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Regulatory recharge
Empowering the strategic regulator

Introduction

Regulators are not just policy-takers; they are policy-shapers and makers.

To effectively discharge their responsibilities, regulators must make strategic choices—whether those relate to rule sets, compliance assurance activities, or input on new legislation or policies. The notion that regulators are solely in the implementation business is too narrow, and significant problems can emerge over time if they do not adequately attend to the strategic dimensions of their roles.

Of course, regulators come in many shapes and sizes and so, the scope of their strategy functions varies. Broadly speaking, there are three types of regulators:

01 Line ministries that report directly to elected officials and typically deliver multiple programs and services, some regulatory and some non-regulatory;

02 Arms-length agencies with more focused regulatory mandates; and

03 Professional colleges with very specific powers.

As we move along this continuum, organizations will typically engage less in broad-based policy work, such as proposing major new legislative initiatives to ministers, but have greater decision-making autonomy with respect to topics assigned to them.

Regulators engage in different types of strategic decision-making. They bring front-line experience and subject-matter expertise to policy discussions in government, legislatures, and the public domain. They make choices when developing regulatory requirements and interpretations within the parameters established by legislation. They pick among a range of options when determining how to allocate finite resources to achieve regulatory compliance.

Regardless of the nature of the regulator or extent of its decision-making latitude, these choices should be approached in a deliberate way that draws on leading practices and leverages a wide set of data and tools. Regulators who attend to “upstream” strategy position themselves for success with “downstream” delivery. Those who don’t risk under-performance, misaligned operations, and missed opportunities.



Challenges

Making sound strategic choices is easier said than done. That's true for any organization, and arguably doubly so for regulators.

Unclear span of influence

One key challenge is insufficient recognition that regulators should, in fact, be actively engaged in major policy discussions that inform strategic direction. This is a common issue for arms-length regulators, which may get little opportunity to share advice with elected officials, review draft Memoranda to Cabinet and legislation, and participate in policy consultations convened by line ministries with experts and impacted parties. But even regulatory ministries, or divisions within those ministries, can be cut out of policy conversations, if other ministries are assigned a lead role and discount the potential strategic-level contributions of colleagues who are out in the field.

Of course, such attitudes aren't only held by others: regulators who think of their own roles as exclusively delivery-oriented won't tend to spend time and resources in methodically identifying and weighing strategic options. In such circumstances, inertia can become dominant; suggestions of even modest proactive changes can be viewed with skepticism; tough decisions can be deferred until problems accumulate and a crisis looms; and the capacity for thinking beyond highly tactical levels can diminish. When "continuity-by-default" takes hold,

tweaks at the margins are treated as major departures and conversations about more fundamental choices are sidelined.

Competing goals

Even when regulators' self-perceptions and norms are more open to strategic deliberations, the fact that they almost always need to juggle competing goals can make those deliberations very challenging. In the face of rapidly changing realities, regulators today are expected to achieve failure-free protections—of safety and security, health, the environment, consumer rights, competitive markets, and so on—while keeping demands on regulated organizations and individuals to a minimum. There are often vocal advocates who strongly push for each type of outcome: some who are quick to attack a regulator for falling short in its protective responsibilities, others who are frustrated with the burdens of multiple rules and compliance procedures. Under such conditions, strategic choices can feel like a zero-sum game.

Rapid change

Compounding these issues is the sheer speed of change in regulated sectors and society more generally. The pace at which

practices and demands are evolving, often in unpredictable ways, is unprecedented, sometimes creating a "whack-a-mole" reality for those charged with protecting the public interest. Methodical decision-making is trickier when the technologies and business practices a regulator oversees are such fast-moving targets. Circumstances may shift even as a new rule is being drafted or a priority area selected. If rules or priorities are outdated before they're delivered, the return-on-investment of strategic decision-making efforts can be perceived as low.

Limited resources

Finally, the simple fact that regulators tend to be tight on time and money means that even a regulator that, in principle, recognizes the value of strategic choices may choose to limit the energy it expends on "upstream" deliberations.

