

**Alberta Energy Regulator**  
An Examination of the  
**International Centre of  
Regulatory Excellence (ICORE)**

**Report of the Auditor General**  
October 2019

Mr. Mike Ellis, MLA  
Chair  
Standing Committee on Legislative Offices

I am honoured to transmit my report, *An Examination of the International Centre of Regulatory Excellence (ICORE)*, to the Members of the Legislative Assembly of Alberta, under Section 20(1) of the *Auditor General Act*.

We conducted this examination under the authority of the *Auditor General Act*.



W. Doug Wylie FCPA, FCMA, ICD.D  
Auditor General

Edmonton, Alberta  
October 4, 2019

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# Report Highlights

- In August 2018 the Office of the Auditor General received a complaint alleging a number of serious concerns with activities related to the International Centre of Regulatory Excellence (ICORE) at the Alberta Energy Regulator (AER). AER is a provincial government agency tasked with ensuring the safe, efficient and environmentally responsible development of Alberta's energy resources. p. 6
- After determining there was much more to ICORE activities at AER than disclosed in the annual reports, board minutes and other publicly accessible information, and that the allegations warranted detailed examination, we conducted a comprehensive examination of AER ICORE-related activities. p. 6

## Key Findings



A prevalent finding in our examination was ineffective controls in relation to ICORE activities. Specifically:

- AER engaged in activities outside of its mandate and public money was spent inappropriately on ICORE activities. p. 21
- Controls and processes to protect against potential conflicts of interest failed. p. 26
- AER Board oversight was ineffective. p. 31
- Financial, information management, and human resource controls were ineffective. p. 40
- Controls to track and monitor expenses related to ICORE activities were at first non-existent and then poorly implemented. p. 45
- The tone at the top at AER did not support a strong control environment or compliance with policies. p. 52

The objectives of this examination are multi-faceted, but perhaps **the most important objective is to make recommendations for improvement that will assist AER in the future, and to communicate lessons learned** that will also be of benefit to other board-governed provincial agencies and organizations. p. 6

## Recommendations p. 9

- We recommend that the AER Board improve its oversight by:
  - Ensuring the effectiveness of processes to evaluate corporate culture and senior executive performance
  - Obtaining formal and periodic assertions from management that activities comply with legislation and AER policies, including policies related to conflict of interest
  - Ensuring officers in key risk management, compliance and internal control roles are well-positioned and supported to provide complete information about AER activities
  - Reviewing and approving CEO travel and expenses
  - Ensuring the primary channel of communication to the responsible Ministers is through the Board
  - Establishing processes to engage with executive staff, and other staff within the organization, to gain comfort that all significant matters have been brought to the attention of the Board p. 39
- We recommend that AER perform sufficient due diligence to assess the risk of further waste of public resources not already identified. p. 44
- We recommend AER evaluate whether any additional funds expended on ICORE activities are recoverable. p. 51
- We recommend AER staff are made aware of and are sufficiently trained on recent enhancements to AER's whistleblowing process, consistent with Section 6 of the *Public Interest Disclosure (Whistleblower Protection) Act*. p. 54



## Lessons to be learned p. 10

- A healthy corporate culture, including tone at the top, matters above all else.
- Directors need to be vigilant and ask challenging and probing questions of management, particularly when new risks to the organization emerge.
- In pursuing new and innovative concepts, government organizations need to ensure any specific activities are an appropriate fit within their mandate.
- Effective whistleblowing mechanisms are critical in uncovering undesired practices.



# Summary

As originally conceived, the Centre of Regulatory Excellence (CORE) was an AER-focused training program that aligned with AER's strategic direction and goals. However, through a combination of deficient controls and poor implementation, CORE morphed into ICORE — a business venture focused on generating revenue from countries around the world through the delivery of services, like training and consulting.

The former AER CEO, along with other members of AER senior management, presented the concept of ICORE to the former Minister of Energy, the AER Board, and other AER staff, based on benefits, to AER.

In our examination, we found the actions surrounding ICORE tell a different story.

ICORE-related activities at AER provide a case study of how controls can be overridden, public money can be wasted, and harm can befall an organization when potential conflicts of interest are present, and weak processes exist.

The ICORE situation provides important lessons about how controls can break down when those charged with oversight fail to heed warning signs and improperly assess systems and risks.

Further it is essential for effective oversight that major provincial corporations in Alberta, such as AER, have boards of directors with the necessary skills mix, and a full complement. Strong processes are necessary to support those oversight functions.

There were critical failures related to the use of resources, managing potential conflicts of interest, information management, compliance with legislation, and corporate culture relating to ICORE.

To move forward, AER needs to ensure its organization focuses on restoring a culture of trust, particularly among and between the Board and senior management.



# Overview

## About this Examination

In August 2018 the Office of the Auditor General received a complaint alleging a number of serious concerns with ICORE-related activities at AER. We completed due diligence to determine if there was any merit to the allegations and if there were indications of system and control weaknesses.

After determining there was more to ICORE activities at AER than disclosed in the annual reports, board minutes and other publicly accessible information, and that the allegations warranted detailed examination, we conducted this comprehensive examination of AER ICORE-related activities, which we completed in September 2019.

We conducted our examination under the authority of the *Auditor General Act*. Accordingly, our work focused on assessing the effectiveness of AER controls and processes to manage risks associated with ICORE activities. Our examination did not extend beyond ICORE activity at AER and did not include assessing the efficacy of the regulatory activity or operations of AER. Our findings relating to ICORE activities should not be extrapolated to any other activity or operations of AER.

Early in this examination we encountered significant information gaps and inconsistencies. As a result, we applied techniques such as the recovery of deleted emails and text messages, to acquire sufficient and appropriate evidence to determine what system breakdowns occurred and to understand circumstances that contributed to those breakdowns.

The objectives of this examination are multi-faceted, but perhaps the most important objective is to make recommendations for improvement that will assist AER in the future, and to communicate lessons learned that will also be of benefit to other board-governed provincial agencies and organizations.

We also believe it is important that the Members of the Legislative Assembly and Albertans are aware of the ICORE activities that took place at AER, particularly given the use of public resources.

# Examination Approach and Cooperation

As part of our examination, we:

- Conducted interviews with nearly 50 individuals, including former Board members, current and former AER employees, Department of Energy staff, a former Minister of Energy, and third parties.
- Conducted interviews under oath with certain individuals that were involved with ICORE, pursuant to Section 14.1 of the *Auditor General Act*.
- Reviewed and analyzed thousands of relevant email and text message communications related to ICORE activities, including “icoreglobal.ca” email records for individuals within AER that were designated to conduct ICORE business outside normal agency channels.
- Examined key documents relating to ICORE activities, including meeting minutes, business plans, strategic documents, promotional materials, proposals and corporate records.
- Assessed ICORE-related expenditures, including expense claims, staff time and accounting records, and their relationship to AER business.

## Use of text messages to augment evidence gathered

We expect that organizations conduct and document substantive business through means that are easily accessible and formalized in documents and permanent records. As a result, requiring text messages for evidence is usually neither necessary, nor warranted. In this case, however, much of the actual business for ICORE was conducted over text messages and email accounts outside of AER.

### Throughout this report, we reference key positions germane to our examination into AER’s ICORE-related activities as follows:

- **Former AER CEO**  
*From 2013 to November 2018*
- **Former AER Board Chair**  
*From 2014 to March 2018*
- **Former Minister of Energy**  
*From May 2015 to April 2019*
- **Former AER VP of National and International Relations**  
Vice-President of National/International Stakeholder and Government Relations  
*From November 2013 to July 2018*
- **Former AER General Counsel**  
AER Executive Vice-President, Law and General Counsel, and Chair of AER Ethics Committee  
*From 2013 to mid-2018*
- **Former AER Chief of Staff**  
AER Chief of Staff and Chief Operating Officer (COO), ICORE  
*From 2013 to mid-2019*
- **Former AER EVP of Stakeholder Engagement**  
AER Executive Vice-President, Stakeholder and Government Engagement and Executive Lead on ICORE  
*From mid-2013 to January 2019*

# Examination Conclusions

## **AER engaged in activities outside its mandate and public money was inappropriately spent on ICORE activities.**

ICORE, an AER-established initiative, was designed and built primarily to generate money from international jurisdictions through training of foreign regulators and by providing advisory services. AER resources, funded by industry levies, were used to develop ICORE – an initiative with negligible benefits either to AER or Alberta.

## **Controls and processes to protect against potential conflicts of interest failed.**

Many potential conflicts were present through ICORE activities, including those borne by former AER Board Chair, the former AER CEO and former AER General Counsel. Controls to properly identify and mitigate these risks failed primarily due to individuals not properly declaring their involvement in ICORE.

## **AER Board oversight was ineffective.**

The AER Board lacked both the extent of skills and full complement it needed to properly oversee ICORE activities. An overreliance on management, particularly with respect to legal matters, contributed to a lack of proper oversight. The AER Board, as well as the former Minister of Energy, did not receive complete and accurate information about ICORE. The AER Board's challenges were further aggravated by the former AER Board Chair's failure to disclose his involvement in ICORE.

## **Financial, information management and human resource controls were ignored and overridden to hide ICORE activities and misuse public resources.**

ICORE activities at AER were pursued without regard to existing controls. This resulted in a transfer of ICORE-related costs to AER, the use of separate ICORE email accounts and text messaging, and AER procurement and contracting processes not being followed.

## **Controls to monitor and track AER expenses for ICORE activities were at first non-existent and then poorly implemented.**

AER recovered approximately \$3.1 million from ICORE Not-for-Profit (NFP) to cover costs AER incurred for ICORE activities. However, we estimate that an additional \$2.3 million was expended through out-of-pocket and in-kind resources used on ICORE work. The lack of accuracy and detail of AER incurred expenses for ICORE stems from the lack of a system to track these expenses prior to May 2017, and a poorly designed and inconsistent approach to tracking costs after May 2017. These process weaknesses contributed to public money being wasted.

## **The tone at the top at AER did not support a strong control environment or compliance with policies.**

Many AER staff felt that expressing disagreement with, or challenging the direction of, ICORE was potentially career-limiting.

# Summary of Recommendations

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Stemming from our examination and findings, we recommend:

## RECOMMENDATION

We recommend that the AER Board improve its oversight by:

- › Ensuring the effectiveness of processes to evaluate corporate culture and senior executive performance
- › Obtaining formal and periodic assertions from management that activities comply with legislation and AER policies, including policies related to conflict of interest
- › Ensuring officers in key risk management, compliance and internal control roles are well-positioned and supported to provide complete information about AER activities
- › Reviewing and approving CEO travel and expenses
- › Ensuring the primary channel of communication to the responsible Ministers is through the Board
- › Establishing processes to engage with executive staff, and other staff within the organization, to gain comfort that all significant matters have been brought to the attention of the Board

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## RECOMMENDATION

We recommend that AER perform sufficient due diligence to assess the risk of further waste of public resources not already identified.

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## RECOMMENDATION

We recommend AER evaluate whether any additional funds expended on ICORE activities are recoverable.

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## RECOMMENDATION

We recommend AER staff are made aware of, and are sufficiently trained on, AER's whistleblowing process, consistent with Section 6 of Alberta's *Public Interest Disclosure (Whistleblower Protection) Act*.

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## Lessons to be learned

### **A healthy corporate culture, including tone at the top, matters above all else.**

A healthy corporate culture is paramount to ensure organizations remain focused on their mandate. Accurately gauging corporate culture is not easy, but boards and management must find ways to obtain assurance that their organizations are operating in a safe, respectful and productive manner.

### **Directors need to be vigilant and ask challenging and probing questions of management, particularly when new risks to the organization emerge.**

Directors routinely walk into a boardroom possessing less information about the organization than management. They may therefore be inclined to defer to management, and there is a risk that directors are not always asking the right questions. Each member of the board must be vigilant — even if the CEO and the Chair are seemingly aligned. Directors should continue to probe and ask hard questions if they are not satisfied risks are being properly identified and mitigated. Through this examination, it became clear that the former AER Board Chair's and the former AER CEO's confidence in ICORE deterred others from questioning ICORE further. Because the CEO wields significant power within an organization, boards need to establish processes to engage with other executive and staff in the organization to gain comfort that all significant matters have been brought to the attention of the Board.

