



**Regulation Matters:
a CLEAR conversation**

Episode #48: Beyond The Contract – What Regulators Really Want and Need From The Vendor Community December 7, 2021

Line Dempsey: Welcome back to our podcast, Regulation Matters: a CLEAR conversation. I'm your host, Line Dempsey. I am currently the Chief Compliance Officer with Riccobene Associates Family Dentistry here in North Carolina. And I'm also CLEAR's president-elect.

As many of you are aware, the Council on Licensure Enforcement and Regulation, or CLEAR, is an association of individuals, agencies, and organizations that comprise the international community of professional and occupational regulation. This podcast is an opportunity for you to hear about important topics in our regulatory community.

Our guests today are Caroline Miller, Business Development Executive, Regulatory with Tyler Technologies; Marc Spector, Deputy Registrar with the Home Construction Regulatory Authority in Ontario; and Cathi Mietkiewicz is the Principal Lawyer with Mietkiewicz Law in Ontario. So, we're glad to have you all with us today.

Marc Spector: Thank you, Line.

Caroline Miller: Thanks so much, Line.

Cathi Mietkiewicz: Thank you, glad to be here.

Line: And we're definitely glad to speak with you today. Also, let me thank our listeners for joining us today. The topic of today's podcast episode is: Beyond the Contract - What Regulators Really Want and Need from the Vendor Community. So, we'd like to explore how relationships between regulatory organizations and the vendor community can be transformed into effective and efficient partnerships that can develop a number of key benefits, including gathering clinical research to inform decision making; setting clear, realistic, and achievable expectations; as well as explore the best practices and what is possible for the future.

So, have you ever wondered what the lawyers and IT people are really thinking? Have you ever

thought to yourself, you know if ever get a chance, I would tell them . . .

Well, today, you're in luck. We have three professionals joining us for this conversation who each served on the vendor side and the regulatory side. It's quite interesting on that. So, both sides of the aisle, as it were. So, the first question: in my time at CLEAR, and it's been quite a number of years, I do not recall this topic ever coming up. So, why is this relevant, and why now? So, let's start that with Cathi.

Cathi: Hi. Thanks, Line. Well, I think it's important because regulators focus on regulation. That's what they do. It's full time; it's more than full time; it's seven days a week, 24/7. And what regulators have to focus on when they're thinking about regulation - it's complex. It requires multiple skill sets in order to be a good regulator, but there are always certain knowledge gaps and expertise gaps. You can't be all things to everyone, and I think that regulators rely on their vendors to help fill in those expertise gaps. And in order to have really productive relationships, I think it's important that the vendors and the regulators understand one another, so I think it's a great opportunity today to talk about those two different perspectives to see if that can assist in building those very necessary relationships.

Caroline: So, for me, thanks so much, Line. For me, I think the first thing is that in the space that I work in now is really elicencing solutions, software registration, database solutions, and software. There's a real shift that I'm seeing, and others are seeing, where we used to think of IT sort of as an aside. It would be over here in this box over here, and primarily the work would be administration and compliance and discipline and policy and legislation.

Now it seems to me this sort of the whole world of technology is really embedded in all of the work that regulators are doing, and so in the case of the types of solutions that I work with, we're talking about a 10- to 12-year solution. That's how long it's going to last you. So it's not only a long-term committed relationship that we're going to be in; it's also a core part of all of the work that regulators are doing, so I think that's one reason. And the second reason is really sort of to Cathi's point about using experience and expertise. I can remember as a regulator having a conversation with, I believe it was, a registrar at the time of the CPSO, College of Physicians and Surgeons of Ontario who said to me, you know, "Save yourself a million dollars; don't do this." And that was some of the best advice I ever got, right? So I think in the case where we're talking about vendors and again in my case, IT vendors and agencies, the more we can have a conversation, and the more we can leverage each other's expertise, the more we can fill in the gaps and the better job we can do in the long run.

Marc: Picking up where you left off, Caroline - to me, the stakes are higher than ever before. Everyone is looking, and they're scrutinizing. And regulators are expected to focus on regulating smartly, to be sophisticated and agile, and to embrace technology. And consider that 97% of persons who recently took part in CLEAR's strategic planning survey identified technology as a key tool for regulators, practitioners, and for CLEAR itself in staying relevant and helpful.

That is why, for today's regulators, success includes standing up and being clear about what they really

want. And many vendors, in turn, are saying, "Wow, if we only knew. Tell us more."

