



RGI

**Regulatory
Governance
Initiative**

FINAL REPORT OF EVENT PROCEEDINGS

**Regulatory Management
During the COVID-19 Pandemic:
Lessons Learned**

A Critical Conversation for Regulatory Professionals

**A Critical Conversation™ from the Regulatory Governance Initiative — Hosted by Carleton
University's School of Public Policy and Administration**

June 27, 2023

About RGI

Headquartered at Carleton University's School of Public Policy and Administration, the Regulatory Governance Initiative (RGI) is an education and cross-sectoral research hub whose aim is to help develop and promote a better understanding and application of regulatory excellence. Its approach is holistic, drawing on expertise from the public, private and non-profit sectors and academia in collaboration with scholars from the RGI network to deliver a program involving a combination of education (professional development), research and dialogue.

In its mission to push the boundaries of regulatory policy thinking, the RGI uses its university-based, impartial convening capacity to host Critical Conversation® events. These events aim to push the boundaries of thinking on important policy and regulatory issues, bringing together senior government policy makers, academics and key non-government opinion leaders to take part in a facilitated discussion that explores the insights of presenters and participants and raises awareness and collective understanding of the issue under discussion.

Agenda

- 8:00 a.m. **Registration & Networking Breakfast**
- 8:30 a.m. **Welcome to Carleton University**
Dr. Jennifer Stewart
Director, School of Public Policy & Administration, Carleton University
- Review of Agenda, Introduction to the Conversation**
Rick Stewart
Executive Director, Regulatory Governance Initiative
- Speaker Introductions**
Michael Presley
Regulatory Governance Initiative
- 9:00 a.m. **Tina Green**
Assistant Secretary, Regulatory Affairs, Treasury Board Secretariat
- 9:30 a.m. **Nicholas Robinson**
Associate Assistant Deputy Minister, Safety & Security Group, Transport Canada
- 10:00 a.m. **Panel Question Period**
- 10:30 a.m. Heath Break, Refreshments
- 11:00 a.m. **Roundtable Discussion**
- 12:00 p.m. **Plenary Discussion**
- 12:30 p.m. **Priority Ranking**
- 12:45 p.m. **Rapporteur**
Dr. Robert Slater
Regulatory Governance Initiative
- 1:15 **Closing Remarks**
Rick Stewart
Executive Director, Regulatory Governance Initiative

Introduction

On June 27, 2023, The Regulatory Governance Initiative hosted a Critical Conversation event to discuss the challenges and experiences that the federal regulatory-management community faced during the extraordinary circumstances posed by the COVID-19 pandemic. It engaged a broad spectrum of policymakers and regulatory managers, academics, and business representatives in a balanced, structured dialogue on the challenges, risks and responses of the past three years. The event was designed to raise awareness and collective understanding of the issues and explore ideas around best practices and innovations that could have broader application for regulatory management post-pandemic.

Background

The COVID-19 pandemic has come to be recognized as a once-in-a-century event that traumatized citizens and stimulated much public debate about the role of government and the level of public confidence that governments were able to sustain over the duration of the crisis. For regulators, this crisis featured extraordinary challenges ranging from incomplete information, an absence of early consensus on the depth and breadth of the crisis itself, and how best to act quickly while sustaining openness and transparency in the design and implementation of responsive measures.

Following a presentation during the second year of the pandemic to the Certificate Program in Regulatory Leadership (an RGI Partner Program delivered through the University of Ottawa's Centre on Public Management and Policy), Ian Shugart – Clerk of the Privy Council at the time – asked Program Directors Michael Presley and Henry Schultz to take stock of the lessons to be learned for regulators from the pandemic. He explained that the crisis was highly impactful on all aspects of public administration and suggested functional communities needed to learn from the experience given the changes caused by its wake.

Responding to this request, Program Directors interviewed a range of leaders in the federal regulatory community during the Fall of 2021. For this review, the authors purposely considered each stage of the regulatory life-cycle to best understand not only the impact of the pandemic on the regulatory policy community but also on program delivery staff and on those being regulated.

The result of this work was the preparation of a report entitled "*Observations of Regulatory Management During the COVID-19 Pandemic*" (Presley and Schultz, January 2022). This Report serves as background context for the Critical Conversation event.

