

OSPG Guidance: Advocacy Activities Evaluation Framework

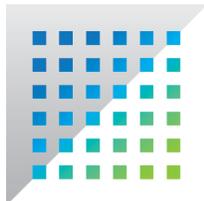
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1.0	2021-02-05	Initial version	Paul Craven, Superintendent



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Purpose

The purpose of this framework is to promote compliance with the *Professional Governance Act* (PGA) s.22 (3) requirement which states:

22 (3) A regulatory body may only act in an advocacy role in accordance with this Act and in accordance with rules, conditions or limits prescribed by the Lieutenant Governor in Council.

Councils should reference this framework in deciding whether activities are in accordance with the PGA. When an activity falls outside s. 22 regulatory body roles and responsibilities (see Appendix A for full section), councils must consider if the activity would constitute inappropriate advocacy, and if so, avoid it. It should be noted that s.22 references purely regulatory functions such as registration and enforcement, but also uses general language such as ‘administering affairs’ and ‘adapting to change’ in which regulatory bodies should find support for day to day and other business that, on their face, may not seem strictly regulatory. It is expected that councils of each regulatory body review current activities as they transition to the PGA as well as assess new activity proposed on a case by case basis. Periodic review of programs is also a good practice.

Policy Intent

The intent of this framework is to help councils:

- Ensure that activities are focused on regulatory body’s general duties and responsibilities: regulating registrants and serving and protecting the public interest (s.22);
- Avoid activities that may lead to the perception, or reality, that the regulatory body is putting the interests of the registrant ahead of the public interest;
- Limit advocacy activities to those that are in accordance with the PGA and any prescribed rules, conditions or limits;
- Avoid activities that may divert significant budgetary or human resources away from core responsibilities.

The framework is not intended to discourage a strong working relationship with government through appropriate mechanisms.

Standards of Good Regulation

The OSPG Standards of Good Regulation set out standards and criteria that will be considered when assessing regulatory body performance over time. The following Standard of Good Regulation relates to OSPG expectations regarding a regulatory body’s ability to demonstrate appropriate advocacy activities.



2. The regulatory body is clear about its duty and responsibilities, applies policies appropriately across all functions and avoids inappropriate advocacy.

Please refer to the Standards of Good Regulation document for further information about this standard.

Whose Role Is It?

The PGA sets up a professional governance model that moves away from the dual mandate role of being both a regulator and member association for professions. Where a member association does not exist for professions, regulatory bodies must make sure that activities that benefit registrants also support regulatory functions and/or the public interest. Affinity programs and conferences combined with job fairs and supplier booths are examples of programming that benefits registrants but may also support regulatory functions.

The regulatory body is an expert in the legislative, bylaw and standards of practice frameworks that its professions work in, and in the governance of its professionals. It may speak in its role as a regulator but should limit speaking for the profession. This framework asks councils to consider their role with respect to various activities and determine if it should be more appropriately carried out by another party, for example:

- Registrants have knowledge about the practice of their profession and may be best to advise on practice-related subject matter.
- A member association focuses on activities in the members' interest, such as consolidating and amplifying the voices of professionals, providing benefits or perks to members, and promoting the reputation of the profession.

If a member association does not exist, the regulatory body may consider using its communication channels (e.g., bulletins) to encourage registrant responses to consultation requests. However, the regulatory body should not be providing responses on behalf of registrants for matters that are outside its role. It is important for councils to consider whether the policy relates to governance, practice, or member issues and to only act within the scope of their role.

The relationship between regulatory bodies and ministries that administer legislation and policies for the sectors that registrants work within is important. It is appropriate for regulatory bodies to provide input to legislation and policy that impact registrants, but their response should clearly benefit the public interest and avoid any undue or perceived favour to the professionals. Moving forward, ministries and regulatory bodies should use appropriate channels for constructive/proactive dialogue and work on mutual issues together. The OSPG and Professional Governance Advisory Committee will work to provide and improve these processes.

Conflicts of Interest and Public Perception

Conflicts of interest may be personal, financial, political or otherwise. For example - financial interests include payments, benefits in kind, shareholdings and gifts. Interests maybe direct - a board member has shares in a company likely to benefit from a contract placed by that board - or indirect - a family member or close friend may gain in some way from a contract.



