

Deloitte.



Making regulation a competitive advantage



Contents

Competitiveness is key to economic prosperity	1
Defining regulation and regulatory burden	5
Canada's regulatory competitiveness challenge	6
Design	8
Relevance	12
Misaligned or inconsistent regulations across governments	14
Time and cost burdens associated with compliance	18
Uneven enforcement of regulations	22
Data limitations	24
Seven dimensions for regulatory reform	26
Conclusion	34
Endnotes	36
Contacts	37

Competitiveness is key to economic prosperity

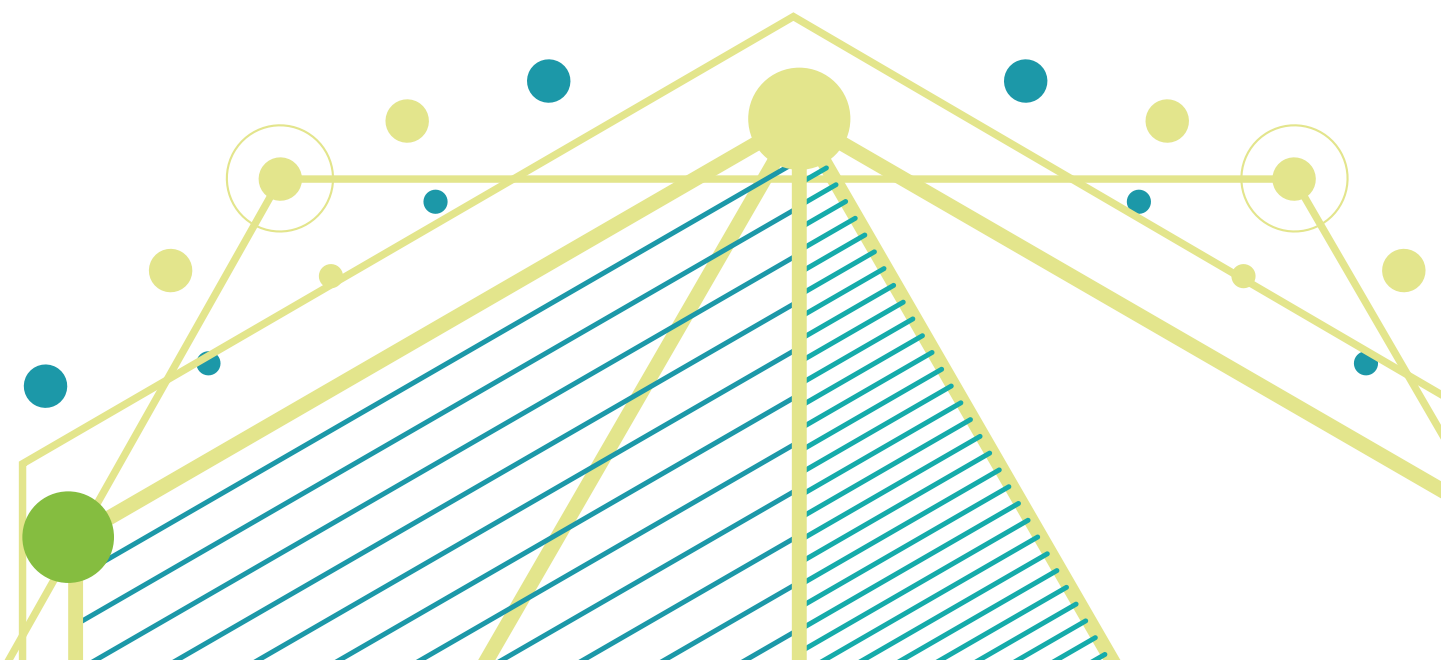
Although the notion of business or economic competitiveness often sounds like it is about greater business revenues or profits, it is actually the primary source of a rising standard of living for Canadians. There are many different definitions for competitiveness, but underlying all of them is an appreciation that the topic is fundamentally about economic productivity. The more productive businesses and workers are, the more they generate income, and that income is divided between the owners of capital and the workers. A more productive labour force supports higher wages. The additional income is taxed, providing fiscal revenues for key social priorities, including income redistribution and social programs. All of this translates into higher income per person—the metric for a rising standard of living. Indeed, since the end of the Second World War, the bulk of the increase in household income has come from higher productivity. So, competitiveness is critical for businesses, governments, and workers.

However, Canada has a competitiveness challenge. In January 2019, Deloitte published Canada's competitiveness scorecard, in which we studied over 500 metrics to characterize the Canadian economy relative to its peers. Our conclusion was that while Canada has some core advantages, such as a globally competitive workforce and strong domestic macroeconomic fundamentals, it also faces competitive headwinds on a number of fronts—particularly innovation, taxation, and regulation—that diminish Canadian competitiveness at home and abroad.

Regulation has been a growing concern for several years, with many business groups calling for significant reforms. Indeed, a Business Council of Canada survey of its members in early 2019 identified regulation as the single most important policy area for governments to make progress on.¹ Canada's standing on many international surveys of competitiveness has been falling. To cite just one statistic, on the World Bank's Ease of Doing Business ranking, Canada has fallen from fourth position in the world in 2006 to 22nd in 2018.

This report does not advocate for broad de-regulation or minimizing the role of government. Sound, effective regulation is the mechanism through which the public interests are protected. Well-designed regulations address existing or potential market failures that would create undesired economic or social outcomes. Broadly, when regulations are not serving the public interest or when they cause excessive costs to the economy, they can be viewed as instances in which government and industry are not working together—to the detriment of society.

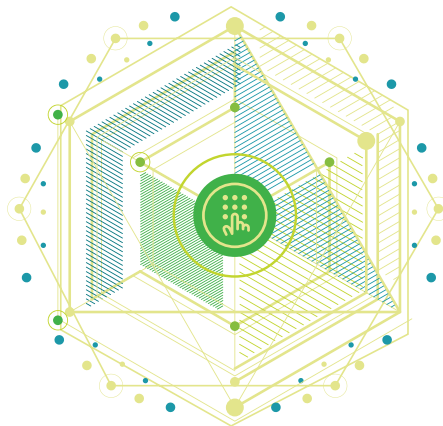
Furthermore, a strong regulatory environment can help foster economic growth, and it can be a competitive advantage if Canada has a superior regulatory environment than other nations. Regrettably, our analysis suggests that Canada appears to be far from this ideal.



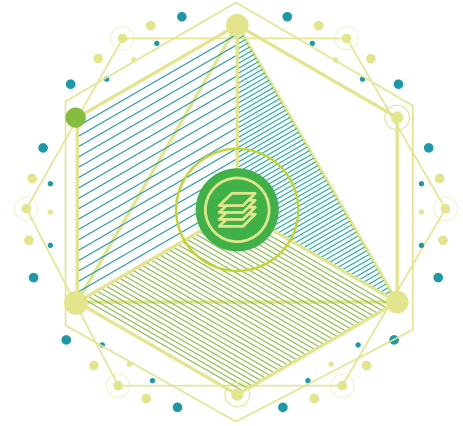
We have examined the economic costs and distortions of a suboptimal regulatory environment in five dimensions, each of which affect Canadian competitiveness:



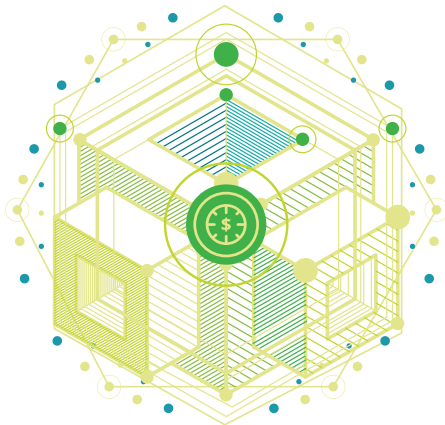
Design: Economic costs due to design flaws in new regulations



Relevance: Costs associated with antiquated regulations



Overlap: Unnecessary overlap, misalignment, or inconsistencies of regulations across governments



Burden: Excessive time and cost burden in complying with regulations



Enforcement: Uneven enforcement of regulations

As we analyzed these dimensions, it became clear that most statistics on regulatory performance come from sentiment surveys—it is difficult to come by objective data that accounts for the wide range of ways that regulations affect the economy. For policymakers, this raises a question of whether Canada has a severe regulatory problem or whether perceptions are excessively negative. The implication is that we need better data, but we should stress that perception can be its own reality. A regulatory environment that is viewed as difficult to navigate can be enough to deter investment and hiring, and hinder economic growth.

The state of Canada's current regulatory environment gives rise to a call for action. Canada needs to make a concerted effort to modernize its regulatory regimes. We have seven key recommendations for enhancing Canada's regulatory environment.



The federal government has made a commitment to deliver progress on regulatory reform, including a 2018 Cabinet directive to federal departments that sets out the government's expectations and requirements in the development, management, and review of federal regulations.² Many provincial governments also want to reduce regulatory burden and improve regulation. Businesses have been clear that they view regulatory modernization as a priority.

So, there is considerable agreement on the ultimate goal. What we now need is substantive and material progress. A regulatory regime that protects the public interest with the least economic disruption, and facilitates the unlocking of technical progress, would give Canada a competitive advantage in world markets, and support sustainable, inclusive economic growth.

Defining regulation and regulatory burden

There is often confusion about what regulatory burden means, as it is often used as a catch-all for complaints about government actions. Criticisms about regulation or regulatory burden are frequently, and inappropriately, followed up by discussion about taxation or other non-regulatory issues.

In this paper, we define regulations as laws intended to change behaviours or outcomes in order to protect the public interest. Regulations establish the rules of the game for doing business in Canada. A strong regulatory regime ensures that businesses operate on a level playing field and that the interests of business and society are balanced.

