

OSPG Guidance for Registrants and Employers or Partners of Registrants on the Duty to Report and Reprisal Protection

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1.1	2022-07-14	Updated to include information about timing considerations for s.58	Rebecca Freedman, Director



OSPG Guidance for Registrants and Employers or Partners of Registrants on the Duty to Report and Reprisal Protection

Section 58 of the *Professional Governance Act* (PGA) places a statutory duty on a registrant to promptly report to a regulatory body if they have reasonable and probable grounds to believe that an identified registrant is engaged in the regulated practice in a manner that may pose a risk of significant harm to the environment or to the health or safety of the public or a group of people.

The duty extends to employers and partners who terminate a registrant's employment, revoke, or suspend all or part of a registrant's privileges, or dissolve a partnership with a registrant following reasonable and probable grounds to believe that the registrant is engaged in the regulated practice in a manner that may pose a risk of significant harm to the environment or to the health or safety of the public or a group of people.

Timing Considerations: The statutory duty to report in s.58 applies to the past behaviour of registrants and the behaviour of registrants that may result in a risk of significant harm arising in the future. Past behaviour is included because an individual may not become aware of behaviour that would trigger the reporting requirement until after the behaviour has occurred. Behaviour that may result in a risk of significant harm arising in the future is included so that such behaviour can be identified and reported before harm occurs. The statutory duty to report only applies to situations that occurred after the PGA came into effect in February 2021.

Terminology:

The following reference sources are used along with definitions from the PGA promote understanding of terminology; however, deference to case law citations should be used for statutory interpretations. Subsequent references to these sources will appear as indicated below:

- Concise Oxford English Dictionary [OED]
- Black's Law Dictionary [Black's]
- Merriam-Webster Dictionary [MWD]

"harm to the environment" means damage or detriment to "external conditions affecting the growth of plants and animals" or other adverse consequences [OED].

"health" means the condition of being sound in body, mind, or spirit [MWD].

"identified registrant" means a registrant believed to be engaged in conduct that is described in section 58 of the *Professional Governance Act*.

"non-registrant" means a person who is not a registered member of a regulatory body and may include employers or partners of registrants.



“**probable**” means supported by evidence strong enough to establish presumption but not proof [MWD].

“**promptly**” means with little or no delay [OED].

“**reasonable**” is a subjective assessment which means fair, proper, just, moderate, suitable under the circumstances; rational; governed by reason; not immoderate or excessive; the standard which one must observe to avoid liability for negligence, including the foreseeability of harm [Black’s].

“**registrant**” means the registrants specified in respect of each regulatory body in Schedule 1 to the *Professional Governance Act*, and includes, as applicable, (a) an individual who is a registered member of a regulatory body, or (b) a firm that is registered with the regulatory body, if firms may be registered in respect of that regulatory body.

“**regulated practice**” means the carrying on of a profession by a registrant of a regulatory body.

“**reprisal**” means a retaliatory act and may include an act to evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on or otherwise discriminate against a registrant.

“**risk**” means the possibility of loss or injury [MWD].

“**safety**” means the condition of being safe; free from danger or risks [OED].

“**significant**” means a noticeably or measurably large amount [MWD].

Commentary:

The statutory duty in s.58 of the PGA goes beyond the ethical responsibility included in regulatory body codes of ethics (see section 57 of the PGA). When s.58 conditions are met, it requires reporting on any registrant, regardless of the profession, and may require reporting to a different regulatory body than one’s own. The reporting duty also applies to non-registrants who employ registrants or are the business partner of a registrant.

Breaking down the requirements:

- a) A registrant or employer/partner must have **reasonable and probable grounds**: The test or standard for reasonable and probable grounds considers what a reasonable person would conclude based on objective and credible information; registrants are not required to establish a case on the face of it before making the complaint; and reports must be made in good faith and should not be used as a tactic for delay or improper purpose.
- b) A registrant must be able to recognize an **identified registrant**: There may be cases where the risk of significant harm posed by the practice is evident, but an ‘identified registrant’ is not known, or it is a non-registrant engaged in the regulated practice. In the first case, the registrant should take reasonable steps to determine the identified registrant, but failure to do



so is not a breach of the duty. In the second case, the section 58 reporting duty is not triggered, but the registrant may have an ethical responsibility to inform the regulatory body.

