A Critical ConversationTM

The Path(s) to Regulation 2.0

A Report on the Event Proceedings of a Critical Conversation on Regulatory Regimes – Past & Present

*The whole [regulatory] process was designed to be linear and mechanistic following a strict top-down approach, but such an approach is no longer feasible. Given the Fourth Industrial Revolution’s rapid pace of change and broad impacts, legislators and regulators are being challenged to an unprecedented degree. How then can they preserve the interests of consumers and the public at large while continuing to support innovation and technological developments that is creating the problem? This means regulators must continually adapt to a new fast changing environment. Reinventing themselves so they can truly understanding what it is they are trying to regulate.*

Calum Carmichael, April 12, 2016

Tuesday, April 12, 2016, 8:30 a.m. to 12:30 p.m.

Senate Room, 6th Floor Robertson Hall, Carleton University

**Contents**

Introduction 3

Agenda 3

Presentations 5

Reflections on Regulatory Regimes: Present & Future 5

Volkswagen Scandal: Implications for the Regulatory Regime Philip 6

Post-Crisis Reflections 7

Roundtable Discussions Process 8

Key Themes and Ideas 8

The Approach 9

Technology and Information 9

People 10

Annex 1: Speakers’ Biographies 11

Annex 2: Themes and Issues from Roundtable Discussions 12

# Introduction

Governments have three core responsibilities -- To tax, spend and regulate. Over the years, there has been a wealth of commentary about the taxing and spending practices of governments, but regulation gets minimal attention. While many governments have achieved high levels of transparency around their taxing and spending systems; the costs of developing and implementing regulatory regimes remains poorly understood and difficult to measure. As the global financial crisis of 2007-8 or the more recent Volkswagen scandal serve to highlight, regulatory regimes can attract significant public attention …when they fail.

Carleton University’s Regulatory Governance Initiative (RGI) seeks to have a direct impact on enhancing the effectiveness of regulations. With a focus on regulatory policy, governance and management, the RGI adopts a holistic and problem-driven approach. The idea of RGI’s *Critical Conversation* event series is to select a topic that is timely and significant, invite people from a variety of perspectives, backgrounds and interests into a room to have the type of conversation that pushes the boundaries of current thinking on policy and regulation – To have the discussions about regulation that we need to have, but rarely have the opportunity to do. On April 12, 2016, the RGI hosted *Critical Conversation: Reflections on Regulatory Regimes – Present and Future.*

This event summaryseeks to capture the key themes that emerged during this discussion and to draw out core ideas that can prompt further dialogue and serve to further clarify the path(s) forward.

# Agenda

8:30 a.m. Opening Remarks by Dr. Calum Carmichael**,** Director of the School of Public Policy and Administration, Carleton University

8:40 a.m. Review of Agenda by Dr. Robert Slater, Director, Regulatory Governance Initiative

8:45 a.m. Presentation: Reflections on Regulatory Regimes: Present & Future by Dr. Robert Slater and Michael Presley

9:05 a.m. Presentation: Volkswagen Scandal: Implications for the Regulatory Regime by Kassem El Saddik

9:20 a.m. Presentation: Post-Crisis Reflections by Vlasios Melessanakis

9:35 a.m. Speaker Plenary Discussion

10:50 a.m. Roundtable Work

11:40 a.m. Rapporteurs Report by Dr. Allan Maslove

12:00 p.m. Plenary Discussion

Speakers’ biographies are provided in Annex 1.

# Presentations

In order to stimulate discussion, the session began with three presentations that introduced different perspectives, issues and ideas related to the challenges facing regulatory regimes in Canada and internationally.

## Reflections on Regulatory Regimes: Present & Future

Dr. Robert Slater and Michael Presley’s presentation provided highlights from their discussion paper: *Reflections on Regulatory Regimes Past and Present*. In particular, they focused their presentation on three key components: 1) Management practices, 2) the players involved in regulatory systems, and 3) the growing importance of the social licence needed to regulate.