At the time the interviews were conducted and the Report was prepared, the pandemic was still very much an active event. Regulatory decision-makers and administrators were still adapting to rapidly changing circumstances and evolving evidence on what was and wasn't working. The emergency management preparedness and capabilities of federal regulators were tested, and while it seems to have been unevenly effective, the interviews identified a

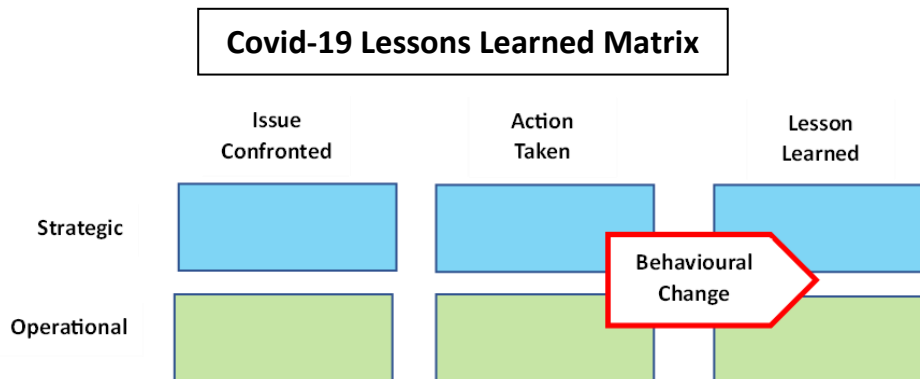
number of positive practices and innovations being employed that could have broad application for regulatory management post-pandemic. These included:

- Health Canada’s practice of using independent expert advisory bodies to help identify key issues requiring quick response and build better understanding and confidence/trust on the part of the public;
- The use of interim orders by key departments to put temporary measures into place quickly; a good example was Health Canada’s use of such orders to facilitate the availability and use of much-needed medical equipment and medication;
- The innovative ways that Transport Canada adapted its safety monitoring oversight activities, putting greater emphasis on risk-based targeting of inspections and use of virtual inspection practices.

While it was too early to draw firm conclusions at the time the Report was prepared, the study did note that a number of these trends and practices would warrant a closer examination as to their enduring value and use once the pandemic was over. This was the purpose of the Critical Conversation event on June 27, 2023 – to hear from some of the federal regulatory leaders who were at the coal-face of this management challenge, debate some of the regulatory management best practices that emerged as well as the disappointments and unexpected challenges that arose, and identify lessons learned for improved regulatory management.

Framing the Discussion

Over the course of the pandemic, federal departments and agencies were faced with the need to adapt many of their traditional administrative practices and decision-making processes in order to deliver on their regulatory mandates. Many of these actions involved changes to operational practices to deal with the reality of public health restrictions. Some efforts and decisions were more strategic in nature, while others were a mix of strategic and operational considerations. The following graphic provides a useful way of thinking about these issues.



The circumstances surrounding the availability of personal protective equipment (PPE) early in the pandemic serves as an interesting example. Public health authorities discovered that existing supplies of PPE were insufficient, and moreover that much of what was available had passed its usable expiry date. As a result, extraordinary efforts were needed to address the problem. From a strategic perspective, this situation demonstrated the fragility of emergency preparedness and vulnerability of supply chain arrangements, raising questions about what changes in practice are needed by risk managers. At an operational level, a variety of efforts were undertaken to source PPE supplies and create domestic production capacity. In this regard, it is interesting to consider what worked best and how these arrangements should be maintained.

Presentations

The Critical Conversation began with presentations from two guest speakers:

- **Tina Green**, Assistant Secretary, Regulatory Affairs, Treasury Board Secretariat
- **Nicholas Robinson**, Associate ADM, Safety & Security Group, Transport Canada

Each of these speakers is an expert in their field, and played a key role in designing and executing regulatory administrative measures that would respond to the pandemic in a way that protected the health and safety of Canadians and maintained public trust. Through their presentations, they shared their unique perspectives and experiences of the past three years. This was followed by a moderated armchair discussion that provided an opportunity to engage with and ask questions of these presenters.

