

Professional Governance Act Overview

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.

On December 3rd and 11th, 2018, government delivered webinars providing an overview of the PGA to interested parties. The following questions were raised by participants and include responses from government.

December 3rd, 2018 Webinar Questions and Answers

1. What is meant by “Ensure equal oversight of regulatory bodies & professionals”?

- The review of the professional reliance model for the Natural Resource Sector identified a gap in government’s oversight of regulatory bodies with respect to governance expertise and capacity to administer the five governance statutes.
- Currently, oversight of the five regulatory bodies is provided by four ministries (the Ministry of Environment and Climate Change Strategy oversees the College of Applied Biology, the Ministry of Forests, Lands, Natural Resource Operations and Rural Development oversees the Association of BC Forest Professionals, the Ministry of Agriculture oversees the BC Institute of Agrologists, and the Ministry of Advanced Education, Skills and Training oversees the Engineers and Geoscientists BC and the Applied Science Technologists and Technicians of BC).
- Under the *Professional Governance Act* (PGA), oversight of regulatory bodies will be the responsibility of a single Office of the Superintendent of Professional Governance (Office) under the Ministry of Attorney General. The Office will also have additional authorities the four ministries do not have in order to protect the public interest. These include the ability to conduct investigations and audits, issue directives, and appoint a public administrator to take over some or all the duties of a council if the Superintendent considers it necessary in the public interest.

2. How many staff and what types of roles will the Office employ?

- The Office staff will include a statutory decision-maker (the Superintendent), policy staff with expertise in governance, and compliance staff. Government is still determining the staffing levels needed to support the Office mandate and functions.

3. What does "Authority to take action to protect the public interest" mean?

- The Superintendent has a spectrum of compliance authorities to ensure regulatory bodies are acting in the public interest. These include: providing guidance that regulatory bodies must consider, providing directives that regulatory bodies must follow, and the authority to appoint a public administrator to take over some or all of the duties of regulatory bodies if it is necessary in the public interest. The Superintendent also has the authority to investigate offences under the PGA. The Office could investigate a complaint with respect to a regulatory body's conduct or if it represents a systemic issue. Complaints against individual professionals will continue to be addressed by their respective regulatory body.
- 4. If it is anticipated that it will take several years for individual profession's legislation to be amended (e.g., the *Foresters Act*), does this mean that the elements in the PGA will take several years to apply?**
- The PGA will be brought into force in phases over the coming years. An initial priority is to bring the provisions respecting the Office into force. Once all supporting regulations are in place, government will fully repeal the five professional statutes (including the *Foresters Act*) and replace them through regulations under the PGA. Regulatory development for provisions such as enabling practice rights for regulatory bodies that are currently without, will take time and are anticipated to come into force at a later date.
- 5. Will a professional be required to report on any professional captured by the PGA or just members of their own profession?**
- The duty extends beyond one's own profession to reporting on any professional governed by the PGA whose practice is or could cause significant harm to the environment or to the health or safety of the public or a group of people.
- 6. Will the PGA change the approach for handling disputes related to an individual's professional judgement?**
- The PGA specifies when complaints can be made to regulatory bodies – these relate to a breach of the PGA or bylaws, professional misconduct, conduct unbecoming a registrant, or incompetent performance of duties undertaken while carrying out the regulated practice. Disputes related to professional judgement are not covered in the PGA – competency declarations may aid here by ensuring there is a written record that a professional has considered their competencies in relation to the work they undertake. The list of ethical principles in the PGA, to be incorporated into codes of ethics, requires professionals to be transparent with respect to the inputs and limits to their professional work.
- 7. What kinds of changes are expected for individuals in the process of obtaining designations from regulatory bodies (e.g., forester in training)?**
- The PGA for the most part has implications for the regulatory bodies. Interactions between regulatory bodies and individual registrants will mainly continue as before. However, some of the changes that individual registrants may see when the PGA is fully implemented as a result of requirements on regulatory bodies include:
 - No changes to existing designations (for clarity)
 - Ability to have a review on the record for registration decisions (s. 48)

