

MOVING TOWARD EVIDENCE-BASED POLICY DEVELOPMENT

To comply with the provincial government’s new Preliminary Regulatory Impact Assessment requirements, PEO is reworking its policy process for developing regulations. What does the introduction of evidence-based policy-making mean for PEO, council and its committees?

By Jordan Max



REGULATORY POLICY development occurs widely across PEO. Issues arise on a regular basis relating to requirements and processes for admissions (academic, experience, good character, and so on), registration, practice standards, enforcement, complaints and discipline. These issues may originate from any of PEO’s committees, task forces, chapters, councillors, licence or Certificate of Authorization holders, government officials, media or the public.

To apply better decision-making to these issues, PEO is moving toward “evidence-based” policy development (EBP), a practice endorsed by the Canadian government and newly required by the Ontario government.

According to the Government of Canada’s Policy Horizons page (www.horizons.gc.ca/eng/content/case-evidence-based-policy):

“Evidence-based, evidence-informed or knowledge-based policy development refers to an approach that leverages the best available objective evidence from research to identify and understand issues so that policies can be crafted by decision makers that will deliver desired outcomes effectively, with a minimal margin of error and reduced risk of unintended consequences.

“Compared to subjective values, the factual interpretations of special interests and advocacy groups, and selective or ideologically-driven

viewpoints informing the policy development process, an evidence-based approach has as its great advantage neutrality and authoritativeness. This stems from sound, rigorous, comprehensive and unbiased policy research, which improves policy development in many ways, including by:

- reducing uncertainty;
- increasing logical clarity and consistency;
- providing new perspectives and understandings of policy issues;
- providing increased accountability to the public;
- providing reliable facts and knowledge; and
- improving the quality, inclusiveness and constructiveness of public policy debate.

“The major goal of evidence-based policy development is to ensure that the experience, expertise and judgment of decision makers are supported and resourced with the best available objective evidence and systematic research. Policy research is not expected to produce the solutions or decisions. It is meant to provide accurate, reliable and credible information, knowledge and analysis to inform public policy. The knowledge base it produces provides an important ingredient for the policy development process to reduce risk and improve outcomes, but it is not a substitute for the process.”

BRITISH IMPORT

Although evidence-based policy can be traced as far back as the 14th century, it was more recently popularized by the Blair government in the UK. A UK government white paper published in 1999 (*Modernising Government*) noted that government “must produce policies that really deal with problems, that are forward-looking and shaped by

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evidence rather than a response to short-term pressures; that tackle causes not symptoms.”

EBP subsequently found its way across the pond into the US and Canada. In Canada, it has been applied to diverse fields, such as education, public health (medicine, nursing), environment, and public safety (crime prevention, criminal justice).

In 2010, the Ontario government introduced a regulatory policy, including the following general principles of good regulatory governance:

- (i) Regulations respond to a clearly identified need for regulation;
- (ii) Regulations are developed and implemented in a transparent manner;
- (iii) Regulations are designed to be least trade restrictive;
- (iv) Regulations are based on assessed risks, costs and benefits and minimize impacts on fair, competitive and innovative market economy;
- (v) Differences and duplication of regulation is minimized, where appropriate;
- (vi) Regulations must be results-based, where appropriate and to the extent practicable;
- (vii) Regulations are timely and reviewed on a routine basis and are not maintained if the need giving rise to their adoption no longer exists;
- (viii) Regulations are made easily accessible and written in language that can be easily understood by the public and business; and
- (ix) Regulations are introduced in a predictable manner (e.g. January 1 or July 1).

The regulatory policy was subsequently amended in 2014 to include the requirement for a regulation proposal to be accompanied by a mandatory regulatory impact assessment that addresses, at a minimum, the impact on the access of people, goods, services and investments from other jurisdictions, including jurisdictions within Canada. As well, all new regulations (as of January 1, 2014) are to be subject to a mandatory review within 10 years. Ministries are required to post final regulations that have an impact on businesses on the Regulatory Registry for public comment for 45 days (www.ontariocanada.com/registry/downloads/Ontario%20Regulatory%20Policy.pdf).

The Ontario Ministry of Economic Development and Trade also published the *Regulator's Code*

of Practice in 2011 and *Alternatives to Regulation: Developing Smarter Policy Approaches* in 2012. These documents owe their origins to concerns about the negative impacts of regulatory red tape on business competitiveness, as well as the need to consider alternative forms of regulatory compliance other than regulations.

PRELIMINARY REGULATORY IMPACT ASSESSMENT

While these documents are not binding on PEO (since PEO is not part of the government), they do indicate that the provincial government views business impact assessment as “public interest.” Since PEO’s principal objective under the *Professional Engineers Act* (PEA) is to “regulate the practice of professional engineering and govern its holders of licences...in order that the public interest may be served and protected,” these standards and expectations should not be viewed lightly.

PEO’S POLICY-MAKING PROCESS

So, how does PEO’s policy-making process work? In general, PEO implements policy regarding the governance of the engineering profession through the use of regulations. The process of developing and implementing these regulations is similar to the process in all democratic governments.

