



**PENN PROGRAM ON
REGULATION**

**Summary Report:
Alberta Dialogue on Regulatory Excellence**

Cary Coglianesse
Director, Penn Program on Regulation

Shari Shapiro
Research Associate, Penn Program on Regulation

Rapporteur's Report from the
Penn Program on Regulation
Alberta Dialogue on Regulatory Excellence
April 12-14, 2015 · Calgary, Alberta

Best-In-Class Regulator Initiative

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Improving regulatory quality is one of the most vital public management imperatives facing government today. In countries around the world, regulators are asked to integrate their society's desire for economic growth with the desire for public protection from risks associated with economic activities and technological advances. Regulators must routinely make difficult judgment calls and management choices to meet the sometimes conflicting demands that society places on them. In the face of these challenges, what does regulatory success look like? And what distinguishes those regulators who achieve their missions in a truly superior fashion?

To address questions like these, the Penn Program on Regulation (PPR) has initiated a Best-in-Class Regulator Initiative sponsored by the Alberta Energy Regulator (AER). As part of this initiative, PPR organized a major, multi-perspective dialogue session on April 12-14, 2015 at the Sheraton Suites Eau Claire in Calgary, Alberta, bringing together about sixty-five individuals from across Alberta to identify attributes of regulatory excellence and credible ways to demonstrate progress toward its achievement. Dialogue participants included oil and gas industry representatives, environmental group leaders, landowners, Aboriginal community representatives, municipal and other government officials, academic experts, and other concerned members of the public. This Rapporteur's Report synthesizes and summarizes the discussion that took place at the dialogue.

The Dialogue

The goal of the Alberta-wide dialogue was to generate ideas about what constitutes regulatory excellence and how regulators like the AER can measure their institution's progress toward excellence. We asked participants to share their views on various characteristics, practices, and outcomes of an excellent regulator, as well as to provide recommendations for how to evaluate a regulator's success in achieving these criteria. Cary Coglianese, PPR Director and head of its Best-in-Class Regulator Initiative, and Harris Sokoloff, Director of the Penn Project on Civic Engagement, organized the dialogue, which Sokoloff facilitated with a team from PPR and the University of Pennsylvania's Kleinman Center for Energy Policy. Sokoloff and his facilitation team led participants in a combination of plenary sessions, panel discussions and small-group breakout discussions to help define attributes of excellent regulatory performance and to develop ideas for a framework that could be used to evaluate a regulator's progress towards becoming an excellent regulator. An agenda of the three-day dialogue is included as Appendix A, while Appendix B provides a list of all the participants..

Although the overall Best-in-Class Regulator Initiative aims to develop a general framework for regulatory excellence that could apply to any regulator, and therefore its purpose is not to evaluate or assess the AER's current level of quality, we were particularly interested in the views of those from across Alberta about the AER and the performance of other provincial-level governmental bodies. We wanted both to help ensure that our general model would fit with concerns held by those throughout Alberta as well as to see what we could learn about aspirations of regulatory excellence from participants' thoughts about AER's performance. As a number of managers and staff members from the AER were present to observe discussions throughout the three days, the AER also expressed a clear commitment to use what it learned from the dialogue to improve its management and performance.

Our purpose with the dialogue was to generate and debate ideas, not necessarily to achieve consensus among the participants. With the exception of two plenary presentations at the beginning of the dialogue -- one by Professor Coglianese and the other by Jim Ellis, CEO of the AER -- which were video-recorded and are available online, the rest of the dialogue session was conducted on a not-for-attribution basis in accordance with the Chatham House rule. In other words, while facilitators took notes on flip charts of each session, they did so without any aim of attributing specific ideas to specific individuals. To encourage the most robust dialogue possible, we also asked participants to honor the not-for-attribution ground rules in any subsequent communications they had following the dialogue. In addition, while we certainly allowed participants to speak on behalf of any of their affiliated organizations if they desired, our default principle was that all comments were offered in a personal capacity only. As a result, any idea expressed in this synthesis report should neither be ascribed to any particular individual nor to any organization with which any participant is affiliated. The ideas reflected in this report also do not necessarily reflect the views of its authors, the Penn Program on Regulation, the Penn Project for Civic Engagement, the University of Pennsylvania, or the Alberta Energy Regulator.

A regulator's excellence can, of course, be defined in a variety of ways. But the ideas exchanged by participants in the Alberta Dialogue seemed to coalesce around a set of six core aspects of a regulatory organization and its operations: (1) institutional characteristics; (2) regulatory decisions; (3) transparency; (4) public engagement; (5) enforcement; and (6) evaluation. The remainder of this report summarizes the major ideas exchanged at the dialogue about each of these aspects of regulatory excellence.