Line: That's great. Well, I think that's a great kind of introduction to the topic today. So, I guess, let's find out a little bit more about each of you, about your background, and how you find yourself having this discussion now.

Marc: Well, thanks, Line.

Line: We'll start right back with you, Marc, yeah.

Marc: Yeah, thanks. I think you and I go back about a decade or so, maybe even a little bit more. And in addition to working alongside you on CLEAR's Board of Directors and on CLEAR's NCIT Committee, for more than 15 years, I was a lawyer working exclusively with regulatory bodies and responding to requests for proposals.

And last year, after working with one of the largest regulators in Ontario, I became the inaugural Deputy Registrar of the Home Construction Regulatory Authority, one of the newest regulators in Canada.

So today, I can say that I've had the opportunity to see things from both the vendor and the regulator's perspective, and, hopefully, I can pull back the curtain about what both sides are really thinking.

Cathi: Yeah, thanks, Marc. And, for me, before I became a lawyer, I was an optician, and I sat on the Council of the College of Opticians for a number of years, so I was on that recipient side of somebody looking for vendor solutions.

And then, when I became a lawyer, I worked with a lot of regulators. I work with regulators both in Ontario and across Canada. And I'm often the one helping them negotiate their contracts with vendors, or sometimes assisting them and getting out of contracts with their vendors.

So, and every now and then, I represent a vendor that's working on a contract. So I've certainly seen where relationships can work and where they break down, and the importance of making sure that the two parties can come together. And then, "Why am I here on this particular podcast?" Well, those two careers I discussed meant I had the pleasure of working with both Marc and Caroline over the years. So, I was happy to join them when they said they were doing this conversation.

Caroline: So, I'm going to go ahead and throw out the number. I'm going to be the brave one and say that I have been - and we did the tally earlier; I've been in the regulatory ecosystem since 1998. So, that's 23 years. I'm going to go ahead and say it, call it out. It just means I'm old.

And during my tenure in that ecosystem, I started out as a license holder, and so I was in practice, and

then I became the registrar for a health college for a little more than a decade. And I've also been and continue to be a CE provider in a number of states and in a number of provinces. I worked with the Federation of Health Regulatory Colleges in Ontario and also on the association side in the US with a number of licensed or regulated professionals.

I was an appointed Member to a health unit in Ontario and now a business development executive on the technology side in a regulatory portfolio, selling the database registration elicense system. So, I've certainly been on the side where I've been a regulator and needed vendors' help, and now I'm on the vendor side, where we work with regulators and look at our fees and do customer implementations. And so, hopefully, that lengthy tenure has provided me with some perspective on all things aforementioned, Line.

Line: Well, thank you. It's clear you guys are certainly experts in this, and it's such a great opportunity to be able to talk to people that have been on both sides of the aisle, to use the term.

So, let's talk about practical examples. And going back to Caroline, give us your top two complaints.

Caroline: Absolutely, so the first one, I'm going to call it a challenge. And I'm going to come at this from the vendor side of the world of challenges, and so, probably the first thing that strikes me as really being prevalent is that regulatory agencies sometimes think about the work that they're doing in the way that they're doing it now. So, for example, we've got a paper-based system for applications and renewals, sometimes for CE, sometimes for inspections. And so, when they think about, "I want to get a new system. I want to get more current. I want to leverage the technology," they'll assume that all of those steps in that order are necessary in their RFP or in their call-out for licensing or database management system. And I would say that that's a mistake. The way that technology works now in our software solutions, all of them, the workflow's built-in so that the workflow is designed so that you can take out a number of those, I'll call them, clean steps -- so clean applications or clean renewals where you know nothing is changed, the information is the same, they haven't moved, they're just paying whatever the fee is to renew -- and so, all of those clean applications with whatever level of accountability the agency requires can run through the workflow system. What that does is that lets your staff, your regulatory staff, focus on different priorities, right? So, you can focus on those applications that do require some handholding, that do require extra documentation or whatever it is you're looking at, and also they can work on things like policy and sort of higher-order things, right? So, you're not stuck in the data entry world. So, I would say that that is my first challenge - sometimes when we see RFPs, we'll see agencies call out systems in an order that they're used to working with on a paper-based system, and they're just not able to think about it in terms of what technology can do, which is a perfect example of how we can and should be having a conversation about what's possible.