- Non-registered professionals may see mandatory registration when practice rights are granted to regulatory bodies (this is specific to biologists, agrologists, and technicians) (s. 54)
- Bylaws no longer ratified by registrants (s. 37)
- Resolution of a general meeting will not be binding unless voted on through referendum (s. 34)
- May see updates to profession's code of ethics to be in line with the PGA's ethical principles (s. 57)
- Mandatory continuing education programs (s. 57)
- Expanded reporting requirement if someone believes there's a risk of significant harm from another registrant's continued practice (s. 58)
- Report any reprisals to Office (s.103)
- Required to sign declarations of competency and conflict of interest in accordance with regulation (s. 59-62)
- Disciplinary actions will no longer have an appeal process (option provided in common law for judicial review)
- Information about discipline hearings, final dispositions, and consent orders will be published (s. 75, s. 82)
- During an investigation, registrants may have limits imposed on their practice or registration suspended if necessary in public interest (s. 67)
- Regulatory bodies can launch an investigation into the conduct of a registrant without a complaint (s.66)
- Registrants and regulatory bodies may engage in alternative complaint resolution (s. 74)

8. How were the professional associations in scope of the PGA selected?

- Commitments made by government in the Confidence and Supply Agreement directed the professional reliance review to focus on the natural resource sector and the regulatory bodies that play an important role in natural resource management decisions. These include the Applied Science Technologists and Technicians of BC, Engineers and Geoscientists of BC, College of Applied Biology, BC Institute of Agrologists, and the Association of BC Forest Professionals.
- The PGA provides for the ability for other professions to apply to be designated or for the Superintendent to initiate an investigation regarding possible designation. The Superintendent would make a recommendation to the Lieutenant Governor in Council as the decision-maker on whether to designate a new regulatory body under the PGA.

9. How long will associations have to transition to the new requirements?

- The PGA enables some transition provisions; for example, when the provisions respecting bylaws come into force, regulatory bodies will have a one year transition period to amend existing bylaws to be in line with the PGA.
- There is the ability to build additional transition time into the regulations; for example, this could mean setting an effective date for regulatory requirements to come into force six months after the regulation is introduced.

10. How will the PGA provide clarity on the duties of the Office to provide oversight, the role of regulatory bodies to regulate professional practice, and the role of line ministries as regulators of land use?

- The PGA outlines the duties of the Office and of the regulatory bodies and distinguishes between the Office being responsible for systemic matters and regulatory bodies being responsible for matters related to individual registrants.
- Regulatory bodies have and will continue to work with line ministries on technical matters related to the practice of a profession, such as establishing technical practice standards.
- The PGA provides for the establishment of a Professional Governance Advisory Committee to be chaired by the Superintendent. The Committee would include representation from line ministries and likely from the regulatory bodies to address matters related to implementation of the PGA and any other prescribed duties, which could include collaborating on technical matters such as practice standards.

11. Will the requirements for conflict of interest declarations be applied for each project a professional works on or only those related to those projects that go to decision makers?

- Details on the conflict of interest declaration requirements, including when they may be required have not been determined. Government requested input on this policy topic in the intentions paper and will consider this input in developing regulatory requirements.
- Declarations may be required currently under the *Environmental Management Act*, *Integrated Pest Management Act*, and *Parks Act* as they are subject to ENV's 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>.

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12. Who will define the public interest?

- While not defined in statute or policy, the term 'public interest' is an abstract concept that has evolved over centuries of use to capture the principle that government serves and is responsible to the 'people' or the 'broader public' rather than the interest or concerns of any one individual or group of individuals. The public interest is not static and will vary over time, as social mores, values and goals evolve and change. Any consideration of the public interest will be contextual in nature – in relation to both the potential impacts of a decision and the members of society that might be affected by those impacts. With respect to the regulation of professions, the public interest has always been a key purpose or duty of the regulatory bodies. The list of responsibilities for regulatory bodies included in section 22 of the PGA provides clarity and consistency in what is meant by the public interest in this context.

13. Who could attend the webinars on the PGA and the policy topics for engagement?

- Government held six external webinars in December 2018 to provide an overview of the PGA and the three policy topics included in the intentions paper. The webinars were open to all interested parties, including professional association staff and members, industry and NGO groups, and Indigenous nations. Recordings of these webinars have been posted online.

14. Who has the ownership of the other recommendations in the Professional Reliance Review report e.g., *Forest and Range Practices Act*?

- Ministries responsible for the statutes are considering the other recommendations made in the review report. The Ministry of Forests, Lands, Natural Resource Operations and Rural Development has the responsibility to address any recommendations specific to the *Forest and Range Practices Act*.