### **In pursuing new and innovative concepts, government organizations need to ensure any specific activities are an appropriate fit within their mandate.**

The external environment tends to change much faster than governing legislation, and as government organizations seek to introduce operational innovation, it is important they confirm that new activities are within the mandate. AER's mandate is to regulate the energy industry within the province of Alberta through direct industry engagement and collaboration. The original concept of CORE to develop AER staff proficiencies was arguably within its mandate; however, the development of ICORE and the diversion of resources to build a business focused on international revenue generation was not.

### **Effective whistleblowing mechanisms are critical in uncovering undesired practices.**

The events at AER further reinforce the importance of whistleblower processes to surface problematic activities within an organization. Whistleblowers are often the only effective source of information to uncover inappropriate behaviors. Organizations need to ensure that staff are aware of whistleblowing processes and that internal processes are viewed as safe, secure and reliable.



# Background

## What is ICORE?

ICORE is an acronym for the International Centre of Regulatory Excellence, an organization that grew out of an internal 2014 “Best in Class” initiative to advance AER’s reputation and expertise as an energy regulator.

In 2015, the initiative evolved into the Centre of Regulatory Excellence (CORE) which would develop approaches and activities, including training to enhance skills and competency of staff at AER. This original concept for the CORE was focused on AER and fulfilling its mandate.

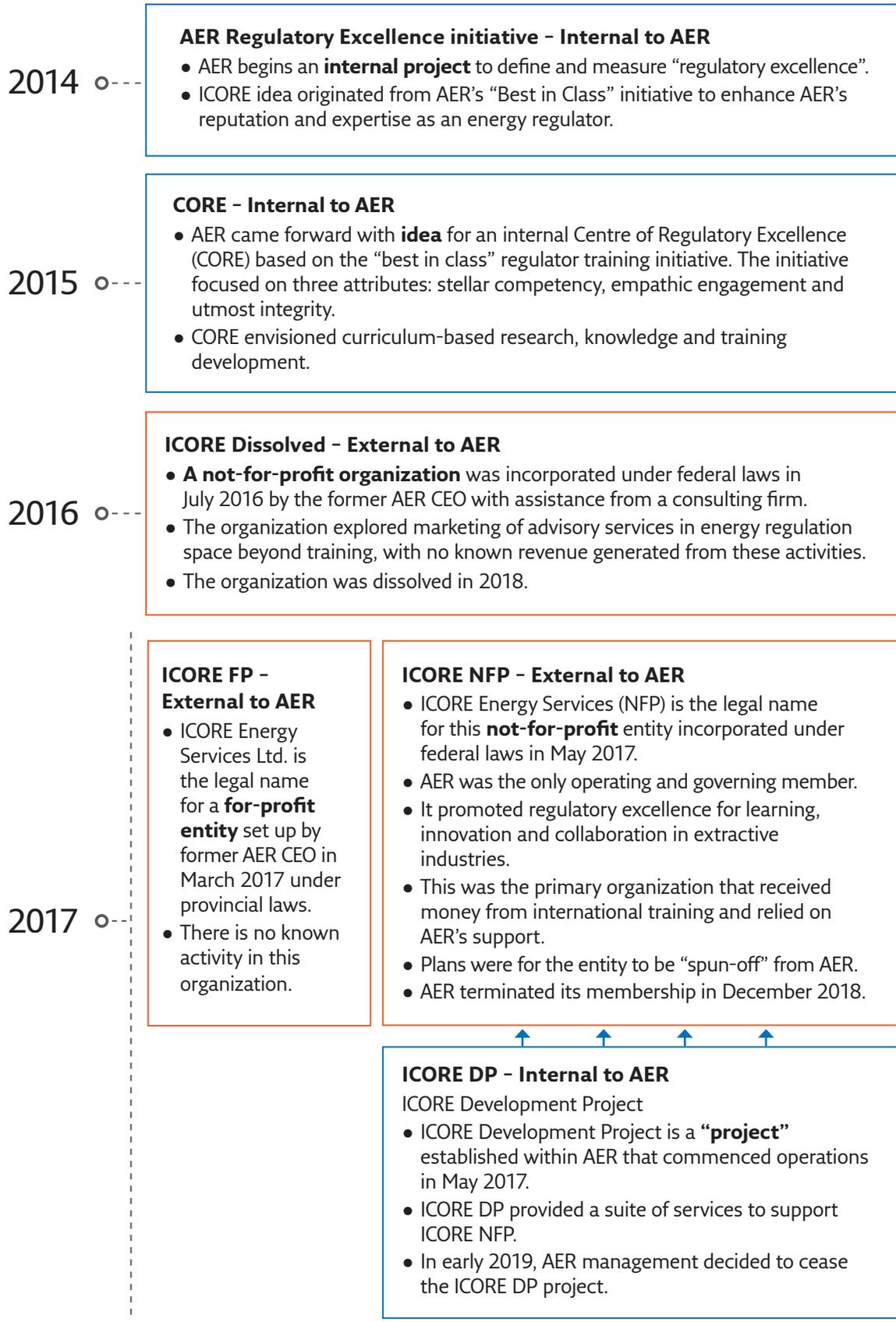
Since the inception of AER, numerous delegations from different countries around the world visited the regulator to attend events, workshops and conferences. AER welcomed the opportunity to assist and work with other jurisdictions, and to learn from others about energy regulatory-related matters. AER strived to be seen, as a worldwide leader in energy regulation.

The assistance and work with other jurisdictions eventually led to the idea of AER providing training outside of Alberta and Canada, leading to the addition of “international” to the CORE concept, expanding it to become ICORE. AER’s growing relationship with an organization in Mexico, which was willing to pay for training, further encouraged the idea of an international focus and a potential funding mechanism to support regulatory excellence activities at AER.

When the ICORE idea emerged it was presented to the former Minister of Energy, the AER Board, AER staff, and others as beneficial not only to the international community, but especially to AER.

# Evolution of ICORE and related entities/projects created:

In the evolution of ICORE, we set out internal AER projects and external organizations established to advance the ICORE concept from 2014 to 2019.



# History of ICORE at a glance

## The origins of ICORE began with AER's Regulatory Excellence Initiative

The ICORE idea originated in 2014 from AER's "Best in Class" initiative by which AER explored ways to advance as an energy regulator. Shortly afterwards, in 2015, AER came up with the idea for a Centre of Regulatory Excellence (CORE) that would develop approaches, like training, to enhance the skills and competencies of staff at AER. The original CORE concept was focused on supporting achievement of the AER mandate. In 2016, AER sought, but ultimately did not receive, additional budget dollars to fund CORE.

## AER's history of assistance to jurisdictions from around the world, combined with the need for funding for CORE, eventually led to the creation of ICORE

Over the years, delegations from countries around the world have visited AER to attend events, workshops and conferences. AER welcomed helping and learning from other jurisdictions. AER also wanted to be viewed as a global leader in energy regulation. The assistance provided to other jurisdictions, through visits and events, in combination with funding constraints for the CORE concept led to the idea of providing training outside of Alberta and Canada as a source of revenue. This shifted CORE to an "International" Centre of Regulatory Excellence (ICORE) furthering the move away from an AER internal focus. In particular, AER's burgeoning relationship with an organization in Mexico that was willing to pay for training encouraged AER to pursue external revenue generating opportunities. As the ICORE idea continued to evolve, it was presented to the former Minister of Energy, the AER Board, AER staff and others as beneficial not only to the international community, but especially to AER.

## AER supported the creation of a separate entity

Legislative restrictions exist that prevent AER from spending time and money outside of regulatory activities in Alberta and from collecting revenues from third parties, outside of levies and other fees. In this context, collecting revenues from delivering training in Mexico, and related expenses, created a problem for AER. By early 2016, AER began the process of exploring what options existed to structure an independent entity to provide training, and other services, to jurisdictions outside of Alberta.

## AER worked with a consulting firm to create a new incorporated entity – ICORE Dissolved

The first iteration of an ICORE entity was incorporated by AER with an external consulting firm. Referred to as ICORE Dissolved in this report, it was incorporated as a not-for-profit in July 2016 with two of the consulting firm's employees and the former AER CEO, representing AER, as the inaugural directors. The AER Board knew as early as June 2016 that AER management, led by the former AER CEO, intended to establish an entity as an independent course and training provider for AER staff and others. During this time, the market for advisory services in the energy regulatory space beyond training was explored. The consulting firm, working with the former AER CEO, the former AER General Counsel and a few other AER executives, developed ICORE operating models, strategies, and a website and promotional materials. At a December 2016 ICORE Dissolved board meeting, the two consulting firm members resigned as directors, and the former AER EVP of Stakeholder Engagement and AER's former EVP of Operations were appointed as directors, leaving three AER executives as the entire board of ICORE Dissolved. For a variety of reasons, including differences in view on direction, compensation, and relationships, the work with the consulting firm ended in 2017. The incorporated entity created by the firm with AER was subsequently dissolved by the former AER CEO, the former AER General Counsel, and others working on ICORE in 2018.

## **After the consulting firm approach failed, the former AER CEO and the former AER VP of National and International Relations incorporated a for-profit ICORE entity without AER's knowledge**

In March 2017, the former AER CEO and the former AER VP of National and International Relations incorporated a provincial business corporation, known as ICORE for-profit (ICORE FP). The former AER CEO contracted with an external law firm to incorporate ICORE FP, for which he paid for personally. The former AER CEO and the former VP of National and International Relations were the only two directors, and AER had no direct connection to ICORE FP. In other words, AER had no power to appoint or remove directors of ICORE FP. Other than the former AER CEO, the former AER VP of National and International Relations, and the former AER Chief of Staff it appears no one, including the AER Board, knew that this organization existed until the former AER General Counsel found out about it in early 2018. The AER Board did not find out that ICORE FP existed until late 2018. Messages between the former AER CEO and the former AER VP of National and International Relations from 2017 suggest the reason for creating ICORE FP was to collect revenues from ICORE advisory services. Given that ICORE FP's only connections to AER were its two creators, it is not clear whether AER would have been the beneficiary of any revenues that ICORE FP received. Notably, ICORE FP did not earn any money. AER as an organization was not aware of, involved in, nor had control of ICORE FP. At the time of writing, ICORE FP continues to exist on the corporate registry, but we found no evidence of financial activity.

## **AER incorporated ICORE NFP as the corporate face of ICORE activities**

The former AER CEO told the AER Board that the strategy for ICORE included setting up an independent entity that would eventually be outside of the control of AER and overseen by various regulators from around the world, including AER. In May 2017, AER federally incorporated ICORE not-for-profit (ICORE NFP). The AER Board, AER staff, and other parties outside of AER were aware of ICORE NFP's existence, and generally, its structure and activities. The sole operating and governing member of ICORE NFP was AER, although AER hoped that other regulators and organizations would eventually join. From ICORE NFP's inception to AER's resignation of its membership in late 2018, AER had the power to appoint the directors of the board of ICORE NFP. The only directors of ICORE NFP were the former AER CEO and the former AER VP of National and International Relations, and both resigned in 2018. We did not see evidence that the AER Board was involved in the appointment of the former AER CEO and the former AER VP of National and International Relations as directors. The officers listed in the corporate documents were the former AER CEO, the former AER VP of National and International Relations, and the former AER Chief of Staff.

In correspondence between the former AER CEO, the former AER VP of National and International Relations and the former AER Chief of Staff, plans for ICORE NFP included getting government grants and delivering training, in contrast with ICORE FP, which was to be the arm to collect advisory services revenue. Outward facing, the focal point of ICORE NFP activity was delivering the training in Mexico.

## **AER started the internal ICORE development project to provide the people and resources needed to build ICORE NFP so it could be spun out from AER**

Since ICORE NFP had no cash or revenues by mid-2017, there were no resources to develop training materials, conduct business development activities, or advance ideas like an innovation lab. Under the former AER CEO's guidance and authority, the resources for these ICORE-related activities came from AER, through an internal project called the ICORE Development Project (DP).

AER created ICORE DP very shortly after ICORE NFP was incorporated and the former AER CEO assigned the former AER EVP of Stakeholder Engagement to lead the project. This project would provide all the people, skills and funds deemed necessary by AER to start up ICORE NFP so it could ultimately be a self-sufficient entity spun-out from AER. AER intended to remain a member of ICORE NFP, but only as one among many other member regulators from around the world, and effectively relinquishing control. From the time of ICORE NFP's creation to the time AER resigned as a member, there were never any other members.