Paradoxically, a number of these complicating factors—competing goals, rapidly-changing conditions, limited resources—are key reasons why carefully-considered strategic choices are essential. The question, in light of the challenges, is how to make them happen, and ensure that they're useful in practice and not just in theory.



Approaches

At its core, regulators' strategy work entails proactively considering core responsibilities against evolving circumstances, tools, and competencies—and making deliberate, evidence-based choices about future priorities and activities.

There are four inter-related ways regulators can create both the capacity and “space” needed for such strategic analysis and decision-making to be effective: fostering a culture of strategic thinking, establishing a record and reputation for competency and transparency, engaging external parties, and leveraging data and technology.

Fostering a culture of strategic thinking



Figure 1 - Fostering a culture of strategic thinking.



Everything begins with establishing the right sorts of internal attitudes and processes. A culture that questions the status quo, adapts to evolving circumstances, anticipates novel issues, explores innovative approaches, thoughtfully considers trade-offs between different priorities and approaches, and seeks out and uses evidence is essential. Such a mindset can be activated through:

- **Signals from the top:** The heads and senior officials of regulatory organizations should make it clear to executive teams and staff that strategic decision-making is critical to organizational success.
- **Governance:** Strategy processes should be given a home base in the organization—a unit or, at minimum, an individual whose primary accountabilities relate to spearheading creative thinking about how the institution delivers its mandates.
- **Executive sessions:** Strategic discussions that emphasize foresight, scenario planning, and proactive response development should be hard-wired as a regular part of the meetings of the senior management team.
- **Evidence gathering:** Processes should be put in place to gather and assess objective evidence on what's happening in the external environment that could affect the regulator's ability to do its job now and in the future, what's working well, and what isn't.
- **Leading practices:** Regulators should actively seek out, and share, information on leading practices implemented, and lessons learned, by peer organizations. These could include regulators in other jurisdictions that oversee the same sectors or types of activities, regulators in the same jurisdiction that oversee different sectors or activities, and regulators in other countries with similar systems of public administration.
- **Upward input:** Opportunities should be created for employees at all levels to offer ideas on ways the organization can reframe, refocus, and improve its activities.
- **Workforce development and organization:** The recruitment and training of staff should emphasize—at least for a relevant subset of employees—strategic thinking, cognitive agility, and digital literacy. And the traditional emphasis on rigid internal boundaries between units should be relaxed, with more work on strategic issues conducted by time-limited task teams with participants from multiple areas.

Through these and similar steps, making strategic choices becomes less an occasional bolt-on to regulators' modus operandi, and more an integral part of how they think about their functions and discharge their mandates.

Case study: Ontario Energy Board – Innovation Sandbox Challenge

The Ontario Energy Board (OEB) is showing how regulators can play a role in stimulating innovation and achieving desired results through experimentation with solutions that can provide value to customers and inform current and future OEB policy related to the energy transition. Its Innovation Sandbox Challenge encourages parties to develop new approaches related to two themes: moving from pilots to broader implementation and enhancing customers' understanding of their role in the energy transition. The OEB has committed financial support to the initiative—from funds collected as penalties for non-compliance with existing requirements—along with customized guidance to participants. This unique approach goes beyond the traditional sandbox model, actively promoting collaboration among the regulator, regulated entities, academics, and industry associations in a dynamic, open environment. Lessons learned through these efforts can inform strategic choices by the regulator on both rule sets and their application.



Demonstrating competence and transparency

Alongside internal culture, regulators' ability to engage in effective strategy depends on credibility with external parties. When other government players, regulated sectors, Indigenous groups, and impacted parties have confidence in a regulator's competence and integrity, the scope expands for that regulator to make strategic choices internally and contribute to wider policy conversations.

To build credibility, regulators need to convincingly demonstrate mastery of matters within their purview. By being on top of their full range of responsibilities, developing a deep understanding of changes in regulated sectors (including novel technologies and business models), and offering insights based on activities "in the field", they demonstrate proficiency, bring unique perspectives that add value, and reinforce the legitimacy of their involvement in broad strategy and policy debates.