Institutional Characteristics

Many participants highlighted the importance of institutional factors, primarily the regulator's culture and its workforce, as foundational attributes of an excellent regulator. Several participants highlighted the importance of the regulator's leadership and its overall governance structure as critical to maintaining a culture of excellence and to inculcating an ethos of excellence throughout the institution's workforce.

Culture

Characteristics of the regulator's institutional culture emerged as an important theme throughout the dialogue. Specifically, various participants mentioned that an excellent regulator's culture should exhibit one or more of the following characteristics:

- A strong and urgent commitment by the regulator's personnel and its leadership to pursuing excellence.
- A clear set of values, adopted following a public input process, to guide the actions of regulatory personnel.
- A future-oriented focus in planning and decision making.
- Consistency in following through on commitments—in other words, a culture of “doing what you say you are going to do.”
- A culture that values ongoing learning, where the regulator affirmatively seeks to analyze and learn from mistakes.
- A pattern of earnest collaboration with members of the public and with other regulators and policymakers.
- A high value placed on transparency of information and decision making.
- A commitment to “educating” and informing the public.
- A well-functioning governance structure with checks and balances.
- Appointment of organizational leaders, including board members, who are representative of different “stakeholders” and the community at large.

Workforce

Regulators act through their employees, so sufficient staff levels and training are essential for a regulator to perform well. Participants raised a number of key ideas about the characteristics of an excellent regulator's workforce, including:

- The workforce should be at least roughly representative of the different stakeholder groups and the community at large.
- Employees with an excellent regulator need to be highly skilled and compensated at a level competitive with industry.
- Employees should be technically proficient so as to make sound interpretations of data and effective decisions.
- In their interactions with the public, an excellent regulator's employees will be consistently empathetic to and respectful of others; they will not be arrogant.
- An excellent regulator's employees will be willing to listen to others and eager to offer reasons for decisions that are made.
- Employees should be trained in, and sensitive to, the varying cultures of the individuals and communities with whom they interact.
- A regulator's staff should be physically located within or near the community and distributed throughout the province, with more field personnel and field offices.

Regulatory Decisions

The decisions that regulators make are crucial to their success. Regulators must often make difficult decisions on complex but highly consequential issues, where outcomes can be uncertain but also unlikely to satisfy everyone. According to many participants, excellent regulators will gather broad public input and analyze the best available scientific information before making decisions consistent with their regulatory mandate and with the overall public interest.

Making Tradeoffs

Excellent regulators at a minimum will recognize the often competing priorities as part of their mission, and thus will strive to make decisions that weigh and accommodate different values and interests. An oil and gas regulator, for example, may find some tradeoffs when it is responsible for both the development of a subsurface resource and the protection of the environment. While sometimes both objectives can be achieved in concert, at times these two priorities may be in some tension, necessitating careful decision-making on the part of the regulator.

Participants not only mentioned potential tradeoffs between energy development and environmental protection, but also those between these objectives and worker and public safety, traditional values, land use considerations (e.g., noise, traffic), and property rights (including subsurface rights holders), among others. Concern about fossil fuel development and climate change was mentioned several times.

Dialogue participants discussed how an excellent regulator should address competing priorities. Many recognized that an excellent regulator will rarely, if ever, be able to make everyone equally satisfied with all of its decisions. One participant said that actually “if everyone is a little bit unhappy, the regulator is succeeding.” Another argued that the regulator succeeds “when [about] 80% of stakeholders are satisfied.”

Other participants suggested that successful decision-making requires more than just leaving everyone unhappy. Indeed, a few participants suggested it should not be defined at all by reference to the satisfaction of vocal, organized interests, especially if those interests are neither reflective of the overall public nor if their views are not grounded in sound science. A number of participants emphasized the importance of an excellent regulator making decisions based on rigorous scientific and economic analysis.

A few participants questioned whether a regulator could ever achieve excellence if it were responsible for carrying out fundamentally conflicting missions. One participant, for example, suggested that an energy regulator responsible for both promoting resource development and protecting the environment faced an inherent conflict of interest that impedes the attainment of excellence with respect to either objective.

Decision Processes

In confronting and making difficult decisions, participants offered numerous suggestions for how the excellent regulator should design its decision processes. Specifically, they recommended that an excellent regulator:

- Base decisions on clearly articulated values and take future impacts into consideration.
- Engage in thorough analysis and obtain the best possible data to inform decisions. (Several participants stressed that such “data” should include traditional forms of knowledge where appropriate.)
- Engage stakeholders early and throughout the process.
- Incorporate feedback from public engagement into its decisions so that public input is reflected in the ultimate outcomes.
- Provide clear and consistent rules and apply them fairly to all entities. (That said, some participants noted that consistency may conflict with the need for an excellent regulator to be flexible at times and apply discretion when circumstances warrant.)
- Provide an explanation of the reasoning for decisions. (Many participants placed a high priority on understanding of the rationale for a regulator’s decisions.)
- Provide documentation of its analysis of competing issues. In AER’s case, its consideration of economic, environmental, social and safety impacts--with special attention paid to the cumulative impacts of a decision.
- Frame decisions based on the broad view of public value, that is, across geographic areas, demographic groups, and time periods. (For example, several participants noted the importance of attending to broad ecosystem health, something that can be overlooked if a regulator’s decisions are always focused on individual projects rather than taking into account cumulative impacts.)
- Provide an opportunity for appeal of decisions, including opportunities for use of alternative dispute resolution and negotiated settlements.

