Regulatory Systems, CIA Value: Designed for Failure?

IAIA26
QUÉBEC CITY, CANADA

Carla R. Conkin

Natural Resource Lawyer/Regulatory Expert/Roster Review Panel Member IAAC

Canada

HTTPS://WWW.LINKEDIN.COM/IN/CARLA-CONKIN-BB9786124

carlaconkin@protonmail.com

Context/Perspective

Natural Resource Lawyer/former regulator, system/policy design/development for environmental liabilities and closure

Review Panel Roster Member IAA – cross appointed for integrated IA – Canada Energy Regulator/Canadian Nuclear Safety Commission

Decades: regulatory reviews/tech reviews, impact assessment, closure, security determinations, shortfalls, abandonment

System failure/system risk focus informed by:

- Giant Mine (risk and behaviour) – Canada's Most Contaminated Sites - Lead Federal Counsel, Department of Justice Canada
- Progressive Regulatory Systems – Canada's North – e.g. Diamond Mines – modern mines; integrated co-management regimes
- Alberta Oil Sands – Regulatory System Cautions – comparative study
- Extractive Sectors/Cross jurisdictional – failure flags know no boundaries (Clean tech, mining, o/g, nuclear, forestry)

System Failure

- Regulatory Systems – become mere ‘rider’ systems to dominant ‘driver’ corporate and financial systems, reinforcing risk transfer over the lifecycle via various system means

- Systems suggest oversight/protection, complexities, red tape, over-regulation – misinformation/disinformation? Functioning systems are self evident

- Starting Gate Issues:
  - Limited risk and economic analysis of playing field;
  - system shorts re Land Use, Cumulative Impacts, Standards

System Failure cont.

Direct impacts on Value of IA/CIA

- Overloading and inefficient
- Performative vs. whole system/substantive intersectional assessment
- Disconnected from compliance/enforcement and bottlenecks into enforcement to do the heavy lifting
- Risk transfer – misuse of legal tools/patterns of behaviour (bankruptcy, asset transfer, bailouts, guarantees), accidents and closure exposure

System Failure cont.

Fast Tracking

- Time limits targeting the right issues/risks?
- Amplifying systemic failure risks? How does fast tracking address the foregoing issues?
- Default risk: science, intersectional impacts, societal interests, including economic benefits for communities, regions and nations get sidelined/dropped off = risk transfer to whose benefit?

Can’t ignore… growing exposure and liabilities; new perspectives and approaches needed to overcome blind spots.

Blind Spots? – Some Considerations

Status quo or fast-tracking initiatives – do not address failure factors and have high potential to reinforce high risk, boom/bust

Quantification of Cost/Risk

- Central to quantifying liability; conducting cost benefit, attributing responsibility
- Brings clarity to the risk transfer, the real trade-offs, directly informing decision making
- Cumulative impacts/regional assessments quantify costs and informs financials
- Quantification is needed for starting gate economic analysis, public bailouts, guarantees, costs of litigation
- Regulates project health and corporate health
- Quantification initiatives and research needed

Blind Spots Cont.

Re-examining Government's Role

- Re-examining reinforcement of failure factors that cause or pave the way to risk transfer
- Re-examining trade-offs given the rapidly changing circumstances, cumulative impact evidence/exposure that systemically tell us that trade-offs will cause system failure, including the economics
- Re-examining progressive examples for system advancement

Fit for Purpose

Regulatory systems elevated to fit for purpose ‘driver’ systems:

- Dynamic ‘driver’ role that bolsters economic advancement that requires **healthy projects and healthy companies**
- Effective advancement/integrations of land use management; cumulative impact assessment (regional assessments); standards development
- Dynamic risk assessment from the starting gate to the final farewell (e.g. risk quantification and risk assessment customized to the regulatory sphere)
- Intersectional assessment that focuses on what is needed for societal advancement, no interests left behind or traded
- Integrates the best science and Indigenous Knowledge and clarifies and eases pressure/bottleneck on enforcement
- System outputs: economic advancement, competition, business efficiencies and innovation (environmental), in lockstep with environmental protection and advancement of societal interests = none/negligible risk transfer

Short Term Realities and Pathways

- Recognition of system checks and balances and how system parts speak to each for better or worse
- Reading/diagnosing system failure factors is key to asking the right questions and determining an advanced pathway
- Qualitatively and quantitatively – we know enough that status quo/fast tracking systems raise legitimate not just speculative fears for system failure
- Areas of focus/Discrete quantification initiatives: customization of risk analysis over the life cycle, testing/modelling system integration approaches, development of standards, regional assessments are areas of focus
- Work in some areas are underway and new work/research/testing is needed – ask the right questions and integrate it effectively
- Reset perceptions, expose the blind spots
- Collaborate, teach, research and build

Let’s continue the conversation!

Message me your questions or comments in the IAIA26 app.

Carla Conkin

Natural Resource Lawyer/Regulatory Expert/Roster Review Panel Member IAAC

Canada

HTTPS://WWW.LINKEDIN.COM/IN/CARLA-CONKIN-BB9786124

carlaconkin@protonmail.com

#iaia26