Alongside mastery, regulators earn others' trust through transparency and accountability. To the greatest extent possible—within limits related to privacy, deliberative privilege, Cabinet confidentiality, and the like—regulators should be open about how they operate and use resources, provide clear rationales for their decisions, and take responsibility and corrective action if something goes wrong. This may require consciously moving away from a tendency to hold a lot of information close to the chest and being more forthcoming about internal processes and reasoning.

There are a variety of vehicles a regulator can use to achieve these goals and convey information and ideas: traditional written material like annual reports, website content, appearances before committees of the legislature, speeches by senior officials, op-eds, and social media. Irrespective of the mix, the regulator should maintain

a singular focus on the audience as it crafts text and formats: Who are the main targets of the communication?; What are their needs and interests?; How can their attention be attracted and retained in a noisy and fragmented public sphere? A premium should be placed on plain language, a factual tone, and compelling insights, and tools like GenAI can be leveraged to increase the relevance, appeal, and impact of the messaging.

By taking deliberate steps to build credibility and trust, a regulator expands its scope for strategic decision-making, both in terms of input to broad deliberations within government and the legislature, and its own capacity for making choices around how it delivers its responsibilities.

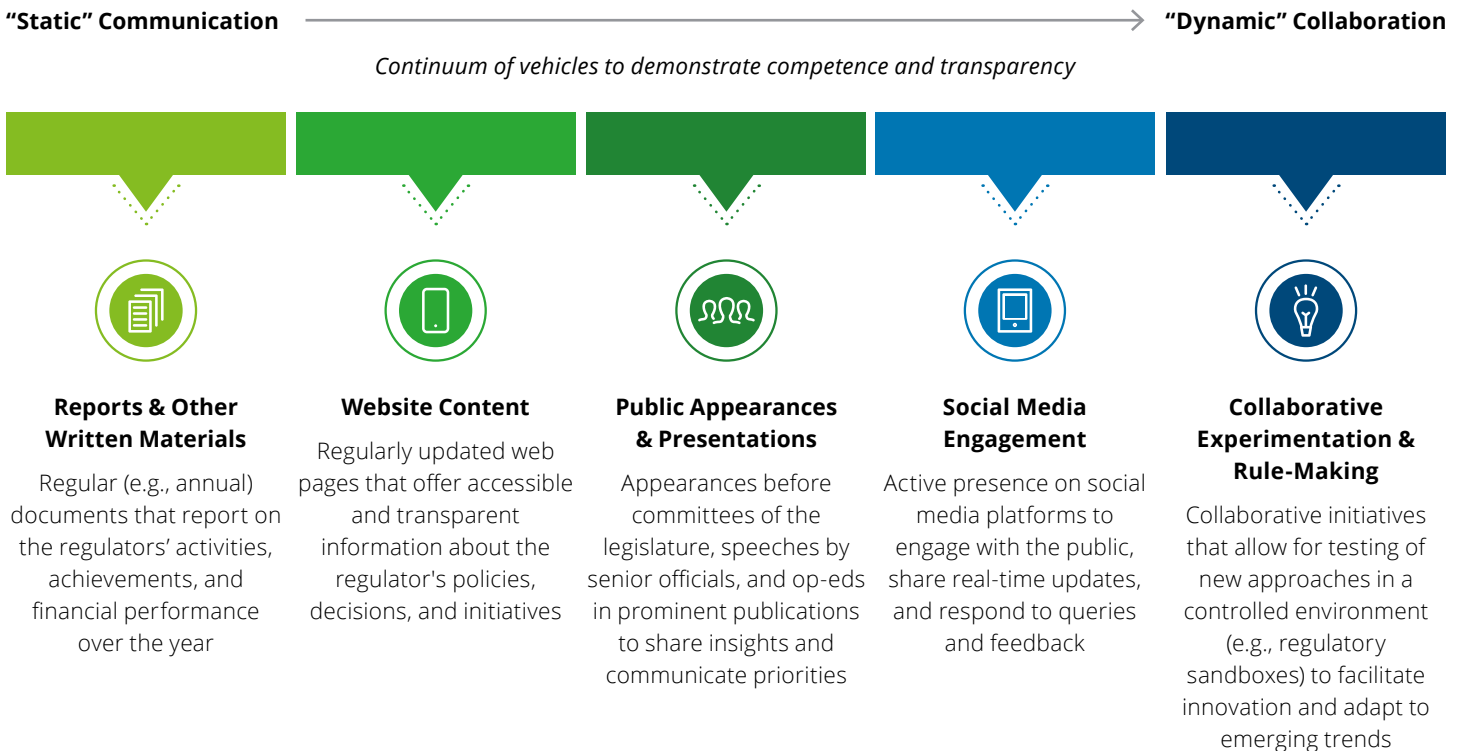


Figure 2 - Demonstrating competence and transparency through engagement.