15. Why does each regulatory body have responsibilities to specific ministries when there are professionals from each organization likely working in all of the ministries mentioned?

- Specific ministries are responsible for the statutes of specific regulatory bodies. For example, the Ministry of Environment and Climate Change Strategy has responsibility for the *College of Applied Biology Act*, and in turn responsibility for oversight of the College of Applied Biology (as an example of a responsibility, the Minister of Environment and Climate Change Strategy appoints lay members to the College's council). One of the reasons for bringing oversight of all five regulatory bodies under a single office within government is to ensure consistency in professional governance within and outside the natural resource sector.

16. Will the duty to report be extended to new professions if they are regulated under the PGA in the future?

- All professionals included in the PGA are subject to the same provisions. If the PGA is expanded to include additional professions, they would be subject to the same requirements. The duty to report requires a registrant to have reasonable and probable grounds to believe that a significant harm may result from another registrant's activities. In implementing these provisions, the Office could develop guidance material to help registrants appropriately interpret the duty to report under the PGA.

17. Does the PGA address the inconsistencies regarding when government retains its decision making authority and when it doesn't (for example, when government relies on the decisions of contaminated sites approved professionals)?

- Some of the other recommendations made in the professional reliance review report speak to the issue of government maintaining decision-making authority where required. For example, the report makes reference to the importance of government maintaining decision making authority under various statutes, including the *Forest and Range Practices Act*, and regulations under the *Environmental Management Act*. While it is true that Ministry of Environment and Climate Change Strategy staff rely on the recommendations of approved professionals for low and medium risk contaminated sites, staff retain statutory decision-making for contaminated sites that are high risk. Government continues to consider the other recommendations in the final report.

December 11th, 2018 Webinar Questions and Answers

18. What is the definition of public interest that the Superintendent will use to base his/her decisions on?

- As mentioned in the response to question 12 above, the PGA does not include a definition of public interest. The Superintendent's performance of duties in the public interest is constrained by the responsibilities of the Superintendent laid out in section 7 of the PGA.

19. What will be included in the Indigenous related components of professional development requirements?

- The PGA provides the Office with the mandate in section 7(2)(b)(ii) to promote awareness among regulatory bodies to support reconciliation with Indigenous peoples, including supporting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. The intent is for the Office to foster new ways of working with Indigenous nations to help build deeper collaboration and consensus. The PGA also mandates regulatory bodies in section 57(1)(f) to establish continuing education programs or requirements that support reconciliation with Indigenous peoples. Government is exploring ways that the Office can work with Indigenous nations and regulatory bodies to formulate a framework for cultural awareness training and requirements for continuing education.

20. What organizations will be included for the regulation of firms?

- The definition of a "firm" in the PGA is broad to allow government to determine by regulation what types of firms should be exempted. Unless exempted, firms could include sole practitioners, consulting firms, industry companies, non-profit organizations, and some public sector entities (e.g., crown corporations, specific business areas within the provincial government, municipal governments).

21. What is the rationale for requiring council members to take an Oath of Office?

- An Oath of Office is a public commitment by council, as well as committee members that in the performance of their duties, they will abide by the PGA and regulations and fulfill their duty to protect the public interest.

22. How might the PGA apply to unregulated professionals?

- One of the implications of granting practice rights to all professions under the PGA is that currently unregulated professionals may be required to become registrants of applicable regulatory bodies in order to offer services that fall under defined scopes of practices for those professions.

23. What were the major concerns regarding lack of public confidence in professionals that were the key drivers for the PGA?

- A review of the professional reliance model in the natural resource sector was completed in spring 2018 and recommendations from an independent final report pointed to restructuring the governance of the regulatory bodies by creating a new Office to oversee professional legislation, developing best practices for professional governance as needed, and standardizing elements of professional governance through umbrella legislation. Some of the elements of the PGA and oversight model were informed by real issues observed with the current model such as conflicts of interest and professional independence. In other cases, the legislation is putting a governance

framework in place that follows international best practices and helps regulatory bodies to strengthen their role in protecting the public interest and improve public trust in professionals.

24. Who will be consulted on the implementation of the PGA?

- Engagement with Indigenous nations and interested parties will continue during regulation development and implementation of the PGA. Interested parties may include regulatory bodies to be governed under the PGA, environmental groups, local government, industry groups, the business community, and other professional associations not regulated under the PGA.