*Management practices*

With regard to the management of regulatory systems, Mr. Presley first discussed the fundamental complexity of running a regulatory regime. He emphasized that regulations and regulatory systems generally receive the greatest attention at the design stage, but do not receive appropriate scrutiny as they go through to implementation, review and adjustment. And yet, he argued that real regulatory management is about execution and understanding the whole lifecycle of a regulation from design and implementation to monitoring and review. He also discussed the challenges of implementing modernization strategies that are currently underway across the Government of Canada. Generally speaking, this involves a shift from prescriptive to outcomes-based management approaches, but also requires that regulatory systems are tailored to specific contexts and acknowledge the importance of the cultures of both the regulators and the regulatory system being managed. Mr. Presley proposed that regulatory regimes need to integrate risk management and adaptive management practices to provide the flexibility and learning necessary to support robust regulatory regimes.

The culture of the organizations you are regulating is also an important factor – recognizing the fundamental values of the regulator and the community or communities being regulated. Those values have to be at the centre of any change management strategy to be successful. Mr. Presley pointed out that “culture eats strategy for breakfast.” He argued that regulatory management is fundamentally risk management – you can’t eliminate risk, you have to manage it. This involves looking at the consequences of an event and the probability of it happening. Mr. Presley used the example of the need to have very different strategies for regulating nuclear safety than ice wine. One element of risk management is to differentiate between reactive versus preventative strategies. An innovation is preventative strategies such as stress testing the regulatory system. He advised that this is something that could be applied more widely in our regulatory systems. Another innovation that could be used more is predictive analytics. Finally, adaptive management is a third innovation – It combines regulation with monitoring to ensure that rules are adapted in keeping with the results achieved or not achieved as the case may be. It’s an iterative process. This is and a strategy commonly used in fisheries management.

*Multiple players*

Mr. Presley went on to point out that there is a stereotype of the regulator as detached, but good regulation is about being engaged. Modern regulation depends on relationships between multiple players, including the collaboration and coordination of multiple levels of government within Canada (municipal, provincial and federal), alignment and integration between states, and the growing role of the private sector and civil society in regulatory systems. Overall, today’s regulators have to work in more complex environments than in previous decades.

*Social licence*

Dr. Slater explained that it used to be that for an enterprise to be launched, you needed two types of licences: financial/commercial and government. Dr. Slater argued that now, you also need to secure a social licence. In other words, social issues must be resolved before a regulatory organization can do its part. He explained that this newest form of licence is growing in importance, but it is imperfectly understood. It can be looked upon as public trust to act in the public interest as some have suggested. It is the “stuff of nation-building.” For example, if you are Enbridge, you might have all the necessary formal approvals, but not the social licence for a large project. And without this approval, a project can be hung up or stalled by the Courts or well-orchestrated public opposition. You can blame the regulatory system for its processes, but this is rarely the full explanation. In fact, it is better to recognize that the “ground was not properly tilled” to allow the regulatory process to come to completion.

Overall, Dr. Slater points out that through improved management of Canada’s regulatory systems, there is an opportunity to create a comparative national advantage internationally for investments because the country has its regulatory “house in order” and a skilled workforce. He pointed to the strength of Canada’s financial sector during the 2007-8 crisis as an example and encouraged the group to consider opportunities that exist for other sectors in Canada to play a similar role.



For the full paper, please see:

<http://carleton.ca/rgi/wp-content/uploads/Critical-Conversation-2016-Discussion-Paper.pdf>

## Volkswagen Scandal: Implications for the Regulatory Regime

Kassem El Saddik introduced the case of Volkswagen to consider the implications of its “emissions scandal” on the regulatory regime. He began by providing important context on the evolution of the automotive industry and then focused in on Volkswagen and its rapid and ambitious growth.

Mr. El Saddik provided details of the evolution of the regulatory systems in the United States and Canada related to emissions – paying particular attention to how the global emissions scandal unfolded. He also pointed out that Volkswagen was not the first company to violate emissions standards or take advantage of weaknesses in the laboratory test conditions. Therefore, he dedicated particular attention to highlighting the important role played by the media in framing and fueling the “scandal.” He then went on to emphasize the scandal’s impacts on financial, liability, management and customer trust in (1) Volkswagen vehicles, (2) the German band and (3) diesel vehicle technologies in general. He finally brought into question the adequacy of the current regulatory regime and its enforcement.

