

Regulation of Firms

Webinar Question 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 includes provisions for the regulatory bodies to be granted the authority to regulate firms. In October 2018, government initiated engagement on approaches and considerations for implementing regulation of firms. On December 12, 2018, government delivered a webinar on this topic to interested parties. The following questions were raised by participants and include responses from government.

1. Why is the regulation of firms being implemented now and where else has it been done?

- The regulation of firms is a trend in professional governance due to the recognition that those organizations significantly influence the work environment and decisions of professionals. In B.C., architects, land surveyors, public accountants and some medical professions currently regulate firms, and the Law Society of B.C. is currently piloting a model of firm regulation. Regulating firms is common across Canada and the United States in the engineering and geoscience professions. In Canada, provinces and territories, except B.C. and Quebec, regulate engineering and geoscience firms under a mandatory legislated authority, and in northwestern US, states, except Oregon, regulate engineering firms.

2. What examples are there of how regulating firms is more beneficial and does more for public trust than regulating individuals?

- The regulation of firms was a recommendation from the independent final report on the professional reliance review ([link](#)). The review highlighted a gap in professional regulation and the ability to protect the public interest when firms aren't regulated. The authority of regulatory bodies to enforce practice standards and codes of ethics is limited if it only applies to individuals, and not to firms. There is the potential to create conflicts of interest for employees who have a sense of duty to their clients or employers while meeting their professional obligations. By holding firms to the same standards as individuals, regulatory bodies will have additional tools to regulate their professions in the public interest.

3. What evidence is there that additional levels of government are warranted to protect the public interest and environment?

- Rather than add an additional layer of government, the Office of the Superintendent of Professional Governance (Office) will centralize the oversight of the regulatory bodies from the

current model with four separate ministries. The regulatory bodies will maintain their oversight of the professions, and may gain oversight of firms as registrants when this provision is brought into force.

4. Since industry is already regulated, why is it necessary to bring in additional regulations for firms?

- Industry is regulated in many ways, but not in the same way as practicing professionals. Taking the step to regulate firms and hold them to the same ethics, standards and disciplinary procedures as individual professionals provides a proactive way to uphold high standards and compliance, rather than reacting after problems occur.

5. Is there a need to go to another level of oversight, when one solution might be to just augment the existing Act(s) to address and resolve the concerns government is attempting to address?

- Rather than create another level of oversight, the Office will centralize the oversight of the professional associations within scope of the Professional Governance Act (PGA) from the current model with four different ministries. The use of umbrella legislation to enable regulation of multiple professions is considered a best practice in professional governance, and provides consistency and administrative efficiency in the regulation of professionals.

6. What types of “legal entities” are being contemplated for the definition of 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, and this is one of the questions government engaged on in the intentions paper ([link](#)).
- Though the public sector is included in the definition of firm in the PGA, there may be services within government that should be exempted. There may be legal barriers to including federal government employees, but voluntary participation could be encouraged. Regardless of whether any organization, public or private, is exempted from the definition of firm, employed professionals will still be regulated by their professional associations. The implications for including the provincial government, local governments and Crown corporations, e.g., B.C., Hydro and the Oil and Gas Commission will be considered as the policy and regulation development progresses.

7. How can government ensure the professionals it employs maintain their professional status?

- Government, like any employer, can ensure professionals it employs maintain their professional status if it is required to carry out their job duties. As with any employer, government would have the ability to confirm employee registration with the registrar of the regulatory body.

8. Are municipalities and regional districts that employ registered professionals to be regulated as firms? What about large forest companies with foresters and biologists on staff?

- The definition of a “firm” in the PGA is broad to allow government to determine by regulation what types of firms should be exempted.

- Government requested input in the intentions paper ([link](#)) on what entities, including local governments and firms with in-house professionals, should be considered for exemption from this definition.

9. Why might regulation of firms be applied to the sole practitioner?

- Several professions have noted that sole practitioners tend to practise with relatively little interaction with other professionals in their field; tend to be less exposed to new information relevant to their practice; have less checking, review or scrutiny of their work; and tend to have higher rates of complaints levied against them compared to larger firms. The Association of Professional Engineers and Geoscientists of Alberta currently regulates incorporated sole proprietors and they are evaluating their inability to regulate sole practitioners. Government requested input in the intentions paper ([link](#)) on what entities, including sole proprietors, should be considered for exemption from the broad definition of a “firm” in the PGA.

