



**PENN PROGRAM ON
REGULATION**

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

Harris Sokoloff

Director, Penn Project on Civic Engagement

Shari Shapiro

Research Associate, Penn Program on Regulation

Cary Coglianesse

Director, Penn Program on Regulation

Rapporteur's Report from the
Penn Project on Civic Engagement-
Penn Program on Regulation
Aboriginal Dialogue on Regulatory Excellence
March 26, 2015 · Edmonton, Alberta

May 2015

Best-In-Class Regulator Initiative

Summary Report: Aboriginal Dialogue on Regulatory Excellence March 26, 2015 · Edmonton, Alberta

Harris Sokoloff
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Cary Coglianesse

This report summarizes a one-day dialogue about regulatory excellence among members of Aboriginal communities throughout Alberta. The dialogue, held on March 26, 2015, at the Sawridge Inn and Conference Center in Edmonton, Alberta, was part of the Penn Program on Regulation's Best-in-Class Regulator Initiative, supported by the Alberta Energy Regulator (AER). The dialogue was organized and facilitated by the Penn Project on Civic Engagement, directed by Dr. Harris Sokoloff, and it served as an important part of the public outreach component of the larger initiative seeking to identify and facilitate best regulatory practices.

Our purpose in convening the day of dialogue was to provide a forum for the expression of a broad range of Aboriginal perspectives on regulatory excellence. The dialogue was not a formal consultation between the AER and participants, nor was it a search for consensus among the participants. Instead it aimed to contribute to a larger research project by a team at the University of Pennsylvania by generating ideas about what constitutes regulatory excellence and how regulators can credibly demonstrate progress toward excellence.

The dialogue was well represented with Aboriginal participants coming from each of the three First Nation treaty areas in Alberta (Treaty 6, Treaty 7, and Treaty 8), as well as from two Métis organizations (the Métis Nations of Alberta and the Métis Settlements General Council). The Indian Resources Council was represented, and the Indian Oil and Gas of Canada CEO attended. Several representatives from the AER, including its President and CEO, Jim Ellis, observed the group discussions thereby enabling a firsthand sense of the perspectives and concerns expressed. A complete list of participants can be found in Appendix A.

We asked participants to share their views on the characteristics, practices and outcomes of a "best-in-class" regulator, as well as to provide recommendations for how to evaluate a regulator's success in achieving these criteria. Although the Best-in-Class Regulator Initiative aims to develop a general model of 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 interested in participants' views about AER as a means of helping us to ensure that our general model would work in Alberta and so that we could see what participants' thoughts about AER's performance revealed about the goal of regulatory excellence.

Following introductions, the day’s dialogue was divided into two main sessions. The first focused on identifying attributes of an excellent regulator, while the second focused on methods and measures to use in determining the success of a regulator. (See Appendix B for an agenda of the dialogue.)

The two main sessions each followed the same basic structure. We started with a brief presentation by members of the Penn team which provided a brief introduction to the focus of that session and an overview of some of what we had learned from other parts of our research. We then divided into three smaller groups, each of which was led by a facilitator from either the Penn Project for Civic Engagement or the Penn Program on Regulation (Harris Sokoloff, Shari Shapiro, or Ted Enoch). We ended each session with a plenary discussion of common ideas.

Each facilitator took notes of the session they facilitated in order to capture the ideas expressed. In addition, each session was supported by a designated staff member (Marie Delorme Founder and CEO of The Imagination Group; Bruce Gladue, AER’s Director of Aboriginal Relations; or Arlette Malcolm, an AER Aboriginal Relations Specialist), who took responsibility for communicating key small group ideas to Michele Anderson of Visuals@Work who completed an ongoing graphic reporting of the small group work. (See Appendix C for a copy of Ms. Anderson’s report, which contains the graphic illustrations she produced.)

Notes were taken without any aim of attributing specific ideas to specific individuals. In other words, any idea expressed in this report should not necessarily be ascribed to any particular individual or organization represented at the dialogue. 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.

Attributes of Excellence

Three major themes about what constitutes regulatory excellence emerged from the day of dialogue:

- Establishing credibility through a fair, inclusive, and transparent process
- Building and maintaining relationships of trust and reciprocity
- Ensuring clear and consistent lines of reciprocal communication

Most participants seemed to think that an excellent regulator is defined as one that has earned credibility, built trusting and reciprocal relationships, and maintained clear, regular communication. We begin by summarizing these themes and elaborating on each by including key points raised in the dialogue that relate to each theme.

