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Opinion: Our regulatory stagnation is killing innovation

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Innovation will never convert into productivity growth unless we constantly modernize our regulations, empowering businesses to implement innovative new practices that also protect consumers.

Regulatory stagnation can cause harm because technologies, products, and business models are rapidly changing, and our regulatory frameworks are not keeping up. This creates increasing economic and public risks. The response to this stagnation is often to promote deregulation, but this, too, can increase the risk of public harm through unsafe products, underperforming services, or hazardous conditions. How do we overcome regulatory stagnation while still protecting the public and embracing the need for innovation in our economy?

There is a proven solution. I'll get to that in a moment, but first, let's explore the problem.

The Organisation for Economic Co-operation and Development (OECD) measures the degree to which competition and innovation policies are promoted or inhibited within member countries. Their Product Market Regulation Indicators measure and compare economy-wide regulatory and market environments. In terms of regulatory burden, Canada is one of the worst-performing countries in the OECD, ranking 35th of 38 member countries.

Another bit of bad news lies within the most recent Global Innovation Index. Despite gradually improving in recent years, Canada is the only G7 country that produces less innovation output relative to its level of investment. In other words, our substantial investments in innovation are not producing commensurate results in terms of improved economic performance.

Despite increasing investments in innovation initiatives, we keep producing lackluster results, in part because of regulatory stagnation. In this ever-changing world, innovation will never convert into productivity growth unless we constantly modernize our regulations, empowering businesses to implement innovative new practices that also protect consumers.

Consider this example. Until last November, Canada's electric metering legislation only allowed electric vehicle charging stations to charge for the amount of time used and not the actual cost of the electricity delivered. As a result, condo and rental property managers, and other potential market participants, were disincentivized from investing in charging stations. Our regulatory stagnation prevented the market from helping to deliver on this top government priority.

This example illustrates the extent to which Canada desperately needs a major, whole-of-government strategy to meaningfully address our OECD-leading legacy of regulatory burden and stagnation. We must create the regulatory agility necessary to protect Canadians, spur innovation, and increase productivity growth.

Treasury Board's current initiatives—the Annual Regulatory Modernization Bill and targeted regulatory reviews—are good steps in the right direction but barely scratch the surface. We need an approach that is far more fit-for-purpose—one that can increasingly create an efficient and modernized regulatory system that is pro-competitive, encourages innovation and investment, and accelerates the growth of business, while still protecting consumers from risks and harms.

Good news: there is a proven solution based on the use of standards. A standard is a set of criteria that is collaboratively agreed to by the stakeholders in a specific industry, including government. Standards differ from regulations in that they are developed through a rigorous and transparent process outside of government and then must be certified. Decades ago, the United Kingdom, European Union, and the United States, among others, created a strategic approach to incorporating standards into their legislative instruments.

In a recent op-ed, Keith Jansa, CEO of the Digital Governance Council, argued for the federal government to institute governor-in-council (GIC) powers to recognize standards, codes of practice, or certification programs that provide equal or greater protections to those required by law. Each departmental minister could then establish an expert advisory panel to carefully review each decision, before being approved by the minister and submitted to GIC.

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In short, this approach would enable the adherence to an accredited standard to fulfil the requirements of a current regulation. Two conditions would have to be met: 1) they must be developed by an organization that adheres to best-in-class international practices; and 2) most importantly, they cannot reduce the public's protections from unsafe products, under-performing services, or hazardous conditions.

There is an urgent need for ongoing agile regulatory reform across our entire economy. It is critical if we want to encourage businesses—large and small—to innovate, invest, and achieve productivity improvements. Prioritizing regulatory agility is an exceedingly low-cost way for Canada to become a globally competitive market for innovators, while delivering affordability and protection to consumers.

Senator Colin Deacon was appointed to the Senate of Canada as a representative of Nova Scotia in June 2018 and has since been part of the Independent Senators Group. He currently serves as deputy chair of the Standing Senate Committee on Banking, Commerce, and the Economy.