25. Will there be opportunities to grandfather practicing professionals who do not hold designations from regulatory bodies into the regulatory regime, or will they have limited practice rights?

- Part of the policy work required for granting practice rights to regulatory bodies is to assess the impact to professionals who are not currently registered with a regulatory body. Government will work with the regulatory bodies who maintain the gatekeeper function on a fair transition plan that considers the impacts to non-registered professionals as well as protection of the public interest. Options already discussed include limited licences, tests of knowledge and experience in absence of meeting entrance qualifications, grandfathering, and an adequate transition period. Government requested feedback on this in the intentions paper ([link](#)).

26. Is the change in the PGA that gives an applicant the ability to apply for a review on the record (registration decision) driven from concern of fairness, public interest concerns, or complaints/accountability?

- The regulatory bodies have and will continue to be a gatekeeper to their professions. This means that they are able to set entrance requirements to the profession. Section 48 of the PGA provides for an applicant to request a review of registration decisions by the council of the regulatory body. This function currently exists for three of the five regulatory bodies and is included in the PGA as it was determined to be a good function for regulatory bodies to strengthen their gatekeeper function.

27. If the Office will reside under the Attorney General - why has the Ministry of Environment and Climate Change Strategy been involved in the legislation development and implementation?

- The Minister of Environment and Climate Change Strategy was instructed in his mandate letter to lead the review of professional reliance in the province as well as the development of legislation in response to the first two recommendations in the independent review report. Implementation of the PGA, as well as administration of the current governing statutes of the five regulatory bodies, will transition to the Ministry of the Attorney General once the Office of the Superintendent of Professional Governance is established.

28. How will the disciplinary process be funded and who is responsible for transparency of this process?

- The PGA standardizes the disciplinary process for all five regulatory bodies but this continues to be a function of the regulatory bodies, funded through the fees they set. Regulatory bodies will

be responsible for adhering to the PGA's provisions with respect to transparency of discipline hearings.

29. For government professionals, who will have the ultimate authority – their employer (government), the professional “gatekeeper” association, or the new Office of the Superintendent of Professional Governance?

- Registered professionals employed by government have always had to abide by the bylaws, codes of ethics, standards of practice, and be subject to enforcement by their respective regulatory bodies and this won't change under the PGA. Provincial government employees also must follow the public sector's standards of conduct and take an oath of employment. The Superintendent will be responsible for oversight of systemic or general matters and for taking action to protect the public interest. The Superintendent will not be looking at individual registrants or taking on the functions of regulatory bodies.

30. Are there any details on the proposed definition of the practice of applied biology?

- Government does not have a recommended path forward yet for establishing practice rights for professions. Government requested input on the intentions paper and will continue to work with regulatory bodies and others in defining areas of practice to be given practice rights.

31. What is the thinking behind requiring firms to provide continuing education programs?

- Under the PGA, continuing education programs (CEP) will be mandatory for registrants, and registrant firms will be required to provide CEP. The culture and practices of a firm can have a significant influence on a professional's ability to fulfill this requirement to maintain competence in their field of practice. This aligns with the conceptual model for the regulation of firms developed by the Engineers and Geoscientists BC.

32. Is the intention for firms to provide CEP that might be common across professions (e.g., Indigenous engagement), or to provide technical CEP related to the firm's area of practice?

- The details of requirements on firms as registrants will be included in regulation, and government is still consulting on a path forward. However, the intent is for firms to have policies that support their professionals achieving CEP requirements, ensuring the requirement is reasonable for firms to adhere to. In some cases, firms may be able to offer training or courses for employees; in other cases, they might assist by covering CEP costs for their employees and/or allowing professionals the time to attend CEP opportunities.

33. Will the Office be staffed with registered professionals (e.g. Registered Professional Biologist) in each professional field in order to ensure appropriate decisions are made?

- Office staff will have professional governance expertise, and will not be required to be registered professionals of the regulatory bodies under scope of the PGA. Technical experience and expertise will still come from line ministries. The Superintendent must not be a registered member of any of the regulated professions under the PGA to ensure there is no perceived conflict of interest.

34. Will BC Timber Sales and the Ministry of Forests, Lands, Natural Resource Operations and Rural Development be considered a "firm"?

- The PGA enables a ministry or agency of the provincial government to be considered a firm. The definition of a “firm” in the PGA is broad to allow government to determine by regulation what types of firms should be exempted. Input provided to the intentions paper on this topic will be considered as policy and regulations are developed.

