

REGULATORY PROBLEM SOLVING AND THE ROLE OF EVIDENCE

By Jordan Max

IN MY ARTICLE last issue, I discussed the introduction of the provincial government’s new evidence-based approach to regulatory policy development—Preliminary Regulatory Impact Assessment (PRIA)—and how it’s being adopted by PEO. This article will address ways to improve our capacity to identify, define and validate a regulatory policy problem and how evidence, both quantitative and qualitative, can be used (or misused) to support regulatory policy development.

WHOSE PROBLEM IS IT ANYWAY?

Engineers are well versed in problem identification and solving for engineering projects. Understanding an initially perceived problem, key drivers and variables, and other shaping factors (and tradeoffs) are the starting points for good engineering design. However, information should never be taken at face value, but must be challenged and validated. PEO’s challenge is to apply those same skills and rigour to making regulatory policies for the practice of professional engineering and the governance of its licence holders. So, in some senses, evidence-based policy design should be a natural extension from the practice of professional engineering to its regulation.

PEO’s regulatory challenge is to properly understand a proposed issue or problem presented to it, validate it with evidence to determine if it is within PEO’s statutory authority to address (i.e. the *Professional Engineers Act*), consider whether it should be addressed and, if so, how. If it is determined by council that a solution is desirable and possible, we turn our attention to the mechanism—in other words, how to solve the problem.

What the government is increasingly telling us is that even if we are willing and able to act to solve a problem, we should consider many different approaches other than just writing a regulation, which ultimately is a rule that must be enforced, monitored, reported on and evaluated for efficacy.

At its core, evidence-based policy-making presumes that an issue or problem must be well understood within the system in which it arises and documented with qualitative and quantitative evidence. Once we understand the system in which an issue or problem resides, we can begin to understand the influences and influencers and, in so doing, determine the desired objectives and outcomes. Having a well understood system allows us to develop a change model to reduce or

eliminate the issue/problem, and why we think a particular approach will actually work. There may be many different ways to achieve the same objective; the challenge is to choose the available solution that is the most effective and efficient use of limited resources.

Sometimes PEO receives bottom-up solutions or proposals from committees, councillors, members, the media, engineering clients or the public that address a specific problem, or are proposed from a particular vantage point. These require further exploration to determine if PEO has the authority to deal with them.

As well, PEO works on top down, macro level, regulatory problems. These typically include:

- private interest (profession capture) trumping public interest;
- non-alignment between act/regulation and operations;
- uneven compliance with rules or processes;
- non-alignment of act/regulations with public interest;
- negative/unintended outcomes or products/services;
- focus on the wrong actor/influencer or instrument;
- over- or under-regulated, or improperly regulated, areas of professional practice;
- inefficient regulatory processes/practices;
- ineffective regulatory tools/instruments; or
- no mechanism for evaluating outcomes.

EVEN IF WE ARE WILLING AND ABLE TO ACT TO SOLVE A PROBLEM, WE SHOULD CONSIDER MANY DIFFERENT APPROACHES OTHER THAN JUST WRITING A REGULATION, WHICH ULTIMATELY IS A RULE THAT MUST BE ENFORCED, MONITORED, REPORTED ON AND EVALUATED FOR EFFICACY.

[REGULATION]



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PROBLEMS: NEGATIVE AND POSITIVE VIEWS

Most people know the philosophical joke about whether a half-filled glass of water is half empty or half full (and the engineer's analysis that there is twice as much glass as is necessary). The answer depends on your perspective and attitude. So it is with the word "problem." The conventional approach sees a problem in a negative manner, representing something that is wrong or unexpected; a deficit, gap, shortcoming, or unmet need; the result of something that doesn't quite fit or that creates difficulties or adverse impacts for someone or a group. And since knowing about a problem ethically compels you to act to address it, the natural human instinct is to avoid looking for problems. Even regulators can justify not looking for problems as they struggle to keep up with the current demands and problems they already know about. This idea is best summed up by the adages "Don't go looking for trouble or it will find you" and "If it ain't broke, don't fix it."

However, innovators and innovative organizations choose to look at problems as opportunities. They can represent a reflection/indicator of a paradigm shift or transition, an opportunity for improvement or repurposing (see, for example, Post-it Notes), an unmet need, or a suggestion of a shortcoming in the understanding of a system. The resulting action is, therefore, opposite; an innovator will actively seek out problems and ask questions to see if things are working or changing, or think about how things might change in the future by asking "What if...?" questions.

PROBLEM DEFINITION: ELEPHANT OR ONION?

Sometimes, problems are like elephants; sometimes they are like onions. When you look at a problem, it depends on your vantage point around the elephant. One person will see the tusks, another the trunk, a third person a leg, a fourth an ear, a fifth a tail. Practitioners, clients, producers, technicians, employers, suppliers, distributors, teachers and students will

each see their reality from their point of contact. If you see only one part, you're missing the whole elephant. It's therefore important to combine all of the different vantage points to get a complete picture and see how others are impacted or involved.

Problems can also be like onions. There are layers of information; what appears at first glance, on the surface, may be only a symptom or effect. We have to peel back the layers to get to the real, underlying causes. A good tool to use is to keep asking "Why is that?" when encountering a description of a situation. It yields significant information about the underlying causes and connections between different parts. Evidence can play a major part in clarifying a problem.

PEO INTEGRATION

PEO staff advisors to regulatory function committees (Academic Requirements, Experience Requirements, Consulting Engineer Designation, Complaints, Complaints Review Councillor, Discipline, Enforcement, Fees Mediation, Legislation, Professional Standards, and Registration) have now been trained to identify, define and validate problems to assist their respective committee volunteers when they wish to develop or revise regulatory policies. As the first part of preparing a PRIA, those committees must now clarify a problem's cause, incidence, solution intention and its rationale up front. Briefing notes for council decisions have now been revised to add the PRIA questions. It is hoped that as a committee works through the PRIA questions, it will ensure problems are well-defined and validated against PEO's statutory and regulation-making authority. Council also plays a key role in ensuring that a problem has been properly understood and validated with evidence before considering (or even proposing) any solution. Σ

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