In ways like these, excellent regulators put in place decision processes and procedures that support the making of sound decisions.

Flexibility

Regulators typically seek to solve problems by issuing rules and directives, and then by enforcing them. A number of participants expressed concerns about overly complex and prescriptive regulations, favoring instead more flexible and performance-based approaches to regulation. However, others noted that there could be some dissonance between flexibility in regulations and the need for a regulatory system to be predictable.

A few participants suggested that even if regulations are not always performance-based, they should at least be “place-based,” that is, varied so as to reflect different contexts across a regulator’s geographic domain. Other participants noted that not every regulated firm is the same, suggesting that an excellent regulator should try to tier or target its rules based on those differences. For example, based on different regulated companies’ capacities and track records for environmental and safety performance, a regulator might offer greater flexibility (or lessen its

enforcement scrutiny) for high performers, placing heightened and more targeted regulatory pressure on lagging performers. Quite a number of participants favored a risk-based approach to regulation and its enforcement, although what this meant seemed to vary across different individuals. Some wanted the regulator to pay the greatest attention to the largest regulated entities that posed the highest potential hazards, regardless of those firms' capacities and track records.

Firmness

At the same time that some participants emphasized flexibility and the desirability of adjusting the regulatory system for different actors and contexts, a number of participants emphasized the need for an excellent regulator show resolve. Sometimes this means, according to participants, denying permits and undertaking vigorous enforcement that imposes high penalties. A number of participants indicated that an excellent regulator is one which it shows it is willing to stand up to industry and "say no" from time to time.

Policy Gaps

Many participants expressed the view that regulatory excellence is best viewed in terms of looking at the system as a whole. In other words, some believed that a regulator could not truly be "best-in-class" if it is situated in a larger governmental system that lacks an excellent legal and policy framework. Considerable attention was given to how the regulator should make decisions when its legal mandate is unclear or misaligned with the reality on the ground or with the interests of the public, such as in the face of new problems not contemplated by the policymaker. Most participants felt that precisely because of the possibility of policy gaps, the regulator must work to build strong relationships with the legislature as well as with the broader set of interested organizations that interact with both the regulator and the policymaker. The excellent regulator, it was suggested, will bring issues of policy gaps, ambiguities, and inconsistencies to policymakers to secure the necessary legislative action. It would also provide a forum for the discussion of policy gaps or problems. If needed, and legislative action cannot be secured, some participants believed that an excellent regulator must nevertheless take appropriate action to protect the public, perhaps even stretching a bit the bounds of its legal authority in order to serve society's well-being.

Transparency

Participants agreed that an excellent regulator must be transparent. They thought transparency was important to ensure that the regulator remained accountable to the public as well as for the public to be informed and be able to participate meaningfully in regulatory processes.

Types of Transparency

Despite their general agreement, different participants emphasized different kinds of transparency – or transparency about different aspects of a regulator's operations. Three types of transparency seemed to stand out.

- Institutional Transparency. Participants expressed concern about regulators acting on potential biases or conflicts of interest, or succumbing to imbalance in represented interests (so-called regulatory capture). Institutional transparency could help counteract these potentialities. Several participants recommended disclosure of information about the makeup of a regulator’s board of directors, the background experience of personnel, and the relationship between enforcement officials and permitting officials.
- Procedural Transparency. Procedural transparency refers to openness and clarity about the procedural steps a regulator follows in making decisions. A number of participants expressed concerns about regulatory decisions being made “in a black box,” “behind closed doors,” with “different rules applying to different groups” and with “pre-determined outcomes.” As a result, many participants wanted a clearer understanding of what procedural steps the regulator follows when taking a particular action. For example, many participants wanted to know the exact procedural steps required for a stakeholder to participate in a permit application proceeding – that is, how decisions about “standing” get made. Others wanted both procedures and regulations to be “accessible, readable and understandable by all those impacted.”
- Decision Transparency. Participants emphasized that transparency is about more than just disclosing “information,” it is also about *giving reasons* for regulatory decisions. A number of participants expressed frustration at not feeling listened to, largely because they did not know the grounds on which particular regulatory decisions were made. Some participants shared examples where they were not consulted at all in a decision which affected them, or where they expended time and resources to participate in an extensive stakeholder engagement process but felt their contributions were not reflected in the ultimate outcomes. At least one participant recommended a regulator adopt a clear template for decisions that specified the types of information to be provided, so that reasons could be consistently and clearly.