Tina Green (TBS)

Ms. Green's presentation focused on the experience of working hand-in-hand with senior departmental officials and Treasury Board Ministers to facilitate decision-making around the regulatory approvals needed to deal with the pandemic. She started by noting that the Cabinet Directive on Regulation is actually quite clear in outlining the thresholds that must be met for obtaining regulatory approvals under emergency conditions. While the instrument proved to be effective overall, she observed that greater richness in its application came out as TBS and departments alike developed greater experience using it to obtain regulatory approvals under duress.

She then turned her attention to the question of whether the variety of legal instruments available to departments for regulatory management provided sufficient flexibility for dealing with the emergency situation. With a stock of over 3000 regulations across 60 departments and agencies, the crisis demonstrated that many were dated and not fully fit for purpose. Program areas that had developed regulations with clear purpose, strong partnerships and flexible, risk-based instrument design were able to pivot quickly when the crisis hit – in Ms.

Green's words, they had "implementation readiness" to respond. In contrast, those whose regulatory tools were less robust had to scramble. She then cited Health Canada as a good case study. Serendipitously, the department had acquired new regulatory flexibilities and authorities through the 2019 federal budget as part of the Government's Regulatory Roadmaps initiative, an effort designed to modernize regulatory frameworks by encouraging more innovation and less compliance burden. When the COVID-19 pandemic struck, using their interim order authorities, Health Canada was able to streamline approvals for health authorities to acquire and use needed equipment and medications to deal with the crisis. This flexibility was accompanied by enhanced compliance monitoring in real time (to watch for unintended consequences) and the ability to terminate authorizations as necessary (overall, a less-prescriptive, risk-based approach).

With the crisis now behind us, Ms. Green noted that some of these temporary pathways had been allowed to sunset, some have been further renewed on a temporary basis, and some have been turned into permanent authorities for future crisis action. In addition, TBS officials are now looking at whether and how to institutionalize aspects of this experience, including:

- How to adjust governance arrangements in order to create offsets in the system, with appropriate guardrails – both Health Canada and Transport Canada had demonstrated that this can be done responsibly; and
- Creating flexibility around incorporation-by-reference practices, especially with respect to smaller-scale technical specifications, and whether this can be made available to most/all departments.

Finally, looking back on the experience, Ms. Green closed her presentation by noting a few key takeaways from having worked through the crisis:

- Treasury Board Ministers take evidence-based decision-making very seriously; they are not prepared to simply approve "everything, fast, forever".
- Creating trust and comfort around policy action during a crisis – honest and open dialogue with stakeholders and decision-makers is essential, being frank about what is known, what is not known, and what are the risks and unintended consequences.
- Advance foresight and forward planning are invaluable – for Health Canada, this allowed the department to have sophisticated conversations with the regulatory community that contributed to the alternative pathway regulatory approvals they provided to the sector for crisis response.
- Regulatory approval should be viewed as a "journey" that takes time and energy to do right. Too often departments are under pressure to focus only on solving the problem at hand. However, in so doing, they miss the opportunity to create more durable, flexible regulatory instruments that take into consideration international cooperation, more emphasis on outcome-based results, and "future proofing" by being technology neutral.

Nicholas Robinson (Transport Canada)

For his presentation, Mr. Robinson focused on three issues – regulatory instruments; communication and stakeholder engagement; and inspection adaptation.

On the issue of *instruments*, Mr. Robinson started by noting that Transport Canada officials did not expect that their department would have a primary role to play in dealing with the pandemic, given that it was a public health issue. He noted that the department had a good understanding of its statutory/regulatory instruments and had gone through a series of emergency events over the previous decade to test and evaluate the “regular” use of emergency tools. But as the pandemic unfolded, they realized that their tools were, in fact, applicable and relevant to dealing with the crisis – the “public interest” aspect of their statutory authorities enabled the department to use the power inherent in their tools. In addition, Transport Canada’s stakeholders were already very familiar with the department’s authorities and use of emergency interim orders, which created a certain comfort/acceptance around their use during the crisis. His main takeaway message on this is the importance of knowing the full scope of your regulatory regime, and building regulatory tools in a way that not only addresses the specific issue at hand, but also has the flexibility to deal with broader issues. He cited the example of NOTAMs (Notice to Air Missions – a notice that alerts aviation authorities/pilots of potential hazards) as a good example of a very effective regulatory tool that could perhaps be applied flexibly to other transportation modes.

