Engineers Canada paper on qualified persons in demand-side legislation

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Notice

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About this Engineers Canada paper
This national Engineers Canada paper was prepared by the Canadian Engineering Qualifications Board (CEQB) and provides guidance to regulators in consultation with them. Readers are encouraged to consult their regulators' related engineering acts, regulations, and bylaws in conjunction with this Engineers Canada paper.

About Engineers Canada
Engineers Canada is the national organization of the provincial and territorial associations that regulate the practice of engineering in Canada and license the country's 295,000 members of the engineering profession.

About the Canadian Engineering Qualifications Board
CEQB is a committee of the Engineers Canada Board and is a volunteer-based organization that provides national leadership and recommendations to regulators on the practice of engineering in Canada. CEQB develops guidelines and Engineers Canada papers for regulators and the public that enable the assessment of engineering qualifications, facilitate the mobility of engineers, and foster excellence in engineering practice and regulation.

About Equity, Diversity, and Inclusion
By its nature, engineering is a collaborative profession. Engineers collaborate with individuals from diverse backgrounds to fulfil their duties, tasks, and professional responsibilities. Although we collectively hold the responsibility of culture change, engineers are not expected to tackle these issues independently. Engineers can, and are encouraged to, seek out the expertise of Equity, Diversity, and Inclusion (EDI) professionals, as well as individuals who have expertise in culture change and justice.

Preamble

"Demand-side legislation" is generally understood to mean legislation stipulating certain activities that must be performed by "qualified persons." In this context, the term "qualified person" (or equivalent terms such as "authorized person", "approved person," or "certified person") are used to describe various categories of individuals, which may include engineers, other regulated professionals, or persons who possess certain specified knowledge, skills, training, experience or other requirements.

In Canada, the profession of engineering is self-regulated by provincial/territorial engineering regulators, pursuant to statutory authorities set out in enabling legislation. Although demand-side legislation is generally viewed as beneficial by Engineers Canada and engineering regulators, concerns have been raised about the possibility of demand-side legislation violating regulatory engineering legislation if it were to allow qualified persons to engage in the practice of engineering without a licence or being supervised by an engineering license holder. The existence of any such scenario would place the public at significant risk.

Developed in consultation with all twelve provincial and territorial engineering regulators, the purpose of this Engineers Canada paper is to provide governments with a document that: reiterates the exclusive authority of engineering regulators to self-regulate the profession of engineering; outlines how any parallel/competing governance structures established by demand-side legislation can jeopardize the public interest; and presents recommendations to be considered when demand-side legislation is being contemplated, developed and implemented.

Background

In Canada, the profession of engineering is self-regulated by provincial/territorial engineering regulators, pursuant to a statutory mandate set out in engineering legislation. The delegation of regulatory function recognizes the specialized knowledge of the profession and its ability to develop and maintain standards of competency and conduct to ensure that the public interest is served and protected. In fulfilling their statutory mandates, engineering regulators are entrusted with a variety of responsibilities, including regulating the practice of engineering and the use of the engineer title.

The "practice of engineering"*:* Only an engineering licence holder can engage in the independent practice or take responsibility for engineering work, which is defined as any act of planning, designing, composing, evaluating, advising, reporting, directing or supervising, or managing any of the foregoing, that requires the application of engineering principles and that concerns the safeguarding of life, health, property, economic interests, the public welfare, or the environment.

The use of engineer title*:* Only engineering licence holders can call themselves engineers (or engineer) and affix an engineering seal to their work, which demonstrates to the public that an engineer has taken responsibility for the engineering work.

Engineering licence holders are legally bound by their Code of Ethics to only practice in their areas of competence; maintain their knowledge, skills, and abilities throughout their careers; and hold paramount the safety, health and welfare of the public and the protection of the environment.

To ensure that only competent individuals practice or take responsibility for engineering work, engineering regulators set standards of practice, ethics and continuing competence. They investigate complaints of unprofessional conduct, and impose disciplinary sanctions including revocation of engineering license when appropriate. Engineering regulators also take action against persons who call themselves engineers but do not possess an engineering licence or are practising engineering without a licence. Their work protects public interest.

Recommendations

The following recommendations are being put forward for governments and other parties involved in the contemplation, development and implementation of demand-side legislation that authorizes qualified persons to perform various tasks and duties, which may include the practice of engineering.

1. Demand-side legislation must not undermine the exclusive jurisdiction of engineering regulators to self-regulate the practice of engineering.

Engineering legislation in all provinces and territories provides engineering regulators with the clear and exclusive mandate to regulate the practice of engineering in the public interest. In fulfilling this legal obligation, engineering regulators use their specialized knowledge to establish professional and ethical standards, develop codes of conduct and administer the regulatory processes set out in engineering legislation. By so doing, engineering regulators protect and enhance public health, safety, welfare and the environment.

The exclusive authority of engineering regulators to regulate the practice of engineering was re-affirmed in *Association of Professional Engineers of Ontario (PEO)* v. *Ontario (Municipal Affairs and Housing)* (2006), where the Divisional Court held that legislative amendments to the Building Code were invalid and/or not applicable to engineering licence holders as they conflicted with the exclusive regulatory jurisdiction of the engineering regulator under the *Professional Engineers Act*.

2. Demand-side legislation must not permit persons other than engineering licence holders to perform or take responsibility for engineering work.

Demand-side legislation is generally viewed as a useful model to help achieve various public interest objectives and is supported by engineering regulators provided that it does not authorize unlicensed persons, sometimes called "qualified persons," to perform or take responsibility for engineering work.

