

CAMPUT Conference 2015

Monday's Day in Review

Willie Grieve:

Willie provided a brief overview of the history of regulation in Canada and reminded us of the principles of public utility regulation. He took us back to the Code of Hammurabi in ancient Mesopotamia and reminded us that we regulate essential services over which the service provider has a monopoly. And, as is his way, brought us back to the Magna Carta to remind us about the regulatory bargain and the need for the independence of regulatory agencies. He then set the tone for the remainder of the day by setting out the emerging challenge for regulators to find our role "as competition nibbles at the edges of monopolies or consumes them completely".

Mark Jamieson:

Reminded us of the two most important learnings from the frontier of energy regulation in England

- Get the economics right – get the right information, get the incentives correct
- Get the politics right – get the leadership role correct as a regulator

Part of his message that I found particularly compelling is the idea, as regulators, what we do will likely be flawed, because regulated prices and terms and conditions are stagnant, but circumstances change. **We have to be prepared to be embarrassed.** Perhaps what we can take from that is the idea that effective regulation cannot attempt to generate a precise outcome. Controlling the companies is just too complicated. Getting the incentives right is really of objective of the exercise. And to do that, our job is to "stand between politics and investment" in Mark's words, by taking a leadership role and building trust in the regulatory system.

Mark also told us that, as regulators, our job is to "disappoint people at a rate they can endure". I was reminded that, as regulators, we are being asked to pick winners and losers. And, I will come back to this theme later.

A View to the Future - Challenges that Lie Ahead

Mark Jamieson's talk led nicely into the next two panels. The first panel looked at the future of regulation and asked the question "How much time do we have to adapt?" **Bruce Campbell** gave us the view from the Ontario IESO, and shared some examples of how technology is changing the landscape. We were reminded that you can never hope to get in front of market forces, the best you can do is try to stay out of the way.

Don Romaniuk got out his crystal ball and predicted that 100 years from now, there may be no electric utilities, no monopolies in distribution, transmission or generation and no need for regulation. I was heartened to realize that if I live another hundred years, I will be out of a job, and I can finally retire. The other intriguing thing Don mentioned was that he talks to his fridge. I was not quite sure what to make of that.

Lisa Polak Edgar reminded us that bureaucrats do not deal with uncertainty very well. And if we turn to the classic technique of asking what consumers want, she cautioned us that the dynamic is changing in a world of sound bite communications. We perhaps were left questioning how we can distance ourselves from the noise and stick to the facts before us to adopt sound public policy?

Social License to Regulate

Our next panel tackled the thorny matter of the regulator's social license to regulate. **Peter Robinson** argued that we can't apply what we have learned in the past to the future, because each generation starts from a new point in

time and creates new social norms. He questioned whether the expectation of regulation is indeed changing, to one where our role as regulators is to protect the interests of people and communities that may be impacted.

Rowland Harrison argued that the very concept of social license is contrary to the rule of law. And perhaps the role of regulators is to grant social license by determining the public interest. And, in so doing, we earn and maintain our legitimacy.

Paul Boothe suggested that government failure to protect the environment has undermined the legitimacy of the regulatory process.

The moderator of this session, **Michael Cleland** brought the discussion around to the question of “How to restore confidence in the regulatory process? “

I was reminded of a scene from a Star Trek movie that you have probably all seen. Mr. Spock is dying, as he says “Jim, the needs of the many outweigh the needs of the few.” I always thought that our role as regulators is to decide when, and to what extent, the needs of the many outweigh the needs of the few, and at what costs. That is our role in determining the public interest.

Again, I was reminded that we are being asked to pick winners and losers. And if we are to restore confidence in the regulatory process, we have to be mindful of the losers, more than we are mindful of the winners. ON that note, one of the most important pieces of advice I received when I took this job was to remember that, when writing a decision, I am writing for the losers – not for the winners. The winners only care that they won, the losers want to know why they lost. They want to understand how our decisions were made and why. And, if we can do a good job of explaining our reasons to the guy whose ox has been gored, we can go a long way to restoring confidence in what we are doing.

What is the Future of Regulation

The final session of the day was about the future of regulation. This panel discussed at some length the idea that we should be measuring what we do, as regulators, to decide if we measure up; if we are “world class.” This is pretty classic business school stuff, applied to what we do, and there is nothing wrong with the idea. We can certainly find operational benchmarks to measure how fast we are processing application or whether we are spending money effectively, from a purely operational perspective. Indeed, I suspect we all do that. But, are there any benchmarks to measure whether we are getting the right public interest outcomes. Those, in my mind, would be the right benchmarks to look at, but I am doubtful we can establish any such benchmarks.

I am looking forward to today’s sessions. I hope you will find them interesting and thought provoking.

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