In contrast to his story around instruments, Mr. Robinson noted that Transport Canada’s experience with *stakeholder engagement and partnerships* was much less developed before the pandemic. Officials did not have an established, regular partnership with other federal organizations such as CBSA or the Public Health Agency of Canada, and their engagement with external stakeholders was equally under-formed. He noted that the pandemic changed all this, creating an exceptional time of sharing and partnering to “make the crisis go away”. Transport Canada created opportunities to test ideas and “what if” scenarios with regulated entities (as well as implicated federal departments/agencies) to get their feedback on operational management implications and secure their cooperation for measures that needed to be put into place. He noted that stakeholders were pleased at having the opportunity to have their views taken into account, and that it enabled Transport Canada to understand what transport operators needed in order to practically manage through the crisis. It also caused the department to consider whether all existing regulatory safety requirements were actually appropriate or needed in the context of a pandemic, or whether certain regulatory exemptions might be practical and warranted in the circumstances.

Mr. Robinson concluded his presentation with a few observations about Transport Canada’s experience with *remote/virtual inspections*. He noted that there are many ways to do this, and that even before the pandemic struck, the department had begun using a risk-based approach to triage their inspection efforts, focusing their on-site inspection capacity on higher-risk entities and using virtual inspections for lower-risk operators. The pandemic simply accelerated

this transition. As an example of where the use of technology actually improved inspection rigour, he cited the requirement to inspect ships' hulls for sea-worthiness, and the fact that the use of drones provides a much more complete picture than the traditional visual scans. The department also began to rely more heavily on self-reporting of compliance reports by regulated entities, although he cautioned that this requires trust and some ability to judge risk. Finally, he also noted that the use of virtual inspection techniques has an international dimension that needs careful consideration. Some international commitments require a certain type and frequency of physical inspection; a move to more virtual inspections for practical and reasonable reasons could create tension if international partners are brought along and convinced of the reasoning and merits before changes are made.

Moderated Question & Answer Session

The two presentations elicited much interest and discussion, with the Q-and-A session addressing issues of the capacity to manage during an extended crisis, engagement, relationships and partnering, and the robustness of the regulatory evaluation system.

In response to questions about the capacity of the system to manage, Mr. Robinson noted that their emergency response capabilities and procedures were structured for a sprint event, not the marathon that the pandemic turned out to be. He noted that Transport Canada had to adjust to this context by creating a dedicated group with responsibility to drive emergency management and identify how to create more flexibility in their regulatory tools, and by looking at how the department could be better structured to engage with partners and stakeholders to improve emergency management. A number of participants raised concerns about the capacity of the system overall to deal with sustained events like the pandemic, and whether it has become more fragile as a result. Mr. Robinson noted that the resilience of the overall system to respond is not what it used to be, with inadequate surge capacity and operational structure to deal with sustained events. He emphasized the need for a greater people management focus to rebuild resilience and create the capacity for sustained crisis management.

There were several questions around the theme of engagement and partnerships. Ms. Green noted that border management policies were the area where departments and agencies worked most closely and most collaboratively during the crisis, resulting in the development and approval of 83 new legal instruments over a period of two years. She further noted the importance of institutionalizing these successful connections and practices, and argued that it needs to be done in a way that is "real" and focused on the issues that have meaningful value. Mr. Robinson echoed these comments, noting that Transport Canada now has a better understanding of the business of its stakeholder community and other departmental partners, and have created an environment where it is possible to disagree without being disagreeable. He noted that they have created new governance practices and arrangements with partner organizations to help institutionalize these arrangements and make them less personal-based.

Finally, on the general theme of evaluating how robust the overall regulatory system is, several participants asked whether it was “fit for purpose” and sufficiently outcome-based in its focus. The response from both presenters was that it is not. Mr. Robinson noted that from his perspective, the system is not sufficiently robust because it is overly focused on the “next issue” to deal with, and there is concern about opening up the regulatory toolbox. Ms. Green echoed this concern, and referred to the Cabinet Directive on Regulation that emphasizes the importance of a stock review that focuses on the regulatory life cycle. She noted that the Treasury Board Secretariat is looking carefully at how it can offer support to a stressed system to make such a review manageable for departments and create the conditions for success.

