

Duty to Report: Framework Questions, Scenarios, and Frequently Asked Questions

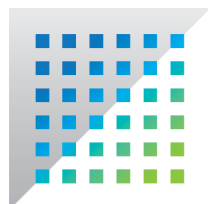
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Issued by:



Kate Haines, Superintendent



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of Professional Governance



Version Control History

Version #	Date (YYY-MM-DD)	Modification	Approved by
1.0	2023-02-23	Initial Version	Kate Haines, Superintendent



Background

The *Professional Governance Act* (PGA) was brought substantially into force on February 5, 2021. Section 58 of the PGA creates and places a new statutory duty to report on Registrants to make a report to a regulatory body when they have *“reasonable and probable grounds to believe that the behaviour of an identified Registrant may pose a risk of significant harm to the environment or the health and safety of the public or a group of people.”*

The Duty to Report Working group, which includes representatives from the Office of the Superintendent of Professional Governance (OSPG) and regulatory bodies, have worked to develop this document to assist registrants in understanding their reporting obligations under the PGA. This document includes:

- A framework of questions to apply to situations to help determine if the statutory duty to report has been triggered.
- Generic scenarios of situations that could trigger the statutory duty to report. Registrants can apply the framework of questions below to each scenario to improve their understanding of the requirements of the statutory duty to report.
- A list of frequently asked questions about the statutory duty to report in section 58 of the PGA.

This document is a companion document to the Registrant Reporting and Statutory Duty to Report video recording presented by the OSPG in February 2023. The intention is for registrants to view the video recording first and then to use this document to further their understanding of the topics covered in the video.



1. Framework of Questions to support deciding whether the statutory duty to report has been engaged

Question	Items to Consider
Question 1: Do you think the behaviour of the identified Registrant may post a risk of significant harm to the environment or health or safety of the public or a group of people?	<ol style="list-style-type: none"> 1) What behaviour is presenting the risk of significant harm? 2) What environment is at risk? Why is it at risk? 3) How is the public at risk? 4) What group of people is at risk? Why is that group at risk?
Question 2: Is the person responsible for the risk of significant harm an identified registrant under the PGA?	<ol style="list-style-type: none"> 1) Who is the Registrant? <ul style="list-style-type: none"> • You can check the searchable public register on each regulatory body website to identify Registrants and confirm their registrant status. 2) What regulatory body under the PGA does the Registrant belong to? <ul style="list-style-type: none"> • See Schedule 1 of the PGA for a list of regulatory bodies 3) Is the Registrant an “Identified Registrant” as defined in section 58(1) of the PGA?
Question 3: Was the Registrant engaged in the regulated practice when the risk of significant harm occurred?	<ol style="list-style-type: none"> 1) What work was the Registrant doing? 2) Was the Registrant engaged in their regulated practice at the time? 3) When did the behaviour that caused the risk of significant harm occur? <ul style="list-style-type: none"> • Did the behaviour occur when the Registrant was doing their work or after? Does anything lead you to believe that the risk of significant harm can be tied back to the behaviour of the Registrant when they were engaged in their regulated practice? • The statutory duty to report applies to situations that occurred after the PGA came into effect in February 2021. This means that the statutory duty to report applies to the past behaviour of Registrants if the behaviour occurred after February 2021.
Question 4: Does the Registrant who identified the risk of significant harm have reasonable and probably grounds to believe there is a risk?	<ol style="list-style-type: none"> 1) Is there objective and credible information that led you to believe that the behaviour of the identified Registrant may pose a risk of significant harm to the environment or health and safety of the public or a group of people? <ul style="list-style-type: none"> • The information does not need to prove this occurred; it only needs to result in the belief that it may have occurred. 2) Do you think another Registrant in your position would conclude there was a statutory duty to report? 3) Is the risk arising from unethical behaviour (i.e., conflict of interest) or incompetent behaviour (i.e., technical errors)? <ul style="list-style-type: none"> • If you are unsure if there is a risk arising from the behaviour, it is advisable to discuss the situation with another registrant who has the same or similar areas of practice as that of the Registrant whose behaviour you are concerned about. 4) Do you need specialized technical knowledge to identify incompetent behaviour? If yes, do you have that knowledge (i.e., the same, or similar area of practice)?



If, after applying the questions above to your situation, you believe there is a risk of significant harm to the environment or health and safety of the public or a group of people arising from how an identified Registrant engaged in their regulated practice, the statutory duty to report has been triggered.

In contrast, if after applying the questions above to your situation, you are unable to answer all the questions or are unsure of whether the questions apply to the situation, the duty to report may not have been triggered. If you are unsure of whether the duty to report has been triggered, you can contact your regulatory body for further discussion; However, it is the responsibility of the Registrant to determine if the duty to report has been triggered.

If the statutory duty to report has been triggered, you are required to report the situation to the registrar of the identified Registrant's regulatory body. To make a report, follow the directions on how to make a complaint on the regulatory body's website.

