

# STAKEHOLDER ENGAGEMENT, IMPACT ANALYSIS AND ALTERNATIVE APPROACHES TO REGULATIONS

*By Jordan Max*



IN MY LAST ARTICLE of this series on evidence-based policy development, I discussed reasons and ways to identify, define and validate problems and the possible uses and misuses of evidence to support policy development, and suggested how PEO could adopt these approaches. This issue, I'll address the role of stakeholders, potential impacts, and alternative approaches to regulations to achieve a desired outcome—all new features of the Preliminary Regulatory Impact Assessment (PRIA) requirement for regulations.

## STAKEHOLDERS

A stakeholder is an individual or group of people on whom a proposed change may have an impact. Stakeholder consultations are not new to PEO; however, they have tended to be carried out only at the tail end of the policy development process to fine-tune a proposal that has essentially been finalized. The government's new PRIA asks a proponent to identify all the possible stakeholders affected by a proposed regulatory change. PEO defines four PRIA stakeholders to be:

- individuals (practitioners, engineering clients and end users);
- businesses (engineering companies, clients, manufacturers, suppliers, distributors, associations, universities and learned societies);
- communities, including First Nations; and
- governments (municipal/regional/provincial/federal ministries/departments, provincial agencies/boards/com-

missions, and special purpose bodies/authorities, e.g. MetroLinx, Toronto Region Conservation Authority).

There are significant advantages to involving external stakeholders early in evidence-based policy development. First, these stakeholders are more directly connected to what's happening outside PEO headquarters. They can help us identify problems, emerging issues and research sources. Second, external stakeholders can provide different viewpoints (see the "elephant" example in *Engineering Dimensions*, May/June 2015, p. 34), and identify data and potential impacts and likely outcomes and behaviours. This suggests a wider role for a continuing dialogue about issues and concerns, not simply a one-off event or reactions to a particular PEO proposal. Third, if we view stakeholders as partners in finding solutions, they can help PEO validate and challenge our initial problem definition, outcomes, alternatives and solutions. Finally, external stakeholders can identify implementation issues that may decrease the likelihood of an initiative's success, so corrections can be made.

## IMPACT ANALYSIS

PRIA is also concerned with potential impacts on external stakeholders—to pinpoint what, who and how they might be impacted and, more importantly, to suggest how negative impacts could be mitigated or avoided. Impacts are not merely financial; PRIA requires the identification of social, economic, health and safety, environmental and trade impacts. The cumulative quantitative impact a year must also be estimated and, if the cumulative dollar value exceeds \$2 million across the province, a more full regulatory impact assessment is required. For example, if a new practice standard were to require licence holders to add a new engineering service requirement billable at \$500, and 4000 clients would be affected, the \$2 million threshold would be reached. The implication is that PEO needs to have a better handle on the incremental cost of regulation and know who its regulation will have an impact on and how. Having strong, positive stakeholder relationships creates an improved likelihood of estimating potential impacts.

## ALTERNATIVES TO REGULATIONS

As the old adage goes: "If your only tool is a hammer, every problem looks like a nail."

The last significant PRIA element PEO must consider is whether there are alternative approaches to regulations to achieve the desired outcome, or whether only a regulation will solve the problem. PRIA expects us to do a rigorous analysis and comparison of alternative approaches. In PEO's case, regulations are not the only tool in our toolkit.

Regulations are put in place to achieve a certain goal, such as mandating some activity to be performed or preventing it from happening. To know if we've been successful in achieving that goal, we need to impose some level of reporting by practitioners, activity monitoring by PEO, enforcement and evaluation of the

## [ REGULATION ]

results. None of these are resource-free (i.e. cost-free). For businesses and practitioners, reporting to PEO takes away productive time. For PEO, it requires new or adapted IT systems (online or otherwise) and databases to enable data input and report generation, staff time and management. So, we should consider a regulation requirement only if we are prepared to devote the resources to monitor compliance and evaluate results.