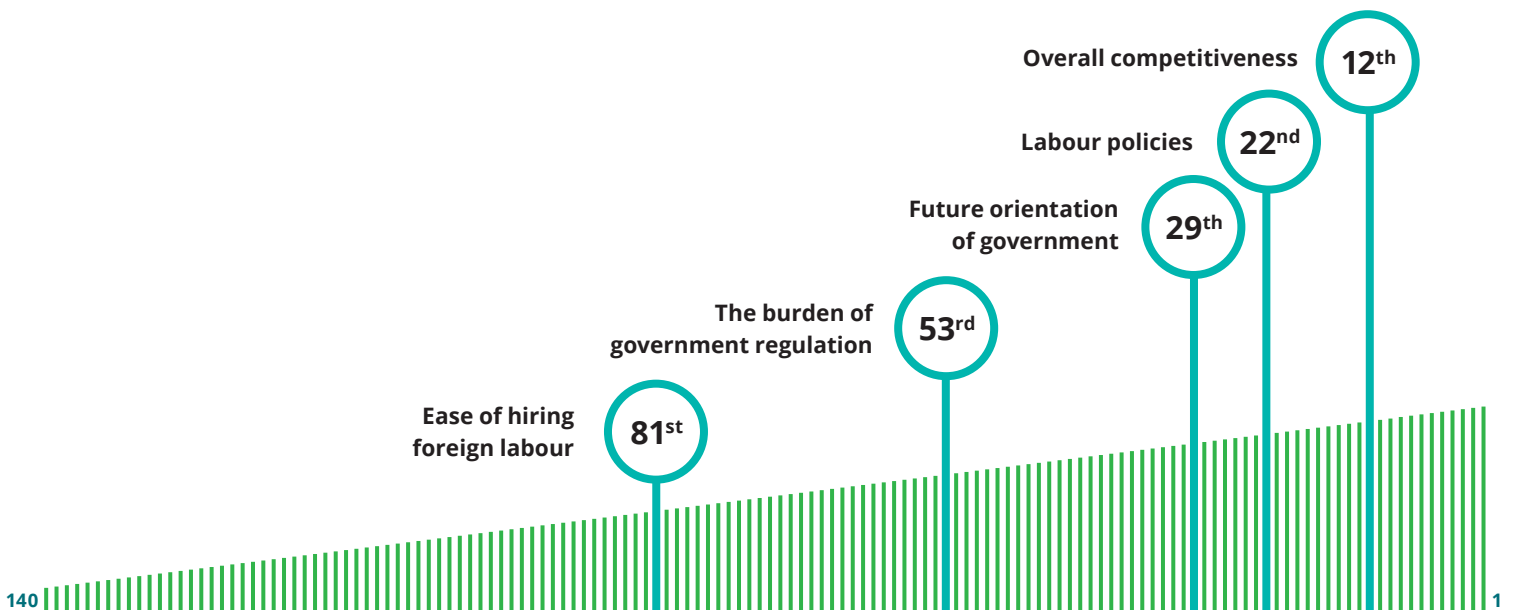
Effective regulation is not simply a base requirement of a successful economy. It can also be a competitive advantage if a country's regulatory regimes are easier to navigate; if the regimes better manage the balance between social, environmental, and economic interests; or if the country is more flexible than its competitors at setting the rules for new innovations and business models.

Canada's regulatory competitiveness challenge

There is abundant evidence that the business community sees Canada's regulatory burden as creating a competitiveness disadvantage. Deloitte's competitiveness scorecard ranked Canada's regulatory environment as a core weakness relative to other dimensions. Our review aligns with Canada's performance on many other surveys and indexes.

Canada's position on the World Bank's Ease of Doing Business ranking has fallen since 2006, from fourth in the world to 22nd in 2019.³ Regulatory challenges are evident. Canada ranked 63rd in the world in terms of obtaining construction permits; it takes 249 days to get a permit for a warehouse.

In the 2018 World Economic Forum (WEF) Global Competitiveness Index, Canada ranked 12th out of 140 countries in overall competitiveness.⁴ This is a favourable outcome, but the details show a regulatory challenge:



Notably, Canada also does not compete equally with all 140 countries in the WEF's Global Competitiveness Index. The United States is the destination and source for the majority of Canadian trade in goods and services, so it is Canada's major competitor. Canada is at a considerable competitive disadvantage relative to the United States, as America has a better competitiveness rating than Canada in 10 out of 13 major categories in the WEF index, with two ratings being the same.

The OECD Product Market Regulations database is updated every five years and paints a similarly lacklustre story. The database looks at indicators that measure the degree to which policies promote or inhibit competition in markets for products and services. In 2019, Canada significantly lagged its peers in several important economic activities.

Key examples include:

- Canada was worse than both the OECD and non-OECD averages in involvement in business operations (i.e., measures related to retail price controls and regulations, command and control regulation, and public procurement).
- Canada was nearly half as competitive as the OECD average in administrative burden on startups (i.e., administrative burden for limited liability companies and personally owned enterprises and/or related licensees and permits).
- Canada significantly lagged behind OECD peers, recording greater barriers to trade and investment (i.e., barriers to foreign direct investment, differential treatment of foreign suppliers, and barriers to trade facilitation).⁵

Importantly, analyzing key global sentiment surveys shows a consistent observation from the business community that Canada's regulatory environment is suboptimal.

Key examples include:

- In the 2017 Executive Opinion Survey, a component of the World Economic Forum Competitiveness Report, inefficient government bureaucracy (and tax rates) were identified as one of the most challenging factors for doing business in Canada.⁶ While this finding is not exclusively about regulation, inefficient government bureaucracy certainly involves the administration of government regulations.
- The Fraser Institute's Economic Freedom Index, which measures several dimensions of human freedom, has consistently ranked Canada in the top 15 in the world overall. However, Canada ranked 31st among peers in the burden of regulation in 2018, which measures responses to, "In your country, how burdensome is it for companies to comply with public administration's requirements (e.g., permits, regulations, reporting)?"⁷
- In May 2018, the Canadian Chamber of Commerce released a report that concluded, "Canada's regulatory system is smothering business in Canada, thanks to a growing mix of complex, costly, and overlapping rules from all levels of government."⁸
- The Canadian Federation of Independent Business (CFIB)'s Business Barometer measures small business confidence, expectations, and operating conditions in Canada on a monthly basis, and is a good guide to business sentiment on a variety of topics.
 - In July 2019, a majority of respondents identified taxes and regulations as the source of major cost constraints for companies.⁹
- Finally, in January of 2019, the Business Council of Canada surveyed its members to get their views on the economy. Forty-one percent of respondents identified reduction of regulatory burden as the "one thing to improve Canada's business environment."¹⁰
 - When asked which regulatory issue represented the most significant problem for their company, a majority of respondents listed uncertainty and/or a lack of predictability in regulatory processes. This was followed by the time it takes to make a decision, and regulatory inconsistencies between different parts of the country.¹¹

While sentiment surveys can be subjective, these results paint a clear and consistent picture of the business community's perspectives on the business environment in Canada.



Design

The first dimension of how regulations can affect economic competitiveness is the content or design of the regulations themselves. The substance of a regulation outlines what is legal and what is not, and can stipulate the requirements a business must fulfill in order to be lawful. Well-designed regulations achieve their public interest objective at the lowest cost. This balance is attained by using an evidence-based cost-benefit analysis that fully assesses both dimensions.¹²

There are several ways that the poor design of regulations can be detrimental to competitiveness:

Misdiagnosed or conflicting public interests

There can be instances where the public interest is not correctly evaluated. There are also cases where there are competing or conflicting public interests that must be weighed and balanced, but this is not done because the policies cut across different regulators.

Unintended consequences

New regulations can trigger unanticipated and undesired outcomes in the economy. This can lead to unexpected financial costs or opportunity costs. Economic distortions can hinder economic growth, which can constrain job creation and income gains. If a regulation is not well designed, the desired public outcome may not be achieved.

Regulatory barriers to foreign direct investment

Canada has a more restrictive environment governing inward foreign direct investment (FDI) than its peers. FDI is a key element to enhancing competitiveness. It brings in additional capital and new technology. This creates jobs and raises productivity. Foreign investment often imports new management techniques and production processes.

In 2018, Canada was found to be one of the most restrictive countries for FDI amongst OECD peers in the OECD Regulatory Restrictiveness FDI Index (FDI Index).¹³ The FDI Index measures statutory restrictions on FDI across 22 economic sectors.¹⁴ Canada ranked worst among its peers in restrictiveness. The United States was found to be approximately half as restrictive as Canada. This outcome was not new. From 2010 to 2017, Canada consistently remained in the top quartile of FDI restrictiveness among peers.

In terms of sector-specific restrictiveness, in 2018, Canada's FDI restrictions in the fisheries, manufacturing, oil refinement, and chemicals, banking, transportation, and media were all found to be higher than the OECD average.¹⁵

The Fraser Institute's Human Freedom Index, which measures several dimensions of economic and social freedom, has consistently ranked Canada in the top 15 countries in the world overall. However, when asked, "In your country, how restrictive are rules and regulations on [FDI]?", Canada ranked 48th in the world in 2017/2018, well behind peers such as the United Kingdom, which was ranked fifth.¹⁶

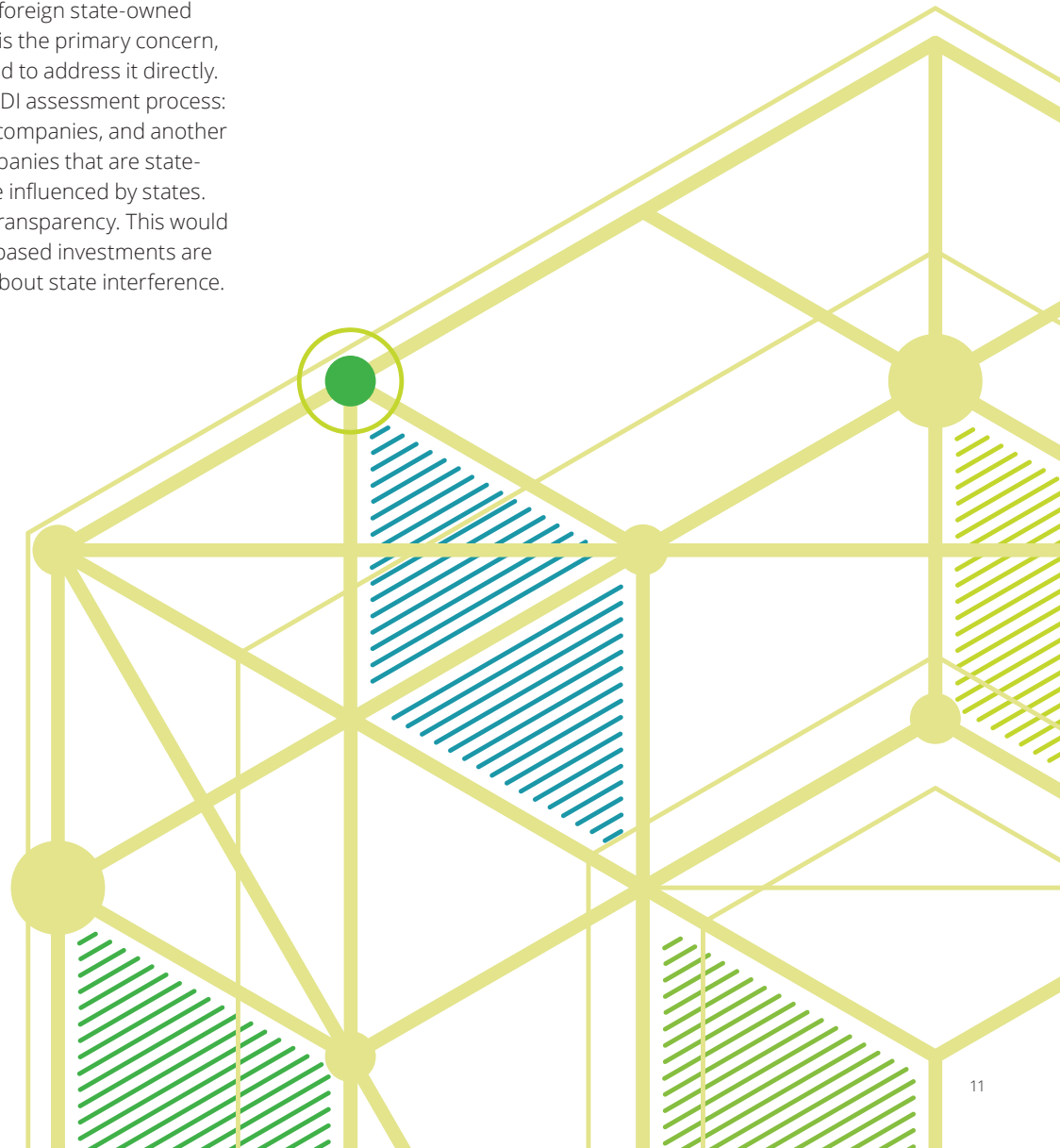
Canada's FDI regulatory system has likely reduced foreign investment. Since 2002, the stock of foreign investment in Canada has grown by just 2 percent a year. Between 2007 and 2017, the total net flows of FDI have fluctuated significantly. During the time of the last recession, FDI fell 79 percent from 2007 to 2009. Since 2014, the net flows have been on a decline, with a decrease of 29 percent from the first quarter of 2014 to the third quarter of 2018.¹⁷