So that's the first one. The second one is probably -- I know this is Cathi's favorite -- try and solve the problem without creating a bigger problem. And so, quite often we'll see that somebody wants to design a workflow so that they can solve X and in the collateral damage they've created you know A, B,C,D,E, not being able to think of it. The example that I found was you're trying to argue a traffic fine

violation, and the judge found you in contempt, so now, not only have you solved your first problem, but now you have two problems, right? So, and this is again another place where this expertise that Cathi was talking about and Marc was talking about really, really can be leveraged, right? Vendors can and should say, "Don't do this; you don't have to do this. This is possible. We can certainly make it look different, right?" So, those would be my sort of top two challenges.

Marc: For me, without question, my biggest concern involves canned presentations that are not tailored to the needs of the regulator. An example could be a templated PowerPoint that does not distinguish between a regulator from an association or advocacy body. Or maybe one that does not take into account pricing when seeking work for not-for-profit regulator. And I can also think about a second one, which may involve vendors who indicate that their products are truly out of the box only for the regulator to later find out that months of configuration or customization are still needed in order to make it work for them.

And if I can add in one bonus concern that I have, and that's those vendors who do not provide references from the regulatory sector. To them, I ask, please be thoughtful about who you want the regulator to contact about you. Do not treat this as a throw-in. With a regulator, it is a significant factor when selecting a vendor. We talk a lot. All the time. In fact, you're doing it right now.

Caroline: Great point, Marc.

Cathi: Thanks, Marc, that's true. I think, for me, as any good lawyer should say: words matter. And words do matter. I cannot tell you the number of times that I have been asked to review an agreement between a regulator and a vendor, and when I review the agreement, I, after reading the whole thing, have no idea what service is being provided or in any level of detail what service is being provided, or how much it's going to cost my client to pay for this service. And I find that sometimes what happens, those discussions that Marc and Caroline were talking about - about being honest and talking about the options and the different possibilities and how do you solve one problem without creating another - sometimes parties have difficulty distilling all of that down to an agreement. And it's important that that be in an agreement because the agreement should set out what you talked about. So all of those discussions that were great, they were fabulous, but if you didn't put them into your agreement, you have no way of ensuring that they're actually going to happen, so that's my first challenge that I find.

And the second one for me is, have a good exit strategy. If the regulator and the vendor talking like Marc and Caroline were talking about, if that's dating and then the agreement is, and then once you start working together that's the marriage, the long term relationship that Caroline talked about, the part in the middle is the prenup, and that's the agreement, and it needs to include a really good, clear exit strategy because relationships will end. So, they will either end at the natural end of their lifestyle, 10 to 12 years like Caroline talked about it might be. Or they may end because things aren't working out well but, regardless of how they come to an end, the agreement needs to set that out clearly, and so again, words matter and make sure you know how to get out of this in a way you want to get out of

this.

Line: Well, to use poor words, so what? I mean, again, the reality is, now that we have this information, how can we proceed in a new and informed way? And Marc, I'm going to kick that with you to start.

Marc: I'm glad you did, Line; thanks. So, it starts with having a real and honest conversation and not a sales pitch. Ask questions, lots of them. Don't ever stop. You will make an impression on the regulator that you're really listening and trying to understand their concerns. You can build trusting and lasting relationships that way and not just the ones that last a year or two, and to use the analogy that Cathi and Caroline were using, we want a relationship to last beyond a year or two, and we want to go beyond professional dating.

Cathi: I think, for me, what I would say, the advice that I would give to clients when they're in the negotiation stage when they're talking about what they want. At that time, that's the time to think about things like, "How am I going to make this language clear in the agreement?" So, "What am I clearly asking for? What do I clearly expect?" And then we'll figure out a way to put that into the agreement that makes sense and is legally defensible. But, be clear about what you want. Be crystal clear on that.

And I think one of the things that's incredibly important is to set up milestones. "I figured out what I want you to do. When's it going to be done?" So, "What are the timeframes for doing those, and at what point do I pay you for hitting those different milestones?" If you set that out very clearly in the beginning, it can certainly help the relationship to flourish over the end because everybody knows what's expected and when it's expected.

Caroline: So, I guess that leaves me with the "So what?" question, which is one of my favorites, Line.