Truthfulness

Participants emphasized the importance of regulators and their employees providing truthful and complete information throughout the lifecycle of regulated activities. Some participants expressed concerns about being “lied to,” “kept in the dark,” or “blindsided” by regulators in the past. One participant related a story where a landowner allegedly only became aware of development happening on his property when backhoes showed up to do excavation. Another participant gave an example of a group that was apparently told by one of AER’s predecessor agencies that there would be “no environmental impact” from a given activity, when it was obvious that there would be at least some environmental impact.

Notably, many participants wanted information from the regulator *even if the information was “bad news.”* In such cases, it was suggested that the excellent regulator would also provide information about any efforts it would undertake to address the underlying concerns. But most

important, an excellent regulator should provide accurate information, “warts and all,” as one participant put it.

Comprehensiveness

Participants stressed the importance of transparency about all facets of a regulator’s operations, whether its directives, risk assessments, violation reports, plans for reclamation and restoration of land, and other regulatory plans and decisions. In addition to transparency about permits and directives, participants emphasized need for transparency about inspections, fines and other enforcement actions, and incident reports as well. Several participants stressed the importance of the regulator keeping the public informed about follow-up activities it undertakes in response to public concerns or industry incidents.

Data Collection and Communication

Consistent with an emphasis on comprehensive transparency, many participants wanted the regulator to collect and disclose environmental data throughout a regulated project’s lifecycle, not just at the inception of the project during permitting. However, some participants cautioned that the regulator should be judicious in the data it collects, only collecting data that it is actually going to use.

Many participants advised that an excellent regulator should not just “dump data” onto its website but instead should provide useful and understandable interpretations of data. For many, this means that the excellent regulator should serve in the role of an educator, providing helpful explanations of data, decisions, and rules in plain, accessible language.

Public Engagement

Like transparency, most participants agreed that robust engagement with the public is a key attribute of an excellent regulator. The importance of building ongoing relationships of trust with community groups came up repeatedly throughout the dialogue as one of the primary attributes of an excellent regulator. Participants favored engagement that evinced respect and kindness towards all members of the public. Many participants seemed to view such empathic engagement as a foundation for other attributes of excellence.

Excellence in Engagement

Generally speaking, participants seemed to support all sincere efforts to increase public engagement. More specifically, they suggested that an excellent regulator should undertake one or more of the following:

- Engage with the public early in the regulatory process.
- Notify affected individuals and communities right away when there is an incident that might impact them (e.g., a spill or accident).
- Continue to engage and communicate throughout the lifecycle of a regulated activity.

- Engage with community groups outside of the context of a particular regulated activity to build relationships and discuss issues which extend beyond the scope of any individual project.
- Use a variety of channels to reach interested and affected individuals in the ways that best match their communication styles and needs. (For example, several Aboriginal representatives noted the importance of their oral traditions and of communicating through songs. Altogether differently, another participant discussed reaching younger audiences through social media. Yet another participant noted that rural residents still have limited access to high-speed Internet.)
- Engage with policymakers and other regulators, and know and take into consideration municipal, national and international perspectives.
- Make “course adjustments” based on feedback it receives from the public.
- Provide reasons for decisions. (Many participants especially emphasized the need for reasons when the regulator did not accept or agree with certain stakeholder input.)
- Ensure that “two-way” communication between stakeholders and the regulator. (Public sessions at which the regulator merely “talks at” members of the public were as disfavored as the lack of reasons.)
- Provide both formal and informal opportunities for engagement with the regulator.
- Make proactive efforts to reach individuals from groups that have not historically received dedicated attention (e.g., local governments, Metis nations and settlement groups, subsurface landowners).
- Provide greater presence in the field, with more field offices and personnel to engage with the public.
- Find ways to engage community members in monitoring for compliance with regulations.

Potential Limitations

Despite participants’ overall emphasis on public engagement, some concerns and challenges about public engagement did emerge. A few participants expressed caution about the time and expense of public engagement. As one participant put it,

We have talked primarily about increasing the quality of stakeholder engagement. If we increase quality, and want to do it cost effectively, it will take more time. If we want to speed things up, it will cost more.

Other participants, however, tended to dismiss potential tradeoffs between participation and efficient decision making. Excellent stakeholder engagement would ultimately cost less and take less time, they argued, because it should decrease the number of disputes among stakeholders.