There were several high-profile cases in which the Government of Canada decided to block foreign capital investments under the terms of the *Investment Canada Act*. Within the *Act*, the critical "net benefit" test puts the onus on prospective investors to demonstrate how their investment plans would be of overall benefit to Canada on dimensions including employment, exports, and productivity. There is a significant cost to investors in meeting the terms of the FDI regulation.

- After a prospective investor submits their case, whether or not to approve the investment is at the discretion of the government. This creates an appearance that the decision is arbitrary, and this perception is magnified when the government makes inconsistent approval or refusal decisions.
- While the review process can enable the Canadian government to protect the public interest, Canada's regulatory approach is far more onerous than in many other peer countries that are achieving the same goal.

When all of these issues are taken together, Canada's investment attractiveness is diminished. Investment in Canada must be funded either through domestic savings or inflows of foreign capital, and the country is reliant on foreign investment as there is inadequate domestic savings to meet the needs of the economy.

To address the competitiveness challenge posed by regulatory barriers to FDI, one potential option is to invert the net benefit test and require the Government of Canada to establish a net cost to the country. A particular challenge with respect to FDI is investments proposed by foreign state-owned enterprises. However, if this is the primary concern, FDI policy should be designed to address it directly. There could be a two-track FDI assessment process: one track for market-based companies, and another more onerous track for companies that are state-owned or are assessed to be influenced by states. The key would be to create transparency. This would reduce the risk that market-based investments are restricted due to concerns about state interference.





Relevance

In some cases, regulations do not keep pace with changing times, become out of date, or are no longer relevant to the economy, but they continue to be enforced. If regulations do not keep pace with the changing times, the public can be put at risk and economic opportunities can be lost. Out-of-date regulations can create economic distortions and carry economic costs.

Data privacy

We are currently in the fourth industrial age, which is driven by data. With both governments and industry increasingly relying on data to interact with society, regulators must recalculate classical approaches to balancing society's right to privacy and data protection with the clear and obvious advantages that new technologies bring.

Airbnb

Airbnb grew rapidly, from 21,000 arrivals in 2009 to 80 million in 2016.¹⁸ Municipalities were confounded about how to best regulate the safety, tax, and legal implications of a new form of home occupancy.

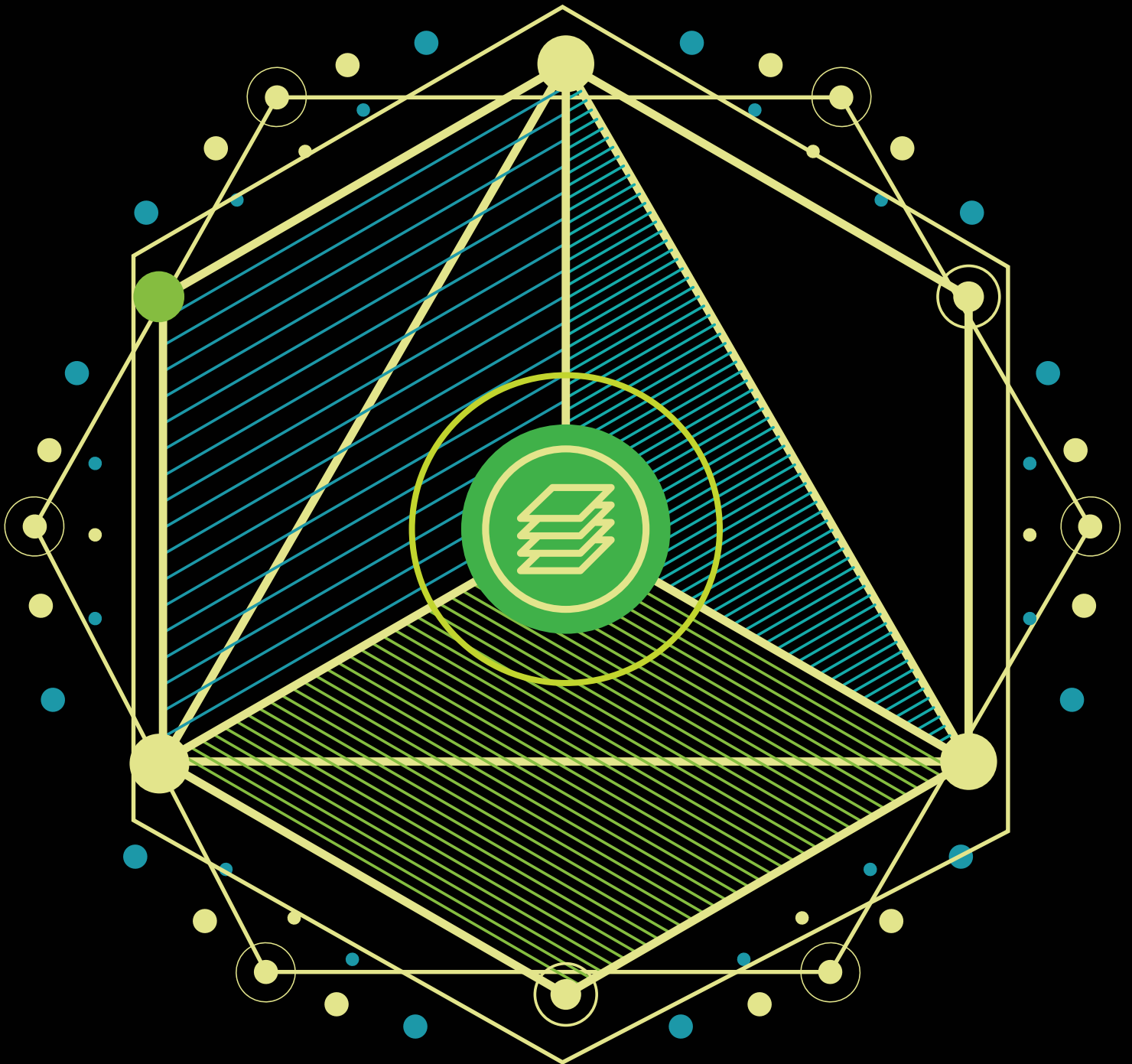
Self-driving cars

Regulatory approaches in the auto sector have long focused on driver safety. However, as automakers invest in self-driving cars, conventional regulatory approaches have been turned upside down. Insurance regulatory regimes can be predicated on the notion of driver liability/fault, but in the absence of a driver, liability must correspondingly shift.

Blockchain

Ensuring that contracts and agreements are honoured and enforced has been a central feature of regulatory and legal oversight in the economy. Blockchain, better described as distributed ledger technology, has the potential to fundamentally change how we do business and the way companies are configured. It removes the need for intermediaries, which is a key source of activity in some sectors such as financial services and portions of public services (e.g. land registry). However, these activities and the handling of associated data are highly regulated. Without new and appropriate regulation, the full opportunities created by this technology will not be realized.

Taken together, these examples illustrate a new landscape in which regulators must quickly determine how to best protect citizens, ensure fair markets, and enforce regulations, while allowing these new technologies and economic opportunities to be realized.



Misaligned or inconsistent regulations across governments

Regulations are applied by all levels of government, across all jurisdictions. The Constitution assigns jurisdiction for various policy portfolios across levels of government. However, the economy of today bears little resemblance to the one that existed at Confederation. This can create instances where government regulatory responsibility may not be clear or may overlap. It is possible that a single business activity is regulated by a municipal, provincial, and federal government at the same time. It is also possible for multiple departments or ministries within a government to regulate a single activity.

Canadian regulators can benefit from the experience and learnings of international peers when the Canadian public interest can be achieved in a similar manner. When Canada doesn't regulate business activities in a similar way as peers, it misses opportunities to harmonize the Canadian market with others, and to adapt smart, effective approaches that are deployed successfully elsewhere.

Examples of consequences for economic competitiveness can include:

Diminished investment attractiveness

Multiple levels of regulatory approval may quickly diminish the willingness to invest. This can be particularly difficult for smaller domestic firms and foreign firms that are not as adept as large domestic firms at navigating the domestic regulatory system.