A. Establishing credibility through a fair, inclusive, and transparent process

Credibility was a theme sounded and raised repeatedly throughout the day. A number of participants maintained a “wait and see” position, holding out to see how effective the dialogue

process itself would really be in terms of credibility. Credibility, participants emphasized, can only be built through consistency and trust, each of which takes time. Credibility is also supported through high-quality relationships, a theme which is addressed later.

Participants expressed the following specific ideas about building and maintaining credibility:

- All Aboriginal groups as well as various stakeholders should have the ability and resources to present their case and respond to the case and presentations of others in a regulator's proceedings.
 - Outreach should be inclusive to create collaboration.
 - Processes should be inclusive and representative of all affected parties.
 - Adequate resources/capacity should be provided to ensure meaningful Aboriginal participation in regulatory processes.
 - Reasonable time frames/timelines should be provided, with particular sensitivity given to any challenges Aboriginal leaders can have in interacting with members of their communities. Decision-making (including how to respond to something) often takes time in Aboriginal communities to work through different levels of review.
- Regulatory processes should make common sense and be thoroughly unbiased.
 - Processes should be clear to all possible participants.
 - Processes should be led by a regulator without bias or conflicts of interests, and all conflicts of interests should be made explicit to all those involved in the processes.
 - Clarity should be provided about the role of the regulator vis-à-vis other governmental bodies that may have relevant authority.
 - Processes should include a joint review committee that reviews the adequacy and meaningfulness of consultations.
- Regulators should provide explicit acknowledgement and consideration of trade-offs
 - What the process is about should be explained to all, including what authority the regulator has to address specific aspects of concern.
 - Excellent regulators will acknowledge upfront the choices and any competing tradeoffs that it faces.
- Regulatory processes should be transparent. Transparency includes:
 - Clear and public standards for decision making (for the processes and for the outcomes).
 - Decisions that are announced in an easily available and understandable fashion.
 - Clear explanations of decisions that include:
 - What the decision was
 - The process that led to that decision
 - The reasoning for that decision (e.g., how trade-offs were addressed, responses to concerns and criticisms)
- Participants expressed a desire for meaningful Aboriginal representation on AER's board.

B. Building and maintaining relationships of trust and reciprocity

For many participants, building trusting relationships came down to “common sense” about how people should be treated. An excellent regulator should be honest and respectful in all of its interactions with members of the public to which it is supposed to serve. It should show an understanding of and empathy towards people from different cultures and ways of living.

Some participants thought the AER and the Alberta government could do much to improve their relationships with Aboriginal communities. One concrete step that was suggested was for a regulator to assign dedicated representatives who could engage repeatedly with Aboriginal groups over time, rather than having such groups need to deal with a shifting cast of regulatory agents. Another concrete suggestion was for a regulator’s agent to follow up and report back to a community about concerns whenever the agent does not immediately have a sufficient answer to a community question or issue.

Some of the key characteristics of a regulator that builds and maintains trusting relationships included:

- An excellent regulator should be truthful.
- Mutual respect and trust needs to be earned via:
 - Respect for different cultures and different Aboriginal communities
 - Collaboration on creating regulatory processes that will affect community members
 - Meaningful collaboration over life cycle of a project
 - Partnership in all phases of a project
- An excellent regulator demonstrates knowledge of important cultural values and modes of thinking.

C. Ensuring clear and consistent lines of reciprocal communication

This third theme overlaps with the previous two in that its key attributes include clarity, transparency and consistency of message and of relationships. Participants emphasized that the communication an excellent regulator engages in should speak to everyday people about their clear everyday concerns, and it should avoid legalistic and industry-related jargon.

Other ideas related to effective communication included:

- The key to effective communication is for a regulator to (a) listen, (b) learn, and (c) educate.
- An excellent regulator should provide proactive and early communication.
- In dealing with Aboriginal communities, an excellent regulator needs to be aware of and sensitive to Aboriginal methods and norms of communication. Not everyone has email, and even regular mail can be very slow.

- An excellent regulator should use language that is easy to understand by all parties.
- Effective communication must include feedback cycles and follow-up.
- A regulator should work to develop explicit and co-produced communication lines between itself, affected Aboriginal communities, and industry.