When a committee, task force, department, councillor or member identifies a policy problem or issue that requires a change to either Regulation 941/90 or 260/08, it must first be established that PEO has the specific authority under section 7(1) of the PEA to make such a regulation. The proponent must also define the policy intent of the solution. Since September 2013, these proposals are to be forwarded to PEO’s Legislation Committee (LEC) to review and to provide a recommendation to PEO council. If council subsequently approves the policy intent of the proposed regulation change, LEC provides that policy intent to the attorney general and works with her staff to finalize the wording of the regulation. Once the regulation has been finalized, it is presented to council for approval, after which the attorney general presents the final regulation to the cabinet through a cabinet submission. If the final regulation is approved by cabinet, it takes effect three weeks afterward (or later, if requested by PEO).

This does not mean that PEO has not used evidence-based policy development in the past. For example, council’s professional standards policy approved in January 2007 (see sidebar, p.19) includes evidence criteria to determine if a professional practice standard is required and, if so, how evidence is to be used in drafting the standard.

In January 2014, the attorney general’s policy staff informed PEO that policy development for all regulation submissions to government (including from ministries, agencies, boards, commissions, and delegated authorities such as PEO) must now include a Preliminary Regulatory Impact Assessment (PRIA). The purpose of this document is to further justify any regulation proposal, by providing:

- clear problem definition, policy intents and rationale;
- evidence and data to support the above;
- stakeholder impacts of health and safety, environment, social, trade, economy and other factors;
- compliance cost impacts on stakeholders (subject to a \$2 million threshold); and
- consideration of non-regulation alternatives (voluntary, education, persuasion, or market-based approaches) to achieve the desired outcome or policy intent.

While the first of these elements is more typical of cabinet submission documents, the remainder of the elements are new to most profession regulators, including PEO. These PRIA questions led us to re-examine our current policy development process for making regulations, and to see what capacity we have to be able to provide the answers.

PRIA challenges profession regulators to clearly articulate not only what the desired policy outcome or intent is, but to ensure that the goal is, in fact, serving the public interest, and not the private needs of practitioners or industry.

INCORPORATING EBP INTO PEO

In reviewing the new government requirements and our capacity to meet them, PEO staff reviewed our current policy-development process and determined that there is much room for improvement to introduce EBP development. Indeed, PEO's 2015-2017 strategic plan includes as a strategic objective that "Regulations, standards and guidelines are produced through an evidence-based, integrated and streamlined policy-making process."

Considerable research was conducted to gather best practices and tools from governments and regulators around the world, which was then assessed for relevance. Since PEO's policy-development process is diversified (issues arising from many points of entry), an extensive training program was created for our committee staff advisors, whose job is, in part, to assist committees and task forces with developing policy proposals. This training was delivered in two half-day sessions this past January.

Beyond the initial training for committee staff advisors, PEO's policy manager is available for coaching and assistance for committees and task forces. Future plans include bringing in external speakers and using e-learning modules to educate staff and committee volunteers, and an improved research initiative to identify and gather evidence and data to support regulatory policy development and management.

I would be happy to receive your thoughts and feedback on integrating evidence-based policy development into PEO. Σ

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PEO PROFESSIONAL STANDARDS POLICY (APPROVED BY COUNCIL JANUARY 19, 2007)

PEO will create performance and practice standards and codify these in regulations;

- (a) Professional standards will be implemented only when there is a demonstrable public interest need or when their use is required to protect the integrity of the profession, as PEO recognized that regulated standards may impinge on the professional judgment of practitioners and can contribute to deprofessionalization through commodification and deskilling of professional engineering services;
- (b) PEO will ensure that standards deal only with the matters pertaining to the practice of professional engineering and the professional obligations associated with providing professional services to clients and employers;
- (c) PEO will create standards when necessary to clarify the practitioner's role in a particular activity by describing the obligatory outcome, either as a set of subtasks that must be accomplished or as the acceptable quality of the output of the engineering activity; and
- (d) PEO staff will determine the priority of developing potential professional standards based on the following criteria:
 - (i) evidence, provided by disciplinary hearings, public complaints or practice advisory inquiries, of a demonstrated need to have qualitative or quantitative criteria against which the activity of practitioners can be judged,
 - (ii) advisory inquiries, of a demonstrated need to have qualitative or quantitative criteria against which the activity of practitioners can be judged,
 - (iii) evidence of a lack of public confidence of practitioners' professional judgment in regard to given activity,
 - (iv) evidence of practitioners' lack of understanding concerning their proper role and responsibilities in regard to a given activity,
 - (v) evidence of a need to resolve conflicts between practitioners and the public and/or other professionals (including other professional engineers) regarding the duties and responsibilities of practitioners,
 - (vi) importance of the issue to the practice of professional engineering based on the extent of its applicability and on the impact to the public and practitioners caused by lack of standards, and
 - (vii) currency of present practice guidelines and standards.