Another real challenge that emerged but seemed never fully resolved was the question of how exactly a regulator should determine which members of the public needed to participate on a particular issue and how precisely they should be “engaged.” Most participants spoke in generalities, advising that an excellent regulator would engage with “all affected” or “all interested” stakeholders. A number of participants expressed frustration with standing rules that

restrict participation in regulatory proceedings only to those “*directly* affected.” A common view was that when in doubt a regulator should err on the side of inclusion.

Some participants suggested that the regulator should ask stakeholders when and how they want to be involved. In other words, an excellent regulator could convene a stakeholder process to listen and deliberate about what its general stakeholder processes and policies would be.

A practical challenge raised by some participants was the lack of resources for some groups to provide meaningful input, especially if they lack funds to hire experts to interpret data, attend hearings, and prepare written submissions. These participants believed that an excellent regulator would provide resources for participation in such circumstances.

Twelve Steps

When asked concretely what steps a regulator like the AER could do to promote more meaningful stakeholder engagement, participants offered numerous suggestions. Twelve concrete ideas seemed to attract the most interest and support:

1. Make engagement an institutional priority and allocate sufficient internal resources to this function.
2. View members of the public as partners in the decision-making process.
3. Conduct an initial scoping of any new regulatory issue to determine with whom to engage and how.
4. Notify all potentially interested parties and ask them whether and how they would like to participate.
5. Create, where appropriate, a different process of engagement tailored to each type of stakeholder, especially for those groups that have fewer resources or expertise.
6. Set clear expectations up front for the role that engagement will play in regulatory decision-making.
7. Participate in dialogue with the public by sharing detailed proposals and inviting comment, keeping the public apprised of what the regulator is thinking as the process is going along.
8. Provide feedback (e.g., give reasons) on how information from the public engagement process has been factored into the regulator’s decision-making.
9. Take action consistent with representations to the public.
10. Take into consideration public concerns about cumulative effects, including issues that might lie outside of the regulator’s direct purview.
11. Provide opportunities for public engagement throughout the lifecycle of a regulated project (including through reclamation, the “after-life” of projects that have been shut down).
12. Perform ongoing follow-up, monitoring, compliance, reporting, and engagement.

Enforcement

Without enforcement, regulations would have relatively little impact. Participants all seemed to agree that an excellent regulator will effectively enforce the law. They differed with respect to what exactly effective enforcement should entail with respect to certain aspects of a regulator's enforcement program. The most salient aspects for consideration included the following:

- *Purpose of enforcement.* Some participants felt that a regulator needed to establish very clear overall goals for enforcement. A regulator can't achieve excellent enforcement, it was suggested, "until it knows what it is managing for."
- *Stringency of enforcement.* Many participants wanted the regulator's enforcement actions to have a clear impact on changing business behavior, not just become a "cost of doing business" or amounting to a "rubber stamp of industry practices."
- *Role for Innovations.* Some participants suggested innovative ways of enhancing enforcement effectiveness. For example, some raised the possibility of finding a reliable mechanism for third-party reporting of violations. Others favored incentives to reward the responsible, high-performing companies and for encouraging all firms to go "beyond compliance."
- *Timing of enforcement.* Some participants admonished that regulators should address compliance concerns quickly, before they grow into larger problems.
- *Rigor of incident investigation.* Some participants expressed concern that significant accidents or other incidents allegedly had not always been promptly or thoroughly investigated by Alberta authorities. Several participants stressed that an excellent regulator will have a clear process for following through on incidents and reporting back to the public on what actions have been taken.
- *Public disclosure of non-compliance.* Many participants seemed to agree that non-compliance information should be publicly available.
- *Regulated entities' response to non-compliance.* Several participants recommended that non-compliant companies be required to provide clear follow-through information to the regulator on how it will ensure that future violations do not occur, information that not only can reassure the regulator and the public but that also might sometimes help the regulator improve its regulations.
- *Role for alternative dispute resolution (ADR) in enforcement.* A number of participants expressed interest in increasing the role of alternative dispute resolution in enforcement. Some participants expressed the opinion that an excellent regulator should affirmatively provide a forum for ADR, making collaborative resolution of disputes the norm not the exception.

Evaluation

Many participants emphasized that an excellent regulator must strive constantly to improve itself. It was suggested that even excellent regulators will never be perfect; there is always room for improvement. In addition, the dynamic nature of any regulated industry necessitates that regulators seek continuously to learn and stay abreast of developments.

Participants accepted the role that performance measurement and evaluation can play in maintaining a “learning culture” within a regulatory organization. When asked to identify credible strategies for determining whether a regulator has achieved excellence, participants made a variety of suggestions for metrics and evaluation strategies.

Participants emphasized the importance of ongoing self-assessment by a regulator. The excellent regulator, they noted, sets goals and measures its progress in meeting them. Some participants emphasized the importance of involving the public in the regulator’s goal-setting process. Others emphasized the value of relying on the public’s views for measuring success. Some favored public polling. Others preferred more targeted polling of select people with greater knowledge of the regulator. Still others recommended relying on the views of stakeholder group representatives. As one participant put it when discussing how to evaluate the success of a regulatory decision: “At the end of the day, [the test is whether interested groups] can kind of live with it. We have been at the table and we have listened to each other.”