On receiving a statutory duty to report complaint, the registrar will determine if the regulatory body will investigate. The bylaws of each regulatory body detail the processes that will be followed during a complaint review, and subsequent investigations and disciplinary hearings, if applicable. It is important to note that timelines for investigations vary depending on the complexities of the case being considered. Where some investigations can be concluded in a matter of months, others can take far longer to reach a resolution, especially if the matter escalates to a disciplinary hearing.



2. Scenarios

In addition to the material presented in the video, the following scenarios have been provided as additional examples of situations where the statutory duty to report might be triggered. Working through these examples with the questions listed above in mind, Registrants should be able to identify if a statutory duty to report under section 58 of the PGA has been triggered. Note, because generic examples are provided, it might not be possible to answer every question based on the information in the scenario; nevertheless, Registrants should still be able to determine if a statutory duty to report has been triggered based on the information provided and close examination of the requirements of section 58 of the PGA.

Scenario 1: Pressure from Project Owner

Entities in scenarios:

Non-registrant = Project Owner

Registrant A = Consultant

Scenario:

A project is nearing completion. The Owner will face financial penalties if the permit to operate the project is not issued by a specific date. There are some construction deficiencies that could affect safety of those at the site during operations. The Owner pressures the consultant to provide the final assurances needed to obtain the permit, noting the work will be done shortly, prior to any actual operation. Even though the project is not ready for operation, the consultant provides the assurances to help the owner obtain the permit, trusting that the work will get done in time.

The permit was issued, based on the Consultant’s assurances. The items needed to correct the construction deficiencies arrive on site, but they cannot be installed due to fabrication errors. It will take several weeks before replacement items built to the correct specifications will arrive and the construction deficiencies can be corrected. In the interests of time and money, the owner decides to begin operations of the project before the construction deficiencies are corrected. Several other Registrants providing consulting services on the project are aware of the construction deficiencies, the final assurances provided by the Consultant, and the owner’s decision to begin operations before the construction deficiencies are corrected.

Question 1: Specify the risk of significant harm:

- 1) What behaviour is presenting the risk of significant harm?
- 2) What environment is at risk? Why is it at risk?
- 3) How is the public at risk?
- 4) What group of people is at risk? Why is that group at risk?

Question 2: Is the person responsible for the risk of significant harm an identified registrant under the PGA?

- 1) Who is the Registrant?
 - You can check the searchable public register on each regulatory body website to identify Registrants and confirm their registrant status.
- 2) What regulatory body under the PGA does the Registrant belong to?
 - See Schedule 1 of the PGA for a list of regulatory bodies



3) Is the Registrant an “Identified Registrant” as defined in section 58(1) of the PGA?

Question 3: Was the registrant responsible for the harm engaged in their regulated practice at the time?

- 1) What work was the Registrant doing?
- 2) Was the Registrant engaged in their regulated practice at the time?
- 3) When did the behaviour that caused the risk of significant harm occur?
 - Did the behaviour occur when the Registrant was doing their work or after? Does anything lead you to believe that the risk of significant harm can be tied back to the behaviour of the Registrant when they were engaged in their regulated practice?
 - The statutory duty to report applies to situations that occurred after the PGA came into effect in February 2021. This means that the statutory duty to report applies to the past behaviour of Registrants if the behaviour occurred after February 2021.

Question 4: Do you have reasonable and probable grounds to believe that a risk of significant harm exists?

- 1) Is there objective and credible information that led you to believe that the behaviour of the identified Registrant may pose a risk of significant harm to the environment or health and safety of the public or a group of people?
 - The information does not need to prove this occurred; it only needs to result in the belief that it may have occurred.
- 2) Do you think another Registrant in your position would conclude there was a statutory duty to report?
- 3) Is the risk arising from unethical behaviour (i.e., conflict of interest) or incompetent behaviour (i.e., technical errors)?
 - If you are unsure if there is a risk arising from the behaviour, it is advisable to discuss the situation with another registrant who has the same or similar areas of practice as that of the Registrant whose behaviour you are concerned about.
- 4) Do you need specialized technical knowledge to identify incompetent behaviour? If yes, do you have that knowledge (i.e., the same, or similar area of practice)?

Statutory Duty to Report Findings:

- 1) Has the statutory duty to report been triggered?
- 2) Who has the duty to report?
- 3) Whose regulatory body should the report be made to?
- 4) If the statutory duty to report has not been triggered, has the ethical responsibility to report been triggered?

Scenario 2: Supervisor direction to change findings

Entities in scenario:

Registrant A = Supervisor

Registrant B = Inspector

Scenario:



An inspection has been conducted of a system to determine compliance with permit requirements. The Inspector found that the system is non-compliant and noted it as such in their inspection record. The Inspector's Supervisor directs the Inspector to change their report to reflect that the system is in compliance. The nature of the non-compliance is such that there is a risk of harm to the environment and the public if it continues to operate in non-compliance. The Supervisor and the Inspector belong to the same regulatory body.