Developing and carrying out the training in Mexico was a significant undertaking for individuals working on ICORE in AER. Technically, administratively, legally and financially, much work had to be done to execute on the contract. At the same time, there was also an intense focus on building future revenue-generating opportunities from other places around the world. Importantly, ICORE NFP never had any employees, even though it was sometimes stated by AER that there were employees of ICORE NFP through secondment and reassignment.

### **The relationship between ICORE NFP and AER was formalized through a Memorandum of Understanding (MOU)**

An MOU between AER and ICORE NFP was signed by the former AER General Counsel and the former AER CEO respectively that outlined the general relationship between the two organizations. Importantly, the MOU states that in-kind and out-of-pocket expenses incurred by AER related to ICORE activities would be repaid by ICORE NFP. This MOU set the stage for accumulating "IOUs" and the resulting ambiguity and inconsistency in how ICORE time and costs were tracked by AER. The nature of expenses incurred by AER on behalf of ICORE included staff time, contracts for services, travel and hospitality.

### **ICORE NFP began to receive money from training delivered in Mexico**

Beginning in mid-2018, ICORE NFP began to receive money from training delivered in Mexico. By early 2019, the amount received was \$4.1 million, representing nearly all of the revenue that ICORE NFP collected. ICORE NFP also collected a smaller amount of revenue – \$80,000 – for training provided to a Latin American economic development organization.

### **AER staff expressed concerns about the nature and extent of ICORE activities**

From mid-2017 up until the allegations brought forward to the Auditor General and others in August 2018, a number of staff raised concerns internally about a number of matters, including time spent on non-Alberta regulatory activities, efforts to commercialize AER intellectual property, and the belief that some of the efforts were in pursuit of personal benefits by a few individuals. Significant concerns about ICORE activities did not make their way to the AER Board or those outside AER until mid-2018.

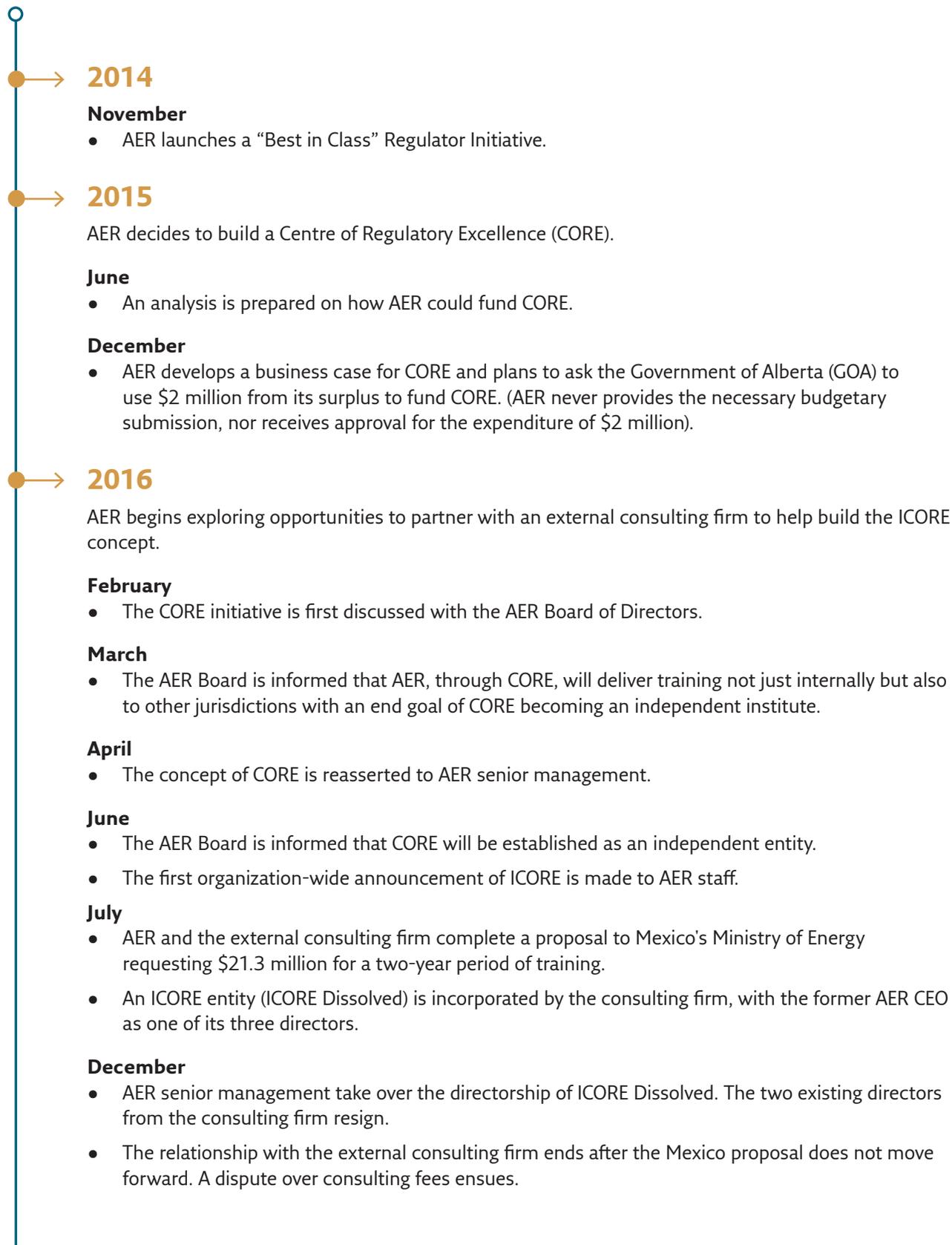
### **AER resigned its membership from ICORE NFP**

In late 2018, as information about ICORE activities continued to surface, the interim CEO instructed management to resign AER's membership in ICORE NFP. The former AER VP of National and International Relations (in February 2018) and the former AER CEO (in November 2018), had already resigned as directors from ICORE NFP.

ICORE NFP and ICORE FP continue to exist on the corporate registry. The last known activity for ICORE NFP are payments to AER in response to a \$2.7 million statement of claim, effectively clearing out the ICORE NFP bank account. The only funds remaining are amounts held for future contract payments.

# Timelines

The following is an overview of the chronology of ICORE-related activities.\*



## → 2017

### **January**

- The former Minister of Energy receives a verbal briefing on ICORE.
- After the consulting firm approach fails, options to create a new organization are explored.

### **February**

- At its February 2017 meeting, the AER Board of Directors receives an update on ICORE activities with no mention made of the creation of ICORE FP, NFP and related activities. This is the only update related to ICORE the Board receives in all of 2017.
- AER publicly announces the launch of the ICORE initiative.

### **March**

- The former AER CEO and the former AER VP of National and International Relations, unbeknownst to the AER Board and AER staff, set up a for-profit entity.

### **May**

- A not-for-profit organization is incorporated to advance the ICORE concept (ICORE NFP). Shortly after ICORE NFP is incorporated, AER and ICORE NFP enter into a critical Memorandum of Understanding (MOU).
- The ICORE Development Program (ICORE DP) is initiated.

### **August**

- The project charter for the ICORE Development Project (ICORE DP) is developed in order to build ICORE NFP to become a stand-alone organization.

### **October**

- AER staff assigned to work on ICORE put in considerable effort and submit an unsolicited, and ultimately unsuccessful, request for grant funding of \$30 million from the federal government.

### **December**

- AER enters into an agreement to develop training courses for ICORE NFP.

## → 2018

### **January**

- ICORE NFP signs a contract with a Mexican university to deliver certified training courses on stakeholder engagement and regulation of unconventional energy development.
- Staff working on ICORE DP begin pursuing other revenue generating opportunities for ICORE NFP, including commercialization of AER intellectual property.
- ICORE DP's activities include developing promotional materials, including a website and marketing brochures.

### **March**

- The former AER Board Chair ends his term on the AER Board.

### **April**

- At the April 2018 AER Board of Directors meeting, the former AER CEO updates the AER Board on ICORE. The Board confirms its support for the project.
- A training course license agreement is signed between AER and ICORE NFP.

### **July/August**

- The former AER VP of National and International Relations resigns from his position as Vice-President, National and International Relations of AER.
- ICORE NFP announces it has hired its first two employees.
- Allegations emerge regarding ICORE activities, and the conduct of the former AER CEO and others associated with ICORE.

### **September**

- The AER Board reasserts its support for ICORE and the need for it to be spun out from AER.
- The AER Board requests a business plan be presented at a future meeting.
- AER engages an external firm to help in the preparation of an ICORE NFP business plan.

### **November**

- The ICORE NFP business plan is completed, with a focus on international business development and revenue generation.
- The former AER CEO resigns from his position as CEO of AER.
- The AER Board takes steps to cease ICORE-related activities.

### **December**

- AER Board of Directors meeting, the Board requests a decommissioning plan for ICORE NFP.
- AER resigns as the sole governing and operating member of ICORE NFP.

## **2019**

### **February**

- The AER Board receives a report on the results of senior management expenses claims and compensation review.

### **March**

- AER seeks compensation from ICORE NFP and filed a statement of claim.
- AER revises its conflict of interest policies and procedures to restrict the executive leadership team, including the CEO, from employment with ICORE NFP and related entities.

# Detailed Findings and Recommendations

## Key Findings

Our examination of ICORE activities at AER identified a number of important areas where systems failed:

- **AER engaged in activities outside of its mandate and public money was spent inappropriately on ICORE activities.** p. 21
- **Controls and processes to protect against potential conflicts of interest failed.** p. 26
- **AER Board oversight was ineffective.** p. 31
- **Financial, information management, and human resource controls were ineffective.** p. 40
- **Controls to monitor and track expenses related to ICORE activities were at first non-existent and then poorly implemented.** p. 45
- **The tone at the top at AER did not support a strong control environment or compliance with policies.** p. 52

# AER engaged in activities outside of its mandate and public money was spent inappropriately on ICORE activities

## Context

AER was created under the *Responsible Energy Development Act* (REDA); as a provincial corporation it is required to comply with other Alberta laws like the *Financial Administration Act* (FAA). Under REDA, AER's objectives are established and limited to a short enumerated list:

2(1) *The mandate of the Regulator is*

- (a) *to provide for the efficient, safe, orderly and environmentally responsible development of energy resources in Alberta through the Regulator's regulatory activities, and*
- (b) *in respect of energy resource activities, to regulate*
  - (i) *the disposition and management of public lands,*
  - (ii) *the protection of the environment, and*
  - (iii) *the conservation and management of water, including the wise allocation and use of water*

The activities of AER must align with its mandate. Provincial legislation also makes it clear that “public money” is all monies owned or held by a provincial corporation, irrespective of its source (i.e. industry levy). And certain rules apply to the management and expenditure of public money. For example, AER cannot gift or loan funds to entities beyond the scope of its mandate.

## Findings

### Key Findings

- **Through its ICORE activities, AER operated outside its statutory mandate** p. 22
  - › ICORE activities lacked a credible benefit to AER. p. 22
  - › ICORE activities focused on generating revenues from foreign jurisdictions. p. 22
  - › AER management explored commercializing intellectual property for the benefit of ICORE. p. 23
  - › AER management unsuccessfully sought \$30 million in federal funding for ICORE operations. p. 23
  - › AER ignored the restrictions on what it could do with industry money collected by statutory authority in relation to ICORE activities. p. 23
- **Executive and staff time spent on ICORE was significant and not aligned with AER priorities and risks** p. 24
  - › At a time where AER had significant priorities related to its mandate, considerable time was spent on ICORE. p. 24
  - › Many AER staff were involved in ICORE activities, from a few hours to full-time positions. p. 24
  - › AER staff were concerned about the resources being redirected and used on ICORE. p. 25
  - › The former AER CEO and others discussed staff moving from AER to ICORE once it was spun off and operating privately. p. 25

## Through its ICORE activities, AER operated outside its statutory mandate

### ICORE activities lacked a credible benefit to AER

ICORE business activities were extensively focused on training the international regulatory community and seeking opportunities to provide advisory services around the world. ICORE NFP operational documents focused on business development and revenue generation, including grants. ICORE documents also highlighted that the strategic goal of ICORE NFP was to be “the solution to global regulatory problems” and that the philosophy was to “Prove ICORE’s value. Value attracts money. Money creates capacity. Capacity creates more value.” ICORE plans included a “membership model” under which ICORE would sell different levels of membership, allowing for varying levels of influence and access to services. In addition to a focus on training and advisory services, there were also plans to provide other services like innovation labs for its members.