Regulations not reflective of global best practices

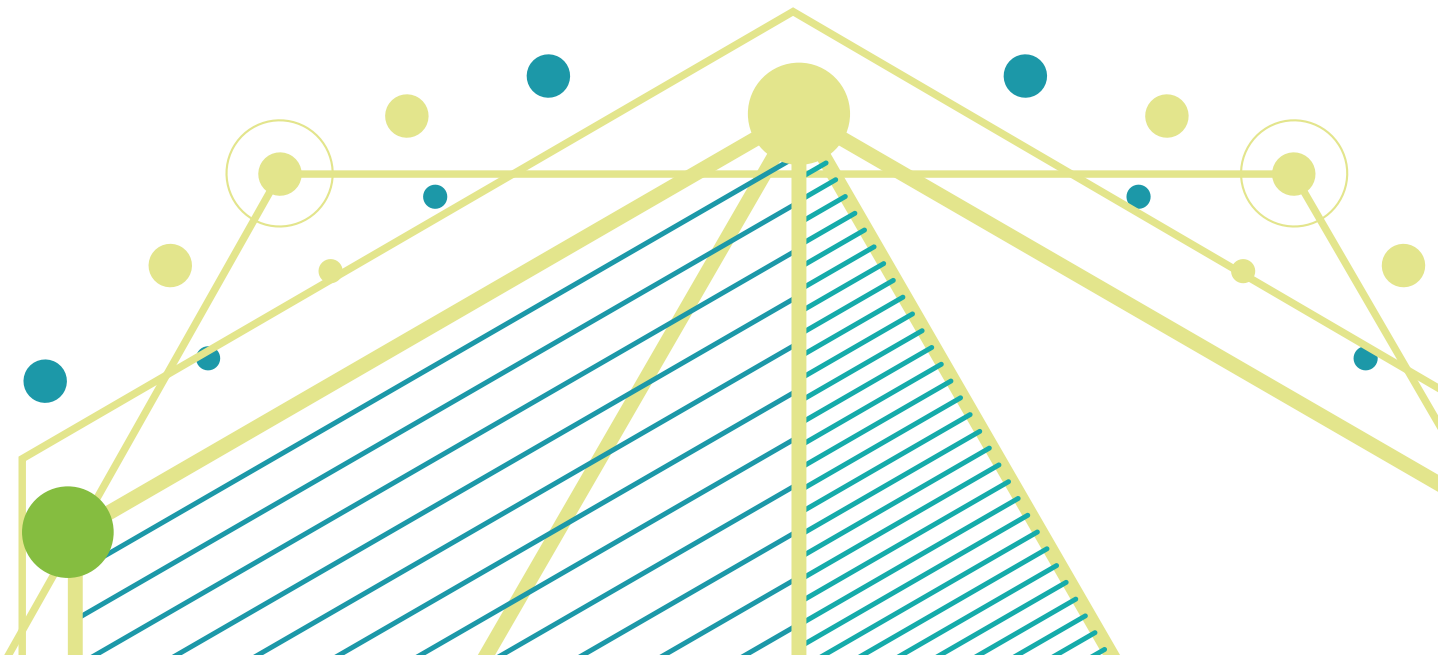
Canadian regulators often do not adopt the most efficient regulatory practices that other countries are pursuing. This can mean that the public interest is protected at a higher cost. Differences in regulation can limit the ability for Canadian companies to easily plug into global supply chains—a key requirement in today's integrated world economy.

Increased financial and opportunity costs associated with compliance

When multiple layers of government regulate the same economic activity, timelines associated with regulatory compliance can swell, triggering time and financial burdens associated with regulatory compliance. It is worth stressing that while financial costs can occur, the time value of money means that opportunity costs are also incurred, and these can be particularly substantial for large projects or a heavy burden for smaller firms.

Difficulty identifying the impacts of regulatory burden

From a public policy perspective, overlapping regulatory schemes can limit the ability for governments to have clear line of sight on the efficacy and impact of regulations. Moreover, when regulatory jurisdiction is spread across departments, assessments of the trade-offs and dependencies between options can be hard to see, further frustrating the process to regulate new ideas and business models.



Interprovincial trade barriers

Interprovincial trade barriers are a glaring example of inefficient and costly regulation. While Canada participates in many multilateral trade deals, its own domestic market is fragmented due to the persistence of interprovincial trade barriers.

Despite the recent ratification of the Canadian Free Trade Agreement (CFTA), an intergovernmental trade agreement signed by Canadian ministers, many interprovincial barriers remain. The deal commits provincial governments to remove all internal barriers on trade, but there are 144 specific exemptions. These exemptions are accompanied by an open-ended provision allowing provinces to apply their own rules in the name of the public interest, along with an opt-out clause.

Lack of national securities regulator

Currently, Canada is the only G20 country without a national securities regulator. Instead, the country's capital markets are regulated by 13 different securities regulators with different laws and regulations in each of the provinces and territories.

Internal provincial market regulations—carbon pricing, cannabis, e-health records

Beyond interprovincial trade, varied provincial market regulations can create unequal playing fields for businesses. A few examples illustrate this situation.

Carbon pricing

Canada has introduced carbon pricing policies at the federal level but with the flexibility for provinces to pursue their own approach. To operationalize carbon pricing policies, a series of regulations govern carbon prices and shape carbon-reduction efforts. While this is the most expedient way to make political progress on this file, it creates differences in how provinces regulate carbon pricing/carbon emissions limitations, which can create complicated compliance requirements for companies that operate across provinces.

Cannabis

While the federal government legalized cannabis in 2018, the rules surrounding the use, sale, and distribution of cannabis vary across the provinces. Cannabis is a significant new market opportunity, with Canadian sales expected to exceed \$7 billion in 2019. However, some provinces have opened up opportunities for private sales, while others have not. Newfoundland and Labrador, for example, do not permit private sales while Ontario does. All together, the differences in how cannabis is regulated across the country could lead to patchy opportunities across the country and limit cannabis companies' ability to build their market presence nationally.

Electronic health records

Differences in provincial standards in the regulation of electronic health records have been accused of diminishing the ability for healthcare analytics companies to sell into, or scale operations in, Canada.¹⁹ Over time, this could contribute to slower adoption of innovation across Canadian healthcare systems and limit the ability for provinces to "recognize" each other's records and patient information. Both of these challenges will create challenges and inefficiencies in the delivery of healthcare services nationwide.

Regulatory overlap across levels of government

Uranium mining

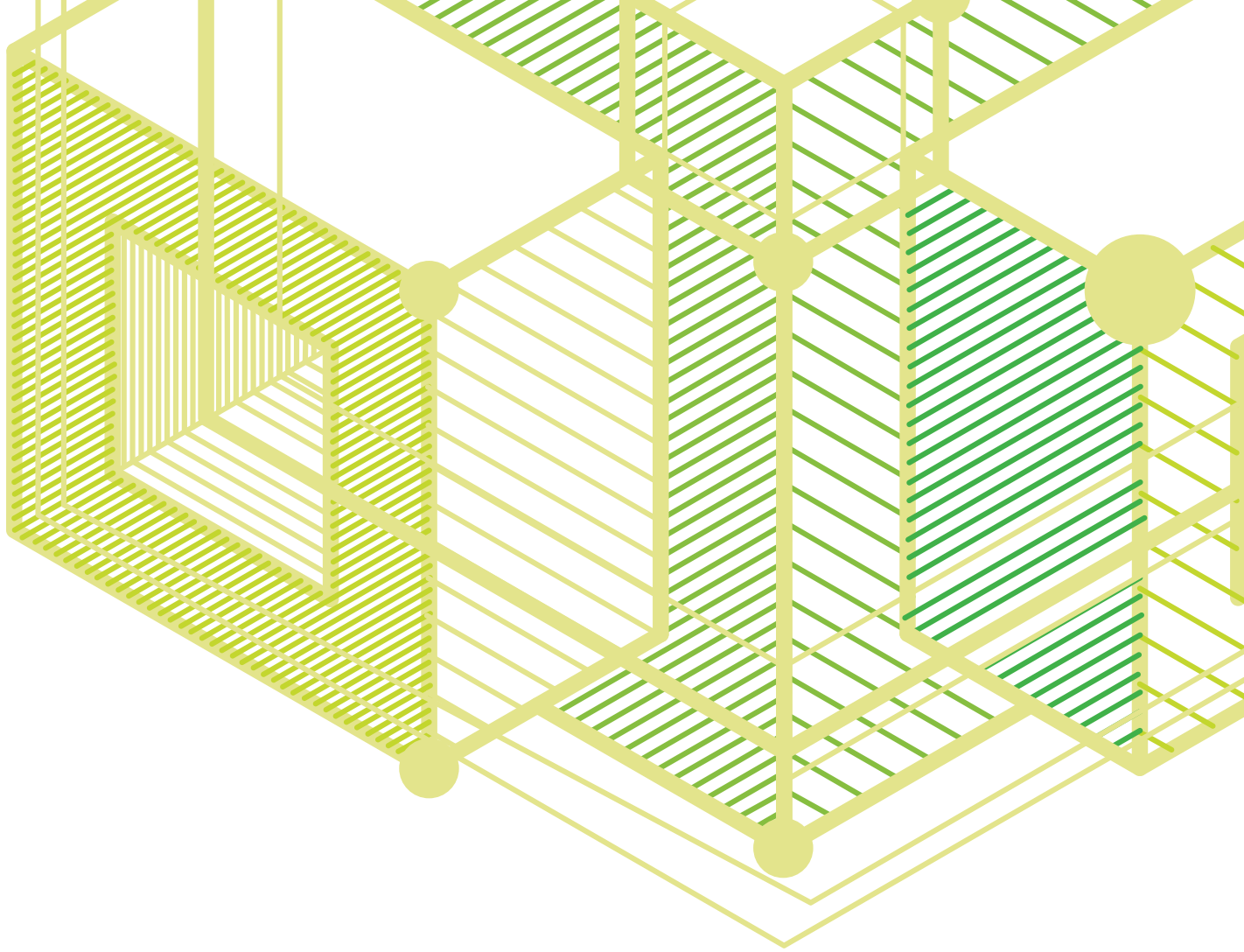
In 2018, the Canadian Chamber of Commerce profiled how uranium mines are simultaneously regulated by three government entities.²⁰ Mining in general is regulated by provinces, but uranium mining is an exception as it is regulated for several health and safety elements and licensed federally by the Canadian Nuclear Safety Commission (CNSC). Concurrently, the Government of Saskatchewan has its own acts and regulations to standardize the health, safety, and environmental aspects of the mining and milling of uranium. Finally, uranium mines are also regulated under Environment Canada's Metal Mining Effluent regulations. In effect, three regulatory bodies govern operations—contributing to an arguably suboptimal regulatory environment for uranium mines to operate within.





Time and cost burdens associated with compliance

Regulations are enforced via reporting or documentation processes that businesses need to undertake. The more complex the compliance requirements are, the more time, effort, and financial cost businesses incur. The financial cost associated with compliance can be straightforward to quantify, but regulators may not have adequate appreciation of the fact that time is money. Once businesses have gathered the documentation required to comply with regulations, they must wait while a decision is made by the appropriate government body.



There are several economic costs associated with these time and compliance costs:

Limiting business investment

Financial costs associated with compliance can limit businesses' ability to make other meaningful investments in their talent and/or physical capital. When they don't invest, Canadian businesses fall behind in the adoption of new best practices or machinery that can help them compete on the world stage.

