



**PENN PROGRAM ON  
REGULATION**

# **Listening and Learning: Toward a Framework of Regulatory Leadership**

**An Interim Report of the  
Best-in-Class Regulator Initiative**

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# Listening and Learning: Toward a Framework of Regulatory Leadership

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In November, 2014, the Penn Program on Regulation (PPR) launched an eight-month “Best-in-Class” Regulator Initiative with support from the Alberta Energy Regulator. The goal of the Initiative is to identify strategies to meet one of today’s most vital public management imperatives: improving regulatory quality.

In countries around the world, regulators are asked to balance their society’s desire for economic growth with the desire for public protection from risks associated with economic activities and technological advances. These 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?

Ultimately, by addressing questions like these – and others – our goal is to help define attributes of “best-in-class” regulatory performance, identify a range of important best practices and methods for ongoing regulatory improvement and to create a framework for evaluating a regulator’s progress towards becoming a “best in class” regulator.

This Interim Report provides an overview of Initiative’s activities and our progress. The Interim Report also identifies the key questions we are endeavoring to address through the Initiative’s several activities, outlines the analytical framework we are using to organize our current research, and provides initial thoughts on attributes of regulatory excellence and performance measurement.

At the time of the release of this Interim Report, we are in the middle of the research and data gathering activities for the Initiative. We are also planning several interactive dialogue sessions to engage with other experts as well as with a broad range of interested individuals and organizations in Alberta and around the world. Our work, in important ways, has only begun. We will be listening and learning much from others in the months ahead.

In addition to describing our progress and plans to date, the primary goal of this Interim Report is to stimulate reflection, input, and dialogue on the part of others, so as to help the development and evolution of our own thinking between now and the issuance of our final report this summer. We expect that many of the views presented in this report will develop further throughout the remainder of the Initiative. Even some of the questions could shift; certainly new ones will emerge.

We encourage you to participate with us and help offer your input as we build toward final recommendations. We would appreciate your ideas about the issues and questions presented in this Interim Report. You can contact us by email to [comments@bestinclassregulator.org](mailto:comments@bestinclassregulator.org) or through the online forms available on our Initiative website at [www.bestinclassregulator.org](http://www.bestinclassregulator.org).

## I. WHAT IS A REGULATOR?

Regulation can be semantically challenging terrain, and not merely because it often requires a lot of technical expertise about complex phenomena or advanced technologies. At even a more basic level, the word “regulation” can mean several things. It can refer to a thing, such as an individual rule or an order. Or it can refer to an activity, such as what is meant by phrases such as the “regulation of the financial marketplace.” A “regulator” can be a person, an organization, or even a physical thing, such as when a machine has a device for controlling the flow of energy or fluid. These terms can be confusing because sometimes the same speaker or writer will use the word “regulation” or “regulator” to capture more than one of these meanings in the course of the same conversation or paragraph. Even when the meaning is held constant, things can get confusing. When used to refer to an individual rule, for example, a “regulation” can vary widely – requiring or prohibiting conduct, mandating outcomes, imposing limited or graduated forms of liability. Experts in the field of regulation have come up with a veritable alphabet soup of different terms to describe different types of rules, and more terms seem to be invented every year.

### A. “REGULATOR” AS AN ORGANIZATION

At its core, regulation is often defined simply as “rules backed up by consequences.” A “regulator,” then, can refer to any individual or organization who sets those rules or who administers or enforces them in an effort to solve problems. Although a regulator could refer to an individual, such as an inspector or the head of a regulatory organization, in this report and in this Initiative we mean to refer to the regulator as an *organization*.

As organizations, “regulators” can vary widely too, in terms of their size, function, structures, responsibilities, and tasks. Sometimes “regulators” are private organizations, as when industries, insurance companies, trade associations, or private standard-setting organizations set up their own codes of practice and expect their employees, managers, and suppliers to follow them. But usually, by the term “regulators,” people mean to refer to public or governmental organizations – as we do here.

That helps narrow things down. But even public regulators take many forms. Who sets the rules can vary widely in different countries and jurisdictions around the world. In democracies, elected officials who serve in legislative bodies establish rules. But even in democracies, the legislature will not be the only rule-maker. Legislatures establish ministries, agencies, commissions, and other public bodies that set policies and standards – and that enforce them. These latter organizations that implement and enforce rules are typically separated from the legislative bodies that set rules, although the degree and nature of that separation varies widely. The public organization charged with enforcing rules will also have varying degrees of authority to set its own standards or norms to fill in gaps or provide clarity to the laws and policies created by legislatures or other policy-making bodies. Sometimes the same organization possesses authority to set more specific standards to implement legislation as well as enforce both legislation and rules created under its authority.

Although regulators can vary widely, in thinking about what makes a regulator excellent it will help to keep in mind that regulatory organizations generally share three at least core characteristics:

1. *Regulator as faithful agent.* A regulator does not exist to serve its own interest, but to serve a broader public interest. It is an agent of the legislature that created it and any other governmental authority that creates rules that it is charged with carrying out.
2. *Regulator as police department.* A regulator enforces rules, much like police officers do. As with a police department, a regulator sets up “patrols” to monitor compliance with rules and then takes actions when they are not followed. The degree to which a regulator will be perceived to be successful will depend, like the police, both on how it conducts its own operations as well as in how others – those it regulates – conduct their operations.
3. *Regulator as market optimizer.* Although the criminal conduct that police officers enforce is banned outright, regulators oversee activities that have been determined to be worthwhile, if conducted in accordance with the rules. The businesses that are subject to regulation are also employers in their communities, and they produce many valued goods and services that make life possible and worthwhile. The regulator is generally charged with ensuring a kind of balance be maintained across multiple goals.