Other participants suggested possible quantitative metrics which would draw on the behavior of others to determine the regulator’s success:

- *A reduction in disputes* (without any reduction in enforcement efforts by regulator).
- *A reduction in the number of complaints to regulator*. As one participant suggested, “if [the regulator] is getting calls [from the public], you have a problem. If you are not getting calls, you’re ok.”
- *An increase in companies doing business in the jurisdiction* (again, without any reduction in enforcement).
- *An increase in the public’s willingness to participate* (as an indicator of its success in public engagement).

Some participants advocated reliance on process metrics, such as the number of negative versus positive findings in regulatory inspections, or the ratio of inspections to enforcement actions.

Although most participants definitely agreed that a regulator should periodically review its performance, some participants favored having a regulator use an independent, third-party process for auditing its performance, such as a review conducted by an academic institution or think-tank. Others were less sure that full third-party auditing was required, but did recommend integrating a peer review process into a performance review. Still others recommended that a regulator establish a public advisory board to provide feedback related to performance.

For other participants, the key was not merely who should conduct evaluations but the way they are conducted. The challenge, they noted, should be to conduct evaluations so as to be

able to attribute outcomes to the specific actions of the regulator. For example, one participant asked whether, if an energy regulator just measured changes wildlife population, “How do you know the impacts are from the energy sector and not from lumber?”

Participants acknowledged that a regulator might use somewhat different metrics for its own internal management, such as personnel decisions, than for its public evaluations. However, participants stressed the importance of communicating clearly the results of the regulator’s public evaluations, much as with any other information. Some participants suggested, for example, that evaluation results should be presented in a “report card” or “dashboard” style. Others mentioned that performance evaluations should be explained in plain language.

Conclusion

The Alberta Dialogue on Regulatory Excellence brought together a diverse group of interested individuals from throughout the province. Despite the many differing opinions they expressed throughout their three days of interactive – and at times intense – discussions, the contours of a general vision of regulatory excellence did seem to emerge from the engagement. According to this general vision, the excellent regulator is one that exhibits, both in its institutional characteristics and its actions, a genuine commitment to making analytically sound decisions that advance the public interest. Of course, as many participants recognized, if nothing else from their own interactions with one another in the dialogue, that different people will judge a regulator’s decisions differently.

In their engagement with others with different views, participants could understand better the difficult social and economic environment within which regulators must operate in a pluralist society, where regulators confront tradeoffs and competing interests that must be managed even if never fully satisfied. Perhaps due to that recognition, many participants seemed to lay stress much more on the *how* of regulation – its processes – than on the *what* – its substantive outcomes. Their general vision of regulatory excellence emphasized processes that exhibit a high degree of meaningful transparency and public engagement, that treat people fairly and with respect. They also valued effective and appropriately targeted enforcement and efforts by the regulator to learn how to improve its performance. Although probably no two participants shared exactly the same detailed criteria or roadmap for the attainment of regulatory excellence – and while many participants acknowledged how fine-grained contextual factors can ultimately dictate how regulators need to act – the dialogue did produce a considerable collection of promising ideas for steps that any regulator might take in a quest to become “best in class.”

APPENDIX A: AGENDA

Alberta Dialogue on Regulatory Excellence

Sheraton Suites Calgary Eau Claire
Sunday, April 12 – Tuesday April 14, 2015

Sunday, April 12, 2015

Welcome and Overview

- Cary Coglianese, *Edward B. Shils Professor of Law; Director, Penn Program on Regulation, Penn Law**
- Harris Sokoloff, *Faculty Director, Penn Project on Civic Engagement, University of Pennsylvania*
- Jim Ellis, *President & Chief Executive Officer, Alberta Energy Regulator*

Session 1: “The History of the Future”: Creating a Vision of What’s Possible

Participants were given a hypothetical scenario in which they were asked to place themselves in the year 2025, when the AER was given an international award for being an excellent regulator. Participants were asked to describe what AER did over the “past” ten years to earn this award. The session began with a plenary panel discussion, which was followed by small group breakout discussion. Following the small group sessions, one representative from each breakout group reported back at a “press conference” to explain how the AER had achieved its position of international renown.

Monday, April 13 2015

Introductions

- Cary Coglianese, *Edward B. Shils Professor of Law; Director, Penn Program on Regulation, Penn Law*
- Jim Ellis, *President & Chief Executive Officer, Alberta Energy Regulator**
- Harris Sokoloff, *Faculty Director, Penn Project on Civic Engagement, University of Pennsylvania*

* Video-recorded remarks, available at www.bestinclassregulator.org.