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Conflicts may also be perceived. That is, an external person may believe a conflict exists even though a decision-maker thinks it does not or thinks that they can act objectively in the circumstances. If a strong rationale exists for why it is not a conflict, careful communication about the rationale may be enough to address the perception and allow the activity to proceed. Perceived conflicts of interest can be just as damaging to the reputation of the individual or their organisation, and to public trust as direct conflicts of interest.



Activities Evaluation Framework

The Activities Evaluation Flow Chart (Figure 1) provides important questions to ask when examining an activity.

Take activities in question through the flow chart and answer the questions.

The first and most important question to ask is whether the activity relates to one or more of the statutory functions for regulatory bodies listed in s. 22 of the PGA?

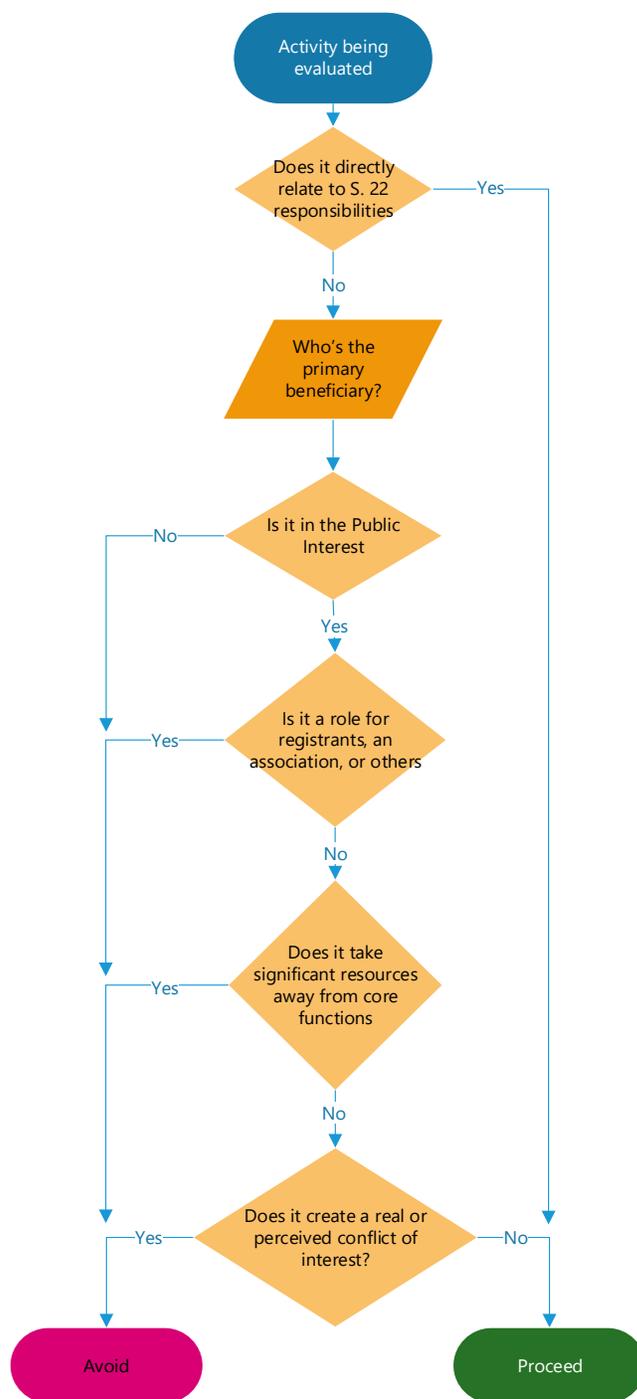
- If it directly relates to a duty or responsibility under s. 22, then no further evaluation or written record in this regard is required.
- If it does, but the activity is unusual and could be misconstrued in relation to statutory functions, then be prepared to give a brief rationale explaining how the activity supports statutory functions if requested (e.g., by contributing to organizational stability*).
- If the activity does not directly relate to regulatory body duties, further examination and explanation is warranted and a written record is expected

The records of analysis and rationale may be examined by OSPG during its assessments against the Standards of Good Regulation, but do not need to be submitted to OSPG for approval.