- c) A registrant or employer/partner must believe the identified registrant's practice may pose a risk of **significant harm to the environment or to the health and safety of a group of people**: This term must be applied contextually—what is or is not significant harm cannot be pre-determined. Broadly speaking, this term sets a high standard for reporting.
- d) The registrant or employer/partner must **promptly report**: This requirement allows for due diligence to meet the test of reasonable and probable grounds; once this test is met, registrants must not hold onto information but take immediate steps to engage the regulatory body. The regulatory body is then responsible for reviewing the complaint and carry out an investigation as required.

The following scenarios should generally trigger the s.58 reporting duty of registrants and employers/partners, with the caveat that registrants and employers/partners should be able to reasonably identify unethical behaviour of a registrant, regardless of profession or area of expertise, but may only be able to identify incompetent behaviour of a registrant with similar areas of practice and expertise:

- Misrepresented credentials or the areas of practice a registrant is competent to practice in
- Conflicts of interest (actual or perceived)
- Incompetence or technical errors observed (where potential impact requires urgent attention or where registrant refuses to address the errors)
- Unethical behaviour – e.g., removal of another consultant's signed report or any tampering with documents

This list is not exhaustive; additional scenarios may be added over time.

For clarity, the s.58 duty is NOT meant to require registrants to make reports to regulatory bodies related to compliance with other government statutes or to raise concerns about government policies or authorizations a registrant may be operating under. These types of concerns may be brought to the attention of the authority having jurisdiction over the policy or authorization in question.

The s.58 duty has clear penalties for not reporting, which may include sanctions by the regulatory body or OSPG. Regulatory body sanctions for registrants include those available through the complaints and discipline process, as well as pursuing convictions, and injunctions under the PGA. OSPG sanctions for registrants and non-registrants (may be employers/partners) include administrative penalties as well as pursuing convictions, and injunctions under the PGA. Though not anticipated to be common, conviction of an offence for failure to meet the statutory duty to report under s.58 could carry a fine up to \$200 000 (or more if a registrant firm is convicted).



Making a Report:

If a registrant is unsure of whether they should be reporting, they may seek advice from their own regulatory body or the regulatory body of the identified registrant. An employer/partner may seek advice from the OSGP or from a regulatory body.

Once a registrant or employer/partner has determined that they should report to a regulatory body, they should follow the process laid out by the regulatory body for receiving complaints. The following links provide more detail and contact information for each of the regulatory body's complaint intake procedures.

[Applied Science Technologists and Technicians of BC](#)

[Association of BC Forest Professionals](#)

[BC Institute of Agrologists](#)

[College of Applied Biology](#)

[Engineers and Geoscientists BC](#)

When a regulatory body receives a complaint, they will follow the steps outlined in their complaint and discipline process, which may lead them to:

- Dismiss the complaint if the registrar determines there are no grounds for a complaint, or if the complaint is deemed to be frivolous, vexatious or made in bad faith;
- Initiate an investigation;
- Take extraordinary action to protect the public by imposing limits or conditions on the registrant's practice, or by suspending the registration of the registrant; or
- Refer the complaint to a different entity if the complaint is outside the regulatory body's jurisdiction.

The duty to report is ongoing – failure of a regulatory body to take action on the first report does not excuse a registrant or employee/partner from future reporting if there are new or ongoing grounds to believe an identified registrant's practice should trigger the reporting duty.

Preventing and Responding to Reprisals:

Section 103 of the PGA says that a person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on or otherwise discriminate against a registrant who makes a report under s.58. Reprisal protection in the PGA is broad and applies beyond s.58 to complaints, giving evidence, or otherwise assisting in a complaint or prosecution.

While a registrant who makes a report to a regulatory body may be providing information and bringing awareness to the regulatory body, it is likely that the regulatory body may need to gather information from several sources in order to determine if a complaint should proceed to investigation. Wherever



possible, the regulatory body will be identified as the complainant rather than the registrant who made the report. This may reduce the potential for reprisals to be taken against the registrant but may not prevent a situation of reprisals¹.

If a registrant is experiencing reprisals for their role in making or assisting in a complaint or prosecution, they may talk to their regulatory body (through the complaint intake process) or to the OSPG through OSPGENQUIRIES@gov.bc.ca; and/or may seek legal recourse.

Both the regulatory body and OSPG may initiate an investigation when reprisal activities are reported, though only OSPG may investigate where a non-registrant is taking reprisals. Following an investigation, sanctions may be laid against the person taking reprisals. These may include sanctions for registrants through the regulatory body's complaint and discipline process, or sanctions for registrants and non-registrants including administrative penalties, convictions, or injunctions under the PGA.

¹ This measure may not give the desired outcome of preventing reprisals if the evidence of a concern brought forward by a registrant makes their identity obvious.