

# Policymakers, Regulators and Courts: Who decides what, when and how?

Mike Cleland  
Executive in Residence, Positive Energy

October 28 2020

POSITIVE ENERGY

CANADA'S ENERGY FUTURE IN AN  
AGE OF CLIMATE CHANGE



uOttawa

# Approach to Research

- Grounded in the two core concepts: **informed reform** aimed at **durable balance**
- Central unit of analysis is “independent” regulators but in context of the larger public decision making process
- Five case studies from a historical perspective
  - Alberta Energy Regulator
  - British Columbia Oil and Gas Commission
  - Canada Energy Regulator/National Energy Board
  - Ontario Energy Board
  - Nova Scotia Utility and Review Board

# Methodology and Deliverables

1. Extensive literature reviews partly reflected in pre-read materials
2. Interviews with a wide range of well-informed experts and professionals
3. Review of original material such as advisory reports, legislation
4. Interim report – a product of this workshop
5. Final report to flesh out case studies and propose recommendations

# A Rapidly Evolving Context

- Several rationales for “independent” agencies
- Independence is a relative term and it is not an objective but a means
- The objective is effective decision making
- Many factors (economic, social, environmental) affect both substance and procedure

# Dimensions of Effective Regulatory Decision-making

- Dimensions (or attributes) common across the literature but organized in many ways
- We have settled on three overarching dimensions each with specific attributes:
  - 1. Mandate**
  - 2. Structure**
  - 3. Procedure**

# What Makes “Effective?”

- Several key indicators of effectiveness related to accountability, public and investor confidence and timeliness and certainty of decision process.
- As decision structures are changed do reforms reflect well **informed** choices?
- Do they ultimately strike a **durable balance** that sustains confidence of all affected parties?

# Four Questions to Consider

- **Q1.** How to account for multiple variables in decision structures?
- **Q2.** How to balance the variables including need for due process so as to sustain public and investor confidence in a world of fragmented opinion?
- **Q3.** How to balance political accountability with need for long term, evidence based and transparent processes?
- **Q4.** How to devise forums for dialogue and sharing of best practices?