*Some activities not directly related to the statutory functions may contribute to organizational stability. Examples include:

Encouraging Volunteerism: Currently the model for regulatory bodies depends significantly on volunteerism. This can range from supporting committees to supporting effective governance (and developing leadership) by sitting on council or holding other leadership positions. Activities that promote the culture of volunteerism may contribute to organizational sustainability.

Figure 1. Activities Evaluation Flow Chart





However, it must be clear that regulatory bodies are not, in the first instance, volunteer organizations; they are professional organizations that use volunteers. Providing volunteer experience is not a purpose of regulatory bodies. Volunteers should receive orientation and training on the regulatory role. The motivation to volunteer must be to provide service, perhaps gain experience, but not to gain status or have influence over the regulatory role.

Financial Sustainability: Activities that generate revenue for the regulatory body help sustain the organization and enable it to carry out its mandate. Caution should be taken to ensure that the revenue streams do not create a conflict or perceived conflict with the regulatory mandate.

Activities to Consider

The example activities and services listed below may have been regularly undertaken by regulatory bodies in the past, and in some cases may be acceptable to continue in the future. Regulatory bodies will need to assess whether these or similar activities are in accordance with the PGA.

Types of activities to assess:

- Government Feedback (PGA related/unrelated)
- Proposals to Government (PGA related/unrelated)
- Conferences
- Advocating for registrants in election promises
- Supply/access to professionals
- Job fairs
- Advancing the profession (new scopes of practice)
- School outreach
- Courses (Providing a Continuing Education Program is a PGA requirement, but some course content may need evaluation)
- Awards and achievement
- Publications
- Participating in a Political Party's fundraising dinner
- Forums and relationships with industry groups
- Speaking to media
- Benefit packages or affinity programs

OSPG Support

This framework and guidance are general in nature and specific cases may be complex and nuanced. Working through such cases with the OSPG is encouraged.



Appendix A - General duty and responsibilities of regulatory bodies

Section 22 of the PGA sets out the duty and responsibilities of regulatory bodies as follows:

22 (1) It is the general duty of a regulatory body at all times to

- (a) serve and protect the public interest with respect to the exercise of a profession, professional governance and the conduct of registrants in the registrants' regulated practice, and
- (b) exercise its powers and discharge its responsibilities in the public interest.

(2) A regulatory body has the following responsibilities:

- (a) to superintend the regulated practice;
- (b) to preserve and protect reserved titles or reserved practices, as applicable, in the public interest;
- (c) to guard against the unlawful use of reserved titles or the unlawful practice of reserved practices;
- (d) to govern the registrants of the regulatory body according to this Act, the regulations and the bylaws;
- (e) to establish the conditions or requirements for registration of a person as a registrant of the regulatory body;
- (f) to establish, monitor and enforce standards of practice to enhance the quality of practice so that registrants avoid
 - (i) professional misconduct,
 - (ii) conduct unbecoming a registrant, and
 - (iii) incompetent performance of duties undertaken while engaged in the regulated practice;
- (g) to establish and maintain a continuing competency program to promote high practice standards amongst registrants;
- (h) to establish, monitor and enforce standards of professional ethics amongst registrants;
- (i) to establish and employ registration, investigation and discipline procedures that are transparent, objective, impartial and fair;
- (j) to administer the affairs of the regulatory body and exercise its powers and perform its duties under this Act or other enactments;
- (k) in the course of exercising the powers and performing the duties of the regulatory body under this Act or other enactments, to promote and enhance the following:
 - (i) collaborative relations with other regulatory bodies, post-secondary education institutions and the government;
 - (ii) interprofessional collaborative practice between its registrants and persons practising another profession;
 - (iii) the ability of its registrants to respond and adapt to changes in practice environments, advances in technology and other emerging issues;
- (l) any other responsibility that the Lieutenant Governor in Council may prescribe.

(3) A regulatory body may only act in an advocacy role in accordance with this Act and in accordance with rules, conditions or limits prescribed by the Lieutenant Governor in Council.