Roundtable Discussion and Priority Ranking

Following the presentations and armchair discussion, event participants broke into small roundtable groups to reflect upon and discuss the issues presented in more depth and draw conclusions on lessons learned for regulatory management. They were guided by three main questions:

1. Even before COVID-19 struck, regulatory management was already being challenged by rapid changes in the regulatory environment, evolving public expectations and factors like disinformation campaigns. How did the pandemic make things worse? What do you feel was done well – and what was done less well – by regulatory organizations in responding to the pandemic, especially as it evolved from initial emergency response to protracted crisis management?
2. Why are the kinds of innovations and partnerships that were in evidence during the pandemic not used more regularly in regulatory administration? How can these best practices of emergency preparedness and crisis response be institutionalized within regulatory organizations?
3. To what extent has public trust in medical and scientific experts and government officials – and in particular, regulatory administrators – been damaged by the pandemic experience? Have we come out of the pandemic with public confidence in our institutions intact as being responsive, effective stewards of regulatory decision-making and administration?

Each table subsequently reported back on the specifics of their discussions to the broader group, identifying what they considered to be the key observations and lessons learned from the experiences of the past three years. The ideas generated from the roundtable discussions were thoughtful and wide-ranging, drawing on the personal pandemic experiences of many in the room. Having shared their observations, participants were then asked to “vote” on the answers from all groups using green stickers to signal agreement and red stickers to signal

disagreement. The following is a summary of the top-rated answers that were presented (see the Annex for a more detailed summary of discussion points).

Question 1: Responding to the Crisis

This question generated considerable roundtable discussion and a wide range of views about how well the system coped with the pandemic. Most observations centered around the challenges and shortcomings of effective communication and action management.

- There was a strong consensus that putting “scientists” out on the front line of communicating with the public did not go well, as they are typically not well-skilled in the role of trying to communicate technical information to the average citizen (9 votes).
- Many participants identified the deterioration in workforce integrity and operational sustainability as the pandemic went on (7 votes) and how the ramp-down of public health measures was handled (3 votes) as important negatives around how the system managed the crisis.
- An important lesson learned was the need to enhance the sharing of evidence to battle disinformation (7 votes), and to communicate on the basis of facts, acknowledging what is known and what is not known (3 votes).

Question 2: Innovations & Partnerships

For this question, there were a number of observations on lessons learned related to engagement, operational flexibility and the development of regulatory tools.

- There was a clear view that the crisis spurred much more impactful and fruitful stakeholder engagement, and that it will be important for departments to commit time and resources to sustain this on an ongoing basis, using flexible tools with a focus on quality (5 votes).
- On the theme of operational flexibility, there was a view that existing emergency mechanisms may not longer be practical, and it would be beneficial to have them reviewed by external experts (3 votes). In addition, having created operational flexibility through the pandemic, it will be important for departments to avoid the risk of “snapping back” to old practices now that the crisis is over (2 votes).
- With regards to regulatory instruments, departments should further leverage technology to help improve compliance and enforcement efforts on an ongoing basis (3 votes) and formalize authority for departments/agencies to use emergency powers more broadly in non-crisis situations (2 votes).

Question 3: Public Confidence / Trust

This question generated a fair degree of discussion and range of views among roundtable participants, but there was less take-up of the ideas during the plenary voting, except for the following:

- “Walking the talk” – trust was undermined by actions/behaviours of some public authorities that were inconsistent with imposed public health restrictions (3 votes).

Rapporteur’s Feedback and Conclusions

Dr. Robert Slater, Regulatory Governance Initiative

After reviewing the results of the roundtable discussions and reflecting on the presentations and discussions over the course of the event, Dr. Slater identified three key takeaway messages from the Conversation.

The first relates to the importance of **trust**. Trust is essential for regulatory excellence, and the experience of the pandemic demonstrated the importance for departments/agencies to create and nurture relationships based on honesty and transparency that will sustain open and trusting partnerships going forward.

The second key takeaway relates to the importance of **people** for regulatory excellence. Departmental staff on the front lines of the crisis responded admirably to quickly address the situation. But as the pandemic endured, workforce sustainability was not systematically assessed, and the lack of surge capacity meant many staff were left “sprinting a marathon” as they dealt with the crisis. It will be important for managers to take the time to rebuild resilience in their workforce in order to avoid the risk of burnout and resultant loss of institutional expertise.