Session 2: Attributes of Excellence: What Makes a Regulator Best in Class?

Participants were asked to identify the different attributes of an excellent regulator. The session began with a plenary panel discussion and then proceeded with small group breakout sessions.

Opening plenary panel discussion:

- Alden Armstrong, Executive Director, Metis Settlements General Council
- Graham Gilchrist, Principal, Gilchrist Consulting
- Lianne Lefsrud, Assistant Professor, Faculty of Engineering, University of Alberta
- Christyann Olson, Executive Director, Alberta Wilderness Association
- Andrew Rosser, VP Sustainable Development & Regulatory, Shell Canada Ltd.
- Cary Coglianese, Director, Penn Program on Regulation (moderator)

Session 3: Assessing Excellence: How Do We Know How Well a Regulator is Doing?

Participants were asked to develop ways of and determining whether a regulator has been successful in achieving regulatory excellence, in particular in terms of the attributes identified during Session 2. The session began with a plenary panel discussion and then proceeded with small group breakout sessions.

Opening plenary panel discussion:

- Ken Bisgrove, Director, Central Environment & Regulatory Services, Suncor Energy
- Chris Severson-Baker, Managing Director, Pembina Institute
- Dr. Reg Crowshoe, Treaty 7 Piikani Nation
- Carolyn Kolebaba, Vice President, Association of Municipal Districts and Counties
- Gary Redmond, Executive Director, Synergy Alberta
- Cary Coglianese, Director, Penn Program on Regulation (moderator)

Tuesday, April 14, 2015

Session 4: “The World Café”: Synthesizing What We Have Learned

This closing session provided an informal space for participants to synthesize the work from the previous sessions. Meeting in plenary session, participants rotated through four different tables of 8-12 people to discuss how, given all of the competing demands that AER and any regulator faces, an excellent regulator achieves the appropriate balance needed to be considered best in class questions. Participants were provided with paper and markers, and were encouraged to write and draw their ideas. One final discussion prompt asked participants to work together with participants around their tables to identify ten concrete steps that all could agree the AER should implement as part of its public engagement.

Closing Remarks and Next Steps

- Cary Coglianese, *Edward B. Shils Professor of Law; Director, Penn Program on Regulation, Penn Law*
- Jim Ellis, *President & Chief Executive Officer, The Alberta Energy Regulator*
- Harris Sokoloff, *Faculty Director, Penn Project on Civic Engagement, University of Pennsylvania*

APPENDIX B: DIALOGUE PARTICIPANTS

Rick Anderson
Rick Anderson Consulting Ltd.

Alden Armstrong
Executive Director, Metis Settlements
General Council

Eric Berg
Executive Director, SPOG

Ken Bisgrove
Director, Central Environment & Regulatory
Services, Suncor Energy

Nick Bourque
Metis Nation of Alberta

Vern Bretin
Alberta resident

Ian Brodie
School of Public Policy, University of
Calgary

Karin Buss
Fort McKay First Nation

Bill Calder
Alberta Environmental Network

Bill Clapperton
Vice President, Regulatory, Stakeholder &
Environmental Affairs, Canadian Natural
Resources Limited

Dr. Reg Crowshoe
Treaty 7 Piikani Nation

Doug Dallyn
Councillor, Northern Sunrise County /
Landowner

Melanie Daniels
Confederacy of Treaty Six

Stan Delorme
Vice President, Metis Settlements General
Council

Robert Deresh
Chairman of the Board, Lakeland Industry
& Community Association (LICA)

Peter Dobbie, QC
Farmers' Advocate for Alberta, Farmers'
Advocate Office

Mike Doyle
President, CAGC

Richard Dunn
Vice President, Encana

Dennis Eisner
Canadian Association of Petroleum
Landmen

Greg Filipchuk
Director - Stakeholder Relations,
Emergency Management & Security,
Industry - Plains Midstream Canada

Jennifer Fisher
Lead, Regulatory Affairs Support, Husky
Energy

Jim Fox
Vice-President, Strategy & Analysis,
National Energy Board

Rob Gibb
Mgr Gov Relations and Communication,
Talisman Energy Inc

Graham Gilchrist
Principal, Gilchrist Consulting

Darryl Hass
Vice President, HSE Operations,
ConocoPhillips Canada

Brenda Heelan Powell
Staff Counsel, Environmental Law Centre

Kevin Heffernan
President, Canadian Society Unconventional
Resources (CSUR)

Joseph Hnatiuk
Professional Biologist MSc, AEN/CSEB

Judy Huntley
BREF/CCWC

Brian Ilnicki
Executive Director, Land Stewardship
Centre

Brian Jackowich
Senior Director, Utility Services, Alberta
Urban Municipalities Association (AUMA)