## **B. WHAT DOES A REGULATOR DO?**

Regulators solve problems. The exact type of problem any regulator seeks to solve will depend on the authority and mandate it has been given by government, with different regulators having been established to solve different types of problems. Regulatory problems come in many varieties but typically they are classified under the concept of “market failure.” Three major types of market failure justifying regulation are:

- **Market power.** Markets fail when competition either doesn’t exist or when it breaks down. If left unchecked, monopolies can generate higher prices or a reduction in service and access. Regulators that protect competition or regulate prices and services of natural monopolies are often referred to as “economic regulators.” Regulation of water, electricity, gas utilities is often justified as a response to the problem of concentrated market power.
- **Externalities.** Markets work when the prices of goods and services reflect their full costs and benefits. But some market activities have spillovers, where their costs are borne by third-parties who are not involved in transactions for the relevant goods or services. Environmental pollution is a classic case of a negative externality, as the costs of pollution are imposed on community members who are not compensated by market transactions with the entity creating the pollution.
- **Information asymmetries.** Markets also depend on the parties to economic transactions having full information about what they are contracting over. But in many situations one party to an economic transaction lacks access to relevant information. A patient who buys medication seldom knows as much as the pharmaceutical company does about the medication’s effectiveness and its side effects. Some regulators force the disclosure of information to make markets work better.

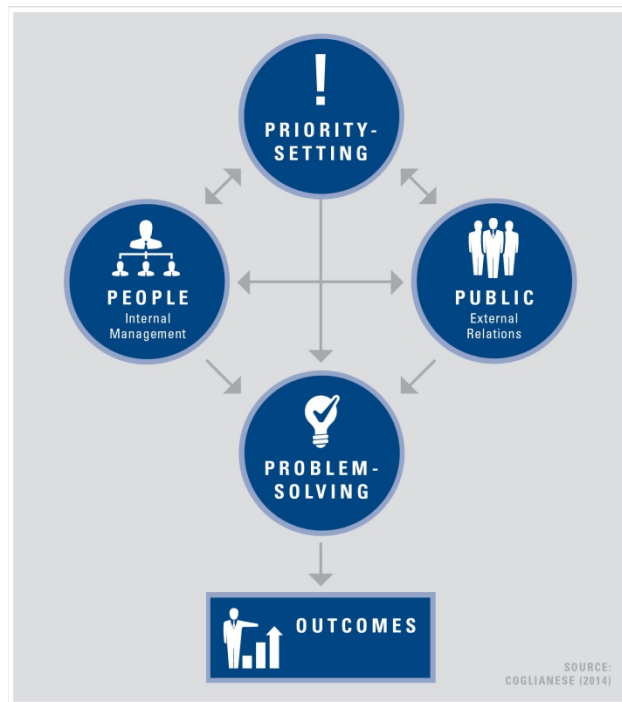
Regulators also address other kinds of problems, even if they do not fit neatly under one of these market failure categories. For example, regulators are also set up to protect civil rights, promote equity, and combat discrimination. Sometimes the same regulator will be charged with solving several different types of problems.

The ways that regulators seek to solve problems will vary, but by definition they will involve some application of or enforcement of rules. Regulators may issue permits or approvals upon a showing that criteria specified in rules have been satisfied. They may inspect and monitor either the behavior of those subject to rules or the outputs of that private behavior to see if individuals or entities are operating in accordance with the rules. When they find that rules have not been followed, they may take a variety of actions to respond, from notifying and helping the noncompliant individuals or entities to imposing fines or taking enforcement actions in the courts. Regulators may also take a variety of other actions – from educating to

subsidizing to adjudicating disputes – all with the aim of solving their targeted problems. Sometimes the rules are structured to give regulated entities flexibility and shared responsibility, encouraging them to solve problems themselves; however, even in these situations, regulators will provide oversight.

No matter what kind of problem a regulator seeks to solve, its regulatory performance depends not only on the actions it takes but on whether those actions ultimately drive outcomes that deliver public value. Figure 1 illustrates a framework of four vital factors that feed into and ultimately affect the outcomes that regulators achieve: priority-setting; problem-solving; people (internal management); and the public (external relations).

**Figure 1: The Regulatory Core**



Each of these four facets interact with each other to generate outcomes that, in excellent regulators, deliver positive public value in the form of solved, or at least lessened, problems as well as other positive outcomes.

- Priority-Setting, then Problem-Solving. Any regulator must choose from a number of different problems to address – that is, it must engage first in **priority-setting**. Some of these priorities may be set by other governmental authorities – a legislature or parliament, or ministries – but even established laws and policies still usually leave much discretion to the regulator and much responsibility for priority-setting.

After deciding what problems to prioritize, the regulator then proceeds to take actions to try to solve those problems. **Problem-solving** entails tasks or activities: approving applications, adopting regulations, conducting inspections, prosecuting enforcement actions, disseminating information, providing grants, and more. These activities are directed at solving the problems that the regulator has been established to address, whether environmental contamination or transport accidents or any number of other problems.

- People and the Public. In setting priorities and solving problems, the regulator operates through its **people** (i.e., its employees), creating a variety of challenges of internal management, from training to evaluation, from IT systems to whistleblower policies. The regulator also pursues its core mission in interaction with the **public**, that is, all those individuals and entities external to the regulator: the broad public, regulated industry, NGOs, the legislature and other governmental entities (municipal, provincial, or federal), indigenous peoples, academic institutions, and a variety of other affected or interested individuals and organizations.

## II. THE BEST-IN-CLASS REGULATOR INITIATIVE

Through the Best-in-Class Regulator Initiative, sponsored by the Alberta Energy Regulator, researchers at the Penn Program on Regulation and its collaborating institutions are working to forge a framework for how to define and measure exceptional regulatory performance. We seek to develop practical, management guidance that any regulator could use to assess how well it is doing and what it needs to do to measure its progress toward excellence in fulfilling its challenging responsibilities.