- Underinvestment is a problem that has plagued the Canadian economy for years. As a percentage of GDP, Canada invests less in machinery and equipment and intellectual patents than its OECD peers and is significantly behind the United States.
- The magnitude of cost impacts can be particularly acute for small and medium companies—a majority of the Canadian economy—which can struggle to offset the costs associated with compliance or the services purchased to comply.

Reduced predictability and transparency

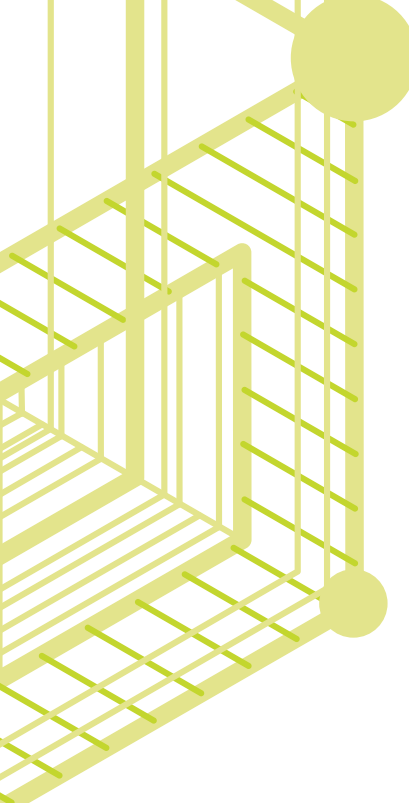
Lengthy regulatory approval times increase uncertainty for investors and make business planning difficult. Notably, lengthy wait times without dialogue between regulators and businesses can lead to a lack of predictability, as businesses may not know what regulatory elements are causing the delays in decision-making.

Foregone revenue and business opportunities

Each day companies wait for the outcome of regulatory reviews can represent forgone opportunity costs. In particular, in instances where market fluctuations can alter profitability prospects (e.g., cyclical changes in commodity prices), delayed approvals can result in the Canadian economy missing out on market opportunities.

Diminishing Canada's perceived investment attractiveness

Long delays can send signals to the investor community that doing business in Canada is difficult, time consuming, and costly. When Canada's peers are able to showcase faster approval turnarounds, or more streamlined approaches to regulations, investors can be attracted to other jurisdictions.



Canadian infrastructure projects

It is becoming increasingly difficult to get approval for the construction of national infrastructure projects. The breadth and timelines for assessing economic, social, and environmental impacts have become increasingly onerous.²¹

In 2016, the Financial Post compiled a list of 35 major projects, worth \$129 billion, that were stalled or cancelled.²² This included pipelines, hydro dams, mines, wind turbines, and others. But the issue isn't just difficulty getting resource projects done. It has taken several years for the Vancouver Fraser Port Authority to get approval for the Centerm Expansion Project, which ultimately would support Canadian exports and trade-diversification efforts.

Another example is the contentious issue of pipeline expansion. Alberta only sells oil to one customer, the United States, which is undergoing an energy supply revolution with the development of shale oil and gas.

This has created over-supply conditions in Alberta and contributed to lower prices. Difficulty getting Keystone XL built has meant that more Alberta oil is being shipped by rail, which is a poor alternative to pipelines. Moreover, Keystone XL will not address the sole-customer problem. Alberta needs to diversify who it sells to; it needs to get oil to a deep-water port.

An alternative is expansion of the Trans Mountain pipeline, but this has proven incredibly contentious.

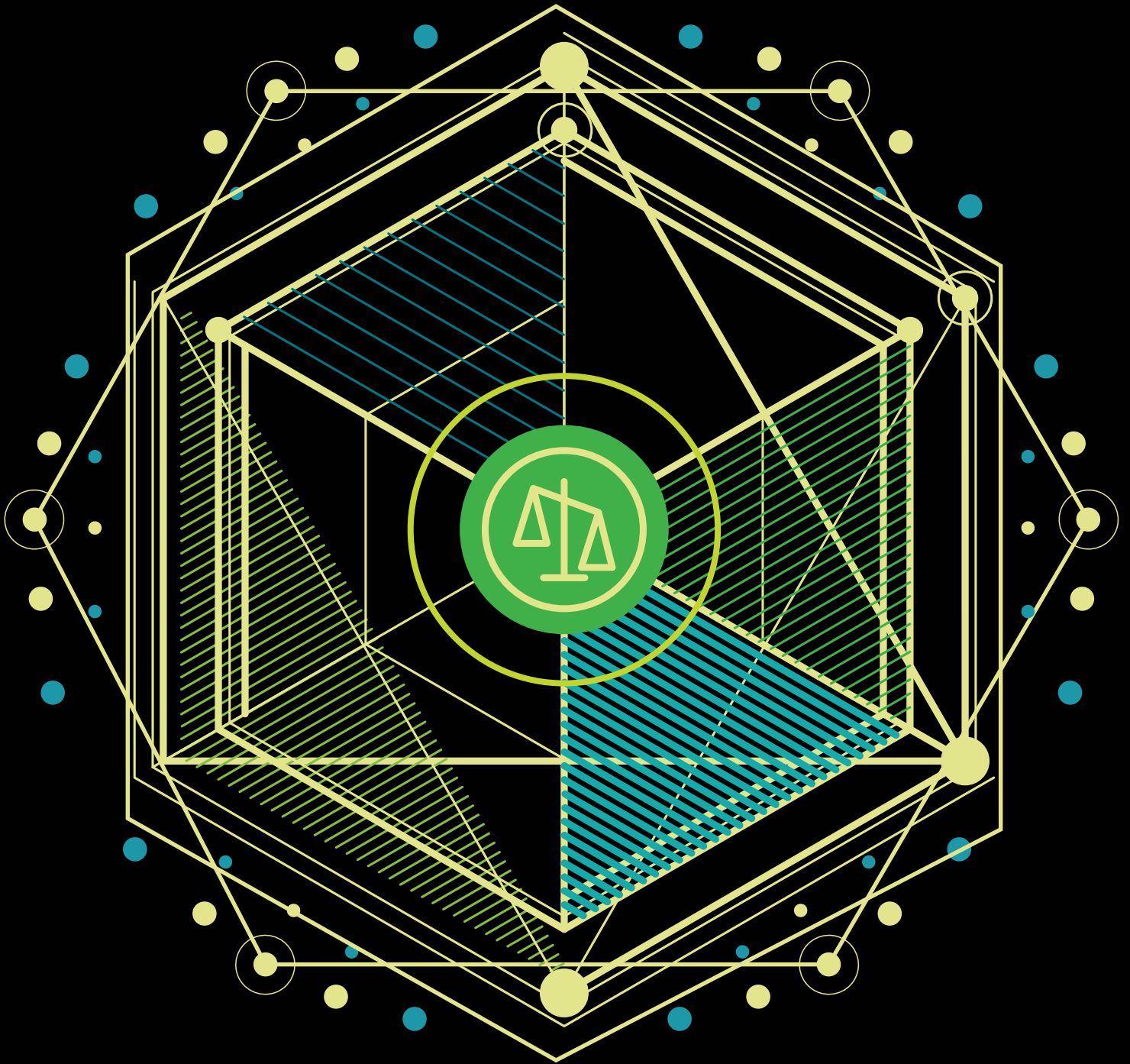
Indeed, in recent years this pipeline proposal has been approved and overturned. Pipelines are a federal responsibility, but the federal government ultimately had to buy the project with taxpayer funds to get it done. The pipeline also led to a public dispute between two of Canada's largest provincial governments.

All of this has increased the cost of the pipeline and ultimately led to a dramatic rise in shipment of oil by rail. It also created the international impression that Canada is a difficult place to invest and do business.

To be clear, national infrastructure projects merit a deep economic, social, and environmental assessment. The central issue is completing such reviews in a reasonable length of time to defend the public interest but not undermine the economic merits of the projects simply through regulatory burden.

Time to obtain permits for construction

In 2019, the World Bank's Ease of Doing Business report found that it takes 249 days to obtain all the necessary permits to build a new warehouse in Canada—168 days more than in the United States. The time required to obtain permits in Canada has grown since 2010, while peers such as Germany have successfully been able to bring wait times down. Time is money, so the delay in permits has economic consequences.²³



Uneven enforcement of regulations

Regulations require enforcement in order to ensure compliance. However, its application can be uneven. When there is an uneven level of enforcement, several negative economic outcomes can occur.

Exposure to risks

Well-designed regulations protect companies and individuals from negative outcomes. A lack of compliance can mean exposure to risks that can have significant consequences. For example, not abiding by health and safety regulations can lead to physical injuries. Similarly, consumer-protection-related regulations are designed to ensure customers have access to adequate information and reporting to make informed choices, diminishing the likelihood of regretful purchases.

Unfair rules of the game

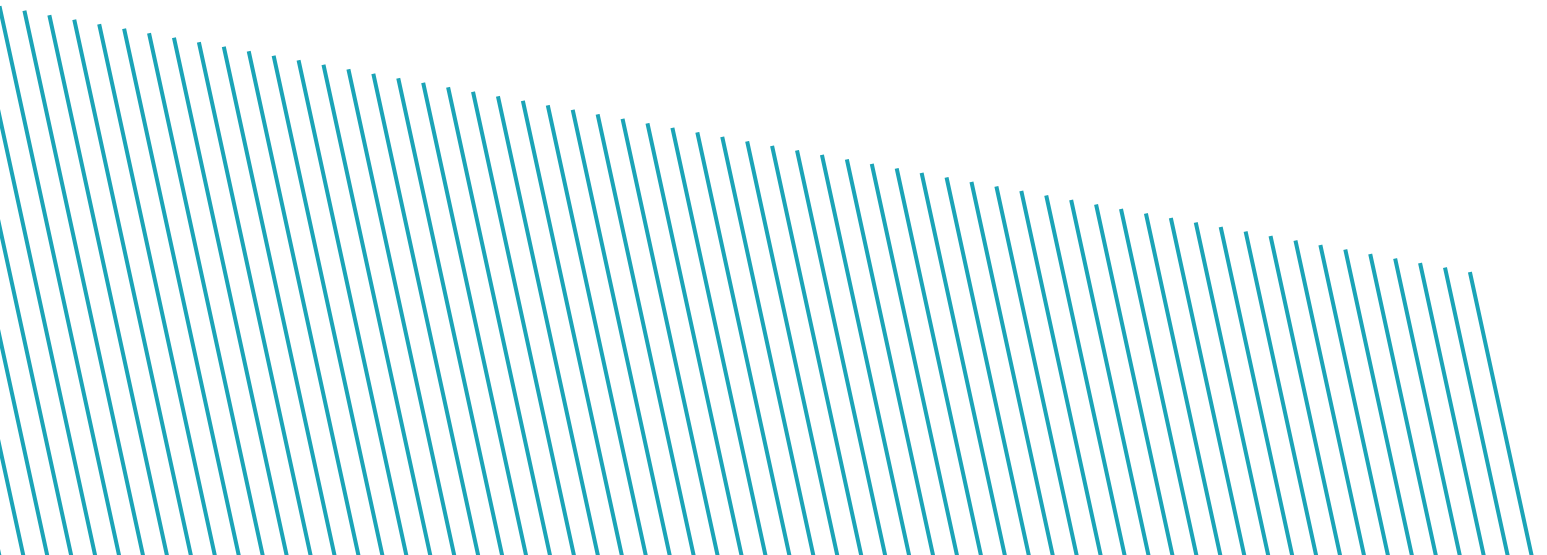
If some companies comply and others don't, companies that do are forced to compete with those that haven't made the same investments, creating an unfair business environment.

