

Regulating Financial Institutions: The Value of Opacity

[Record]

Anita Anand and Andrew Green

Professors, Faculty of Law, University of Toronto. Thanks to the participants of the 2010 meetings of the 4-Sided Law and Economics Group (Faculty members from Toronto, Sienna, and Tel Aviv), the 2010 annual meeting of the Canadian Law and Economics Associations, UBC's Business Law Institute's 2011 Seminar on Banks, Markets and Regulation, and Grant Bishop for helpful comments. Thanks to Emily Bala, Adam Friedlan, Haakim Nainar, Chava Schwebel, and Dharshini Vigneshwaran for valuable research assistance funded by the Social Sciences and Humanities Research Council of Canada.

Citation: (2012) 57:3 McGill LJ 399

Référence : (2012) 57 : 3 RD McGill 399

Read the full text



Online publication: May 4, 2012

URI <https://id.erudit.org/iderudit/1009063ar>

DOI <https://doi.org/10.7202/1009063ar>

An article of the journal [McGill Law Journal / Revue de droit de McGill](#) ✓

Volume 57, Number 3, March 2012, p. 399–427

Copyright © Anita Anand and Andrew Green, 2012

Abstract

In this article, we explore a question of institutional design: What characteristics make a regulatory agency effective? We build on the growing body of administrative law literature that rigorously examines the impacts of transparency, insulation, and related administrative processes. We argue that there are certain benefits associated with an opaque and insulated structure, including the ability to regulate unfettered by partisan politics and majoritarian preferences. We examine Canada's financial institution regulator, the Office of the Superintendent of Financial Institutions (OSFI), whose efficacy in part explains the resilience of Canada's banking sector throughout the financial crisis of 2008. In particular, OSFI operates in a "black box", keeping information about the formation of policy and its enforcement of this policy confidential. With its informational advantage, it is able to undermine the possibility that banks will collude or rent-seek. Our conclusions regarding the value of opacity cut against generally held views about the benefits of transparency in regulatory bodies.

Résumé

Dans cet article, nous explorons une question d'organisation institutionnelle : quelles sont les caractéristiques d'une agence de réglementation efficace ? Nous nous appuyons sur une littérature croissante, en droit administratif, portant sur les impacts de la transparence, de l'isolation, et d'autres processus administratifs reliés. Nous soutenons qu'il y a certains avantages liés à une structure opaque et isolée, à savoir la capacité de réglementer sans l'influence des politiques partisans ou des préférences majoritaires. Nous examinons l'organisme de réglementation des institutions financières du Canada, le Bureau du surintendant des institutions financières (BSIF), dont l'efficacité explique en partie la résilience du secteur bancaire canadien lors de la crise financière de 2008. Le BSIF travaille à huis clos ; il ne dévoile ni le processus d'élaboration de ses politiques, ni sa manière de les appliquer. Cet avantage au niveau de l'information lui permet de diminuer les risques de collusion et de recherche de rente de la part des banques. Nos conclusions sur la valeur de l'opacité font contrepoids aux positions généralement admises concernant les avantages de la transparence au sein des organismes de réglementation.

Other Articles From This Journal

Le droit à l'information des patients gardés en établissement : un instrument essentiel de promotion des valeurs démocratiques et du statut citoyen

By Emmanuelle Bernheim

The Confessions Rule and the *Charter*

By Hamish Stewart

Regulating Greenhouse Gases in Canada: Constitutional and Policy Dimensions

By Shi-Ling Hsu et Robin Elliot

Canadian Bijuralism and the Concept of an Acquisition of Property in the Federal *Income Tax Act*

By David G. Duff



Subscribe to our newsletter

name@email.com

Sign Up

[About](#)

[Help](#)

[Accessibility](#)

[Research Guide](#)

[Contact us](#)

[Journals](#)

[Theses and dissertations](#)

[Books and proceedings](#)

[Research reports](#)

Érudit

Cultivate your knowledge.

Follow us



COALITION
PUBLICA

[Privacy policy](#)

[Cookie policy](#)

[Terms and conditions](#)

© 2024 Érudit Consortium