Finally, Dr. Slater’s third point related to the issue of **communication**. The experience of the pandemic showed that this is a significant challenge, and Dr. Slater highlighted three things that will be essential to more effective communication in the future:

- Front-line communicators must be knowledgeable, with a presence that instills confidence on the part of the public;
- Messaging on the part of different spokespersons (departmental, inter-governmental) needs to be coherent and reinforcing, avoiding the problems of mixed-messaging and ambiguity;
- There needs to be a systematic and purposeful effort to push back on misinformation in the public domain (recognizing that this is not an easy task).

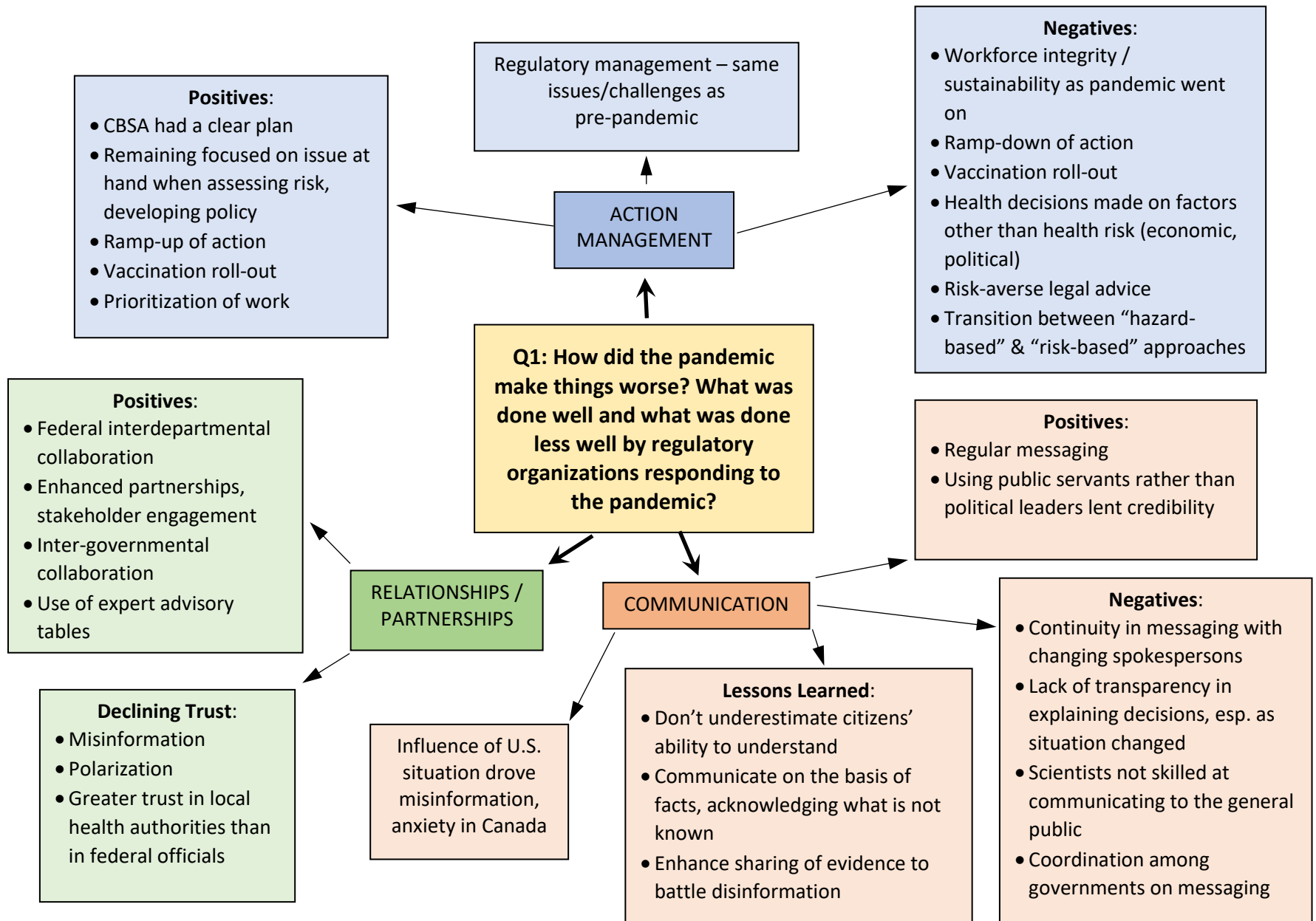
ANNEX – ROUNDTABLE DISCUSSION SUMMARIES

Responding to the Crisis

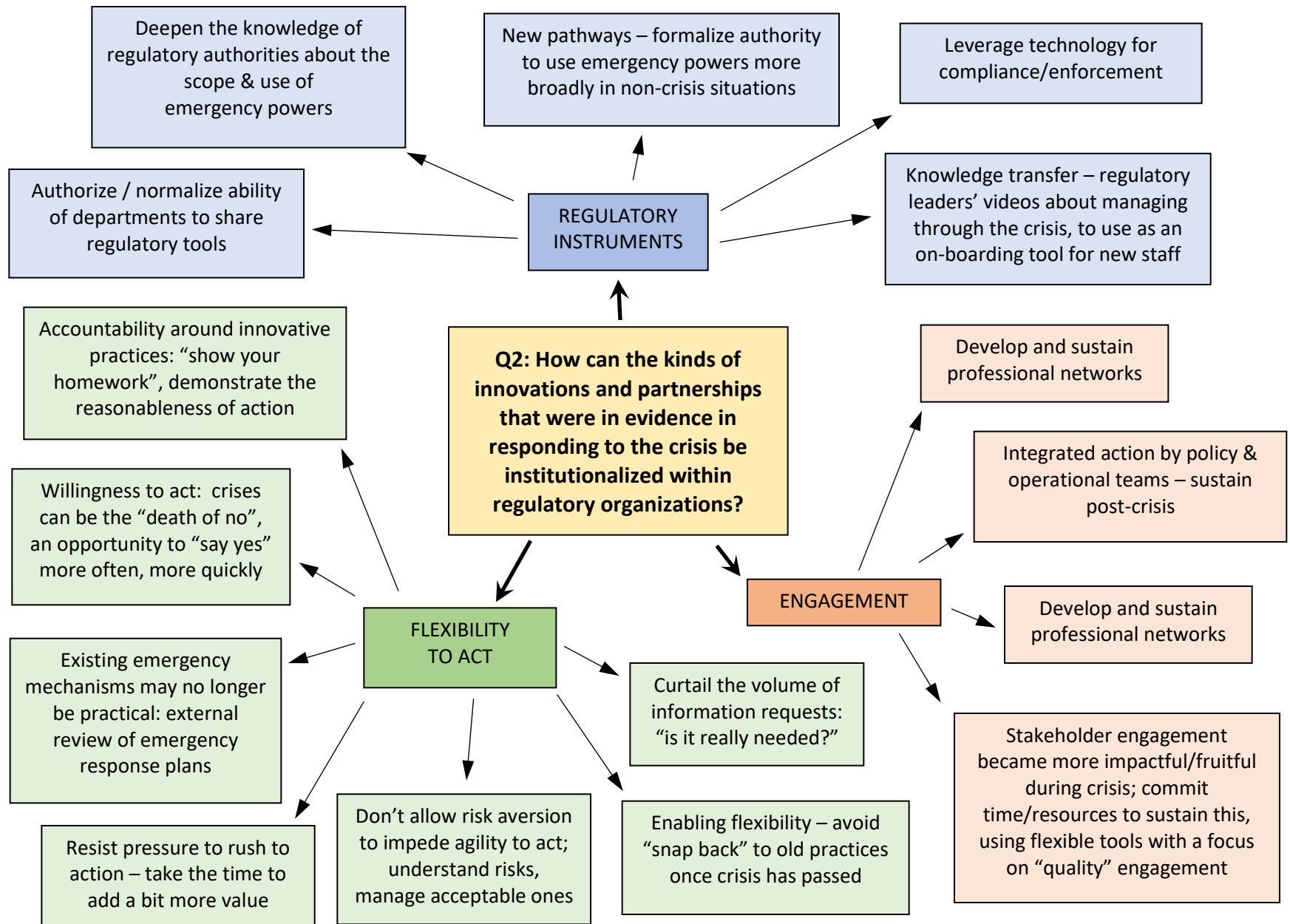
Innovations & Partnerships

Public Confidence / Trust

Roundtable Discussion – Responding to the Crisis



Roundtable Discussion – Innovations & Partnerships



Roundtable Discussion – Public Confidence / Trust