D. Other ideas about regulatory excellence

In addition to the three main themes about credibility, trusting relationships, and effective communication, various participants expressed a number of other concerns that reveal important values that an excellent regulator should consider.

- An excellent regulator gives explicit recognition of treaty rights.
- An excellent regulator shows leadership and fills in regulatory and inter-agency gaps.
- An excellent regulator engages in effective enforcement, uses clear and fair processes, and takes advantage of possible dispute resolution mechanisms.
- An excellent regulator accepts responsibility and ensures accountability. It doesn't shift responsibility or blame to another department or regulator.
- An excellent regulator considers the cumulative impacts of its decisions.
- An excellent regulator balances benefits of economic activity with its negative impacts.

How to Determine Success?

After the participants discussed the attributes or characteristics of regulatory excellence, they focused on finding ways for a regulator to determine how it is doing in its quest to achieve excellence, including how it might credibly show others how well it is doing. The means of determining success discussed by participants can be organized around each of the three main attributes of excellence identified by participants.

A. Establishing credibility through a fair, inclusive, and transparent process

Collectively, the dialogue participants identified a variety of metrics and methods for determining how well a regulator is doing in terms of establishing credibility and ensuring transparency. Some possible metrics and methods included:

- Fewer lawsuits, disputes, and adversarial engagement
- Fewer complaints and improved relationships
- Environmental violations stop or at least decrease
- Independent audits validate fairness and inclusiveness (and lack of bias) in processes

More extensively, the participants presented ideas that form a series of questions that a regulator (or its independent auditor) should ask in determining how well the regulator is doing in terms of maintaining transparency and building credibility:

- Are Aboriginal peoples engaged early and meaningfully throughout the lifecycle of projects?
- Are the right people at the table for different stages of a regulatory process?
- Are subject matter experts, including aboriginal experts, used in proceedings?
- Are process timelines adequate for meaningful participation and for project implementation?
- Are the status and progress of regulatory proceedings made clearly and easily available to the public?
- Are all relevant data provided to the public in a manner that is accessible and verifiable?
- Are reasons for decisions provided?
- Are conflicts of interests reported?
- Are minutes of all meetings easy to find? Do they provide detail and reasons for decisions made?
- Do regulatory processes demonstrate clear knowledge about Aboriginal rights, interests, culture and values?
- Is the regulator devoting an adequate amount of resources to ensure meaningful Aboriginal participation?
- Are the socio-economic impacts and benefits of projects balanced so that benefit to the community is proportional to the benefit to the developer? Furthermore, do populations that experience large shares of negative impact also experience large shares of benefit?
- Are policies and practices consistent over time, even in the face of shifting political developments?
- Are penalties collected for violations used to give benefits back to communities adversely affected?
- Is monetary security provided by companies sufficient to restore potential environmental damage?

B. Building and maintaining relationships of trust and reciprocity

The dialogue similarly raised a series of questions that could be used to assess how well a regulator is doing in terms of building trusting relationships.

- Does the regulator provide a balance of representation on all boards and panels? Specifically, does it provide for Aboriginal representation and participation on boards and panels, including those that lead to the design and assessment of impact studies and mitigation?
- Are Aboriginal representatives treated on equal footing with industry when it comes to regulatory decisions and outcomes?
- Does the regulator provide fair and meaningful collaboration over the life cycle of projects?
- Do representatives from the regulator come talk with community leaders and members at each step of a project's process? How clearly and authoritatively do the regulator's representatives speak with respect to issues of concern to the public? If the representative does not know an answer to questions, does the representative find out and report back?
- Does the regulator observe recognized Aboriginal mechanisms when convening meetings?
- Does the regulator seek regular input from various segments of the public on its performance (e.g., a routine report card)?
- Does the regulator proactively solicit public input, including input from Aboriginal groups on all projects (not just when legally required)?
- How focused is the regulator on building and maintaining trust and respect?

C. Ensuring clear and consistent lines of reciprocal communication

In terms of a regulator's performance in communicating with the public, participants provided a variety of possible metrics and questions for evaluation.