Some of the questions that we are exploring through this project include:

- How should a world-class regulator prioritize which problems and risks to target?
- How do the best regulators organize their resources, implement routines, and pursue efforts to promote compliance and other desired behavior?
- How do best-in-class regulators measure their own performance and adapt to changing circumstances?
- What defines best practices with respect to interactions with regulated entities and engagement with other interested organizations and members of the public?

By considering questions like these – and others – our goal is to organize our research and develop recommendations that can help any regulator on its journey toward excellence. As this report explains, we are affirmatively seeking expert and public input on how to define the attributes of “best-in-class” regulatory performance, identify best practices and methods for



ongoing regulatory improvement, and design a measurement framework for any regulator to use to evaluate its progress towards becoming a “best in class” regulator.

## **A. SCOPE OF INITIATIVE**

The Initiative is funded by the Alberta Energy Regulator (AER), the single regulator of energy development in Alberta—from application and exploration, to construction and development, to abandonment, reclamation, and remediation. The AER’s mandate is to ensure the safe, efficient, orderly, and environmentally responsible development of hydrocarbon resources over their entire life cycle. This includes allocating and conserving water resources, managing public lands, and protecting the environment while providing economic benefits for all Albertans.

Although funded by the AER, the project’s recommendations will be general enough to be used by any regulator around the world, in any area of regulation. We are, though, taking steps to ensure that our recommendations will be informed by the concerns and views of a full range of interested members of the Alberta public. Our project is taking full account of the range of issues and challenges that arise in the domain of oil and gas regulation, as well as the particular needs and concerns of a broad range of interested organizations and individuals in Alberta, including landowners, industry, Aboriginal communities, environmental groups, municipal government officials, and other members of the public. We are learning from our dialogue with others about the work of the AER and the challenges and opportunities for energy extraction regulation in the province of Alberta. Our aim is to ensure that our report will be fully relevant to the concerns we hear at the same time that our project will offer guidance for regulators from any area of regulation and in any country.

### *What the Initiative Is*

The Initiative will generate a general framework for AER to use to measure its performance against best-in-class attributes on a regular basis. AER’s goal in funding the Initiative is to use our deliverables to inform its future work, to measure AER’s performance against best-in-class attributes, and ultimately to take management actions to improve its performance against these attributes. After receiving our final recommendations outlining the key attributes for excellence and general guidelines on measurement of progress toward these attributes, the AER (or any regulator) will still need to undertake its own efforts to:

- Operationalize the attributes of excellence, fine-tuning them and giving them specific content and definition that fits with its own distinctive mission and operational environment.
- Identify or develop methods and practices for the collection of data needed for measuring its performance on each of the defined attributes.

- Measure its current level of performance against these attributes and determine the size and causes of gaps between its current performance and its attribute-informed goals.
- Implement management and operational actions designed to improve performance.
- Continue appropriate engagement with experts and members of the public on all of the above steps.

*What the Initiative Is Not*

This Initiative is not conducting an evaluation of the AER’s performance or its current status toward achieving best-in-class performance. It is not designed to give the AER a grade or a stamp of approval, nor is it intended to compare AER’s current level of performance with that of other comparable regulators around the world. Rather, it is intended to provide the AER (and any regulator) with recommendations about a general performance management framework that it can use to conduct either its own self-assessment or external assessment in the future.

This Initiative will not generate operational recommendations for the AER or any other regulator. Although Initiative researchers are working hard to identify best practices in regulatory priority-setting, problem-solving, management, and public engagement, they are doing so not to provide the AER with a “cookbook” or manual that will guide its day-to-day operations. Regulators’ tasks vary depending on local objectives and conditions, but a review of generally-accepted best practices from around the world can be useful as a source of innovation and a guide to what kinds of regulatory activities an overarching performance framework, which this Initiative is aimed at generating, should accommodate.

**B. INITIATIVE STATUS**

*1. Papers and Reports*

We have engaged regulatory policy analysts from the United States and Canada to generate the following papers and reports which are described in this section:

- [Strategic Plans Analysis](#)
- [Research Papers on Regulatory Best Practices](#)
- [Discussion Papers on “What Makes a Regulator Excellent?”](#)

As these papers and reports are drafted, they will be publicly announced and posted on the Initiative’s website—[www.bestinclassregulator.org](http://www.bestinclassregulator.org).

## **Strategic Plans Analysis**

This first of its kind paper will identify regulator-identified attributes of excellence by reviewing strategic plans for common themes and attributes related to superior performance. The aim is to review a broad range of readily-accessible strategic plans issued by regulators around the world over the last several years, with an eye toward identifying common issues and aspirations. This paper will distill from what these other agencies identify in their own strategic plans to be the common attributes or frameworks that appear to be used in practice to define superior regulatory performance around the world, with an aim toward developing a coherent set of complementary attributes drawn from the overall review. A draft of this paper will be available in March 2015.

*Principal Researchers:*

[Adam Finkel](#), Penn Program on Regulation

[Dan Walters](#), Penn Program on Regulation

Angus Corbett, Penn Program on Regulation

Megan Yan, Penn Program on Regulation

## **Research Papers on Regulatory Best Practices**

In addition, we have commissioned research papers on four primary dimensions of a regulator's work: *priority-setting*, *problem-solving*, *people* (internal management), and the *public* (external engagement). Each of these four areas, discussed in greater detail in below, comprise the work of any regulator, and they combine to result in the performance outcomes of concern to the public and to the policymakers who established the regulator to solve particular problems.

Each paper will survey existing research and identify key issues, providing the reader with a thorough background on what is known about each topic and what are the important factors that a regulator seeking excellence should consider.

The work on these core papers will inform PPR's identification of possible attributes a best-in-class regulator might exhibit in each of these core areas. They will also provide a research base for further progress by the AER and other regulators toward the achievement of continuous improvement.