I think, for me, the real trick here is to move out of a transactional model and into a strategic one to find a partner, right? So, of the group, I am clearly the committed long-term marriage relationship part where we're going to be together for 10 to 12 years, and so, it's really important that all of the work be done ahead of time in terms of communication, in terms of setting out expectations, in terms of setting out exit strategies, right? Let's take care of that, Cathi always says, let's take care of that while we're in the honeymoon, right? This is all about relationships -- instead of when we're not in a good place, right? Let's work out those details ahead of time, so I'm a big advocate of the role of thinking about partnerships, right? Because I think there's a way that the regulatory agency can get what they want and need, and there's a way that the vendor can get what they want and they need. And if we do it right, then everybody's happy. I know that sounds naive, but I really do think that that's certainly possible. I think it's Marc's honest conversation, and I would just add making those key decisions together so like Cathi was talking about, what are the milestones, right? So, rather than putting those things out there and then hoping for the best, let's negotiate them. Let's have an honest conversation about what is achievable and when, and what are the expectations, right? And then we're less likely to

be disappointed, I think, anyway.

And then, I'm off-script here, but words matter, and so I'm just going to echo what Cathi says. We see, certainly from the place where I am now in regulatory solution software, we see a lot of buzzwords. So, we'll find that we'll, let's say we respond when an RFP comes out; there's a lot of buzzwords in there. We, as the IT vendors, can certainly respond to those buzzwords; we live in that world. These guys live and breathe software solutions. And so, then let's say we win the contract and we get the award, and we sit down at the table, and we say, "Okay, so tell us about why you put this in your RFP and why it's important." And the answer is at least half of the time, "I don't know."

It's because it seemed like that was a good idea, and so I would just advocate that open conversation. Again, if you don't understand something, ask. There are plenty of resources, certainly, inside the CLEAR Community. I know all of us would be happy to respond to those questions, but if you're not sure, just ask, right? And then you can make an informed decision. Cathi, does that make sense, my lawyer friend? And Marc?

Cathi: Marc, your other lawyer friend? Yeah, it does. I mean, I think that sometimes when folks are putting together an RFP or even if it's not as formal as an RFP but they're looking for a vendor for something, they know there are certain things they should ask for, but they don't necessarily know what those are. So they might say something like, "a requirement is the vendor complies with all privacy legislation." But they don't actually know what that is, right, and they and you don't really have to comply with all privacy legislation in this particular circumstance, so it's a bit broad. So, it sometimes makes sense to seek that expertise before we even go down that road. What are you really asking for, because do I have to comply with all of the privacy legislation? Well, not the privacy legislation that isn't relevant. I don't care if my vendor complies with the irrelevant policy, much of the privacy legislation so. Yeah, and I think it's too easy to fall into that, "Well, that seems like a good thing to throw into the RFP," without really knowing what you're asking for.

Caroline: Yeah. Well said.

Marc: Yeah, and if I can just say that the conversation that the three of us are having moderated by Line, this is exactly the kind of conversation that regulators and vendors should be having all the time. So, to everybody out there, go do this.

Caroline: "Go do this." Lead by example, way to go to team!

Line: That's excellent, and Marc, I'll kind of follow up on that too. The couple of things that really stood out to me is - clear communication and expectations, setting that out from the very get-go, from both sides of that but also treating it more as a partnership. I think, Caroline, you used that term, and I really liked that, especially when you think about "we're in this together, we both have a common goal. And how can we help each other reach that goal together?" So, that's great. So this has been an excellent conversation. I do certainly want to thank Caroline, Marc, and Cathi for joining us today.

Cathi: Thanks, Line.

Caroline: Thanks, Line.

Marc: Thank you.

Line: Absolutely, it has been a pleasure. I also want to thank our listeners for tuning in for this episode. We invite you to continue this conversation through the CLEAR discussion forum. This podcast will be posted in CLEAR Communities, and members can then reply to the post with their comments and reactions. And listeners, I have a couple of questions for you to think about to start that conversation:

First, for our Vendor Community, what is the number one mistake you see regulators make, and how can you help them fix it?

And then for our Regulatory Community, let's not let them off the hook so easily. What is the number one mistake that you see vendors make, and how can you help them fix it?

So, we'd love to have you continue this discussion on CLEAR Communities. We'll be back with another episode of Regulation Matters: a CLEAR conversation very soon.

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Finally, I'd like to thank our CLEAR staff, specifically Stephanie Thompson. She's our content coordinator and editor for this program. And, once again, I'm Line Dempsey, and I look forward to speaking to you again very soon.

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