In most ICORE strategic and operational documents, AER is mentioned as a source of expertise and as having a relationship to ICORE, but rarely is it described how ICORE would specifically benefit AER and further its mandate. There were numerous examples where the former AER CEO and the former AER VP of National and International Relations, among others, promoted ICORE externally under the banner of AER.

Business strategies culminating in the business plan developed in 2018 show the focus on building an international business with revenue generation and growth opportunities. Notably lacking was any focus on better energy regulation in Alberta. While strategies and plans shifted over time, what was consistent was the importance of building an ICORE business that conducted work outside of Alberta.

### ICORE activities focused on generating revenues from foreign jurisdictions

Various ICORE work plans we reviewed outlined the status of business development activities directed at countries all around the world. The countries include the US, Mexico, Ukraine, United Kingdom, Oman, Guyana, Jamaica, Mongolia, India, Pakistan, Uganda, Ethiopia, Argentina, Brazil, Iran, Saudi Arabia and Colombia, among others.

Below are examples of some of the goals included in the work plans for some of those countries:

- Canada – secure multi-year operation funding commitments from the federal government
- US – achieve an initial state-level agreement for ICORE services
- Oman – establish a multi-year ICORE agreement to establish a single regulator system
- Mexico – deliver a full regulatory course build for Mexico
- Ukraine – achieve multi-year “Regulatory System Build” agreement with Ukraine

Activities to support ICORE business development efforts around the world included preparing “pitch decks”, delivering speeches at conferences, and developing of brochures and websites. We examined evidence including numerous text messages between the former AER CEO and the former AER VP of National and International Relations that substantiate that many international trips were for ICORE business.

Based on our review of internal documents, the benefits to AER from ICORE’s international focus generally only arose when defending ICORE activities.

## **AER management explored commercializing intellectual property for the benefit of ICORE**

For a period of time the former AER CEO, the former AER VP of National and International Relations, the former AER Chief of Staff and others working on ICORE had explored selling AER intellectual property (IP), like OneStop<sup>1</sup>, in pursuit of “regulatory system build” business from foreign jurisdictions – Ukraine being the initial focus. AER staff spent considerable time and effort exploring ways to commercialize OneStop. Executive Leadership Team meeting minutes from early 2018 demonstrate management supported efforts to explore commercialization. The only objective of commercialization evident was to allow ICORE NFP to use AER’s IP to sell services and products to other jurisdictions to generate revenue for ICORE NFP. Even after AER staff strongly advised that commercialization was not appropriate, we found evidence of continued requests of the law branch to find a way to deliver OneStop to Ukraine (including via “software as a service” arrangement). However, commercialization did not proceed.

## **AER management unsuccessfully sought \$30 million in federal funding for ICORE operations**

A number of AER staff contributed significant time to the development of a grant proposal, seeking \$30 million from the federal government. Based on our review, the former AER CEO oversaw this effort and the Executive Leadership Team and other AER staff knew about the proposal. Neither the AER Board (aside from the former AER Board Chair) nor the provincial Department of Energy knew about the proposal. The detailed financial information supporting this request was only shared among the former AER CEO, the former AER VP of National and International Relations, the former AER Chief of Staff and some other ICORE staff. Our review of the underlying support for the grant application found that a significant portion of the funds were to be used for salaries, board honorariums, plans for an office in Calgary and Montreal and establishment of an international office. The proposal “Towards Regulatory Excellence” was submitted on October 2017 and the only mention of AER is in the context of AER founding ICORE. There is no stated benefit to AER based within the grant funding request. Notably, the letter covering the request is from the former AER CEO as AER CEO using AER letterhead.

## **AER ignored the restrictions on what it could do with industry money collected by statutory authority in relation to ICORE activities**

AER is to operate within its mandate, including the use of its resources. AER is limited in how it spends money collected from industry according to REDA, as follows:

*The Regulator may, in respect of any fiscal year, impose and collect an administration fee with respect to any facility, oil sands project, coal project or well on a basis that will produce a sum sufficient to defray a portion or all of the estimated net expenditures of the Regulator in that fiscal year.*

AER disregarded these statutory limits and used both in-kind and out-of-pocket AER resources to advance ICORE activities. Based on our examination, ICORE activities were not regulatory activities. From the initial idea until mid-2018, ICORE did not generate any revenues, so all resources used to build ICORE came from AER.

<sup>1</sup> OneStop is an integrated platform that provides automation of process, data and regulatory rules for a regulator. It helps manage the lifecycle of regulator activities such as authorizations, compliance, close and hearings.

## **Executive and staff time spent on ICORE was significant and not aligned with AER priorities and risks**

### **At a time where AER had significant priorities related to its mandate, considerable time was spent on ICORE**

Our examination found that ICORE was a high priority for the former AER CEO. The exhaustive amount of corporate information covering ICORE matters highlights the extent of ICORE-related activity by AER staff, including the former AER CEO. The former AER CEO texted almost daily with the former AER VP of National and International Relations, the former AER Chief of Staff, and the former AER EVP of Stakeholder Engagement over the course of 2016 to 2018 about ICORE. Thousands of messages discussed ICORE strategies and decisions. We also found hundreds of emails specifically related to ICORE matters. These emails included strategy and business discussions, document review, and sharing of information.

While the former AER CEO did not log the time that he spent on ICORE, the evidence shows that it was considerable.

### **Many AER staff were involved in ICORE activities, from a few hours to full-time positions**

The number of AER staff who assisted with ICORE over the years while it was under AER control was significant, from a few hours to full-time dedicated positions. Over 50 employees were part of ICORE activities in some way. From regulatory subject matter expertise, to administrative functions, to communications, the former AER CEO and the Executive Leadership Team directed AER staff to help with ICORE. Some staff spent time outside of work hours to complete ICORE tasks, even though they were not directly assigned to ICORE.

Our review of AER communications to staff noted organizational changes that included redirection of executives and staffing for ICORE. For example, a May 15, 2017 communication titled “ICORE Update and Staff Assignments” informed staff that a number of AER employees had been formally seconded full-time to ICORE, including the former AER Chief of Staff and the former AER VP of National and International Relations. In addition, two senior advisors, one from Stakeholder and Government Engagement and another from Major Projects and Transformation, were announced as being appointed to ICORE positions. Beginning May 2017, the former AER EVP of Stakeholder Engagement officially led AER’s ICORE Development Project. The project charter lists 10 full-time staff working on ICORE; these staff were reassigned from roles in other AER functions.

## **AER staff were concerned about the resources being redirected and used on ICORE**

A common theme in our interviews with staff was concerns about the extent of resources used on ICORE and how the project seemed to take priority over important AER work. For example, the capacity of legal staff to keep pace with ICORE business became an issue. The former AER General Counsel expressed to the former AER CEO the considerable demands on her time by having to work on ICORE. In our interviews, we were told by others that they had demands placed on them to deliver ICORE tasks in addition to their AER work.

## **The former AER CEO and others discussed staff moving from AER to ICORE once it was spun off and operating privately**

ICORE activities were dependent on the skills and subject matter expertise of AER staff. In our review of communications between the former AER CEO, the former AER VP of National and International Relations, and the former AER Chief of Staff, we noted they recognized the need to have some key AER staff be part of ICORE NFP. In our interviews we were told by various individuals that the potential of moving over to ICORE NFP was discussed with them.

We also found a number of discussions during work with the consulting firm that planned on AER staff moving over to ICORE Dissolved.

# Controls and processes to protect against potential conflicts of interest failed

## Context

Conflicts of interest can arise in situations when individual have competing interests or loyalties. AER's Conflict of Interest Policy, dated June 2014, states, among other things, that:

- “Conflict of interest” or “conflict” is defined as a situation or circumstance that places, or may be perceived by others as placing a director, hearing commissioner, or employee in a position where his or her personal interests may influence his or her decisions or actions in carrying out his or her responsibilities.
- Members and employees may be in a conflict of interest and in violation of this Conflict Policy if they participate, or might reasonably be perceived, to participate in a decision in the course of carrying out their duties knowing that the decision might further a private, personal, or financial interest of theirs, or of a relative's.
- Members and employees must conduct their duties with impartiality at all times. It is critical that the members and employees disclose all real or perceived conflicts of interest between their AER-related duties and their personal interests and/or relationships. Further, these parties also have a responsibility to avoid real and perceived conflicts of interest and to take all steps necessary to remove themselves from any conflict. Disclosure, while necessary and important, does not itself remove a conflict of interest.

Consistent with the conflicts of interest policy, AER established an Ethics Committee<sup>2</sup>.

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<sup>2</sup> Membership included the Executive Vice President Law & General Counsel, the Vice President of People, Culture and Learning, Chief Financial Officer and the Executive Vice President of Strategy and Regulatory (prior to November 2018, VP of In-situ Sector).

# Findings

## Key Findings

- **Conflict of interest risks were not managed by AER processes** p. 28
  - The former AER CEO held multiple potentially conflicting roles. p. 28
  - The creation of multiple ICORE entities, the involvement of AER staff and the use of AER resources for ICORE activities resulted in conflict of interest risks that were not properly analyzed or mitigated. p. 28
  - The former AER CEO asked the former AER General Counsel to provide legal services for ICORE NFP and ICORE Dissolved, which undermined controls intended to protect AER's interests. p. 29
  - Negotiations with the external consulting firm ignored potential conflict of interest risks. p. 29
  - There is no evidence that AER controls existed to identify a potential conflict of pursuing ICORE-related revenues from oil and gas companies AER regulates. p. 30
- **Control mechanisms, including the AER ethics committee, failed to protect the interests of AER** p. 30
  - The AER ethics committee was ineffective to protect the interests of AER. p. 30

## **Conflict of interest risks were not managed by AER processes**

### **The former AER CEO held multiple potentially conflicting roles**

The former AER CEO did not report or otherwise engage the mechanisms established under AER's Conflict of Interest Policy to ensure transparency and enable AER to protect its interests. As a director of ICORE NFP, ICORE FP, ICORE Dissolved, and as AER CEO and ICORE NFP president, the former AER CEO held a number of roles that created a risk of conflict of interest. Specifically, his multiple roles made it unclear whether he was working in furtherance of AER's interests, or the interests of ICORE, especially since financial and non-financial transactions were taking place between the entities.

We found no evidence that appropriate disclosures were made respecting potential conflicts of interest, including to the AER Board. We also did not see that any analysis and management of conflict of interest risks occurred. In certain cases evidence indicated an intentional override of controls.

An example of control override was the MOU signed between AER and ICORE NFP. The former AER CEO signed as ICORE NFP president on one hand and then, using his authority as AER CEO, asked an executive vice-president to sign on behalf of AER. When that individual declined to sign, the former AER General Counsel was asked to, and signed, the MOU.

Another key document between ICORE NFP and AER was the training license agreement that allowed ICORE NFP to use AER developed courses for a payment calculated on recovery of costs. The former AER EVP of Stakeholder Engagement signed for AER while she was the ICORE Project Lead, and the former AER CEO signed for ICORE NFP. Once again, we did not see evidence of how this potential conflict was deemed to be acceptable and managed.

### **The creation of multiple ICORE entities, the involvement of AER staff and the use of AER resources for ICORE activities resulted in conflict of interests risks that were not properly analyzed or mitigated**

The structure of the ICORE organizations, the intentions for those organizations, and the roles that AER staff played in developing, and potentially joining those organizations, created a number of risks that required proper analysis and mitigation. For example, the former AER CEO was a director of ICORE NFP and ICORE Dissolved. He was also AER CEO and ICORE NFP President.

Other AER employees also took on the role of directors and officers at the incorporated ICORE entities. For example:

- The former AER EVP of Stakeholder Engagement and AER's Executive Vice-President of Operations were appointed as directors of the ICORE Dissolved board at a December 2016 board meeting.
- The former AER VP of National and International Relations was working directly to set up ICORE Dissolved and was a director of ICORE NFP and ICORE FP, while also an officer of ICORE NFP – all while an employee of AER.
- The former AER Chief of Staff was an officer of ICORE NFP and an employee of AER.

We saw no evidence of any of the above individuals formally disclosing directorships and officer appointments with ICORE entities to AER. We also saw no documented analysis of these potential conflicts of interests to show that risks were evaluated at the time that decisions were made regarding these entities and their governance structures.

