

Competency Declarations and Conflict of Interest Declarations

Webinar Questions and Answers

The *Professional Governance Act* (PGA) received Royal Assent on November 27, 2018. The PGA will initially govern five regulatory bodies overseeing agrologists, applied biologists, applied science technologists and technicians, engineers and geoscientists, and forest professionals. The intent of the PGA is to ensure the regulatory bodies operate under a consistent framework that incorporates best practices of governance regardless of the profession. The PGA is also intended to strengthen government oversight by establishing a statutory Office of the Superintendent of Professional Governance (Office) in the Ministry of Attorney General. This Office will be responsible for administering the PGA and for ensuring that best practices for professional governance are implemented.

The PGA requires registered professionals to make declarations of competency for work undertaken and to declare any conflicts of interest. These requirements will come into force by regulation. In October 2018, government initiated engagement on the specific requirements that could be included in regulation. On December 13, 2018, government delivered a webinar on this topic to interested parties. The following questions were raised by participants and include responses from government.

- 1. Will government consider foresters who hold woodlot licenses or agrologists who are range tenure holders and perform their professional duties for themselves in a conflict of interest?**
 - The details on who needs to submit declarations and will be policy work that the Office of the Superintendent of Professional Governance (the Office) would undertake.
- 2. Tenure holders are held accountable through other legislation, for example, through the *Forest Range and Practices Act* and then as a professional under the *Professional Governance Act*. How will the potential for a double jeopardy situation be addressed?**
 - There is no intention to create new layers of bureaucracy where it does not result in a benefit to the public. As part of developing the policy and regulations on declarations, the Office will need to consider how other statutes intersect.
- 3. How will the Province ensure that a ministry or statutory decision makers (SDMs) are not subjectively evaluating competence of a registered professional when they are applying for permits?**
 - How the declarations will be reviewed and used by the appropriate bodies, including statutory decision-makers (SDMs) are details that are still to be considered. One of the roles the Office could play is to provide guidance to the regulatory bodies as well as SDMs to ensure the

declarations are being reviewed appropriately, while recognizing that statutory decision-makers make independent decisions that are not fettered by government.

4. Which acts are subject to the Ministry of Environment and Climate Change Strategy (ENV) interim Professional Accountability Policy?

- *Environmental Management Act, Integrated Pest Management Act, and Parks Act* are subject to the Professional Accountability Policy. More information on the policy can be found here: <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/laws-policies-standards-guidance/environmental-guidance-and-policy/professional-accountability>.
- The ENV policy is separate from the declarations work under the PGA; however, it could inform, along with the feedback received through the intentions paper ([link](#)), how the PGA policy and regulations are developed.

5. Is there an expectation for government employees to file a one-time competency declaration for their job?

- Government has not confirmed policy direction on this and is still considering thresholds for when declarations would be required.

6. How is government addressing cost to individuals and firms with regards to the *Professional Governance Act*?

- Government will be considering potential implications to individual professionals and firms as policy and regulations are developed to implement the PGA including for declarations and regulation of firms.

7. Will there be more quality based selection now within government contracts in BC based on the new requirement under the *Professional Governance Act* for firms?

- The PGA will not directly influence quality-based selection processes for government contracts; however, provisions respecting practice rights and regulation of firms may indirectly influence these processes if the scoped work requires use of registrant professionals.

8. When will a schedule be provided for when the various provisions of the PGA will be enacted? Will there be grandfathering provisions?

- It is anticipated that the first phase of regulations will come into force in spring 2019 and will focus on establishing the Office and bringing in a merit-based council nomination process. The remaining components of the PGA will be brought into force in the coming years as determined by the Superintendent and the Ministry of Attorney General.
- Regarding declarations of competency and conflict of interest, these will not be part of the initial phase of regulations; although a requirement under the Ministry of Environment and Climate Change Strategy's Professional Accountability Policy for declarations does apply for certain acts. For more information on this policy, visit: <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/laws-policies-standards-guidance/environmental-guidance-and-policy/professional-accountability>.

9. What are some of the factors that might come into play in terms of a real or perceived conflict? Would the community within which a person lives become a factor? For example, if a local or Indigenous community has stated objections to major resource development and the qualified professional happens to be within that community.

- A “perceived” conflict of interest is about the appearance of bias to a reasonable third party e.g., when a family member or close friend of the professional may benefit. The Office could develop guidance to support regulatory bodies in their role of ensuring conflicts are avoided or properly mitigated.