These research papers are intended to provide a menu of options for a regulator to address – offering pros and cons, and discussing the conditions under which some options are better than others. The purpose is not necessarily to recommend any particular approach, especially since the research literature may not yet be definitive on some issues.

- **Priority-Setting**

This paper will focus on the key analytic capacities needed by an excellent regulator, focusing how that regulator selects priorities from the universe of possible problems within the scope of the regulator’s authority. It will focus in particular on risk analysis and risk management decision criteria.

*Principal Researcher:*

[Greg Paoli](#), Risk Sciences International

- **Problem-Solving**

Regulators can choose from a variety of tools when setting standards and enforcing them. This paper focuses on what should be in the toolkit of an excellent regulator and what the research literature says about how these tools should be applied. The paper will synthesize the literature on regulatory instrument choice and strategies of regulatory enforcement.

*Principal Researchers:*

[Christopher Carrigan](#), George Washington University Trachtenberg School of Public Policy and Public Administration

[Elise Harrington](#), University of Pennsylvania Kleinman Center for Energy Policy

- **People**

Regulators are organizations of people. The way they are structured and how their cultures operate affect how well they can achieve excellent performance. Two papers are in progress – one on structure, one on culture – addressing the internal management of regulatory organizations.

*Principal Researchers:*

[Jennifer Howard-Grenville](#), University of Oregon Lundquist College of Business

[Stephanie Bertels](#), Simon Fraser University Beedie School of Business

[Christopher Carrigan](#), George Washington University Trachtenberg School of Public Policy and Public Administration

- **Public**

Regulators ultimately serve the public. How they interact with affected individuals and organizations when making and implementing decisions is key to achieving regulatory excellence. This paper reviews the literature on regulatory transparency and public participation.

*Principal Researchers:*

[Jennifer Nash](#), Harvard University John F. Kennedy School of Government

[Dan Walters](#), Penn Program on Regulation

## **Discussion Papers on “What Makes a Regulator Excellent?”**

We have assembled a group of internationally recognized experts on regulation and have asked them to answer the question of “What Makes a Regulator Excellent?” Their answers will appear in a series of short discussion papers, which we will release later this spring, and that will later be expanded into full book chapters, to be published by the end of 2016.

These discussion papers will approach the general question of regulatory excellence from the distinct disciplinary and research-based perspectives of the individual authors. Collectively, we expect these papers will touch on a variety of key issues involved in defining and assessing best-in-class regulatory performance, from both concern about the substance of regulatory outcomes as well as the process of making decisions and engaging with the public.

Drafts of the discussion papers will frame the discussion at an [International Expert Dialogue](#) to be held in March at the University of Pennsylvania Law School and described in greater detail later in this report. We expect to post the short discussion papers online near the end of March 2015.

## **Dialogue Reports**

As described further below, we are hosting three key [dialogue sessions](#) during the winter and spring of 2015 to foster interactive discussion among both international experts and interested individuals and organizations in Alberta on the attributes of a best-in-class regulator and the metrics for evaluating a regulator’s success in achieving best-in-class status. Each of these sessions will be followed by the public release of a report synthesizing the key issues discussed, the main themes from each dialogue, and the perspectives shared and trade-offs identified.

## **Final Convenor’s Report**

A final convenor’s report will draw on the findings of the other papers and the various dialogue sessions to produce a framework that regulators can use to pursue and measure best-in-class regulatory performance.

This final convenor’s report, as with the entire Best-in-Class Initiative, will not constitute an evaluation of the AER’s current or past performance, but rather will identify evidence-based metrics and methodologies that the AER or any regulatory authority could use to guide its management and decision-making.

Following the various dialogue sessions, a draft of the final convenor’s report will be subjected to peer review with experts on regulation from around the world. The final convenor’s report, which will respond to and incorporate results from the peer review process, will be posted online by summer 2015.

## 2. Dialogues

The PPR will host three dialogue sessions during the winter and spring of 2015 to foster interactive discussion among both international experts and interested individuals and organizations in Alberta on the attributes of a best-in-class regulator and the metrics for evaluating a regulator's success in achieving excellence. Each of these sessions will be followed by the public release of a report synthesizing the key issues discussed, the main themes from each dialogue, and the perspectives shared and trade-offs identified.

- **International Expert Dialogue**, University of Pennsylvania Law School, Philadelphia, Pennsylvania

This two-day, invitation-only expert dialogue will be held at the University of Pennsylvania Law School in Philadelphia on March 19-20, 2015. It will involve intensive dialogue among a diverse group of about thirty academic experts, regulatory officials, industry representatives, environmental group leaders, and other experts from Canada, the U.S. and around the world.

Approximately ten of the academic experts attending this dialogue session will be writing discussion papers to provide insights on defining and measuring regulatory excellence. Appendix A to this interim report includes a list of the contributing authors. Their discussion papers will be subsequently released online as well as developed into longer papers which will be published together in an edited book to be published in 2016.

- **Aboriginal Dialogue**, Edmonton, Alberta

On March 26, 2015, Dr. Harris Sokoloff, founder and Director of the Penn Project on Civic Engagement, will facilitate an interactive dialogue with representatives of Aboriginal peoples from within Alberta to work through key issues of energy regulation from their perspectives. The dialogue will combine an opening presentation with group discussion.

- **Alberta Dialogue**, Calgary, Alberta

This meeting will be held on April 12-14, 2015, in Calgary and will bring together a diverse group of about sixty representatives from the Alberta public. Invited attendees will include representatives of the following groups: landowners, industry, environmental groups, Aboriginal peoples, municipal and provincial officials, academic experts, and other concerned citizens. The dialogue will combine plenary panel discussions with small-group breakout discussions. The plenary sessions will be videotaped and made available online.