Bruce Jackson
Grandfather - Community Ethical Reflector,
Keepers of the Athabasca Watershed
Society

Duncan Kenyon
Director, Unconventional Oil and Gas,
Pembina Institute

Carolyn Kolebaba
Vice President, AAMDC

Lianne Lefsrud
Assistant Professor, Faculty of Engineering,
University of Alberta

Colleen MacDonald
SCM Manager, Drilling and G&G, MEG
Energy

Tracey McCrimmon
SPOG

Brian McGuigan
Manager, Aboriginal Policy, CAPP

Mike Murray
Program Manager, Bow River Basin
Council

Christyann Olson
Executive Director, Alberta Wilderness
Association

Else Pedersen
President, Freehold Owners Association

Bob Phillips
Metis Nation of Alberta

Alvaro Pinto
Director, Strategy & Sustainability, Fort
McKay First Nation

Gary Redmond
Executive Director, Synergy Alberta

Karla Reesor
Principal, Moving Forward

Andrew Rosser
VP Sustainable Development & Regulatory,
Shell Canada Ltd.

Mark Salkeld
President & CEO, Petroleum Services
Association of Canada

Al Sanderson
Chief Assistant Deputy Minister,
Department of Energy

Chris Severson-Baker
Managing Director, Pembina Institute

Bob Small
Consultation Policy Analyst, Confederacy of
Treaty Six

Rich Smith
Executive Director, Alberta Beef Producers

Patrick Smyth
VP, Safety & Engineering, CEPA

David Speirs
Tech Committee Chair, Freehold Owners
Association

Leonard StandingontheRoad
Director, Friends of Chain Lakes

Fenner Stewart
University of Calgary, Faculty of Law

Tracey Stock, P.Eng.
Canadian Association of Petroleum Land
Administration

Don Sutherland
VP Regulatory and Community Relations,
MEG Energy Corp

Trevor Swan
Chief Legal & Regulatory Officer, BC Oil
and Gas Commission

Gord Thompson
North Saskatchewan Watershed Alliance

Jim Turner
Alberta resident

Michael van Aanhout
Chairman, Stratos Inc.

Brittany Verbeek
Conservation Specialist, Alberta
Environmental Network

Mel Wilson
M.J. Wilson & Associates Inc.

Jennifer Winter
Associate Director, Energy &
Environmental Policy, The School of Public
Policy, University of Calgary

Penn Facilitation Team

Cary Coglianese
Edward B. Shils Professor of Law and
Professor of Political Science; Director,
Penn Program on Regulation, University of
Pennsylvania Law School

Cornelia Colijn
Program Director, Kleinman Center for
Energy Policy, University of Pennsylvania

Adam Finkel
Senior Fellow and Executive Director, Penn
Program on Regulation, University of
Pennsylvania Law School

Elise Harrington
Research Assistant, Kleinman Center for
Energy Policy, University of Pennsylvania

Shari Shapiro
Research Affiliate, Penn Program on
Regulation, University of Pennsylvania Law
School

Harris Sokoloff
Faculty Director, Penn Project on Civic
Engagement, University of Pennsylvania

Dan Walters
Regulation Fellow, Penn Program on
Regulation, University of Pennsylvania Law
School

AER Observers

Kirk Bailey
Executive Vice President, Operations
Division, Alberta Energy Regulator

Kim Blanchette
Vice President, Office of Public Affairs,
Alberta Energy Regulator

Tim Church
VP, National/ International, Stakeholder and
Government Relations, Alberta Energy
Regulator

Deborah Eastlick
VP Alberta Stakeholder Engagement,
Alberta Energy Regulator

Jim Ellis
President and Chief Executive Officer,
Alberta Energy Regulator

Jennifer Fitzgerald
Alberta Energy Regulator

Patricia Gigantelli
Executive Advisor Stakeholder and
Government Relations, Alberta Energy
Regulator

Bruce Gladue
Director - Aboriginal Relations, Stakeholder
& Government Relations, Alberta Energy
Regulator

Tristan Goodman
Vice President, Office of Regulatory
Enhancement, Alberta Energy Regulator

Cal Hill
Executive Vice President, Strategy and
Regulatory Division, Alberta Energy
Regulator

Diane Holloway
Alberta Energy Regulator

Shelley Ingram
Alberta Energy Regulator

Eric Kimmel
Senior Advisor, Regulatory Operations &
Economics, Alberta Energy Regulator

Jennifer Lutz
Alberta Energy Regulator

Tiffany Novotny
Alberta Energy Regulator

Carey-Ann Ramsay
Alberta Energy Regulator

Jennifer Steber
Executive Vice President, Stakeholder and
Government Relations, Alberta Energy
Regulator

Zeeshan Syed
Executive Director, National/International
Stakeholder & Government Relations,
Alberta Energy Regulator