10. Are the declarations in addition to what the regulatory bodies already have to address conflicts of interest?

- Not all of the regulatory bodies under the PGA have bylaws or rules regarding “perceived” conflicts of interest. Recently there have been examples of professionals operating in a real or perceived conflict situation. This suggests a need for additional opportunities for professionals to put their mind to whether or not they are in a state of real or perceived conflict of interest. These declarations are assurances that professionals are actively putting their mind to their competence for a specific activity and issues of conflict of interest, and that the public and employers are confident in the professionalism and unbiased expertise provided by the professional.

11. As declarations would include the professional’s signature and/or seal, does this mean there is a legal aspect to making that declaration?

- A declaration signed by a professional will support regulators in enforcing compliance with their bylaws and codes of ethics by being able to reference back to the submitted declaration. A self-declaration of competency, in writing and signed by the professional, and open to scrutiny by various parties (e.g., regulators, proponent, government ministries) carries weight and may, in the long run, minimize the likelihood of professionals undertaking work where their declaration would not hold up.

12. In the context of balanced and unbiased government decision-making, will a professional who is making representation in opposition to a proposed development also be required to declare their competency and conflict of interest?

- The details on who will be required to submit declarations are under development; however, the intention is for professionals who are undertaking certain activities that require specific expertise to submit declarations.

13. Will municipalities, regions, city staff, planning boards, planning committees, or city council have access to completed declarations?

- The use of declarations and how they will be made available to interested parties are some of the considerations in the policy development process.

14. Will due diligence be addressed for professionals that are sealed, as well as working with and overlapping the professionals the PGA covers?

- Due diligence will be a consideration in the policy development process in a number of areas including the oath of office and continuing education programs. Due diligence is also a

component of the code of ethics of the regulatory bodies, who will be able to set more stringent codes of ethics for their members.

15. Is it a real conflict of interest whenever a professional employed by a company works with a client and the company benefits if the project goes ahead or similarly if a self-employed professional only gets paid if the project goes ahead?

- Guidance on when a professional may be undertaking activities that present a real or perceived conflict of interest may need to be developed, similar to what is available to public servants on defining and avoiding conflicts of interest as part of their work. This is an area the Office, as a centre of expertise in professional governance, could provide guidance on to assist the regulatory bodies, professionals, and employers to navigate different scenarios. While it is a requirement of the regulatory body's code of ethics for registrants to avoid conflicts of interest, the intent of declarations is that conflicts of interest, whether real or perceived, are disclosed so that they can be considered by the appropriate authority. Professionals will also have a responsibility to take measures so that any conflicts of interest do not bias their work.

16. How will the PGA or declarations address the issue of "QP shopping" where proponents choose the professional that will give them the answer they want to hear?

- The issue of "QP shopping" was raised in the professional reliance review as a concern. There are provisions in the PGA that are intended to respond to this issue, including the ability to create rosters of approved professionals. Declarations can support regulatory bodies to enforce compliance with their bylaws and codes of ethics by being able to reference back to declarations submitted by registrants confirming that they are competent to complete the required work and that any real or perceived conflicts of interest were disclosed.

17. Are there examples of other professions in B.C. or elsewhere where there has been legislation that requires professionals to file declarations of this kind?

- The following are examples where declarations have been required:
 - Pharmacy professionals, Declaration of Competence (DoC) system, United Kingdom
 - Ontario Nurses Regulation 275/94, s. 11
 - Chartered Professional Accountants of BC - competency declaration for audit licensees

18. Will filing of declarations hold up emergency responses, e.g., in the event of a dam failure or oil spill where immediate action and collection of data by professionals is required?

- The details on who will be required to submit declarations are under development; however, it is not government's intention to create barriers to providing professional services, particularly in the event of an emergency.

19. Will every effort be made to ensure a balanced and not overly onerous process for declarations of competence?

- Who will be required to submit declarations of competency and declarations of conflict of interest is still to be determined. Government will be working with the regulatory bodies to understand how best to administer this process so it is not overly burdensome.

20. What methods are under consideration for filing a declaration?

- Options that could be considered in the policy development process include an annual online statement of competence, such as a resume, or an online statement of competence related to a specific conflict for a project. Government requested suggestions on this to the intentions paper process.