During our interviews, a number of staff stated that they were aware of plans by a few AER staff, particularly the former AER CEO, the former AER VP of National and International Relations, and the former AER Chief of Staff, to transition to ICORE. The evidence we reviewed supported this.

### **The former AER CEO asked the former AER General Counsel to provide legal services for ICORE NFP and ICORE Dissolved, which undermined controls intended to protect AER's interests**

The former AER CEO asked the former AER General Counsel to assist in a number of different ICORE-related activities. For example, the former AER General Counsel helped draft corporate documents for ICORE NFP and was involved in finalizing the agreement with a Mexican university for training.

In early 2018, legal staff raised concerns to the former AER General Counsel about the risks associated with effectively representing both AER and ICORE NFP as legal counsel, particularly when agreements, like the MOU, were being developed and signed by the two parties.

We found that the former AER General Counsel was providing legal advice for both AER and ICORE NFP.

We saw no evidence anyone, including the former AER General Counsel, raised concerns to the Board related to legal counsel being potentially conflicted. The former AER General Counsel, having been involved in the preparation of various corporate documents for both ICORE Dissolved and ICORE NFP, should have known of the various risks related to potential conflict of interests.

### **Negotiations with the external consulting firm ignored potential conflict of interest risks**

Negotiations with the consulting firm and contemplations concerning compensation, and the movement of staff and expertise from AER to ICORE all created potential conflict of interest risks.

There is no evidence that the nature and structure of work being conducted with the consulting firm was determined to be appropriate by AER and that potential conflict of interest risks were properly mitigated.

## **There is no evidence that AER controls existed to identify a potential conflict of pursuing ICORE-related revenues from oil and gas companies AER regulates**

We noted a few instances where there were communications between AER management and oil and gas companies regarding potential provision of services by ICORE, as well as plans for ICORE to solicit sponsorships and other revenue opportunities from oil and gas companies regulated by AER.

Based on an examination of documents and confirmed through our interviews, there was no analysis or consideration given to whether soliciting oil and gas companies that AER regulates might be a potential conflict. We did not find evidence indicating that ICORE performed any services for, or received resources from, any oil and gas companies.

## **Control mechanisms, including the AER ethics committee, failed to protect the interests of AER**

### **The AER ethics committee was ineffective to protect the interests of AER.**

A key control failure was the ineffectiveness of AER's ethics committee. With the former AER General Counsel as chair, the committee was privy to important information related to conflict of interest risks. However evidence indicates that it never considered any conflict related to ICORE.

# AER Board oversight was ineffective

## Context

The board of directors plays a pivotal role in the success of an organization, having both governance and oversight responsibilities. Directors have a duty of care and a fiduciary responsibility to the organizations they serve. This duty ensures decisions are made in the best interests of the organization.

The REDA outlines much of the AER Board's powers and responsibilities. REDA states that the AER Board is responsible for the general management of AER's business and affairs. REDA also stipulates that the AER Board must have a minimum of three members. The Board created up to six committees<sup>3</sup> to facilitate business of the regulator.

The *Public Agencies Governance Framework* supports a competency-based process for the appointment of directors. When vacancies arise, the agency initiates this process and the Agency Governance Secretariat provides support. This agency makes appointment recommendations to the Ministers, and Cabinet ultimately approves appointments based on recommendation by the Ministers.

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<sup>3</sup> These committees include risk management, nomination, governance, audit & finance, regulatory review and human resources, health & safety.

# Findings

## Key Findings

- **The AER Board did not have a full complement of competencies between 2015 and 2018.** p. 33
  - At times between 2015 and 2018 the AER Board had numerous vacancies. p. 33
  - The AER Board did not have all the skills, nor did they contract the required skillset, to conduct proper oversight. p. 33
- **The former AER Board Chair was involved with ICORE activities.** p. 33
  - Contrary to the AER Board process for all members to disclose potential conflicts prior to conducting AER Board business, the former AER Board Chair did not disclose his involvement with ICORE. p. 33
- **AER management, led by the former AER CEO, provided updates to the AER Board about ICORE from 2016 onward; however the updates were sometimes incomplete and/or inaccurate.** p. 34
  - Evidence shows there was misalignment between the former AER CEO and the AER Board on the importance of ICORE. p. 36
- **AER Board oversight processes were lacking or not followed.** p. 37
  - The AER Board did not ask management to provide critical ICORE-related information. p. 37
  - The AER Board did not include ICORE as a meeting agenda item for more than a year while ICORE activities ramped up. p. 38
  - In September 2018, the AER Board reasserted its support for ICORE, while outstanding allegations and concerns still existed. p. 38
- **Ministerial oversight processes were ineffective.** p. 38
  - The former Minister of Energy met regularly with the former AER CEO as opposed to AER Board and former AER Board Chair. p. 38
  - The former Minister of Energy indicated she did not want ICORE to be a provincial corporation, nor did she want industry levies collected by AER to be used on ICORE work, but no confirmation was ever sought concerning this. p. 38
  - Important information about ICORE was not reported to the former Minister of Energy. p. 39

## **The AER Board did not have a full complement of competencies between 2015 and 2018**

### **At times between 2015 and 2018 the AER Board had numerous vacancies**

In early 2015, AER had eight Board members, but over the following years, it typically had five Board members, and for a period of time in mid-2016 was down to three members. The number of vacancies, among other things, impacted the AER Board's ability to effectively utilize sub-committees, such as the audit and risk and governance committees, to ensure appropriate oversight.

### **The AER Board did not have all the skills, nor did they contract the required skillset, to conduct proper oversight**

Our review of the AER Board competency matrix from 2015 to 2017 confirmed areas where certain expertise was lacking. Information technology and corporate legal expertise were areas of weakness for the AER Board and this represented a risk given the nature of AER's operations. The AER Board did not take measures to mitigate this risk, such as retaining external experts to provide advice. The directors we interviewed indicated that they placed significant reliance on the former AER General Counsel as their legal expert.

Our interview with the former Minister of Energy confirmed that she too had concerns about whether all the expertise necessary was present at the AER Board level. For example, the former Minister of Energy noted that additional information technology expertise would benefit the AER Board. The information management findings we outline later in this report lend support to this view.

## **The former AER Board Chair was involved with ICORE activities**

### **Contrary to the Board process for all members to disclose potential conflicts prior to conducting Board business, the former AER Board Chair did not disclose his involvement with ICORE**

In our review of AER Board minutes and interviews with former Board members, we confirmed that the former AER Board Chair did not disclose his involvement with ICORE. The former AER Board Chair's involvement, while he was Chair of the Board, included trips to the United States and domestically to promote and advance ICORE, recruit prospective members for the ICORE advisory board, and for ongoing strategic conversations with the former AER CEO and others regarding ICORE.

There are a number of communications through email and text that show the former AER Board Chair's involvement with, and interest in, ICORE.

## **AER management, led by the former AER CEO, provided updates to the AER Board about ICORE from 2016 onward; however the updates were sometimes incomplete and/or inaccurate.**

Through our review of AER Board minutes and interviews with both AER Board members and AER management, it is clear that the AER Board was informed of some key ICORE steps along the way – including the establishment of ICORE NFP (and ICORE Dissolved). Our review of AER Board minutes since the CORE concept emerged found the following:

### **February 5, 2016:**

- The former AER CEO informed the AER Board that CORE was related to the regulatory excellence initiative and goals include optimizing training resources, anticipating new skills/training needs, and building a regulatory workforce to meet needs.
- The former AER CEO informed the AER Board that if AER was not able to access funds from AER accumulated surplus to develop CORE, management would look for other options for funding.

### **March 31, 2016:**

- The former AER CEO informed the AER Board that a request for approval to utilize accumulated surplus was pending and the allocation of funds for CORE would be deferred until the first quarter of fiscal 2017 when government made its funding decision.  
*Note: our examination indicates that no submission to Treasury Board and Finance was ever made.*
- AER approved the budget for fiscal 2017 for CORE.

### **June 1, 2016:**

- The former AER CEO informed the AER Board that AER was proceeding with a plan to establish an entity that would be an independent course and training provider not only for AER staff, but externally as well. The former AER CEO noted the legal and financial constraints in REDA for AER to receive and spend third party funds.
- The former AER CEO stated that management would move forward to establish CORE as a legal entity and the focus of the entity was primarily internal training delivery.  
*Note: our examination indicates that by this point that management's focus was not on AER internal training needs but exploring external opportunities.*
- The former AER CEO also noted that management was discussing governance and model options with a consulting firm.

### **February 2, 2017:**

- AER Executive Vice-President of Corporate Services provided an update on ICORE to the Board. He confirmed that the AER Board of the separate legal entity (ICORE Dissolved) was comprised of AER staff; however, the intent was to transfer to an independent entity within next year.  
*Note: we did not find evidence that the former AER CEO and other management intended to transfer the entity to an external firm at this point. Within months of this meeting, ICORE FP and ICORE NFP were created.*
- The former AER Board Chair reported that Mexico had formally joined ICORE and at least two other countries were also interested in joining.  
*Note: Mexico never formally joined ICORE and we did not find evidence that two other countries were seriously interested in joining.*
- The former AER Board Chair also noted the federal government was very supportive of ICORE.

## April 25, 2018

- The former AER CEO provided background on how ICORE NFP came into being and a presentation that provided an overview on philosophy and structure of ICORE NFP.
- The former AER CEO noted that ICORE NFP was not funded by industry levy and that industry response was “muted.”  
**Note:** *Given that AER staff and resources were being used to establish ICORE NFP, it was being funded by industry levy.*
- The former AER CEO outlined the AER/ICORE NFP relationship, working model, and ICORE’s current operations.
- The former AER Chief of Staff stated ICORE NFP’s main goal was AER regulatory excellence and international recognition of AER as a global energy regulatory leader.
- The AER Board noted the long-term importance of the initiative and confirmed its support.

## September 13, 2018

- The former AER CEO provided a presentation about the ICORE initiative. The former AER CEO emphasized this was about AER.  
**Note:** *ICORE activities to this point were almost exclusively externally focused.*
- The former AER CEO indicated that AER did not have capacity and expertise to adapt to change and be future-oriented.
- Discussion between the former AER CEO and the AER Board highlighted the risks if ICORE were established outside of AER.
- The former AER CEO stated that AER would ensure all financial and in-kind costs were captured and documented.  
**Note:** *tracking and recording of costs was not properly captured or documented by AER. We detail this later in our report.*
- The AER Board questioned the former AER General Counsel about any concerns/legal issues.
- The AER Board confirmed its support to continue efforts to develop the ICORE concept and business strategy.

Also at the September 13, 2018 meeting, in response to a request from the AER Board in August 2018, the former AER CEO provided a chronology of ICORE-related activities. While the chronology did include some detailed information about ICORE-related events since 2014, some very critical facts were omitted. For example, the chronology does not include:

- AER managements submission of a \$30 million grant proposal to the federal government to fund ICORE
- The existence of ICORE FP
- The fact that the former AER CEO signed the memorandum of understanding between AER and ICORE NFP as the President, ICORE NFP
- That a separate email system was created for ICORE (icoreglobal.ca) by AER staff to conduct ICORE business
- The former AER Board Chair’s involvement

There are also statements in the chronology that are inaccurate. For example, the chronology states:

- “The AER has not contributed any cash into the ICORE NFP as the AER is providing in kind resources only.” This statement ignores the fact that AER did incur out of pocket costs prior to the AER/ICORE NFP MOU and that a number of travel and hospitality costs incurred for ICORE business were paid for by AER and never invoiced or recouped.
- That AER hosted a delegation from Oman, but says nothing about ICORE’s plan to sell to Oman “a multi-year ICORE agreement to establish a single regulator system...” Planned international business development activities by ICORE were omitted from chronology overall.
- The chronology states: “All AER resources associated with ICORE will ultimately be cost recovered by the AER.” Our review of correspondence between the former AER CEO and others involved in ICORE demonstrate that full cost-recovery of AER resources used was not intended.

Generally, the focus of the chronology was on hosting delegations, visiting other jurisdictions, and public signings. The chronology lacked many key issues and challenges that AER management should have reported to the AER Board. Additionally, many of the key events that were included in the chronology constituted the first time the AER Board had heard of them, like international events and certain interactions with the former Minister of Energy.

