed, it may mean the regulation becomes longer and more burdensome than when it was first implemented. However, the flip-side to this is if more time is spent investigating whether or not the regulation is needed, more regulation might find itself in need of being repealed.

Federal Canada is the highest democratic point of a number of different legislatures in Canada, including the federal legislature, provincial legislatures, and municipal legislatures. In New Zealand, the only legislatures are the national legislature and the local government legislatures. A long phase in period would be helpful to ensure that the implications for interactions between the different legislatures are fully integrated.

The culture of Canadian bureaucracy needs to change. This could include the implementation of a new training programme, insistence that regulators spend time learning about business, and ensuring the new generation of public servants are able to adequately implement regulatory standards. Incentives could also be introduced for public servants identifying unnecessary internal paper trails. Fifteen years is essentially one generation, which allows for a new generation of public servants to be trained to be able to identify waste in the public sector.

CONCLUSION

There is no silver bullet when dealing with the ever-expanding ambition of politicians. There are, however, steps that can be taken towards regulatory fairness. These steps will ultimately decide whether Canada wants a country that promotes consumer choice and innovation, or allows bureaucrats to dictate what path Canada should follow.

ENDNOTES

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