Mr. El Saddik concluded by proposing key features of a “performance-based” regulatory framework that should be considered in the future, including:

* Ensure public interest not just private interest
* Have effective systems and processes of transparency and public accountability
* Meet statutory objectives
* Ensure and maintain a higher level of trust between the regulators, regulated and the general public.



## Post-Crisis Reflections

Vlasios Melessanakis offered his reflections on the financial regulatory system in Canada – reflections he proposed could offer valuable insights for other sectors. He began by explaining that the 2007-8 financial crises was by far the worst that the world had ever seen; however, Canada faired better than most specifically because of some of the features of its regulatory system. Subsequently, Canada has had a chance to share its regulatory approach with other countries to encourage them to adopt similar regulatory features and do work to further refine its system based on lessons learned. Overall, Mr. Melessanakis observed that we live in a very different world where financial crises are bigger, faster, more complex and potentially more frequent. He suggested that a similar crisis will happen again, so the real questions are how prepared we will be and how we will manage it.

For regulators, Melessanakis offered specific lessons along two tracks – the “going concern” and the “gone concern.” The “going concern” involves the day-to-day work of regulators to monitor and supervise the financial system and this is 99% of the work. The “gone concern” involves work associated with assuming that the system will fail and considering what powers and tools are needed to respond and how you will respond in different scenarios.

Based on lessons learned, Mr. Melessanakis proposed that the “going concern” system needs to include early intervention powers and access to information to support evidence-based decision-making because once you are in a crisis, it is no longer just an economic issue but an issue of psychology. The regulatory system also has to be risk-based. The reality is that the financial sector is made up of companies that are “too big to fail”; therefore, it is critical to recognize this up front and structure the system accordingly. In these circumstances, the regulatory measures and standards must be higher and stricter. He noted that this is now an approach that has been adopted internationally for the financial sector. Mr. Melessanakis suggested that there are other sectors (e.g. housing) that are intimately linked and must be carefully monitored as well.

Mr. Melessanakis further indicated that day-to-day, on-the-ground supervision and monitoring of businesses (including affiliates and subsidiaries) is key and that this supervision should be consolidated across jurisdictions (e.g. through supervisory colleges). Regulators need to have regular opportunities to share and compare information. Finally, regulators need to keep their eyes on the shadows. The 2007-8 crisis was caused by activities outside of the regulated banking sector, so there is a lot that can occur in the shadows that have an impact on the banking sector. In other words, there needs to be regular intelligence gathering about players and activities that can affect the sector. He pointed out that this can be counter-intuitive as regulators because we have been taught to focus only on our mandate.

The newer element is to focus on “gone concerns.” In particular, using the experience of the 2007-8 crisis to assess the tools, powers and structures available versus needed to respond to crisis; developing recovery and resolution plans and multi-jurisdictional crisis management groups; and conducting crisis simulations with firms and regulators to assess preparedness.



# 

# Roundtable Discussions Process

Following the presentations, participants were invited to engage in small group discussions. To take full advantage of the diverse perspectives and expertise in the room, a mix of participants were assigned to each table and asked to **identify the top three priorities for management improvement to achieve higher efficiency and effectiveness in regulations.**

Seven small group discussions took place and each group shared their group’s priorities with the plenary. All participants were then asked to vote on the proposed priorities that they felt were most important. The results of the small group discussions and the voting process are presented in Annex 2.

Dr. Allan Maslove was then invited to summarize and comment on the common themes he observed during the session and the priorities identified by the groups. The session concluded with a final plenary discussion.

# Key Themes and Ideas

Based on Dr. Maslove’s concluding comments and the plenary discussions that took place, there were three core themes identified when considering the future of Canada’s regulatory regimes: the approaches to regulating, use of technology and information, and the people who regulate. This section captures the ideas, issues and questions raised throughout the session under each of these themes.