Engaging effectively

Complementing general practices that help regulators build credibility and secure decision space are engagement activities specific to different external parties and partners. These activities build on, but go beyond, regulators' traditional obligations to inform affected parties and publish proposed rules.

Other government players

When it comes to various government players—ministers, political staffers, other ministries and agencies—regulators should nurture “no surprise” relationships that are based on dialogue and respect for everyone’s respective mandates. Arms-length regulators must be particularly

intentional in shaping these dynamics, given that it’s easy for them to be shut out of policy discussions, particularly if others are uncomfortable with their leeway for veering from official positions and preferences. And of course, even as they seek to ensure that their unique insights and institutional interests are given reasonable weight, such regulators have a duty to preserve their decision-making independence.

Thus, it’s important to find the right balance between involvement and autonomy. That will depend on a regulator’s functions (for example, if its powers include quasi-judicial adjudication), its status in law, and norms that have crystallized over time. And the

dynamics may evolve, in part because the degree of a regulator’s independence – the length of the arm—can ebb and flow as a result of political conditions, judicial rulings, and societal expectations. But because this is always a grey zone, answers won’t be self-evident, and the regulator should be ready to initiate conversations with other players about how it can be appropriately engaged in policy work. Frank discussions can clarify boundaries for all concerned, mitigate the risk inherent in these sometimes-complex interactions, and allow the regulator and colleagues in government to establish understandings and processes that permit meaningful collaboration.

Case study: College of Veterinarians of Ontario – Enabling access to veterinary medicine and teams in Northern Ontario

Regulators can play an important role convening industry partners, serving as a bridge between government policy makers and the communities they serve and enriching the strategic decision-making and rule-making process. A notable example is the College of Veterinarians of Ontario—they spearheaded the formation of a Working Group on Veterinary Medicine in the Beef Farming Sector to address the challenge of access to veterinary medicine and veterinary teams in Northern Ontario.

This working group – which included representatives from the Ontario Association of Bovine Practitioners, the Beef Farmers of Ontario, the Ontario Federation of Agriculture, the Ontario Veterinary College, the Ontario Association of Veterinary Technicians, and the Ontario Veterinary Medical Association—collectively focused on highlighting the critical importance of high-quality veterinary medicine and team-based care to the beef industry, illustrating how the industry’s success is linked to the regulatory functions of the College. This approach highlights how aligning efforts across an ecosystem can help regulators and regulated organizations effectively situate their own strategic choices within a broader set of government priorities, building momentum and alignment.



Regulated entities

A careful balance also needs to be struck with regulated entities. Candid dialogue with organizations and individuals whose activities are overseen by a regulator strengthens trust, lets the regulator offer guidance that can increase compliance without the need for tougher enforcement measures, and allows the regulator to benefit from feedback from those most affected by its actions. Such dialogue can take different forms:

- Outreach to emerging segments and entities that, in a world of rapid innovation and entrepreneurship, may not be familiar with the legal framework and, in the absence of education, may be at heightened risk of violations
- Structured, ongoing consultation or advisory committees, which can be issue-specific or more general in nature, and may include other impacted parties along with regulated entities
- One-off workshops, education sessions, and the like, which offer structured opportunities for a regulator to provide information and receive input in a group setting
- Individual, often ad hoc discussions related to a particular organization's or individual's compliance plans and performance, process questions, or suggestions for improvements to rules or procedures

Regulators can also go a step further and engage with regulated entities to test new approaches to achieving desired outcomes; for example, by establishing sandboxes in which some rules are varied or suspended to facilitate experimentation.