- **Peer Review Session**, University of Pennsylvania Law School, Philadelphia, Pennsylvania

A draft of the final convenor's report will be circulated to about ten experts from around the world who will convene in late May or early June for a discussion of the draft report.

### *3. Other Outreach*

In addition to our dialogue sessions, we have engaged in a variety of other outreach efforts, including the following:

#### **Listening Sessions**

Team members have spent hours on the telephone, as well as two weeks in person in Alberta, in one-on-one conversations with interested members of the public, from landowners to industry group representatives to environmental group advocates, as well as with municipal and provincial government officials. We are eager to talk to those who interact with and are affected by the work of the AER as well as other regulators around the world.

#### **Internet Outreach**

We have created an Initiative website – [www.bestinclassregulator.org](http://www.bestinclassregulator.org) – to share our project plans and products with the public and other experts. The website lists a variety of materials that we are reading as well as includes an online input function to make it easy for others to offer us feedback and suggestions.

#### **Releases and Updates**

We have released on our website a short discussion draft of a paper entitled “On Best-in-Class Regulators,” and we invite public comment on it (<https://www.law.upenn.edu/live/files/4141-on-best-in-class-regulators--draft-discussion>). We are also issuing on the website and distributing by email the first of what we expect will be a series of periodic updates on our progress.

### *4. Complementary Activities*

Collectively, our research team is busy reading a variety of reports, studies, and books on regulation and performance management. Many of the items we come across we post to the “Reading Room” section of our Initiative website. In addition, we are engaged in several complementary activities, including teaching a seminar entitled, “RegX: Defining and Measuring Regulatory Excellence,” organizing and hosting a seminar on the governance of unconventional oil and gas development (a video of which we have uploaded to our Initiative website), and making plans for a meeting in Washington, D.C. in late April on regulatory performance management.

### III. TWO BIG QUESTIONS (AND MANY SMALLER ONES)

The Best-in-Class Initiative's several streams of activity – from research to expert elicitation to public engagement – are linked by two overarching, big questions:

- *How should regulatory excellence be defined?*
- *How should progress toward regulatory excellence be measured?*

Our overall aim is to answer these two questions and provide recommendations that the Alberta Energy Regulator and any regulator can follow to establish and maintain management practices that will help them move forward and improve their operations, no matter where they may fall on a spectrum of regulatory quality. Along the way toward answering these big questions and developing recommendations, we are encountering a variety of other, smaller questions. As our role is one of a convenor, we are seeking both expert and public input on these questions in formulating the recommendations that we will develop.

#### **A. DEFINING EXCELLENCE**

A regulator's excellence could be defined in a variety of ways, and one of the major objectives of the Best-in-Class Regulator Initiative is to identify a set of internationally-recognized core attributes of excellence. In identifying attributes or criteria of excellence, three approaches are possible. Excellence can be defined in terms of the regulator's (1) characteristics, (2) actions, or (3) performance.

##### Excellence in Terms of Characteristics

When people define excellence in terms of the qualities or characteristics of a regulator as an organization, they use attributes such as "strong," "independent," "well-funded," "adequately staffed," "credible," "honest," "legitimate," and so forth. These do not describe specific actions or outcomes, although they may well be affected by (or in turn affect) actions and outcomes. Rather, they describe a general "state" of the regulator, a standing set of "resources" upon which it has to draw or a general posture that it holds in conducting its day-to-day operations and affecting outcomes in the world.

##### Excellence in Terms of Actions

Another way to define excellence lies in the type of actions the regulator takes in the course of regulating. These attributes might be articulated in general terms, describing the general tendencies in the regulator's actions in the course of regulating, such as "vigilant," "serious," "reasonable," "transparent," and so forth. Or they might be



articulated in terms of specific types of best practices, e.g., “an excellent regulator targets the most significant risks,” “an excellent regulator uses flexible regulatory instruments,” “an excellent regulator adopts a problem-solving rather than a punitive approach to enforcement.”

### Excellence in Terms of Performance

Ultimately the characteristics of an excellent regulator, as well as its actions, should lead to desired outcomes. Indeed, what makes certain *characteristics* and *actions* important will be their effects in terms of helping to achieve desirable *outcomes*. The attributes of regulatory outcomes – or the regulator’s performance – might then define excellence. These may be both *substantive* outcomes (e.g., avoiding industrial accidents and environmental spills, etc.), or *procedural or managerial* outcomes (e.g., achieving effective internal management or transparent external communications).

Examples of attributes of substantive outcome include:

- *effectiveness* (impact in terms of solving the problem or achieving a targeted outcome);
- *cost-effectiveness* (achieving a specific level of some outcome, i.e., problem reduction, at a low cost);
- *efficiency* (balancing problem reduction with other outcomes of concerns, such as costs, so as to achieve an optimal level of problem reduction);
- *equity* (a fair distribution of the costs and benefits of regulatory action).

Procedural or process-oriented outcomes could be thought of in terms of the degree to which the regulator fosters legitimacy, credibility, and public or political support. For example, does the regulator’s stakeholder engagement leave members of the public feeling they were listened to and respected? How much trust has the regulator earned?

As already noted, performance may have a close connection with characteristics of a regulator and with the regulator’s actions. Sometimes this will be an instrumental connection, in that a regulator possessing certain qualities or one that takes a certain kind of actions will be more likely to achieve excellent outcomes. For example, a regulator with strong credibility will be more likely to achieve effective outcomes. A regulator that uses flexible instruments will be more likely to achieve cost-effective or even efficient outcomes.

We have started to compile a set of possible attributes, drawing on our research on regulation, a study of regulatory agency strategic plans, and our conversations with interested members of the public in Alberta. Some of these possible attributes are listed in Appendix B to this report. We welcome reactions to these possibilities as well as suggestions for additional

attributes. In addition, we highlight here several specific themes or sets of questions about attributes of excellence which we hope will stimulate thought and feedback by participants in our dialogue sessions as well as by any member of the public, who we invite to send us comments.