Stricter interpretation of regulations

When companies don't comply, regulators are often incented to develop harsher enforcement mechanisms. While this approach might make sense in instances where there is large-scale non-compliance, sometimes this approach can stifle opportunities for companies to work with regulators to develop new approaches to regulations.

Data limitations

There have been many initiatives by governments over the years to reduce regulatory burden—too many to list. Some of these efforts have had greater impact than others. Nevertheless, the declining trend in Canada’s international competitiveness rankings suggests that progress has been limited. Canadian governments are keen to address the challenge, with several provinces appointing dedicated regulatory reform groups. The Government of Canada has also launched a review of its Red Tape Reduction Initiative to solicit feedback on the extent to which regulations achieve policy objectives. If businesses and governments are often singing from the same songbook—both wanting effective regulations that serve public interests at the least economic cost—why hasn’t more progress been made?



There are many factors at play in this limited progress, including, for example, the complexity of the issue. But one key challenge is scarcity of data, which creates a lack of transparency and government accountability. Canada does not produce meaningful data on regulatory burden. This is why our analysis cites the results of surveys dominated by opinion or sentiment polling.

Unlike other determinants of economic competitiveness, accurately measuring regulatory burden can be difficult given some foundational data challenges. Regulations are different from other metrics of competitiveness. They are not traded in public markets and thus have no market price to indicate their value or cost. Nor is there a meaningful, standardized measure to summarize the impact of regulations on the economy.²⁴ Isolating the regulations most relevant to the competitiveness of the economy is also difficult, as regulations impact companies differently based on their size, location, and sector.

The data that does exist in the public domain sometimes does not capture regulatory burden or its key aspects. While the Canadian government mandates public reporting on regulatory management initiatives, existing public data can be difficult to interpret. For example, a review of public data from the Canada Gazette between 2012 and 2018 reveals that an average of approximately 100 new regulations were introduced per year.

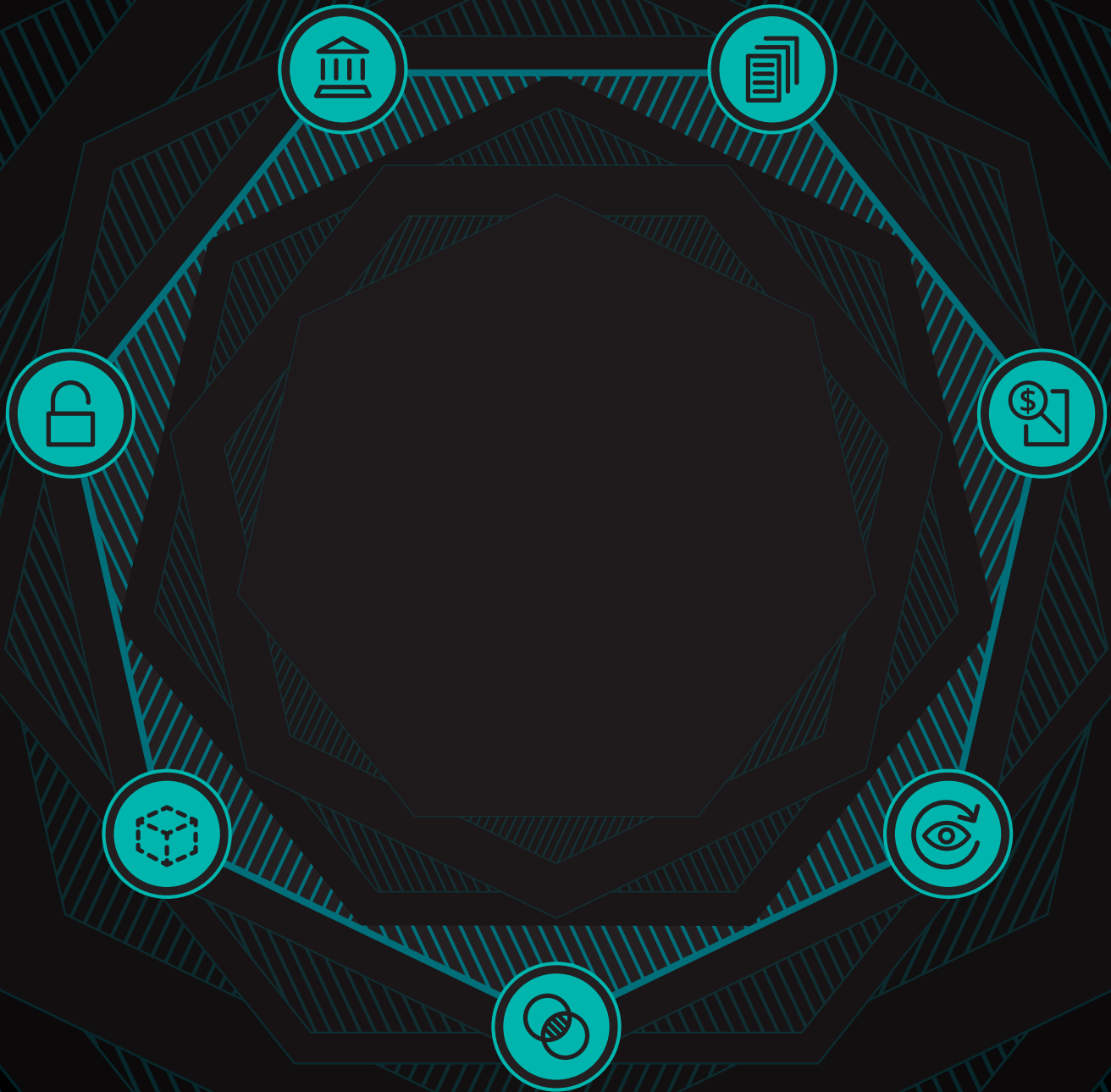
However, data for the number of regulations that were revoked within the same time period is not provided in an easy-to-understand format. So it's difficult to evaluate the relative efficacy of Canada's "one-for-one" rule (which was established in 2012). Similarly, the provinces that do measure the number of regulatory requirements frequently provide a numerical count. For example, in 2012, Ontario reported having 380,000 regulatory requirements, and BC reported 166,919 in 2017.²⁵ These figures can be misleading as provinces do not always report in the same years, which makes them difficult to compare.

In addition, numerical counts do not tell us to what extent regulations driving the most burden have been taken off the books or, the extent to which the BC economy is easier to do business in as a result of having fewer regulations.

Moreover, evaluating competitiveness is an inherently comparative exercise. In the case of regulatory environments, making international comparisons can be difficult, as differences in government and economic structures can prohibit true "apples for apples" comparisons. Troublingly, Canada is unaccounted for in some benchmark comparisons of global regulatory datasets.

Canada is noticeably absent in the World Bank Enterprise Surveys between 1960 and 2014. The surveys track several detailed elements of the regulatory environment, including asking respondents to articulate what percentage of senior management time is spent dealing with the requirements of government regulations.²⁶

In other instances, analysis of regulatory burden can be updated infrequently or often be one-off, or not updated on a regular basis—thereby constraining the ability to review time series data. Finally, much of the data related to regulatory competitiveness focuses on measuring the impact of, or the presence of, regulations and is silent on the extent to which regulations are enforced effectively or evenly across the economy—a critical perspective required for policy makers to have a robust view on the quality of a regulatory landscape.



Seven dimensions for regulatory reform

Our main recommendation is to encourage all governments in Canada to commit to regulatory reform, with competitiveness being a key dimension of review and modernization efforts. The federal government and many provinces have already made this commitment. For those governments that have already embraced the goal, regulatory reform should be made a top priority, with resources committed to making real change.

Beyond a commitment to regulatory reform, there are seven broad elements that we recommend should be part of the framework for regulation modernization. Each of these principles would see government and industry working together in more effective ways to ensure Canadian regulatory regimes are optimally designed and executed.²⁷



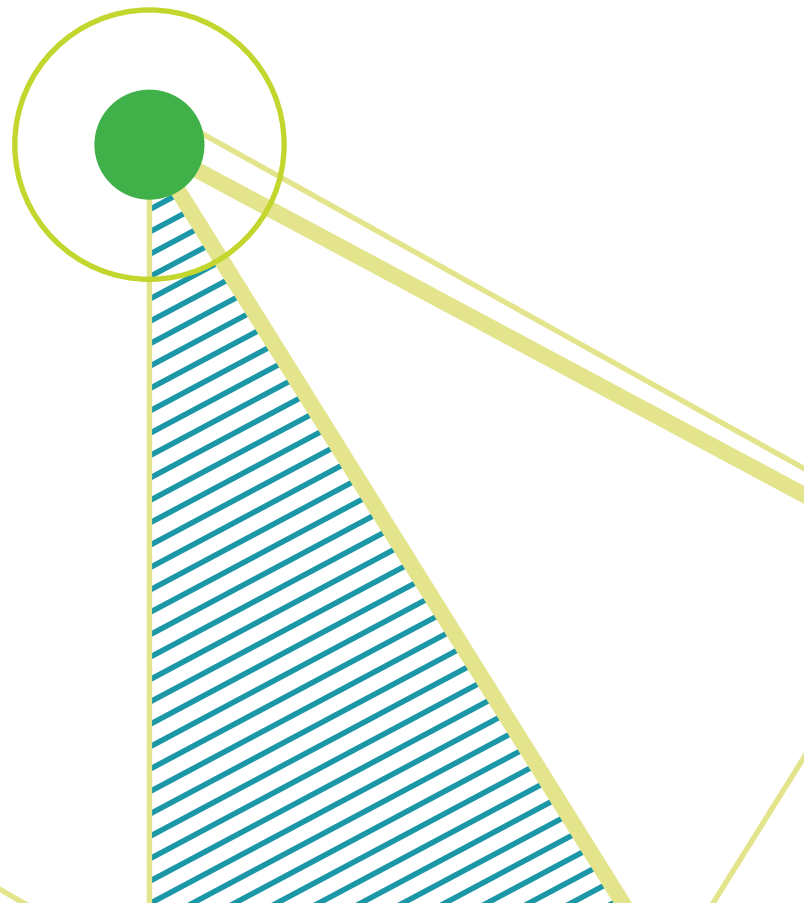
1. Governments should leverage new technologies for regulatory design and review

Tackling the challenges laid out in this paper can be a daunting task for governments. However, unlike at previous points in history, Canadian governments now have access to a new suite of tools that can automate several difficult, time-consuming activities that can help to enhance regulatory competitiveness. Governments should maximize the use of new and advanced technologies to facilitate regulatory design and review. This includes use of artificial intelligence (AI), machine learning technology, blockchain (i.e., distributed ledger), and other new innovations.