Whatever their format, interactions with regulated entities give the regulator intelligence on what's happening “out

there” and enhanced legitimacy to pursue strategic deliberations. That said, appropriate safeguards should be applied to avoid any possibility, or perception, of so-called regulatory capture. Discussions should be well-documented, socializing should be avoided, and the regulator should not offer assurances that could be seen as creating a conflict-of-interest if it subsequently has to assess compliance.

In short: while open and forthright discussions with regulated entities are a key foundation for effective strategic choices, the relationship between regulators and those they oversee should remain professional and above-board – cordial and respectful, but not cozy.

Indigenous groups

It's now widely understood that Indigenous groups have a unique place in Canada's constitutional order, as the holders of inherent rights. Moreover, as Canadians—and citizens in other places with similar histories, such as Australia and New Zealand—have grappled with the legacies of colonialism, reconciliation has become a central commitment of governments across jurisdictions.

All regulators should, therefore, carefully consider how Indigenous rights and interests may be affected by their activities and how reconciliation can be meaningfully manifested in their operations.

In part, this means rigorously evaluating whether Indigenous rights or interests could be affected by a regulator's decisions or actions; an obvious example is where a regulator is charged with reviewing and approving major projects that are proposed for construction on traditional Indigenous territories. In such cases, regulators have a positive obligation to, at minimum, actively inform and consult the governments and

representatives of potentially affected Indigenous groups and take action to accommodate their rights and interests, eliminate or mitigate any adverse impacts, and ensure that they receive an equitable share of benefits.

In other cases, effects may be less direct or obvious, but there can still be an Indigenous and reconciliation dimension to a regulator's activities. For instance, if a regulator licenses activities that can be reasonably expected to have a disproportionate impact on Indigenous communities—positive or negative—it should be giving those communities a voice as decisions are made and programs are rolled out. Similarly, regulators should be alive to the possibility that resource pressures or risk-based approaches that rely heavily on the scale of possible impacts could mean that too little attention is paid to remote or marginalized Indigenous (and other) communities – communities that may be hard to reach or relatively small in population, but need the support and services the regulator provides.

A regulator's engagement with Indigenous groups is not the same as its engagement with others: it is a nation-to-nation conversation grounded in the fundamental laws of the land. For a regulator to establish and effectively exercise strategic discretion, it needs to develop capabilities specific to such engagement, acting meaningfully on the special obligations that all Canadian public sector bodies have towards the country's Indigenous peoples.

Advocacy and interest organizations

Many regulators have mandates that are of interest to a wide swath of Canadians – and often, advocacy, community, or labour groups seek to represent and advance those perspectives. Regulators that regularly and respectfully engage with such



organizations benefit from the insights they offer and gain legitimacy for policy choices and contributions.

Traditionally, engagement with civil society tended to be sporadic and ad hoc. If a new issue arose or an updated rule was being considered, organizations and, sometimes, the general public would be invited to give input, either formally or informally. Such topic-specific engagement remains necessary, but is no longer adequate. Regulators today should be establishing mechanisms for more dynamic two-way communication, in part by leveraging technology—communication that is accessible to Canadians in remote locations as well as those in major centres. These mechanisms can include:

- A discussion portal and/or regular surveys on the regulator’s website

- Online chatbots that converse with organizations and members of the public on the regulator’s responsibilities and activities
- Participation of groups with relevant expertise in consultation or advisory committees, alongside regulated entities
- Regular in-person and online town hall-type sessions to answer questions and get feedback
- Information dissemination and exchanges through social media.

More active and open engagement does need to be leavened with some caution, including—as with regulated entities—care not to be overly influenced, or seen as “captured”, by vocal interest groups. In addition, it’s important to create the conditions for respectful interactions, especially when it comes to social

media. Frank exchanges with advocacy organizations and interested citizens, including responsiveness to reasoned criticisms, are valuable, but regulators aren’t obligated to give free rein to dubious accusations or angry voices that seek to drown out others; indeed, preventing aggressive actors from swamping or distorting conversations preserves the necessary environment for constructive conversations.

Clear and appropriate ground rules and moderation, combined with tech applications to weed out commentary generated by bots, can maximize meaningful dialogue while maintaining civility. And that fosters public confidence and gives the regulator useful information to support strategic deliberations.