### 1. Dynamic versus static excellence

Is excellence a “state” that an organization “achieves”? Or is it a process? Does excellence require a growth mindset, a vigilance and pursuit of continuous improvement? We note that regulators face changing conditions and ever-present risks, so the best regulators may need to be attentive to change and able to adapt. Does an openness and capacity for learning become an important component of an excellent regulator? Might processes of evaluation and validation be not only vital for determining whether a regulator is excellent, but also itself a defining feature of being excellent?

### 2. Defining excellence in absolute or relative terms

Does excellence as a regulator mean just being better than peer organizations? Or are relative assessments with other entities insufficient, especially if others in a regulator’s “class” are not themselves performing well – or well enough? Terms such as “best in class” or “world class” connote a comparison with others. But might excellence demand an *absolute* level of achievement and excellence?

### 3. Intersection with policy

How should a judgment of a regulator’s degree of excellence be affected by the mandate it has been given by the legislature or the ministry responsible for setting policy? Do the mission and mandates imposed on the regulator establish the (only) attributes of excellence that matter? If a regulator is charged with achieving a misguided mission, can it ever be considered excellent? What should an excellent regulator do when problems arise that fall under the ambit of its general mission but are not addressed adequately by existing policy?

### 4. Impact of resources

To what extent should the excellence of a regulator be adjusted for the financial resources it has available to it? Can a regulator be “excellent” if it does an excellent job with the resources it has at hand or the institutional structure it has been given, even if the lack of resources or institutional structure means that doing the best with what it has been given is still not very good?

## 5. Who chooses?

One overarching set of questions encompasses an entire system of public performance measurement, and these questions can be neatly encapsulated in the simple question: Who chooses? Still other questions elaborate: Who operationalizes (and how do they operationalize) the attributes, making them concrete? Who determines how tradeoffs should be resolved in characteristics, actions, and performance, or how measures of these attributes should be aggregated across different dimensions of a regulator's operations? What role should be played by the legislature or other governmental bodies that oversee the regulator, or members of the public?

### **B. MEASURING EXCELLENCE**

In addition to identifying attributes of excellence, the second major objective of the Best-in-Class Regulator Initiative is to develop guidance about how to measure how well a regulator stacks up against the selected attributes. Although determining what are the attributes of excellence is necessary in determining whether a regulator is excellent, it is not sufficient just to select the attributes. These attributes must be used to give feedback about how a regulator is doing. Since regulators solve problems, one purpose of measurement would be to learn how well specific programs and activities are addressing those problems. Even processes of decision making and public engagement can be evaluated, such as by investigating how well a particular type of engagement process might reduce conflict or increase information available to the regulator.

No regulator can be perfect, though, whether in terms of its characteristics, actions, or outcomes. Rather than a standard of perfection, a more meaningful understanding of excellence, then, will require thinking about how to measure and then aggregate the chosen attributes. For example, how much "transparency" is needed for a regulator to be deemed as having "excellent" transparency?

Furthermore, the nature of any assessment may be driven by a "value of information" or "proportionality" approach. That is, the effort and degree of rigor applied in assessing a regulator's performance will likely vary depending on factors such as the importance of the goal, uncertainty over how well the regulator is achieving that goal, and the potential for unintended consequences or undesirable side effects.

To evaluate operations, policies, programs, processes, or other activities, the regulator will need in some fashion to:

1. Identify *goals*
2. Select *metrics* for measuring progress toward these goals, and
3. Engage in *assessment* to determine if progress is being made.

The goals, along with accompanying metrics and assessments, will usually be tied to specific programs, policies, tasks, or other activities. For example, with respect to external relations, the regulator will need to define goals, metrics, and determine how it will assess its performance. Is its goal to reduce conflict? Increase public trust? Gain more information? A regulator might well have a combination of one or more of these or other goals. For each goal, the regulator will need to identify metrics and then engage in assessment.

As regulators are public organizations, they should consider the extent to which (and how) to involve the public in the process of identifying goals, metrics, and assessment. One way might be to publish a proposed evaluation framework and seek public comment on it, for example. In addition, other kinds of external or third-party validation could be used when measuring excellence. Assessments can also be subjected to external peer review. Other types of more global validation can be deployed to assess the regulator's overall performance, such as by convening at periodic intervals advisory bodies of international experts or using public perception surveys.

As we did with the attributes of excellence, we highlight here several specific themes or sets of questions about attributes of excellence which we hope will stimulate thought and feedback by participants in our dialogue sessions as well as anyone who wishes to send us comments.

#### 1. Aggregation

One way of thinking about aggregation has to do with the different attributes themselves: Does a regulator need to achieve a level of excellence on all of the defining attributes? Most or some of them? Or just one of them? If more than one of these, how should the measures of these attributes be combined?

Another way of thinking about aggregation has to do with each individual attribute as it applies to different aspects of a regulator's operations. If a regulator's enforcement personnel never take bribes but the officials who set standards frequently do (or vice versa), should the regulatory organization overall be considered to exhibit the characteristic of "honesty"? Is it useful to develop an overall measure of any attribute across all aspects of a regulator's operations? If so, how should measures of any given attribute be aggregated across these different aspects? Or should the attributes not be aggregated?

In thinking about what is captured under the banner of "aggregation," there are a variety of additional questions that might be considered:

- What are the units of measure of the different attributes?
  - Some attributes may lend themselves to obvious units of measurement, whereas others may be harder to translate. A performance measure for accident reduction may be an example of the former, whereas attributes such as credibility, honesty, or transparency might be examples of the latter.