For example, AI and machine learning technology can sift through vast amounts of data to identify out-of-date regulations as well as regulatory overlap and duplication. It can also help in the collection of information on foreign regulatory approaches, which can help identify best practices.

Similarly, distributed ledgers can be efficient, lower-cost substitutes for existing regulatory practices such as land registries. The digital revolution has the potential to dramatically improve efficiency for the delivery of public services, including the administration and design of regulatory regimes.

Importantly, should governments apply technologies like AI, they would reinforce adoption of technologies across the public sector which could meaningfully reinforce Canada's technology ecosystems. For policymakers, this could be a compelling "win-win" and help to support the Pan-Canadian Artificial Intelligence Strategy—a central feature of the government's current approach to economic development.²⁸





2. There should be increased collection and publication of data on regulatory performance

When governments report on the outcomes of regulatory burden reduction, they should transition from reporting on regulatory counts to a more robust reporting of the reduction in regulatory costs by measure. This would help distinguish between repeals of low-hanging fruit (such as out-of-date regulations) and more substantive efforts to overhaul regulatory regimes. A lack of meaningful data limits accountability and the scope for improvement. Canada should ensure that it contributes data to the international surveys (OECD, World Bank, etc.). There should be federal, provincial, territorial, and municipal data on regulatory burden. Where possible, the public interest of regulations should be cited with greater disclosure of regulatory costs.



3. All regulations should be evaluated on a rigorous cost-benefit basis

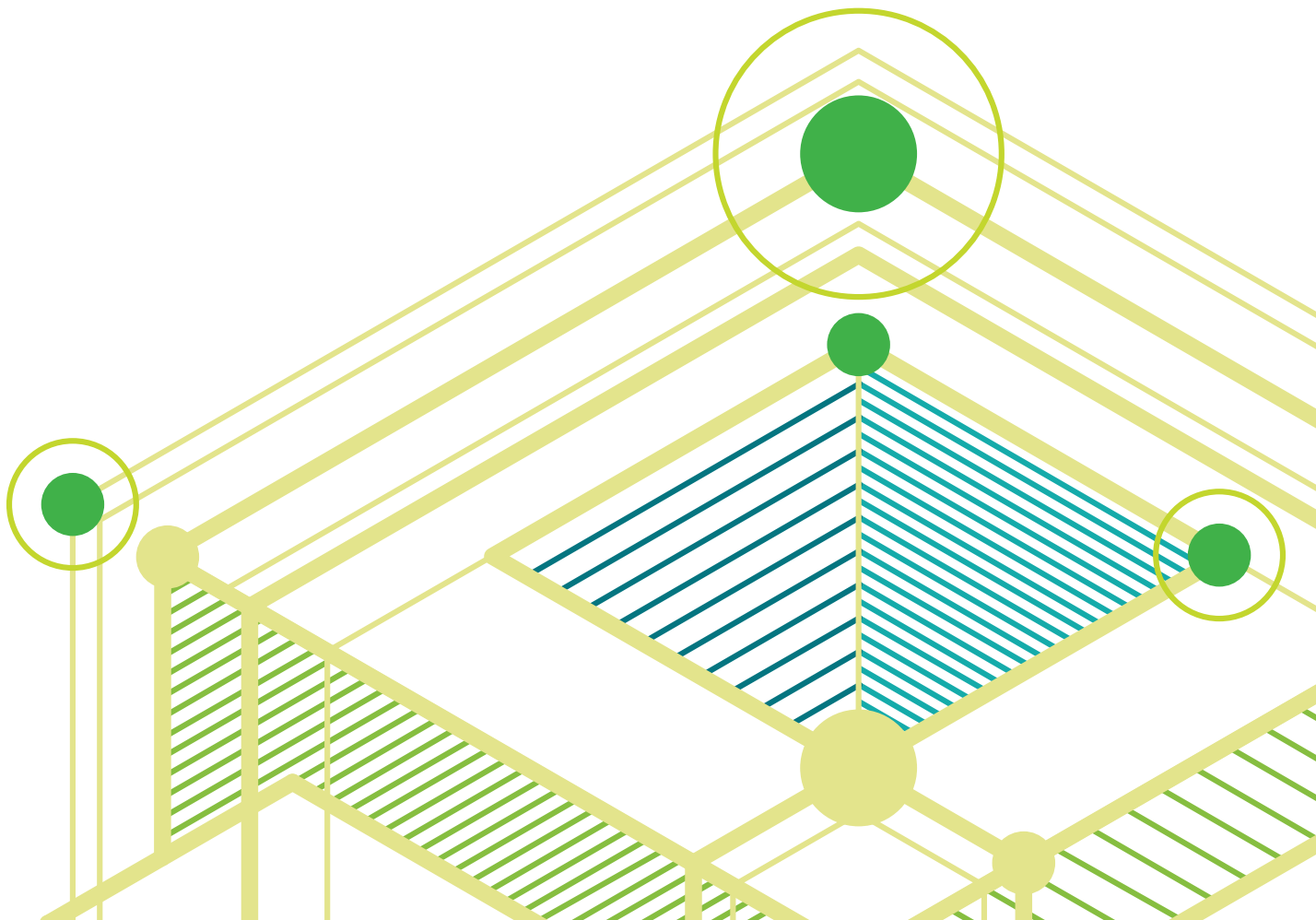
Governments evaluate the merits of a new regulation on several elements. In 2017/2018, the federal government announced its Policy on Cost-Benefit Analysis, which requires departments to analyze the costs and benefits of proposed federal regulations. This policy scopes the level of analysis for new regulations as a function of the anticipated costs of the regulation. For example, for larger regulatory proposals, a robust qualitative and/or quantitative cost-benefit analysis is required. Economic benefits are listed as an example of a “regulatory benefit” that could be measured. However, the definition of costs does not explicitly force an assessment of economic costs/harm associated with a regulation.

While cost-benefit analysis approaches can include an assessment of economic factors, regulations should also be viewed through the lens of the impact on competitiveness. The cost and competitiveness dimensions should factor in duplication and misalignment with other jurisdictions. Importantly, the cost-benefit analysis process should not be done by government in isolation. It is imperative that regulators and businesses work together to share perspectives to develop optimal regulatory approaches.



4. All regulations should include a pre-determined review mechanism

All regulations should have regular review mechanisms (such as sunset clauses, regularly mandated reviews, or formal consultations on effectiveness) to identify whether they are still relevant and to identify opportunities to change or enhance them. A review several years after the regulations have been adopted can also enable the identification of any potential unintended consequences. By creating the expectation for regular reviews, the Canadian regulatory environment can become more adaptive and iterate with stakeholders to ensure regulations achieve maximal effect. As required, the review should include updating the cost-benefit analysis, to allow for a more outcome-based assessment.





5. There should be greater harmonization and co-creation of regulations

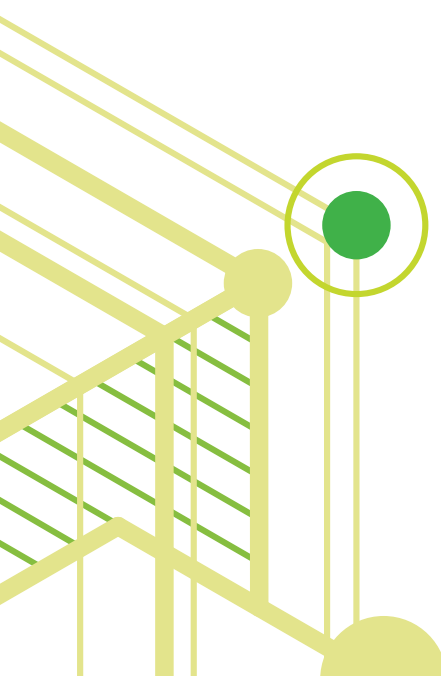
The Canadian federation and our international ties mean that complete regulatory harmonization is not realistic, but greater regulatory harmonization is possible. Governments should assess regulatory best practices both in Canada and abroad. For example, if a regulation is successful in defending the public interest in one province, it should be able to achieve the same goal in another. Similarly, there may be cases where the public interest does not allow for international harmonization. However, the starting point should be to harmonize unless there is a valid public-interest reason not to.

Regulatory competitiveness should be on the agenda of federal-provincial-territorial government meetings. There are many such meetings across ministries and departments.

There is a strong role for regulators to play on this journey. The government should seek to co-create regulations with regulators and the business community, to ensure that forthcoming regulations strike the most optimal balance between the public interest and economic advantage.

Collaboration should also include greater consultation with market participants, who have specialized knowledge of the potential economic disruptions or unintended consequences that might arise.

One recommendation to achieve greater harmonization and duplication of regulations is to form a regulation harmonization council, with representatives from all governments that could foster exploration for collaboration among governments and with stakeholders.





6. There should be greater adoption of regulatory sandboxes

Increasingly, governments are deploying regulatory sandboxes, which are temporary relaxations or adjustments to existing regulatory requirements, to provide a “safe space” for companies to test new business models or activities that are constrained by current or absent regulation. Emerging technologies in heavily regulated industries, such as the financial services or health care sectors, can benefit from this approach, since it creates flexibility to innovate freely without risk of penalty. Regulatory sandboxes could also be used with small- and medium-sized businesses as part of efforts to help them to scale. Canada has many rapidly growing businesses, often called “gazelles.” It may be that regulations are an obstacle to growth, so some degree of flexibility on regulatory requirements might help companies to flourish without putting the public interest in jeopardy.

The Canadian Securities Administrator’s CSA Regulatory Sandbox initiative is a positive example of this in practice. The initiative is open to start-ups and well-established companies with business models that are innovative from a Canadian market perspective. The initiative relaxes regulations for a set period of time—benefiting the company and enabling regulators and companies to test ‘out of the box’ approaches to regulating new activities in a collaborative manner.

Impak Finance, for instance, became the first company ever to legally raise \$1 million via a cryptocurrency crowd sale in the Americas in 2017. As part of the CSA sandbox, it was exempted from registering as a security dealer and providing a prospectus. Impak will be allowed to remain in the sandbox until the end of 2019.