## Approach

During the session, there was a recognition that there has long been a perception that regulatory regimes are rigidly rules-based and difficult to change. While the participating experts agreed that this perception is outdated, there was also a recognition that more work can be done to ensure that regulatory regimes are more effective and responsive. At its foundation is the need for risk-based approaches to how regulations are designed, implemented and monitored. It is also critical to maintain a clear sense of the goals of regulating. It was recognized that a risk-based approach to regulation will help to inform the regulatory toolbox available to policymakers and regulators. Some regulations need to be highly prescriptive; while others can adopted more flexible and open designs. Furthermore, the information collected by regulators and the regulated throughout the implementation and monitoring of a regulation should be used to inform continuous improvement of policies and regulations throughout their lifecycle.

There was also extensive discussion about the importance of harmonizing regulations at the local, provincial/territorial, federal, regional and international levels. This was seen to translate into a need for better, more regular communication and cooperation across jurisdictions to support understanding by regulators, the regulated and the public. There was also a recognition that many regulatory regimes could benefit from partnerships with a broader range of stakeholders – from business to NGOs and communities.

Similarly, participants discussed the need for strengthened relationships between regulators and policymakers. Regulations bring policies to life, but often the necessary feedback loops are poor or nonexistent. Therefore, it is critical to make the commitment to respond to feedback received through the monitoring of the regulatory regime.

## Technology and Information

The changing world of information and information technologies was another prominent theme throughout the session. Initially, this involved a discussion about disruptive technologies and how these can rapidly and fundamentally transform what is regulated and how best to regulate. This raised many questions about regulating in a world of unknowns. What do you do when you don’t have sufficient information to make an evidence-based decision? How can management keep up? How can the management of regulation be organized so that regulation can keep up? What management systems would best do that?

Participants also discussed the many opportunities now available to overcome information barriers through access to information from multiple sectors and jurisdictions. The advantages of harnessing this information to inform the development, implementation and monitoring of regulatory regimes was well recognized by the group. The power of using technology to better harness this information was discussed, as were the challenges of regulating in a globally connected environment and an era of rapid change.

## People

The final theme that emerged during the session was the people involved in a regulatory regime – both the regulators and the regulated. Participants emphasized that is was important to understand the values and culture of the people involved in a particular regulatory regime and consider the implications for the regulatory toolbox that is available. Establishing trust among regulators, the regulated and the public is also essential to ensure that a regulatory regime has the social licence necessary to function effectively.

In addition, the group discussed the depth of experience and knowledge that exists within the regulatory community. People tend to stay in the community throughout their careers; therefore, more effort must be put into building the capacity of regulators both through traditional training, but also through networks of learning and sharing both within and across regulatory regimes. There was a recognition that regulators need to be empowered with the necessary tools, skills and authorities to do their work. Finally, there was an acknowledgement that the community of regulators in unlikely to grow. As a result, decisions need to be made about how and where to use their capacity.