- How can these attributes be operationalized so that they can be measured in terms of the units?
  - Accident reduction as a measure of excellence could be operationalized by relying on an established reporting system, for example. Credibility, honesty, or transparency, on the other hand, might need to be operationalized in terms of, say, expert or public survey results asking about qualities such as credibility or transparency.
- Measurement issues:
  - How and when should measurement be conducted?
    - Different attributes will be operationalized differently. What instruments should be used to measure what types of attributes?
    - Should measures be taken monthly? Quarterly? Annually?
  - Who should do the measurement? Should the regulator itself do the measuring? Or should it rely on a third-party?
  - Should the regulator or evaluator rely on a single measure for each attribute? Or should the regulator try to “triangulate” and rely on multiple measures? If multiple measures are used, how should differences or inconsistencies among them be resolved?
- Dimensionality:
  - Should the *overall* characteristics, actions, or performance of a regulator be what gets measured?
  - Or characteristics, actions, or performance in specific *domains or dimensions*?
    - Might a regulator be excellent in terms of setting standards but not excellent in terms of enforcement? Might it be excellent in enforcing certain types of rules but not others?
  - How do measures on these different dimensions get combined (if at all)? Should the aim be to determine some overall level of excellence? If it is, does each dimension or domain count equally? Or are some more important than others?
  - Should different attributes be weighted differently? In other words, suppose a regulator scores really well in terms of its “characteristics” but it turns out not to generate efficient “performance.” Do performance attributes count more than attributes in terms of characteristics or actions? Do some performance attributes count more than other performance attributes?

## 2. Attribution

Especially when it comes to performance, although also with respect to excellence in terms of characteristics and actions, another set of questions arises about attribution. In other words, when is it helpful to determine if changes in measures of attributes have come about because of choices made by the regulator?

When thinking about excellence in terms of, for example, the *effectiveness* attribute, should the evaluator determine if the level of problem reduction observed is

causally related to the actions of the regulator? Suppose that the problem within the regulator's ambit is thankfully lessening. Should it matter at all whether that reduction in the problem came about because of the policies and actions of the regulator? Or should the regulator (and evaluator) be able to declare a success and move on, even without knowing exactly why the problem has been reduced?

Seeking causal attribution can be hard to do, so it is likely not possible to conduct a causal evaluation for each and every attribute – which only raises additional questions about which attributes should be given serious causal evaluations, when and how often, and so forth.

Although attribution in terms of *causation* may be clearest with respect to performance, issues of attribution *of responsibility* are also in play, especially with other attributes of excellence. Imagine a regulator that is “doing everything right” and is causing good outcomes, but suffers from low public confidence in its honesty because it is operating within a larger governmental system that generally has high levels of corruption. Even if that regulator were to be completely honest, it might be perceived as less than excellent simply because it is situated within a larger governmental climate that is deeply mistrusted.

Similarly with respect to a regulator's actions, perhaps a regulator fails to follow “best practices” not because it doesn't know better and not because it has chosen not to. Rather, suppose it fails to follow best practices because it operates under a legislative mandate that precludes it from doing so. For example, some people have criticized the U.S. Environmental Protection Agency's (EPA) air quality standard-setting decisions as being much too inefficient, but the regulator must operate under a legislative mandate that precludes it from taking costs into account in setting air quality standards. Should that legislative prohibition affect an evaluation of EPA's performance in terms of efficiency?

In addition to the regulator's mandate, consider other factors that might be out of the regulator's control. Should it matter if it is easier for one regulator to achieve excellent levels of effectiveness because it has been tasked with solving simple problems, as opposed to another regulator who struggles and does the very best that can possibly be done to solve a challenging, even impossible, set of problems?

### 3. Grading

Just as any teacher knows, there are key issues not only of identifying and measuring attributes of excellence, but there are important choices about where and how to establish “cutoffs” for different gradations of excellence. How much of a certain attribute must a regulator possess to be deemed an “excellent” regulator? Or is it “good enough” just to see improvement over time on the different attributes?

If there is to be a threshold above which a regulator is deemed “excellent” and below which it is not, then someone has to pick that threshold. How should that threshold be determined? As noted already, is it to be an absolute threshold? Or is the better way to approach this more like with a teacher grading on a curve, namely a matter of *relative* performance? If so, what is the relevant comparison group? Unlike students taking an exam in a classroom, not every regulator faces the same exam or the same exam conditions. Should the reference group be other regulators in the same jurisdiction? Or regulators dealing with “similar” problems in other jurisdictions?

If the last of these is the way to grade a regulator, namely to compare a regulator with regulators in other jurisdictions that address similar problems, then questions of attribution of responsibility and causation will again arise. How should one factor in differences in resource levels, overall governmental capacity, and the difficulties of the problem caused by different industry characteristics, demographic, political, geologic, or other environmental conditions -- all which might affect a regulator’s ratings and yet fall outside the regulators’ control?

#### **IV. THE PATH AHEAD**

This report has described what a regulator is and does, as well as has identified the four main ingredients to a regulator’s success: priority-setting, problem-solving, people, and the public. We have reviewed our progress to date through the Best-in-Class Regulator Initiative to pursue a multi-prong strategy of research, engagement, and deliberation around two big questions: How to define, and then how to measure, regulatory excellence? These big questions, we have indicated, also have embedded within them a variety of subsidiary questions. We present a variety of these questions here to invite others’ reflection and comment on them. In the end, we seek to offer answers to as many of these questions as possible. We recognize, of course, that their answers may not be the same for every regulator, but we are confident that regulators everywhere – and the publics that they serve – will benefit by thinking hard about these questions as they manage and measure their pursuit of excellence.

Our ultimate objective is to create a trail map that any regulator can use to move in the direction of the mountaintop of excellence. That map will be based on input from and validated by leading regulatory experts from around the world and informed by intensive deliberations with a diverse individuals and organizational representatives from throughout Alberta. It will not have all the detail that will be needed to make out each trail and stream that might be encountered, but the main landmarks will be there. Of course, as with any map, ours will reveal options, not dictate a specific route. And of course, the regulators who use it will still need to lace up their shoes and put in the effort it takes to travel the distance themselves.