In the event that demand-side legislation were to authorize non-licence holders to engage in the practice of engineering, it would be violating engineering legislation and placing the public at significant risk. It could also be inconsistent with and/or overlap with the comprehensive regulatory structures overseen by engineering regulators. Such situations could also create significant public confusion as to whether or not the work is being performed by a licensed engineer. Potential examples of such additional standards and requirements may include but not be restricted to the:

- »Establishment of additional registration or certification requirements to perform certain work;
- »Imposition of additional standards of practice or codes of ethics; and
- »Imposition of a parallel disciplinary regime.

3. Demand-side legislation must be specific in describing the work to be performed and the results to be achieved.

To ensure that non-engineers are not engaging in the independent practice of engineering or taking responsibility for engineering work, demand-side legislation must ensure that it is specific in describing the nature of the work to be performed and the results to be achieved. By being specific, it will be easier to identify work that constitutes the practice of engineering, which can only be performed or supervised by engineering licence holders.

4. Demand-side legislation must not attempt to set out the qualifications and requirements of engineering licence holders.

Engineering regulators have the legislated mandate to define the qualifications and requirements of engineering licence holders. In instances where demand-side legislation sets out the qualifications and other requirements expected of engineering licence holders, it would be violating engineering legislation as it would be impinging upon the exclusive regulatory jurisdiction of engineering regulators to determine what constitutes the practice of engineering and the standards of practice of the profession. Demand-side legislation must only describe and set out the objective of the work to be performed and let engineering regulators determine the qualifications and other requirements needed to perform or take responsibility for engineering work.

Similarly, where demand-side legislation provides that work is to be performed by engineers and other types of regulated professionals, it must rely on the knowledge and expertise of the applicable regulated professional association(s) to determine if the work falls under their respective profession and how the work is to be performed.

5. Requiring that “qualified persons” work be performed by members of regulated professional associations, including members of the engineering profession, enables demand-side legislation to assure a high level of accountability.

Regulated professional associations are mandated by their enabling legislation to govern their members in the public interest, which includes the licensing and disciplining of members and setting and maintaining standards of competency and conduct.

Members of regulated professional associations are subject to significant oversight and must adhere both to the legislation applicable to their profession and the standards established by their regulator.
On the contrary, unregulated persons are not subject to the above-described regulatory oversight. Rather, their regulation is typically limited to the rules and requirements set out in demand-side legislation.

To ensure a high level of accountability and maintain public trust and confidence in the work being performed, it is recommended that demand-side legislation utilizes members of regulated professional associations as qualified persons.

6. Demand-side legislation must ensure that it uses an appropriate term to describe the categories of qualified persons authorized to perform the work in question.

It is recommended that demand-side legislation use terminology that accurately describes the categories of qualified persons who are authorized to perform the work in question, especially when dealing with regulated professions such as engineering. As such, it is recommended that if demand-side legislation contemplates that part of the work is to be performed only by regulated professionals, it considers using the term “professional” when describing persons that are members of professional associations and refrain from using the term “professional” otherwise.

7. Government must ensure that engineering regulators are engaged in all

aspects of demand-side legislation.

The success of any demand-side legislation that relates to engineering is contingent on the support of the engineering profession, as represented by engineering regulators. As such, it is essential that engineering regulators be thoroughly engaged in demand-side legislation that relates to engineering. In this regard, government must ensure that it:

- »Gives serious consideration to all proposals made by engineering regulators in respect of demand-side legislation, including the rationale for its development;
- »Engages in comprehensive consultations with engineering regulators regarding contemplated demand-side legislation and places significant weight on the input provided;
- »Involves engineering regulators in the development and drafting of demand-side legislation;
- »Involves engineering regulators in the implementation of demand-side legislation, including the establishment of any administrative body created by demand-side legislation; and ensuring that any such body does not impinge upon the exclusive regulatory jurisdiction of engineering regulators;
- »Engages engineering regulators in periodic reviews of demand-side legislation to obtain their input regarding its effectiveness and improvement suggestions; and
- »Places significant weight on concerns expressed by engineering regulators regarding demand-side legislation and works collaboratively with engineering regulators to find solutions.

To realize the benefits of the increased engagement proposed above, it is essential that government does not view engineering regulators as stakeholders, but rather as co-regulators with similar public protection mandates to fulfill.

8. Government must retain engineering licence holders to evaluate and oversee engineering work being performed pursuant to demand-side legislation.

To ensure that the public interest is protected, it is imperative that government retains engineering licence holders to evaluate and to oversee engineering work established by demand-side legislation. This will ensure that its public servants possess an appropriate level of technical knowledge and training, and that the work is overseen by competent persons who are required to practice in accordance with engineering legislation and the standards established by engineering regulators.

9. Government should consider adopting standards of disclosure for demand-side legislation work.

Demand-side legislation should include requirements for qualified persons to disclose conflicts of interest. Adopting disclosure standards across all demand-side legislation sectors will support the provision of unbiased evidence, transparency, and maintain public confidence in regulation.

Conclusion

Although demand-side legislation is generally viewed as beneficial by engineering regulators, it is imperative that the contemplation, development and implementation of all such legislation receive significant attention to ensure that it does not conflict with engineering legislation and the exclusive authority of engineering regulators to regulate the practice of engineering. It is essential that government and engineering regulators work collaboratively to ensure that they achieve their respective objectives and jointly protect and serve the public interest.

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