35. Would mandatory registration to a regulatory body apply to professionals working for provincial natural resource ministries?

- Requirements to be a registered professional will be dependent on the definitions of scopes of practice that will be determined in regulation. Policy work in this area will consider the impacts to non-registered professionals, including those in the provincial government. The PGA requirements will be the same for a professional working within government or outside of government.

36. Is government going to review staff and managers' classifications to ensure that registered professionals are in positions to which the legislation should apply?

- The BC Public Service Agency (PSA) is responsible for classifications and job descriptions of positions within the BC Public Service. A review of government staff classifications is not part of the policy work required for the granting of practice rights to professions. The Office will engage with the PSA as part of its policy development to understand potential implications for positions within the Public Service.

37. Will the PGA influence unequal entrance requirements to professions that the Trade, Investment and Labour Mobility Agreement (TILMA) has created?

- The PGA maintains the authority of the regulatory bodies to consider applications for enrolment, admission or reinstatement, and to create bylaws establishing requirements, procedures and fees for admission or reinstatement, including applicants from other jurisdictions subject to the *Labour Mobility Act*, and other prescribed trade agreements.

38. How will current agreements for recognised college registrations in different jurisdictions be affected by the PGA? (e.g., transfers to/from Royal Society of Biology UK)

- Under the PGA, regulatory bodies may make bylaws to establish requirements and procedures for registrant admission. Bylaws can be developed to meet the needs of a profession, presumably continuing current agreements, as long as they are in line with requirements in the PGA. For example, regulatory bodies can make bylaws concerning joint standards of conduct or competence with other jurisdictions, which could facilitate labour mobility.

39. Is the statistic of "56% of professionals answered that they had been pressured to change their recommendations" from a publically available report?

- This finding comes from the public and professional surveys, which received over 4600 submissions, conducted during the professional reliance review. The report, “[What We Heard – Public and Stakeholder Engagement Summary Report](#)”, was published as an appendix to the professional reliance review final report.

40. How will the PGA mitigate pressures placed on employees given that employers/managers may not be professionals that must adhere to a regulatory body's ethics or bylaws?

- The PGA enables regulatory bodies to regulate firms. While the details of what corporate regulation will look like are still being determined, the intent is that firms as registrants would be subject to the PGA's provisions, including a regulatory body's code of ethics and bylaws.

41. Can a firm be subject to the disciplinary process and potential suspension of service, and if so, what measures would be in place to review allegations?

- Details such as disciplinary processes and offences will be worked out during regulation development and these processes may be determined by bylaws of the regulatory bodies.

42. What is the intention of the PGA in applying to the natural resource sector?

- The five regulatory bodies under scope of the PGA operate in the natural resource sector, as well as outside of the natural resource sector. Regardless of the sector, the PGA provides standardized processes and best practices related to ethics and standards of conduct.

43. Once practice rights are in place, what will be the implications for non-registered professionals?

- Once practice rights have been granted for certain areas, a professional may not be able to perform those activities defined in regulation unless they are a member of that regulatory body. See response to question 25 above for more information on what will be considered in the development of regulations to establish practice rights.

44. Why will it take time to fully implement the PGA?

- Provisions in the PGA are enabling and require further policy and regulations to bring the provisions into force. This work will be completed in the coming years. Until that time, the current five governing statutes of the regulatory bodies remain in effect.

45. When will the new nomination process for councillor candidates commence?

- It is anticipated that provisions in the PGA requiring a merit-based process for nominating candidates to stand for council elections will be implemented in spring 2019.

46. When will the 5 existing statutes be repealed?

- Once all the regulations are in place to support PGA implementation, government will repeal the 5 existing statutes. Regulation development will continue over the coming years.

47. When will government take applications for designation from professional associations not already included under the PGA?

- Government is still considering when provisions addressing designation of new professions may come into force.

48. Why does section 10(1)(b) give the Superintendent powers to investigate the state of practice of a profession, which seems to stray away from the intent for the Office and the Superintendent to focus on governance issues?

- The Superintendent can conduct an audit or investigation into the state of practice of a profession in B.C. This relates to the possible designation of a profession under the PGA, as well as to ensure a regulated profession under the PGA is acting in the public interest. These authorities will be carried out in accordance with the duties and responsibilities of the Superintendent as described in section 7 of the PGA.