### **Evidence shows there was misalignment between the former CEO and the AER Board on the importance of ICORE**

Based on interviews we held, most AER Board members felt that ICORE was not a significant endeavour and were surprised to hear, after the fact, about the time and effort spent by the CEO and others on ICORE. Some members we interviewed felt the CEO characterized ICORE as a small project. Because of the lack of accurate information about ICORE, a misalignment between the AER Board and AER management about ICORE existed.

## AER Board oversight processes were lacking or not followed

Notwithstanding the inherent limitations that the AER Board faced due to lack of a full complement, and the needed skillset as well as the Board Chair's direct involvement with ICORE, there were key AER Board processes that were inadequate in relation to ICORE. Our examination focused on AER Board processes in the context of ICORE, not on other AER priorities and activities.

### The AER Board did not ask management to provide critical ICORE-related information

Because the former AER CEO and other management informed the AER Board from 2016 to 2018 about certain ICORE key matters (i.e. establishing an independent ICORE entity, AER staff working on ICORE, and plans to deliver training internationally), a reasonable expectation would be that AER Board processes would have required the former AER CEO and AER senior management to:

- Provide a strategy and a business plan for ICORE activities. The AER Board did not ask to see a business plan until the fall of 2018 after concerns and allegations about ICORE surfaced. The business plan the AER Board received demonstrated that ICORE had little to do with benefiting AER. The AER Board failed to identify that ICORE was driving AER management's focus away from AER's mandate.
- Detail the governance structure of ICORE NFP. Based on our interviews, AER Board members did not know prior to the fall of 2018 that AER was the sole governing and operating member of ICORE NFP, giving AER the power to appoint all the directors of ICORE NFP. The AER Board did not ask to see the incorporation documents for ICORE NFP. It is not clear how the AER Board supported establishing ICORE without discussing its governance structure.
- Prove how AER management was mitigating the risks of AER staff performing work and delivering services in Mexico, and potentially other countries. We found AER had no documented assessment of security risks associated with placing AER staff in foreign jurisdictions.
- Provide specific information about AER resources necessary to build ICORE.
- Demonstrate how AER staff involved in both governance and management of ICORE entities did not place individuals in a conflict.
- Discuss succession plans for AER senior executives. The former AER CEO used ICORE to create succession opportunities for some of AER staff. For example, the former AER EVP of Stakeholder Engagement moved from an Executive Vice-President position at AER to Lead of ICORE DP as part of a succession plan.
- Assert, or even evaluate, that ICORE activities complied with legislation. Dating back to 2016, AER management told the AER Board they intended to establish ICORE as an independent entity. However, we did not find evidence that the AER Board had AER management assert and demonstrate that establishing a new entity and collecting and spending third party revenues was onside with REDA and other legislation relevant to AER, such as the *Financial Administration Act*.
- Confirm whether ICORE NFP would be following AER policies and procedures, given it was AER staff who were working on ICORE NFP activities. There were no separate policies and procedures established for ICORE NFP. When ICORE business transactions were conducted by ICORE DP, there was a reasonable expectation that AER policies, and hence acceptable public sector practices were to be followed. Our examination found this was not always the case.

## **The AER Board did not include ICORE as a meeting agenda item for more than a year while ICORE activities ramped up**

In February 2017, AER's Executive Vice-President Corporate Services told the AER Board that certain AER management were the board members of a recently established ICORE entity (ICORE Dissolved). Yet, based on a review of AER Board minutes, ICORE was not on the AER Board agenda until April 2018. As a result, an important time-period elapsed during which oversight was limited. During the February 2017 to April 2018 timeframe, ICORE NFP was incorporated and the internal AER project ICORE DP was initiated.

## **In September 2018, the AER Board reasserted its support for ICORE, while outstanding allegations and concerns still existed**

Even without a business plan, risk assessment or clarity on the extent of resources necessary to stand up and spin-off ICORE from within AER, the AER Board continued to support the ICORE concept as late as September 2018. At the September 13, 2018 board meeting, the AER Board reasserted its support to continue efforts to develop the ICORE concept and business strategy, despite the outstanding allegations and concerns.

## **Ministerial oversight processes were ineffective**

The former Minister of Energy confirmed to us she had a vague understanding of ICORE activities and supported the concept of regulatory excellence and building international relationships with those jurisdictions that fit within the government's strategy. Her understanding was that AER was the primary beneficiary of any ICORE-related activities.

## **The former Minister of Energy met regularly with the former AER CEO as opposed to the AER Board and former AER Board Chair**

Rather than meeting regularly with the Chair of the AER Board, the former Minister of Energy met with the former AER CEO. This relationship undermined the accountability process between the AER Board and the former Minister of Energy, as the former AER CEO essentially went above the AER Board to discuss AER matters. This is atypical of the relationship between CEOs and Ministers in the public sector, as the board and board chair should have the direct relationship with the Minister. The Minister relies upon the board to oversee the performance of the CEO.

The CEO reports to the board, and in the public sector the board is accountable to the Minister. The former Minister of Energy received high-level updates about ICORE activities from the former AER CEO and sometimes his staff. However, based on interviews and our review of correspondence, we can confirm that the former Minister of Energy was not privy to the various iterations of ICORE nor any of the significant issues related to ICORE.

## **The former Minister of Energy indicated she did not want ICORE to be a provincial corporation, nor did she want industry levies collected by AER to be used on ICORE work, but no confirmation was ever sought concerning this**

Based on communications, and corroborated in interviews, we know that the former Minister of Energy asserted two provisos related to ICORE—that AER should not create a provincial corporation, or use industry levies collected by AER to advance its operations. In both cases, we did not see any evidence of follow through or confirmation that these two important requirements were satisfied.

## Important information about ICORE was not reported to the former Minister of Energy

From 2016 to 2018, the former Minister of Energy received intermittent and selective briefings from the former AER CEO. In June 2016, a briefing note submitted to the former Minister of Energy indicated that AER needed CORE to advance AER training, that CORE would be set up as an independent entity to be able to receive funding, and that AER would have a limited role in establishing CORE. We found no further briefing notes. Based on our interview with the former Minister of Energy, many of the key challenges and risks relating to ICORE were never communicated to her. For example, the former Minister of Energy was unaware of the \$30 million grant request submitted to the federal government, the consideration of commercializing OneStop, or the extent of AER staff and resources deployed to build ICORE. In January 2017, the former Minister of Energy was told that AER funding was not being used for ICORE, which was incorrect. In June 2017, the former Minister of Energy became aware of ICORE NFP by participating at signing events announcing the MOUs between ICORE and the University of Alberta and SAIT. From the documented evidence, in combination with interviews, we found the former Minister of Energy was not privy to important information about ICORE that would allow for sufficient oversight.

### RECOMMENDATION

**We recommend that the AER Board improve its oversight by:**

- › **Ensuring the effectiveness of processes to evaluate corporate culture and senior executive performance**
  - › **Obtaining formal and periodic assertions from management that activities comply with legislation and AER policies, including policies related to conflict of interest**
  - › **Ensuring officers in key risk management, compliance and internal control roles are well-positioned and supported to provide complete information about AER activities**
  - › **Reviewing and approving CEO travel and expenses**
  - › **Ensuring the primary channel of communication to the responsible Ministers is through the Board**
  - › **Establishing processes to engage with executive staff, and other staff within the organization, to gain comfort that all significant matters have been brought to the attention of the Board**
-

# Financial, information management, and human resource controls were ineffective

## Context

Controls can fail for a number of reasons including human error, lack of resources and technology failure. Such failures are most often unintended and are usually not indicative of purposeful contravention of a control. Management override of controls, on the other hand, is different. Override of controls can stem from deliberate behavior and can be more difficult to detect, negatively impacting oversight and assurance functions.

As part of this examination, we concluded that a high risk of management override of controls was present, and we expanded our testing accordingly. Because ICORE activities were being conducted by AER staff, using AER resources, while ICORE was under the control of AER, it seemed a reasonable expectation that any ICORE-related work would comply with relevant government and AER policies and processes.

## Findings

### Key Findings

- **AER management engaged in unusual information management practices.** p. 41
  - › Communication methods, particularly text messages, were used to restrict access to information. p. 41
  - › A separate email domain “icoreglobal.ca” was set up outside of AER’s control environment. p. 41
  - › ICORE email accounts were deleted in late 2018. p. 41
  - › Confidential, and potentially privileged, AER information was transmitted via ICORE email accounts. p. 41
  - › AER information technology processes and controls were ineffective in mitigating risk relating to ICORE. p. 42
- **Controls intended to protect public money were ineffective.** p. 42
  - › With ICORE NFP lacking resources due to delayed revenues, an ICORE project was established within AER to access AER resources. p. 42
  - › Travel referred to as “AER reputation building” was used to advance ICORE. p. 42
  - › ICORE travel expenses lacked proper documentation and were coded to AER. p. 43
- **Contracting practices related to ICORE did not comply with AER policies.** p. 43
  - › AER management developed a contract between ICORE NFP and the former AER VP of National and International Relations with unconventional contract terms. p. 43
  - › AER management engaged an external consulting firm to build ICORE with no engagement letter, no contract, and directed ICORE NFP to pay the bill. p. 43
- **ICORE activities often ran contrary to other AER processes.** p. 44
  - › The project charter for ICORE DP lacked many items required of other AER projects. p. 44
  - › ICORE activities required the setup of bank accounts and signing authorities that were outside AER processes. p. 44

## **AER management engaged in unusual information management practices**

### **Communication methods, particularly text messages, were used to restrict access to information**

While we found a considerable volume of ICORE business documents, such as proposals, contracts, forecasts, perhaps even more substantial were the numerous text messages between the former AER CEO, the former AER VP of National and International Relations, the former AER Chief of Staff and the former AER EVP of Stakeholder Engagement. Beyond simply using text messages to communicate ICORE business, it was clear from the nature and extent of messages that texts were used to avoid the risk of certain decisions becoming known to others.

The former AER CEO, the former AER Chief of Staff and the former AER VP of National and International Relations in particular expressed regular concerns about who might see sensitive ICORE information, and how freedom of information legislation might negatively impact ICORE activities. We found no evidence that any individuals working with ICORE sought guidance for what would be acceptable information management practices as they related to ICORE. In the absence of anything to the contrary, we expected that AER practices and policies would be followed.

We found communications between the former AER CEO, the former AER VP of National and International Relations and the former AER Chief of Staff discussing deleting ICORE-related information from their emails.

### **A separate email domain “icoreglobal.ca” was set up outside of AER’s control environment**

In March 2017, the former AER Chief of Staff set up a corporate email domain “icoreglobal.ca” whereby AER staff working on ICORE activities would have their own ICORE email address. These emails were not on the AER server, and AER IT staff were not involved in the setup, monitoring, or security of these emails. Some individuals stopped using their icoreglobal.ca email by early 2018, whereas other account users were active until late 2018. The former AER CEO used his icoreglobal.ca email extensively during 2017, as did those working on ICORE full-time. The former AER Board Chair also had an icoreglobal.ca account.

### **ICORE email accounts were deleted in late 2018**

Based on an extraction we took of icoreglobal.ca activity, we identified a number of email accounts that the former AER Chief of Staff deleted between October 27, 2018 and November 6, 2018. Two of the email accounts deleted were those of the former AER Board Chair and the former AER General Counsel.

### **Confidential, and potentially privileged, AER information was transmitted via ICORE email accounts**

We found examples where AER business information was being shared via icoreglobal.ca emails outside of AER controls and security. We found an example where sensitive AER information—some of which was described as Cabinet confidential—was shared among icoreglobal.ca email accounts. This information was described as being privileged.

## **AER information technology processes and controls were ineffective in mitigating risk relating to ICORE**

AER Information Services leadership was aware that some AER support would be necessary in the early days of ICORE, and that at some point ICORE would operate independently. ICORE relied on support from AER Information Services to carry on some aspects of its business. For example, the ICORE DP group was granted a secure file location on the AER network. ICORE members were given hardware and devices which allowed connectivity to AER's network. Additionally, ICORE set up a webpage outside AER, without AER Information Services oversight. AER Information Services was involved in the assessment on the OneStop application and evaluation of the Intellectual Property (IP) issues associated with its commercialization, so there was awareness of initiatives planned by ICORE. AER's Information Services failed as a protective and detective control given the knowledge they had about ICORE's technology use.