Reg X

Reg X (also referred to as Reg Xplorer or Reg Explorer) is a regulatory tool created by Deloitte that uses AI and text-analysis technologies to streamline the regulatory process and help regulators keep up with the fast pace of technology, scientific breakthroughs, and new regulations. By circumventing hours of difficult data analysis, Reg X can enable governments to reduce their regulations quickly and effectively. Over time, tools like Reg X can prepare databases of regulations that governments can use to have a “single source of truth.”

Recently, Deloitte piloted Reg X with the Canadian federal government and uncovered several policy insights relevant to governments:

- The average age of Canadian regulations, based on registration year, is 19 years, with most regulations introduced in 1990s. However, over 20 percent of the regulatory stock was introduced after 2010, and 10 percent of regulations haven’t been updated since 1980.
- AI techniques have allowed us to draw similarity comparisons for Canadian and American regulations, including generating a similarity score. Based on analysis of a sample of regulations that are 1,000 words or more, only 26 are similar to analogous American sections.
- Regulations have become less prescriptive over time. In the 2010s, 6 percent of the verbs in the regulations were prescriptive, compared to 9 percent in the 1950s (Deloitte analysis).

These insights, just a snapshot of Reg X’s capabilities, demonstrate how technology can expedite large-scale reviews of government regulations and uncover actionable intelligence that can guide governments to take swift, important action to enhance the quality of regulatory regimes.



7. Regulatory regimes that unlock the economic potential of new technologies should be a priority

Regulations are a unique policy instrument. Deployed effectively, regulations can create and grow markets for technologies and products. Often, the market moves faster than regulators; companies develop new products and services for which there are no regulations or where existing regulatory approaches do not respond to social or economic challenges. This can create uncertainty in markets and can lead to instances where regulators must play catch-up to new sets of social, market, and economic challenges they hadn't anticipated.

We anticipate that this scenario will grow more and more frequent as the economy goes through the fourth industrial age, with technologies combining in ways that are opening new, unforeseen business models and solutions that can be adopted quickly by users. Existing regulatory structures are often slow to adapt to changing societal and economic circumstances, and regulatory agencies generally are risk-averse.²⁹

Countries that are able to navigate these types of issues quickly can open the door for entrepreneurialism and stimulate demand for new products and services, which in turn can be a powerful engine for economic growth. Thus, a regulatory approach that can proactively identify, manage, and deploy regulations that specifically respond to unique challenges can create a new form of competitive advantage going forward.

Canada should consider deploying dedicated teams that actively monitor and prioritize development and management of such regulatory issues. These teams should be nimble enough to “fast track” a regulatory response to new issues in consultation with affected stakeholders and should be empowered to proactively monitor the market to get ahead of regulatory issues. Where possible, the extent to which new regulations could position Canada to take advantage of new technologies should be integrated into cost-benefit analysis and the prioritization of regulations to come to market.

Conclusion

The research for this report has been a daunting undertaking, as regulations exist for every sector of the economy and a vast range of activities. Indeed, many of the examples of regulatory challenges are worthy of research papers on their own. The purpose of this paper is to provide the evidence of a regulatory challenge in Canada, highlight the wide-ranging economic costs associated with suboptimal regulation, and provide a framework for thinking about regulatory reform.

Our analysis has tied our regulatory challenges to reduced economic competitiveness overall. While Canada's regulatory environment is sophisticated, with laws and requirements that serve the interests of its citizens, international surveys and the available data suggest that Canada's regulatory competitiveness is weak.

Importantly, regulatory effectiveness is an integral dimension of competitiveness. It is important that we act now. With our aging population, Canada's labour force growth is slowing. This will lead to weaker economic growth unless we can enhance our productivity. Moreover, the complexity of societal and economic issues can be expected to increase. As policymakers grapple with protecting privacy while fully leveraging the breadth of technology available to society, ensuring our regulatory system is optimally calibrated could create an impactful competitive advantage against our peers. Viewed this way, effective regulatory reform should be seen as a tool that can enhance Canada's competitiveness, creating a more dynamic, innovative, and productive economy.

Governments and businesses must work in concert to achieve this goal. Canada would benefit from deeper, sophisticated communication approaches between the regulators and the regulated. Greater harmonization and coordination across regulatory activities is needed. To achieve these objectives, new technologies can be harnessed to make great strides in regulation modernization.

The best news is that there does appear to be federal and provincial government support for progress. In 2019, the Government of Canada released three regulatory roadmaps, which articulate a vision for regulatory management within three high-growth sectors of the economy. The roadmaps were developed in partnership and consultation with businesses, academia, and other key stakeholders.³⁰

This progress demonstrates meaningful, intentional action to create “a simpler, clearer and more modern regulatory system.”³¹ This is absolutely the right objective, and many provinces want to achieve the same ideal. The challenge is not to talk about regulation or make commitments to improve regulation, but rather to make real quantitative progress in terms of making regulation a comparative advantage for Canada.



Endnotes

1. Business Council of Canada, *Member Survey*, January 2019
2. Treasury Board of Canada Secretariat, "Cabinet Directive on Regulation," <https://www.canada.ca/en/treasury-board-secretariat/services/federal-regulatory-management/guidelines-tools/cabinet-directive-regulation.html>
3. It should be noted that some dimensions of the Ease of Doing Business report compare the performance of specific Canadian cities against peer cities. As a result, a weakness of the report is that results may not represent the entire Canadian economy's performance relative to its peers.
4. World Economic Forum *The Global Competitiveness Report 2018*
5. OECD, Product Market Regulation Indicators - *Economy-wide indicators*, 2019
6. World Economic Forum, *Executive Opinion Survey*, 2017
7. Economic Freedom of the World, 2018.
8. Canadian Chamber of Commerce, *Death by 130,000 Cuts: Improving Canada's Regulatory Competitiveness*, May 2018
9. Canadian Federation of Independent Business, *Business Barometer*, July 2019
10. Business Council of Canada, *Member Survey*, 2019
11. Business Council of Canada, *Member Survey*, 2019
12. The Government of Canada has mandated cost-benefit analysis as a requirement of the Cabinet Directive on Regulations. As a part of the regulatory process, stakeholders have the opportunity to comment on the estimates for cost/benefits.
13. The peer group studied included United Kingdom, United States, France, Sweden, Netherlands, Mexico, Japan, Australia, France, Italy, and Spain.
14. The OECD FDI Index gauges the restrictiveness of a country's FDI rules by looking at the four main types of restrictions on FDI: 1) Foreign equity limitations, 2) Discriminatory screening or approval mechanisms, 3) Restrictions on the employment of foreigners as key personnel, and 4) Other operational restrictions, such as restrictions on branching and on capital repatriation or on land ownership by foreign-owned enterprises.
15. The OECD Regulatory Restrictiveness FDI Index 2018
16. Fraser Institute, *Human Freedom Index*, 2017/2018
17. Haver and Deloitte analysis, 2018
18. Deloitte Insights, *The Future of Regulation: Principles for Regulating Emerging Technologies*, 2018
19. Government of Canada, *Investing in a Resilient Canadian Economy*, December 1, 2017
20. Canadian Chamber of Commerce, *Death by 130,000 Cuts*, 2018
21. An example is concerns about Bill C-69. The CD Howe Institute, in a report entitled, "A Crisis of Our Own Making: Prospects for Major Natural Resource Projects in Canada," notes that planned investment in the resource sector plunged by \$100 billion between 2017 and 2018 and argues that Bill C-69 could further discourage investment "by congesting the assessment process with wider public policy concerns."
22. *Financial Post*, "Arrested Development: A searchable database of billions of dollars in stalled or cancelled resource projects," December 15, 2016
23. It should be noted that the World Bank bases these estimates on city permits issued by selective municipalities and thus they may not be fully representative. But the warehouse example is frequently cited and is part of the perception that Canada has a significant regulatory challenge.

Contact



Craig Alexander
Chief Economist
Economic Advisory
416-354-1020
craigalexander@deloitte.ca

An economic voice in the Canadian business community

Craig has over 20 years of experience in the private sector as a senior executive and leading economist in Canada, including chief economist roles at both TD Bank Financial Group and The Conference Board of Canada. In his role at Deloitte, Craig oversees and further develops macroeconomic research and forecasting capability, and provides advanced interpretation of economic trends affecting Canadian businesses and the future of Canada.



Aisha Ansari
Manager
Financial Advisory
416-202-2876
aisansari@deloitte.ca

Aisha Ansari is part of Deloitte's Economic Advisory team and has worked with governments and businesses across Canada on complex economic issues. Prior to joining Deloitte, Aisha worked for the Government of Ontario, focused on evaluating investments and economic development policy.

24. John Dawson and John Seater, *Federal Regulation and Aggregate Economic Growth*, January 2013
25. BC Government, *Regulatory and Service Improvements for British Columbians*, Annual Report 2017/18; Government of Ontario, *Open for Business*, 2017; and Deloitte Analysis
26. At the time of publication, Canada was noted to have a "survey in progress."
27. Deloitte Insights, *The Future of Regulation: Principles for Regulating Emerging Technologies*, 2018
28. Government of Canada, *Pan-Canadian Artificial Intelligence Strategy*, 2019
29. Deloitte Insights, *The Future of Regulation: Principles for Regulating Emerging Technologies*, 2018
30. Government of Canada, *Targeted Regulatory Review: Agri-Food and Aquaculture Roadmap*, 2019
31. Government of Canada, *Fall Economic Statement, Chapter 3: Confidence in Canada's Economic Future*, 2018



Canada at 175 refers to Deloitte's vision for the future of our nation's prosperity by July 1, 2042. Now is the time for Canada to redefine what it means to be a global leader.

Our ambition as a nation must be bolder—we must aim to not only achieve economic prosperity, but to elevate our quality of life for our vast and diverse population.

Deloitte believes that in the years leading up to our 175th anniversary Canada can remain in a class by itself—not one of the best, but the best place in the world to live and work. To do this, we must adopt an unrelenting commitment to developing courageous leaders who embody an inclusive way of being.

Contact us at canada175@deloitte.ca

Deloitte.

www.canada175.ca

Deloitte provides audit & assurance, consulting, financial advisory, risk advisory, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500[®] companies through a globally connected network of member firms in more than 150 countries and territories bringing world-class capabilities, insights and service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 264,000 professionals—9,400 of whom are based in Canada—make an impact that matters, please connect with us on LinkedIn, Twitter or Facebook.

Deloitte LLP, an Ontario limited liability partnership, is the Canadian member firm of Deloitte Touche Tohmatsu Limited. Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

© Deloitte LLP and affiliated entities.

Designed and produced by the National Design Studio, Canada. 19-6045M