Leveraging data and technology

Sound data are foundational to effective strategic choices – and today, more data are available than ever before, along with sophisticated methods for making sense of them.

Data analytics can:

- Support scenario planning—consideration of different possible future trajectories and responses to them
- Help regulators identify emerging trends that require attention at the level of either the rule set or enforcement
- Inform instrument choice, regulatory impact analysis, and cost-benefit analysis—and minimize regulatory duplication – as rule sets are developed or updated
- Facilitate risk-based targeting when finite compliance assurance resources are allocated
- Flag potential regulatory violations
- Indicate where the regulator’s efforts are bearing fruit and where they aren’t having much impact

- Strengthen regulators’ ability to participate in and bring evidence to wider policy discussions in government

These contributions depend on finding, mining, and assessing robust data in ways that are efficient and affordable – and doing so on an ongoing basis, not just once a year as part of a discrete exercise. Among the data sources regulators can access are:

- Their own repositories of past activities and decisions
- Reports, applications, and submissions from regulated entities
- Call centre and other inquiry data
- Regulated entities’ internal records, to the extent that the regulator is permitted to access them
- Information collected by other public sector agencies in respect of the same regulated entities or sectors
- Publicly available information related to the activities of regulated entities or sectors, such as social media posts, media reports, and sentiment analysis to gauge public perception and emerging trends

In some cases, records may have to be digitalized or converted to common formats, although AI is making this less and less necessary. In addition, privacy issues may need to be addressed or confidentiality safeguards put in place. But with innovative approaches and careful planning, most regulators can assemble a set of sources that offer enough data to conduct robust analysis and draw reasonable inferences.

The tools for doing so are becoming increasingly sophisticated and cost-effective. AI and GenAI, in particular, are making it easier to ingest and make sense of large quantities of data, at lower and lower cost points. Tight budgets are no longer a barrier to approaches such as data-driven scenario modelling, digital twins, visualization, and content and trend analysis. When digital tools are used to glean insights from large data sets with reduced human effort, strategy processes can be made more evidence-based, impactful, and efficient.

Case study: US Government Agency - public comments analysis and regulatory intelligence support

GenAI and other emerging technologies are accelerating and enriching the regulatory strategic decision-making process. A US Government Agency engaged Deloitte to use its AI-powered regulatory intelligence tool to swiftly process 21,000 public comments to inform decision-making on an effective operational response. Manually reviewing such a large volume of comments would have been time-consuming and resource-intensive, potentially delaying critical decision-making processes. The tool identified and processed duplicate comments, significantly reducing the number of comments requiring manual review to 3,306 unique ones. By automating duplicate analysis and providing real-time insights, the tool empowered and gave time and space to leadership to make strategic choices about their operations, ultimately improving their responsiveness and effectiveness in addressing critical issues.



Conclusion

The approaches outlined above focus on how regulators can create the conditions for effective strategic decision-making. The tangible results of such processes—what they produce in practice—include:

- More rigorous and evidence-based planning and priority-setting processes
- More precise and effective rule-making that's more likely to secure desired public policy outcomes without placing unnecessary burdens on regulated organizations and individuals
- More efficient resource allocation that achieves higher compliance rates at lower cost

- More agile workforce with a clearer sense of purpose
- Increased capacity to identify issues—whether they relate to problems in regulated sectors or the regulator's own performance—and take corrective action in real time
- Improvements to the regulator's reputation and scope for contributing to wider policy deliberations

Of course, none of this requires that regulators make a 180 degree turn away from operational delivery, which will always remain the core of their business. But it does suggest that regulators who have not paid sufficient attention to strategy should

think carefully about whether and how to recalibrate, to inform operational delivery.

Modest investments in careful analysis, meaningful engagement, a supportive culture, and thoughtful “upstream” decision-making can yield major returns—and in a time of exceptionally rapid change, inertia can be a lot costlier. For contemporary regulators juggling multiple demands with limited resources, establishing the capacity and space for strategic choices—acting confidently as policy-makers and shapers within their spheres of authority—is no longer just an option. It is an imperative.



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