As part of our examination, we retrieved the former AER CEO's work laptop, and found it had not been used. The former AER CEO conducted his AER and ICORE business using an AER-issued iPhone and on a personal iPad. Hence some of the former AER CEO's formal business decisions and strategy discussions were never documented in proper corporate records.

## **Controls intended to protect public money were ineffective**

### **With ICORE NFP lacking resources due to delayed revenues, an ICORE project was established within AER to access AER resources**

Based on our review of text messages, emails and our interviews with staff, a key reason for creating ICORE DP, an in-house AER project, was because revenues from Mexico and other ICORE opportunities were not materializing quickly enough. As a result, ICORE NFP did not have funds to retain staff or continue development work. ICORE NFP did not receive its first revenues from Mexico until mid-2018, and by that time over \$1.5 million of ICORE-related costs had already been incurred by AER.

A common theme we encountered in our interviews and review of communications was that AER was effectively used as the "bank" to supply necessary resources to create ICORE.

### **Travel referred to as "AER reputation building" was used to advance ICORE**

Based on an examination of travel expenses, it became apparent that travel was often to advance ICORE with AER's interests being secondary.

We found communications discussing two sets of visit notes—one related to AER reputation building, and another to be kept private related to ICORE.

Some examples of AER paid trips that were primarily for ICORE business include:

- The former AER CEO and the former AER VP of National and International Relations took a trip to Istanbul, Turkey for the World Petroleum Congress in July 2017. AER paid for the travel expenses for this trip where the former AER CEO was speaking. We reviewed his speaking notes, and the focus of his speech was on ICORE and promoting ICORE.
- The former AER CEO and the former AER VP of National and International Relations were also in Oman in July 2017 where evidence suggests the primary focus was ICORE.

During our testing of expenses and through our interviews, we became aware of a practice in which certain staff were asked to code ICORE-related reasons for travel and hospitality to "AER reputation meetings."

## **ICORE travel expenses lacked proper documentation and were coded to the AER**

There were instances in our testing in which staff did not document the business purpose for expenses incurred, as required by AER policy. Thus, it is difficult to determine whether the travel was reasonable and required for AER business purposes. This lack of documentation made it particularly difficult to determine which was AER, and which was ICORE-related business, without detailed examination. From April 2016 to June 2018, the former AER VP of National and International Relations made 12 ICORE-related trips to London at a total cost of \$16,194. Eight of these trips did not have clear documentation regarding the business purpose.

In some cases, hosting meals were claimed, and it was not documented who the employee was meeting with or the purpose of the meeting. There were also multiple taxi receipts claimed with no business purpose documented.

## **Contracting practices related to ICORE did not comply with AER policies**

### **AER management developed a contract between ICORE NFP and the former AER VP of National and International Relations with unconventional contract terms**

The former AER VP of National and International Relations resigned from AER in July 2018, and effective August 2018 was contracted by ICORE NFP through a private company operated by the former AER VP of National and International Relations. The practice to engage the former AER VP of National and International Relations's company did not follow AER policies, including the lack of documented justification for sole-sourcing. The contract total was for \$550,000 over two years. Based on the contract, \$275,000 of money earned by ICORE NFP was placed in a separate account to be held to pay the former AER VP of National and International Relations's company in the event ICORE NFP ceased operations.

### **AER management engaged an external consulting firm to build ICORE with no engagement letter, no contract, and directed ICORE NFP to pay the bill**

From 2016 to 2017, AER management engaged with a consulting firm to build ICORE Dissolved with AER, which resulted in the creation of ICORE Dissolved. No contract for this work was ever created, and given the extent of work planned, a Request for Proposals (RFP) was also required under AER policies but an RFP was not completed. The absence of a contract between AER and the consulting firm was a direct contravention of AER's procurement policies.

The consulting firm sent AER an invoice in March 2017 for \$422,000. This triggered a protracted dispute between the consulting firm and AER over payment for services rendered. By early 2018, both parties agreed and signed off on the amount of \$175,000. The AER did not pay the \$175,000 as the former AER CEO directed that ICORE NFP should cover this cost. However, this was problematic for the AER, because ICORE NFP did not exist at the time when the consulting firm performed its services for the AER.

Because no contract existed between AER and the consulting firm, the plan was to wait until money came in to ICORE NFP from the training delivery in Mexico and use that money to pay the \$175,000.

## ICORE activities often ran contrary to other AER processes

### The project charter for ICORE DP lacked many items required of other AER projects

There were no estimated costs included in the ICORE DP project charter “as the (AER) ICORE branch budget covers project costs.” There were also no measures put into place to determine whether the goals of the ICORE DP were being met. For example, there was no measurement of how many AER staff received training developed via ICORE. One notable assumption in the ICORE DP project charter was that “any recoverable costs are dependent upon the completion of international delivery.” This assumption sets the stage for AER’s resources being used for ICORE activities without reimbursement, unless it related to a contract where revenues were generated.

In April and May 2018, the former AER General Counsel raised concerns regarding the discrepancies between the ICORE DP project charter and the work actually conducted. In her view, the actual funding requests and deliverables far exceeded those in the ICORE DP project charter.

### ICORE activities required the setup of bank accounts and signing authorities that were outside AER processes

The former AER Chief of Staff set up bank accounts for ICORE NFP, with the former AER CEO, the former AER VP of National and International Relations, and the former AER Chief of Staff named as officers of the organization in banking records. AER Finance was not involved in the setup of the bank accounts. Three individuals had signing authority for payments out of the ICORE NFP bank account – the former AER CEO, the former AER EVP of Stakeholder Engagement and the former AER Chief of Staff. AER Finance did not have direct oversight of transactions that occurred between ICORE NFP and third parties once money had come in from Mexico, allowing ICORE NFP to make its own payments.

## RECOMMENDATION

**We recommend that AER perform sufficient due diligence to assess the risk of further waste of public resources not already identified.**

# Controls to track and monitor expenses related to ICORE activities were at first non-existent and then poorly implemented

## Context

AER staff time, travel, contracted services, supplies and office space were all used for ICORE activities to establish ICORE NFP, and prior to that, ICORE Dissolved. In May 2017 a MOU between AER and ICORE NFP was signed. Prior to that there was no recognition of, or mechanism to, track ICORE-related costs incurred by AER. The MOU is clear that direct and in-kind costs incurred by AER would be reimbursed by ICORE NFP. The MOU states *“In the start-up and subsequent phases AER contributions to ICORE training, products, curriculum and course materials will be in the form of in-kind services. In all cases ICORE will compensate.”*

## Findings

### Key Findings

- **We estimate the total financial impact of ICORE activities to be approximately \$5.4 million. Of this, AER recouped \$3.1 million from ICORE NFP, resulting in an uncollected amount of \$2.3 million.** p. 46
- **Prior to May 2017, no system was in place to track ICORE-related expenses and AER absorbed these costs — approximately \$1.1 million.** p. 46
- **After May 2017, AER had arbitrary and inconsistent approaches to calculate and bill for costs it incurred to build ICORE.** p. 47
  - › AER did not submit an invoice to ICORE NFP until more than a year after ICORE NFP was created. p. 47
- **As of November 2018, AER only planned to bill ICORE NFP \$842,000.** p. 47
- **Beyond the \$3.1 million recovered by AER, we estimate an additional \$1.2 million in ICORE-related costs were incurred after May 2017 that AER did not appropriately bill to ICORE NFP.** p. 48
- **The amount of travel and hospitality expenses related to ICORE activities was significant.** p. 49
  - › Travel and hospitality expenses were not cost-effective. p. 51

## We estimate the total financial impact of ICORE activities to be approximately \$5.4 million

### Of this, AER recouped \$3.1 million from ICORE NFP, resulting in an uncollected amount of \$2.3 million

As part our examination, we attempted to quantify the total financial impact to AER from the initiation of ICORE activities until AER resigned its memberships. This proved challenging given non-compliance with and override of controls, as well as expenses intentionally classified as AER operational expenses when they were actually ICORE costs. In addition, AER employees who spent time on ICORE activities had their employment compensation coded to AER, and not to ICORE. Also, ICORE costs incurred prior to the May 2017 MOU were not tracked. As a result, we had to apply judgment in our estimates of the total financial impact (both in-kind and travel and hospitality costs). Given the uncertainty inherent in estimating the costs, we used conservative assumptions to provide insight into the financial impact of ICORE activities. The table below summarizes total actual and estimated ICORE related costs to AER, including recovered amounts:

<b>AER costs recovered from ICORE NFP</b>		<b>\$ 3,134,000</b>
ICORE costs (course development and delivery, and third party) billed		857,000
ICORE costs (in-kind and out-of-pocket) billed		2,277,000
<b>AER costs NOT recovered from ICORE NFP</b>		<b>\$ 2,285,000</b>
<b>Pre-MOU ICORE costs before May 2017</b>		<b>1,070,000</b>
ICORE costs tracked and recorded by AER		108,000
ICORE costs not tracked by AER that OAG estimated		962,000
<b>Post-MOU ICORE costs after May 2017</b>		<b>1,215,000</b>
AER tracked and recorded ICORE costs (primarily severance payments for ICORE staff)		697,000
ICORE costs not tracked by AER that OAG estimated		518,000
<b>TOTAL ICORE COSTS, Estimated and Actual</b>		<b>\$ 5,419,000</b>

### Prior to May 2017, no system was in place to track ICORE-related expenses and AER absorbed these costs — approximately \$1.1 million

Prior to the May 2017 incorporation of ICORE NFP, and the MOU between AER and ICORE NFP, there was a significant amount of work done on ICORE-related activities. AER Finance did not track ICORE-related costs prior to May 2017 and AER absorbed these costs. These costs included the AER staff time and resources spent to set up the business and administrative aspects of ICORE, including the efforts to partner with a consulting firm. There were also travel costs to promote ICORE domestically and internationally.

We tested expense claims and analyzed expense descriptions to identify potential ICORE expenses prior to May 2017. We found \$108,000 of costs that were coded as ICORE expenses, but not billed to ICORE. We also calculated an estimate of \$962,000 (\$833,000 in-kind and \$129,000 travel-related expenses) based on the available information relating to staff time, and other costs that related to ICORE activities.

We found communication between the former AER CEO, the former AER VP of National and International Relations and the Former AER Chief of Staff confirming that ICORE-related expenses would not be tracked before May 2017, and that those costs would be treated as AER reputation building costs before that date.

### **After May 2017, AER had arbitrary and inconsistent approaches to calculate and bill for costs it incurred to build ICORE**

Even after the MOU between ICORE NFP and AER was signed, AER failed to implement proper processes to record ICORE costs so that AER expenses could be recovered in full. We could not find documented guidance to AER staff on how to allocate or account for costs per the MOU. The lack of established processes resulted in variation in how AER accounted for costs. The AER Finance did not actively monitor compliance with the MOU from a financial perspective.

### **AER did not submit an invoice to ICORE NFP until more than a year after ICORE NFP was created**

The first invoices submitted by AER to ICORE NFP were in September of 2018. Through our interviews, staff stated that until ICORE NFP had cash from Mexico training delivery, there was no money to be recouped by AER.

### **As of November 2018, AER only planned to bill ICORE NFP \$842,000**

When we began our examination, AER Finance did not have a complete listing of all incurred costs relating to ICORE NFP.

In addition to costs recorded in the ICORE development project cost center, there were other costs that had “CORE” or “ICORE” in the description of the transaction that AER Finance had to identify. Based on a document titled “AER/ICORE NFP Repayment” dated November 20, 2018, AER initially planned to recover only \$842,000 from ICORE NFP. This included cost recovery for Mexico course development and delivery, training, and contracts directly signed between ICORE NFP and third parties (i.e. communication services). This \$842,000 amount was communicated to the AER Board during a December 6, 2018 presentation. However, this amount did not capture nearly \$2.3 million of in-kind and out-of-pocket costs that AER incurred to support ICORE NFP after the date of the MOU.

AER Finance staff identified these additional costs after we started to question AER’s plans to recoup the in-kind services provided to ICORE NFP. This included over one million dollars of in-kind services provided in fiscal 2018, but which had not been recorded as a receivable from ICORE NFP. An updated invoice was prepared and submitted to ICORE NFP, after AER resigned its membership, for an additional \$2.3 million.