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## APPENDIX B: ATTRIBUTES OF REGULATORY EXCELLENCE

### Alberta Energy Regulator (2014)

1. Protective
2. Effective
3. Efficient
4. Credible

### Australian Communications and Media Authority (2013)

1. Bridging to the Future
2. Transforming the Agency
3. Major program delivery
4. Effective regulation

### Brown, *et al* (2006)

1. Independence
2. Accountability
3. Transparency and Public Participation
4. Predictability
5. Clarity of Roles
6. Completeness and Clarity in Rules
7. Proportionality
8. Requisite Powers
9. Appropriate Institutional Characteristics
10. Integrity

### Environment Canada (2012)

1. Evidence based decision making
2. Effectiveness
3. Efficiency
4. Transparency
5. Adaptability

### Farrell & Goodman (2013)

1. Use of better evidence for decision-making
2. Greater engagement and empowerment of citizens
3. Thoughtful investments in expertise and skill building
4. Closer collaboration with the private and social sectors

### Gardner, *et al* (2013)

1. Accelerating ... strategic goals
2. Using efficient and transparent processes
3. Strengthening capabilities
4. Building expertise
5. Providing customers with cross-functional support
6. Working as a coordinated and cohesive internal team

### Government of Alberta (2010)

1. Effective
2. Efficient
3. Adaptable
4. Predictable
5. Fair
6. Transparent

### Hempling, Scott (2013)

1. Purposeful
2. Educated
3. Decisive
4. Independent
5. Disciplined
6. Synthesizing
7. Creative
8. Respectful
9. Ethical

### Mumford, Peter (2011)

1. Growth supporting
2. Proportional
3. Flexible and Durable
4. Certain and predictable
5. Transparent and accountable
6. Capable Regulators

### New Zealand Ministry of Business, Innovation & Employment (2011)

1. Efficiency
2. Effectiveness
3. Transparency
4. Clarity
5. Equity

### New Zealand Treasury (2012)

1. Growth supporting
2. Proportional
3. Flexible
4. Durable
5. Certain and predictable
6. Transparent and accountable
7. Capable Regulators

### OECD (2005)

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.
2. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.
3. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.
4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.
5. Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.
6. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalization and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.
7. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

### OECD (2012)

1. Commit at the highest political level to an explicitly whole-of-government policy for regulatory quality.
2. Adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation.
3. Establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality.

4. Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals.
5. Conduct systematic programme reviews of the stock of significant regulation against clearly defined policy goals, including consideration of costs and benefits, to ensure that regulations remain up to date, cost justified, cost effective and consistent, and deliver the intended policy objectives.
6. Regularly publish reports on the performance of regulatory policy and reform programmes and the public authorities applying the regulations.
7. Develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence.
8. Ensure the effectiveness of systems for the review of the legality and procedural fairness of regulations and of decisions made by bodies empowered to issue regulatory sanctions. Ensure that citizens and businesses have access to these systems of review at reasonable cost and receive decisions in a timely manner.
9. As appropriate apply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective.
10. Where appropriate promote regulatory coherence through co-ordination mechanisms between the supranational, the national and sub-national levels of government.
11. Foster the development of regulatory management capacity and performance at sub-national levels of government.
12. In developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction.
13. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.
14. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.
15. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.
16. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.
17. Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.
18. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.
19. Identify important linkages with other policy objectives and develop policies to achieve those objectives in ways that support reform.

**Riefberg, *et al* (2013)**

1. Clear articulation of strategy and overall agency direction
2. Well defined operating model based on efficient and effective processes and systems

3. Organizational culture that harnesses the unique talents of employees and steers those talents towards achieving the agency's mission

**Texas Department of Insurance (2011)**

1. Timely
2. Prompt
3. High-quality
4. Efficient
5. Accurate
6. Limited Disputes/Prompt Resolution
7. Cost-Effective

**Treasury Board of Canada Secretariat (2012)**

1. Protect and advance the public interest
2. Advance efficiency and effectiveness
3. Make decisions based on evidence
4. Promote a fair and competitive market economy.
5. Monitor and control the administrative burden.
6. Create accessible, understandable & responsive regulation
7. Require timeliness, policy coherence and minimal duplication

**UK Civil Service (2009)**

1. Set direction (Leadership)
2. Ignite passion, pace and drive (Leadership)
3. Develop People (Leadership)
4. Set strategy and focus on outcomes (Strategy)
5. Base choices on evidence and customer insight (Strategy)
6. Collaborate and build common purpose (Strategy)
7. Innovate and improve delivery (Delivery)
8. Plan, resource and prioritize (Delivery)
9. Develop clear roles, responsibilities & delivery model(s) (Delivery)
10. Manage performance and value for money (Delivery)

**UK Department of Energy and Climate Change (2009)**

1. Set direction (Leadership)
2. Ignite passion, pace and drive (Leadership)
3. Take responsibility for leading delivery and change (Leadership)
4. Build Capacity (Leadership)
5. Focus on Outcomes (Strategy)
6. Base choices on evidence (Strategy)
7. Build common purpose (Strategy)
8. Plan, resource and prioritize (Delivery)
9. Develop clear roles, responsibilities & delivery model(s) (Delivery)
10. Manage performance (Delivery)

**UK Environment Agency (2013)**

1. Proportionate
2. Targeted
3. Customer-focused
4. Consistent
5. Accountable

**UK Food Standards Agency (2005)**

1. Delivering outcomes
2. Practical and timely interventions
3. Consistent, risk-based, proportionate and transparent decision-making
4. Using the market & applying effective incentives & sanctions
5. Continuous learning
6. Delivering value for money
7. Changing the landscape

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