10. How will firms be regulated?

- Once in force, firms could be regulated under the PGA through a requirement to register with a regulatory body, similar to how individual professionals are currently regulated. Registrant firms would be subject to the PGA provisions as well as bylaws set by regulatory bodies covering areas such as standards of conduct and competence, audits, practice reviews and discipline.
- Regulatory development will consider models used elsewhere and best practices, for example, requiring firms to develop and submit management plans to regulatory bodies to show how they are meeting professional standards, and supporting their professional employees to meet continuous professional development requirements.

11. Who will firms register with, regulatory bodies or government?

- Once regulatory bodies are given the authority to regulate firms, they could set the registration requirements for firms, similar to how individual professionals are currently regulated. Government requested input in the intentions paper ([link](#)) on how this process could work, particularly for multidisciplinary firms with more than one profession that is regulated under the PGA.

12. What will it cost to regulate firms?

- When firms are regulated as registrants, they could have similar requirements as individual registrants, including paying fees to the regulatory body. These fees would be set by the regulatory bodies to cover costs associated with administration of the regulation of firms. The model proposed by the Engineers and Geoscientists BC includes a fee that is scaled in proportion to the number of registered professionals that are employed by a firm.

13. How will firms be disciplined in cases of wrongdoing?

- As members of a regulatory body, firms could be audited to show how they are incorporating required quality management practices into their work, and would be subject to the regulatory body’s complaints and discipline procedures.

- A spectrum of compliance options may be appropriate for the regulatory bodies to regulate firms. This could range from education or training requirements to de-registration of firms, in extreme cases.
- The Superintendent could impose administrative monetary penalties or fines on firms if convicted of an offence under the PGA e.g., if businesses are operating as firms without registering with the appropriate regulatory body.

14. Will the PGA place additional obligations on licensees who hold tenures under the *Forest Act*, but who heed advice from their employed professionals?

- The PGA does not affect the obligations of the licensee under any regulatory statutes e.g., Forest and Range Practices Act. The PGA will bring in a new requirement for employers of professionals regulated under the PGA to report to the appropriate regulatory body if the professional's employment is terminated because of practices that pose risks of significant harm to the environment or public. The PGA includes whistleblower protection for registrants, including individual professionals and firms, who report on harmful practices, complain or give evidence. These provisions are not anticipated to come into force in the initial phase of regulations in spring 2019.

15. Are there annual reporting requirements for the regulated firms?

- Policy work on firm regulation is ongoing, including details regarding registration and other administrative requirements. Government requested feedback in the intentions paper ([link](#)) on the model proposed by the Engineers and Geoscientists BC, which includes reporting requirements, and Professional Practice Management Plans.

16. Who will people call for information on firms?

- Once in force, firms could be regulated under the PGA through a requirement to register with a regulatory body, similar to how individual professionals are currently regulated. The regulatory bodies are required to maintain a public register that includes information on the registration status of registrants, including firms once this provision is in force.

17. Does government expect that small regulatory bodies will retain the same type of information as larger regulatory bodies (such as competency declarations, etc)?

- The policy work on the details related to declarations, including when and how the declarations will be submitted, is still underway and the administrative burden on regulatory bodies will need to be assessed as part of the consideration of options for implementation.

18. Is there a place where someone can go to find out if there has been a professional practice or ethics complaint made against a regulated firm?

- Firms are not currently regulated under the PGA. The authority for regulatory bodies to regulate firms is anticipated to come into force as part of a later phase of regulation development. Once in force, information on regulated firms, including the registration status, if a citation has been issued, and the results of a disciplinary hearing would be publicly available from the appropriate regulatory body.

- The Better Business Bureau is the current place for complaints to be made against businesses.

19. Does the *Professional Governance Act* capture firms that employ professionals from other provinces?

- The intent of the PGA is to enable regulatory bodies to regulate firms that employ professionals within scope of the PGA. Currently the definition of a “firm” is broad to allow government to determine by regulation what types of firms should be exempted. If there is no professional service being offered in B.C., then neither the firm nor the individual may be required to register with the appropriate regulatory body.

20. Will environmental professionals with ECO Canada be included under the PGA?

- The Superintendent will have the authority to recommend the addition of new professions under the PGA. There are a number of professions that have expressed interest, including ECO Canada.

21. Has any discussion taken place at this time with the other provinces to determine if similar efforts are being made in those jurisdictions?

- The policy work by government on this topic has involved engaging other jurisdictions that have corporate regulation already in place. These jurisdictions will continue to be a resource as this work progresses. A jurisdictional scan was completed as part of the final report on the professional reliance review ([link](#)).