- The regulator provides accurate information and feedback that responds to concerns
- Communication provided is culturally relevant
- Communication is multi-faceted and includes aboriginal mechanisms
- Clear explanations, timelines, and accountability are part of all mitigation efforts

- The regulator provides information on all aspects of work: projects, violations, inspections
- Reporting of incidents and follow-up is timely, thorough, and robust
- The regulator is candid about risks – acknowledging “bad news” and seeking to educate (not merely “report”) about risk
- The regulator produces and provides a clear public statement of benefits and adverse impacts when assessing all projects
- The regulator communicates about and addresses *all* impacts (especially cumulative effects)
 - Plans for amelioration of negative effects
 - Plans included monitoring for a full suite of indicators on health to animals, people, and plants (not just hunting, fishing, trapping)
 - Plans for future are considered and cumulative effects are anticipated

Conclusion

Over the course of the day-long dialogue, participants offered numerous valuable insights about what constitutes regulatory excellence. Participants recognized the substantive goals that a regulator like the AER should seek to achieve, even if some of these goals are at times in tension with other goals. In grappling with regulatory tradeoffs and seeking to advance a public-oriented mission, the excellent regulator, as reflected in much of the day’s discussion, pays careful attention to how it manages social relationships even at the same time that it seeks to solve technical problems. An excellent regulator, participants seemed to say, is one that knows how to relate well to the various members of the broader public it serves, including individuals and communities from a variety of cultural perspectives. In pursuing excellence, then, a regulator needs to do more than just solve problems; it needs to do so in a way that builds and maintains its credibility with the public and fosters trusting relationships with interested and affected individuals and organizations. It can achieve both of these attributes of excellence – credibility and trust – by communicating effectively and empathically with all those affected by its decisions.

APPENDIX A: DIALOGUE PARTICIPANTS

- Michele Anderson, Visuals@Work
- Alden Armstrong, Executive Director, Métis Settlement General Council
- Nick Bourque, Business Development Officer, Métis Nation of Alberta
- Karla Buffalo, Fort McKay First Nation
- Karin Buss, Fort McKay First Nation
- Tim Church, Vice President National/International Relations, Alberta Energy Regulator
- Strater Crowfoot, CEO, Indian Oil and Gas Canada
- Stan Delorme, Vice President, Métis Settlement General Council
- Dr. Marie Delorme, The Imagination Group
- Jim Ellis, CEO, Alberta Energy Regulator
- Ted Enoch, Facilitator, Penn Project for Civic Engagement, University of Pennsylvania
- John Ermineskin, Elder, Ermineskin First Nation
- Tyler Fetch, Associate Director, Métis Nation of Alberta
- Bruce Gladue, Director, Aboriginal Relations, Alberta Energy Regulator
- Larry Knaida, Indian Resource Council
- Arlette Malcolm, Aboriginal Relations Specialist, Alberta Energy Regulator
- Darren Manyheads, Siksika First Nation
- John McDougall, Pikini First Nation
- Annette Ozirny, Kehewin First Nation
- Alan Paul, Councillor, Alexander First Nation
- Bob Phillips, Community Liaison Officer, Métis Nation of Alberta
- Alvaro Pinto, McKay Sustainability Group
- David Shade, Indian Resource Council
- Shari Shapiro, Esquire, Project Manager, Best in Class Regulator Initiative, Penn Program on Regulation, University of Pennsylvania
- Harris Sokoloff, Ph.D., Director, Penn Project for Civic Engagement, University of Pennsylvania
- Dustin Wolfe, Pikini First Nation

APPENDIX B: AGENDA



PENN PROGRAM ON
REGULATION



BEST-IN-CLASS REGULATOR INITIATIVE ABORIGINAL DIALOGUE

Thursday, March 26, 2015

8:30 am - 3:30 pm

Breakfast, lunch and refreshments will be served

Sawridge Inn and Conference Centre Edmonton South – Wildrose Room

4235 Gateway Blvd. N, NW

Edmonton AB, T6J 5H2

8:30 a.m. Registration, sign-in, continental breakfast

9:15 a.m. Welcome, opening prayer, introductions, opening comments

Small Group Discussion Part 1: Goals and qualities/attributes of excellent regulators

Objective: For each group to develop 3, 4 or 5 qualities of an excellent regulator – what they do and how they do it.

Plenary discussion of what we can learn from our small group discussions

Lunch Break

Small Group Discussion Part 2: How to evaluate whether a regulator is excellent

Objective: For each group to develop 3, 4 or 5 ways/measures to determine whether a regulator is doing an excellent job

Plenary debriefing of what we can learn from our small group discussions on evaluating the work of regulators

Closing

- Summarize what we've learned/heard
- Next steps and how this will all be used

3:30 p.m. Adjourn

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