There are also more virtuous reasons to consider alternative approaches. In *Alternatives to Regulation: Developing Smarter Policy Approaches*, published by the Ontario Ministry of Economic Development and Trade in January 2012, it's suggested that alternative approaches may help governments, regulators and businesses reduce their administrative burdens and business/user costs; encourage and support innovation; improve targeting, which will lead to improved compliance rates; and allow for greater flexibility and responsiveness, leading to a more effective policy instrument.

This more nuanced approach to regulation operates from the principle of using the least intervention necessary to achieve an outcome. Strong, positive external stakeholder relationships really pay off here; PEO would be better positioned to achieve compliance if it better understood the various actors, agents and resistors to proposed changes in a system. There is a spectrum of different approaches to achieve a desired outcome, which can generally be broken down into three categories.

### 1. Voluntary compliance

The approach encourages a target audience to comply voluntarily, often as a first step when embarking on a new area. Typical methods include the use of education, persuasion, recognition/awards, credits/points and guidelines. Some savvy regulators use behavioural nudges, such as sending automated reminders or notices that “x percentage of users have already complied.” Another key success factor is explaining to the intended audience the reasons why compliance is desired, accompanied by examples and case studies to show how possible it is to comply. Social media can play a large part in getting the message out. Setting up website FAQs, hotlines and support are also important factors in achieving compliance.

Professional practice guidelines are PEO's primary examples of a voluntary approach for practitioner compliance, because they are advisory and do not have force of law. The Code of Ethics is another example of listing expectations, especially since a breach of the Code of Ethics, by itself, doesn't constitute professional misconduct. The Ontario Professional Engineers Awards, Order of Honour and Engineers Canada Fellowship (FEC) awards are other examples of encouraging engineering achievement, civic engagement and volunteering for the profession. Enforcement initiatives have recently included employer presentations aimed at encouraging use of PEO licence holders in industrial settings (i.e. voluntary compliance with the repeal of the industrial exception) and PEO's “Licence, Please” educational outreach DVD.

### 2. Market-based incentives: fee reductions (e.g. PEO Financial Credit Program), offsets and social impact bonds (SIBs)

Another non-traditional approach for governments and regulators is using market forces (and users' pocketbooks) to encourage compliance. To date, PEO has used the Financial Credit Program to waive licence application fees and first-year engineering internship program fees for qualified engineering graduates (within six months of convocation) and international engineering graduates (within six months of landing in Ontario) to encourage them to apply for licensure. We also removed the waiting period for qualified applicants to write the professional practice exam (PPE), potentially enabling them to get licensed sooner.

### 3. Mandatory compliance: standards, certificates, examinations, and act or regulation change

Traditionally, PEO has focused more on this category, in particular, regulation changes and professional practice standards, which are added to Regulation 260/08. All applicants must pass the PPE; some applicants must additionally pass confirmatory and technical examinations. The Certificate of Authorization is a prime example of a certificate. The last major round of act changes were brought in under the government's *Open for Business Act* in 2010. The most recent regulation changes were made to implement the limited licence/LET, temporary licence and Certificate of Authorization changes (see *Engineering Dimensions*, May/June 2015, p. 35).

To determine which approach will most likely achieve the desired policy outcome, we need to look more broadly at models and philosophies used in other places, or even other professions. We can benefit greatly from inter-jurisdictional comparisons, whether in Canada or around the world, to examine and consider other non-regulation approaches (particularly, the United Kingdom, Europe and Australia). We don't always have to reinvent the wheel.

In conclusion, the government's new PRIA requirement compels PEO to raise the bar and move toward evidence-based regulatory policy development. It presents us with the opportunities and challenges of more valuable stakeholder relationships, understanding and quantifying impacts of proposed changes, and a more robust consideration of alternative forms of reaching policy objectives. Taken as a package with better problem identification and validation at the front end, and augmented by better qualitative and quantitative evidence, the PRIA requirement can enable us to achieve more effective and efficient policy solutions going forward.

PRIA is the new normal. We can fight the new requirements to our detriment, or embrace their elements as a way of better regulating the practice of professional engineering and governing our licence holders in the public interest.  $\Sigma$

Jordan Max is PEO's manager, policy.