## **Beyond the \$3.1 million recovered by AER, we estimate an additional \$1.2 million in ICORE-related costs were incurred after May 2017 that AER did not bill to ICORE NFP**

Given the lack of proper tracking of time spent on ICORE activities, the ability for AER to properly calculate and bill for many ICORE-related costs was compromised. Based upon our detailed testing of expenses, we identified a number of transactions which AER failed to assess, track and recover from ICORE NFP. For example, less than \$1,000 of the former AER CEO's time and travel expenses were included, which is an understatement of costs given the extent of time and travel he spent on ICORE NFP development activities.

Our interviews with staff and review of documents also identified a number of staff who worked on ICORE activities where their time was not tracked and billed to ICORE NFP. Through our interviews with staff we also know that some were working outside of business hours to complete ICORE-related work. This included personnel who were not even part of the internal ICORE Development Project.

Based on our analysis, we estimated the post-MOU in-kind and direct costs for which AER did not bill ICORE NFP to be approximately \$518,000. Of this amount, approximately \$46,000 was ICORE NFP travel-related activities. Additionally, AER incurred wind-down costs once AER terminated its governing and operating memberships. AER's records showed \$697,000 that was primarily severance payments (\$546,000) related to the disposition of AER staff assigned to the ICORE project.

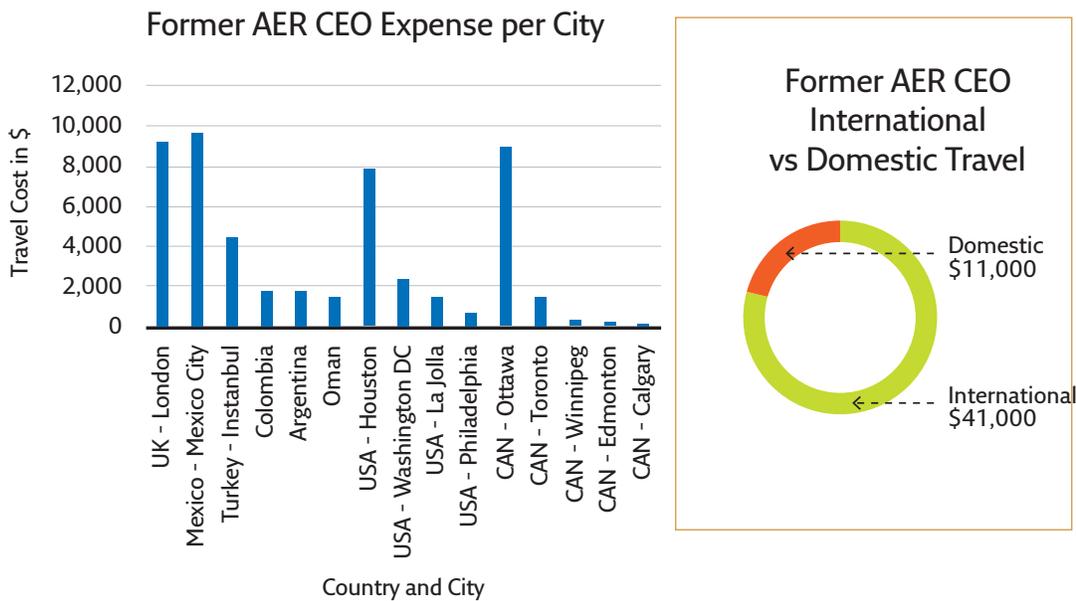
## The amount of travel and hospitality expenses related to ICORE activities was significant

We completed a detailed examination of travel and hospitality expenses that appeared to be related to ICORE. We were challenged in separating out the former AER CEO’s travel and hospitality costs to determine which cost was for AER reputation versus ICORE because of the dual purpose of the trips, and efforts made to intentionally understate ICORE-related travel. It is important to note that it is not unreasonable for certain staff to incur travel costs to attend meetings and conferences in carrying out AER business activities.

Based on our testing of expense claims related to ICORE, the amount of money AER spent was significant. We estimated this amount to be \$410,000 for pre- and post-MOU periods. This includes business development travel and course delivery in Mexico. AER recouped from ICORE NFP \$236,000 of the travel and hospitality expenses, but it absorbed the remaining \$174,000. In particular, the former AER CEO and the former AER VP of National and International Relations had the most travel for ICORE.

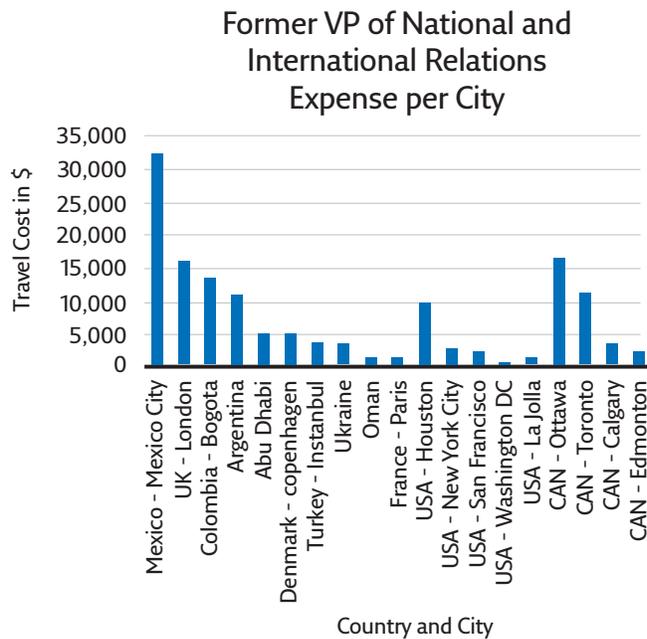
Below are the total travel and hospitality expenses for only these two individuals.

### The former AER CEO’s Estimated ICORE-Related Travel and Hospitality Expenses of \$52,000 from January 2016 to November 2018



As noted earlier, less than \$1,000 of the former AER CEO’s travel costs were charged to ICORE NFP. The above graphs show that \$52,000 (\$41,000 international and \$11,000 domestic) represent the cost of the former AER CEO’s ICORE-related travel recorded in AER financial systems that we tested from January 2016 to November 2018, when he left AER.

**The former AER VP of National and International Relations's ICORE Travel and Hospitality Expenses of \$148,000 from January 2016 to December 2018**



Based on our testing, the former AER VP of National and International Relations's total travel costs from January 2016 to December 2018 were \$148,000 (\$113,000 international and \$35,000 domestic). Of the total amount, \$81,000 were post-MOU (May 2017) travel costs that AER had tracked and billed to ICORE. However, AER did not track and bill to ICORE approximately \$67,000 pre-MOU travel costs that we have identified from our expense claims testing.

Other key ICORE individuals' travel costs were much less than the former AER CEO and the former AER VP of National and International Relations. The former AER Chief of Staff incurred \$15,000, and the VP Stakeholder Engagement incurred \$23,000. The former AER Chief of Staff and the former AER EVP of Stakeholder Engagement's travel costs were domestic, and our testing found no international travel. The former AER Board Chair's ICORE related travel paid for by AER, and recovered from ICORE NFP was approximately \$3,000.

## Travel and hospitality expenses were not cost-effective

AER's travel policy states that employees are to use the most cost-effective methods of transportation and accommodation. Our expense claims testing found that the former AER CEO and the former AER VP of National and International Relations often travelled using business class airfare and seat upgrades. One round-trip for the former AER VP of National and International Relations from Calgary to Copenhagen and London resulted in total flight costs of \$8,089. Another round-trip for the former AER CEO to London incurred total costs of \$8,789. The former AER CEO also incurred over \$5,000 in flight change fees from March 2018 to November 2018.

We did not see documented rationale for the types of hotels that the former AER VP of National and International Relations and the former AER CEO stayed at, with costs of up to \$500 a night.

### RECOMMENDATION

**We recommend AER evaluate whether any additional funds expended on ICORE activities are recoverable.**

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# The tone at the top at AER did not support a strong control environment or compliance with policies

## Context

Culture is recognized as a critical element for success of any organization. A dysfunctional culture creates inefficiencies and perpetuates daily instances of underperformance. At its worst, cultural missteps can damage an organization's reputation, put the organization in breach of laws and regulations, lower productivity, contribute to a failure to deliver on strategies, and be very costly to resolve. The board plays a key role in overseeing culture. The CEO is a significant, if not the most significant, driver of culture, along with his or her management team.

When individuals or organizations step out of bounds, a whistleblower can expose information or activities that are deemed illegal or unethical within an organization, public or private. The information of alleged wrongdoing can be a violation of laws, policies, rules, and regulations, as well as fraud. A whistleblower can bring information or allegations to immediate supervisors, senior management or to the board members, but there is a risk of facing reprisal and retaliation from those who are accused or alleged of wrongdoing. As such, many jurisdictions, including Alberta, have introduced legislation and processes within the public service to protect whistleblowers.

## Findings

### Key Findings

- **The culture at AER stifled concerns regarding ICORE activities** p. 53
  - Problems with culture at AER, described as a “culture of fear”, surfaced during our interviews. p. 53
  - Stakeholder relationships in the context of ICORE were not managed well. p. 53
- **The internal whistleblowing process at AER was ineffective and not widely known by AER employees** p. 54
  - Many AER employees we interviewed were unaware of AER's whistleblowing policies and process. p. 54
  - AER's internal whistleblowing process – distinct from the processes involving the Public Interest Commissioner (PIC) – was not viewed as safe and effective. p. 54

## The culture at AER stifled concerns regarding ICORE activities

### Problems with culture at AER, described as a “culture of fear”, surfaced during our interviews

“Culture of fear” was a phrase we commonly heard in a number of interviews we had with staff during our examination.

From our many interviews, and other evidence, including text messages, we gathered deeper insights on AER’s corporate culture. A common theme emerged—there were cultural problems within the corporate environment, including:

- Employees who were vocal about expressing complaints were at risk of losing their job
- Information on ICORE was not widely shared
- Executives were guarded about what they would say at the Executive Leadership Team table

### Stakeholder relationships in the context of ICORE were not managed well

AER has processes to manage relationships with stakeholders. These processes were not effective in the management of ICORE. As ICORE broadened its business, it formed partnerships and relationships with various external organizations. However, AER did not manage these relationships well.

AER, in the context of ICORE, did not view departments, like the Department of Energy, as a source of guidance and support to ensure activities were aligned with legislation and government objectives.

Our review of correspondence via text messages and emails from the former AER CEO and some of the key AER staff working on ICORE revealed concerns about how the “GOA” (Government of Alberta) would view the real activities of ICORE. The correspondence showed an attitude of dismissiveness and distrust of government departments.

Response from industry regarding ICORE was also ignored. Some of the interviewees told us that industry confidence in the regulator was deemed to be low. The former AER CEO frequently met with industry leaders and industry associations. In his communication, he conveyed messages that ICORE was not costing the industry because costs were recovered.

During our interviews with AER’s staff, we were told that some industry parties raised concerns about AER spending time and levy dollars on ICORE activities.

## The internal whistleblowing process at AER was ineffective and not widely known by AER employees

### Many AER employees we interviewed were unaware of AER's whistleblowing policies and process

AER has codified its whistleblower protection policies and procedures to manage disclosures. In response to the *Public Interest Disclosure (Whistleblowing Protection) Act*, AER modified its policies and procedures to comply with the legislation. Effectively the legislation sets out a structured process for dealing with disclosures, and provides an avenue for employees to report concerns to the Public Interest Commissioner, as well as the organization's designated officer.

Many employees we interviewed told us that they were unaware of the policy, the process, the protections afforded to them for disclosures, and the respective roles of a designated AER Ethics Committee Chair and the Public Interest Commissioner.

### AER's internal whistleblowing process — distinct from the processes involving the Public Interest Commissioner (PIC) — was not viewed as safe and effective

We learned that aggrieved employees did not feel empowered to speak up, and hence they had no confidence that the AER system was safe to shield them from retaliation.

We found there were inherent problems with the internal whistleblowing system and conflict reporting practices at AER. It was evident from our examination that the internal process did not work as intended. AER's designated officer for the whistleblower system told us she had concerns because any complaints brought forward were to be taken to the former AER CEO, which would have been problematic.

## RECOMMENDATION

**We recommend AER staff are made aware of, and are sufficiently trained on, AER's whistleblowing process, consistent with Section 6 of Alberta's *Public Interest Disclosure (Whistleblower Protection) Act*.**







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