# Annex 1: Speakers’ Biographies

|  |  |
| --- | --- |
| Calum 2014 TN  Opening Address | **Dr. Calum Carmichael** is the Director and Associate Professor at the School of Public ‎Policy and Administration. He holds a BA in Economics and Political Science from ‎the University of Western Ontario, and a Masters in Public Affairs and Doctorate ‎in Economics from Princeton University.  Since completing his doctorate, Professor ‎Carmichael has conducted research in a range of fields, including trade policy and ‎monetary policy. Most recently, he has studied ways in which governments ‎encourage or regulate the financial contributions that individuals and ‎corporations provide charitable activities and non-profit organizations.‎ |
| Speaker & Facilitator | **Dr. Robert Slater** is an Adjunct Professor and Senior Distinguished Fellow in Environmental Policy at Carleton University and is the Executive Director of the Regulatory Governance Initiative. He is also President of Coleman, Bright and Associates, a consulting firm that operates internationally specializing in Sustainable Development issues, and a Senior Fellow with the International Institute for Sustainable Development.  Dr. Slater occupied several senior positions during a 32 year career at Environment Canada and was the Senior Assistant Deputy Minister for eight years. He was instrumental in establishing the National Roundtable on the Environment and the Economy, the International Institute for Sustainable Development and the UNU Institute for Water, Environment and Health.  He was appointed a Member of the Order of Canada in 2009. |
| Speaker | **Michael Presley** was the Assistant Secretary, Regulatory Affairs, Treasury Board Secretariat of ‎Canada from 2009 to 2014 before retiring from the public service to assume the duties of the ‎Director, Certificate Program in Regulatory Leadership at the University of Ottawa. Prior to being ‎appointed Assistant Secretary, Michael was the Executive Director of Regulatory Affair, TBS. At TBS, ‎his team was responsible for challenging departments to design regulatory proposals submitted for ‎Governor in Council approval to ensure they complied with the Government’s direction in terms of ‎federal-provincial alignment, international cooperation and minimization of burden on industry ‎while maximizing cost-benefit ratios. He also presented more than one thousand regulatory ‎proposals to Treasury Board for approval. ‎ Much of Michael’s career prior to joining TBS was spent at Agriculture and Agri-food Canada (from ‎‎1993 to 2007) and at Transport Canada (from 1986 to 1993). He began his career at the Public ‎Service Commission (1984 to 1986).‎  Michael completed his political science and international studies undergraduate degree at Queen’s ‎University in 1982 before completing a Masters in Public Administration degree at ‎Carleton ‎University in 1984. Later in his career, he was a graduate of the first cohort of the ‎Certificate ‎Program on Public Governance and Leadership at the University of Ottawa’s Odell House.‎ |
| C:\Users\Sara\Downloads\Kassem.jpg  Speaker | **Kassem El Saddik** is pursuing his PhD in public policy at Carleton University, organizing and coordinating the “2016 Critical ConversationTM”. Before joining Carleton, he led evaluations, strategy reviews and capacity building, and policy analysis across various sectors in MENA region. He consulted for the Government in Dubai (UAE), led and facilitated the development of various strategic plans, deployed performance management systems in different government departments, and drafted and presented strategy reviews and program evaluations to senior government officials. As part of his consulting role, Kassem drafted dozens of policy papers on environmental and public health issues in the UAE and contributed to academic and policy forums with the Gulf Research Center in Cambridge.    Kassem has a wide knowledge of the development and environment landscape and a solid understanding of the dynamics between the NGO and the public sectors in MENA. He has been actively engaged in various UNEP-led regional and global lobbying and negotiation meetings around environmental institutional reform and sustainable development agenda post 2015, regionally and globally, and contributed papers on the subject and served on UNEP International Environment Governance (IEG) Advisory Group from 2010-2011.    He is a founder and a board member of the MENA Evaluation Network and actively involved in many evaluation forums. He is currently vice-Chairing the EVALSDGs initiative and co-organizing the MENA Evaluation Conference 2016. |
| Speaker | **Vlasios Melessanakis** is the Director of Policy Development at the Office of the Superintendent of Financial Institutions Canada (OSFI), where he provides policy advice to the Superintendent and OSFI senior management on a wide range of regulatory issues relating to the financial sector.  Vlasios has over 18 years of experience in economic research, analysis and policy development in the private sector, government and academia, of which 9 were as a Senior Economist for the Financial Sector Policy Branch of the Department of Finance, Canada. He also served as Departmental Secretary, a key executive position of the Department of Finance, during the transition of the new federal government in 2006.    Vlasios has a diverse educational background, including a B.A and M.A. in Economics from Wilfrid Laurier University, an M.B.A. in Finance from the Schulich School of Business (York University), and a Graduate Diploma in International Relations from the London School of Economics. He has also completed doctoral studies in Public Policy at Carleton University. |
| Rapporteur | **Dr. Allan M. Maslove** is a Distinguished Research Professor in the School of Public Policy & Administration at Carleton University. His research focuses on two primary areas, the first of which is the financing of health care in Canada, with a focus on the federal-provincial fiscal arrangements. The second general area of research is public budgeting. Along with colleagues Bruce Doern and Michael Prince, Dr. Maslove recently completed “Canadian Public Budgeting in the Age of Crises”, which won the Canadian Political Science Donald Smiley Award in 2014 for the best book in Canadian government and politics. His teaching areas at the School of Public Policy & Administration include health policy, microeconomics, public budgeting, and benefit-cost analysis. |

# Annex 2: Themes and Issues from Roundtable Discussion