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- 1) What work was the Registrant doing?
- 2) Was the Registrant engaged in their regulated practice at the time?
- 3) When did the behaviour that caused the risk of significant harm occur?
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Scenario 3: Practice Overlap

Entities in scenario:

Registrant A = operations manager

Registrant B = consultant

Scenario:

An Operations Manager has been asked to rely on a report done by a Consultant. The Operations Manager and the Consultant belong to different regulatory bodies but have areas of practice that overlap; both registrants have their own professional knowledge of the same subject and are authorized to practice in that subject area. The Operations Manager noted that the methodology and findings of the Consultant's report were questionable and felt uncomfortable relying on them. Furthermore, the Operations Manager felt that the Consultant did not meet the expectations of practice in the area and that this posed a significant risk to the safety of the public. The Operations Manager approached the Consultant to discuss their findings. The Consultant maintained that their methodology was correct, and their findings were accurate.

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- 3) Is the Registrant an "Identified Registrant" as defined in section 58(1) of the PGA?

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- 1) What work was the Registrant doing?
- 2) Was the Registrant engaged in their regulated practice at the time?
- 3) When did the behaviour that caused the risk of significant harm occur?
 - Did the behaviour occur when the Registrant was doing their work or after? Does anything lead you to believe that the risk of significant harm can be tied back to the behaviour of the Registrant when they were engaged in their regulated practice?
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 - The information does not need to prove this occurred; it only needs to result in the belief that it may have occurred.
- 2) Do you think another Registrant in your position would conclude there was a statutory duty to report?
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- 1) Has the statutory duty to report been triggered?
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Scenario 4: Inappropriate Use of Report

Entities in scenario:

Registrant A = Consultant

Registrant B = Consultant's Partner

Registrant C = New Project Director

Scenario:

Testing was completed for a feature of a project based on a specific configuration and requirements. The testing was completed and authenticated, and a test report prepared by the Consultant. The report was then taken by the Consultant's Partner and applied to a new project that included features with a different configuration and requirements. The New Project Director noticed the discrepancy in the report submitted by the Consultant's Partner and raised the issue with the Consultant's Partner, who assured the New Project Director that the testing report adequately covered the project feature. The New Project Director then contacted the Consultant to inform them that their original report has been submitted. The Consultant indicated that they were unaware that their report was being used in the context of the new project.

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- 4) What group of people is at risk? Why is that group at risk?

Question 2: Is the person responsible for the risk of significant harm an identified registrant under the PGA?

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- 3) Is the Registrant an "Identified Registrant" as defined in section 58(1) of the PGA?

Question 3: Was the registrant responsible for the harm engaged in their regulated practice at the time?

- 1) What work was the Registrant doing?
- 2) Was the Registrant engaged in their regulated practice at the time?
- 3) When did the behaviour that caused the risk of significant harm occur?
 - Did the behaviour occur when the Registrant was doing their work or after? Does anything lead you to believe that the risk of significant harm can be tied back to the behaviour of the Registrant when they were engaged in their regulated practice? The statutory duty to report applies to situations that occurred after the PGA came into effect in February 2021. This means that the statutory duty to report applies to the past behaviour of Registrants if the behaviour occurred after February 2021.

Question 4: Do you have reasonable and probable grounds to believe that a risk of significant harm exists?



- 1) Is there objective and credible information that led you to believe that the behaviour of the identified Registrant may pose a risk of significant harm to the environment or health and safety of the public or a group of people?
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- 2) Do you think another Registrant in your position would conclude there was a statutory duty to report?
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3. Frequently Asked Questions

The questions and answers presented below should be considered broadly. Each situation is unique and will be considered by regulatory bodies on a case-by-case basis. Regulatory bodies will determine the final approach that should be taken for each case presented to them.

1. Why is there a Statutory Duty to Report imposed in section 58 of the PGA?

- The PGA and the OSPG were created in response to recommendations on professional governance provided in the independent final report on professional reliance in the natural resource sector completed by Mark Haddock in June 2018.

Several of the recommendations in the report centered on creating a statutory duty to report to ensure that regulatory bodies were aware of instances of environmental harms, non-compliances and risks to health and safety. These recommendations resulted in the creation of section 58 in the PGA. Mark Haddock's final report is available at this hyperlink:

https://professionalgovernancebc.ca/app/uploads/sites/498/2019/05/Professional_Reliance_Review_Final_Report.pdf .

2. What is the Statutory Duty to Report?

- The Statutory Duty to Report places a statutory duty on Registrants to promptly report to a regulatory body if they have reasonable and probable grounds to believe that an identified Registrant is engaged in their 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.

3. What is the intent of the Statutory Duty to Report?

- The intent behind the creation of the Statutory Duty to Report was to:
 - Overcome barriers to professionals reporting, including a reluctance to report on peers and fear of reprisals.
 - Create clear penalties for failing to report situations that might pose a risk of significant harm to the environment or the health and safety of the public or a group of people.
 - Overcome a lack of confidence from registrants that their reporting would lead to the regulatory body addressing the concern.
 - Ensure regulatory bodies were made aware of such instances so that they could appropriately address them.

4. Can making a statement in a public forum trigger a Statutory Duty to Report against a professional?



- Yes. When a professional makes a statement in public, it may trigger the Statutory Duty to Report if the professional is engaged in their regulated practice and their statements may pose a risk of significant harm to the environment or to the health or safety of the public or a group of people. Professionals should turn their minds to the potential implications of the statements they make and how they represent themselves when making statements in a public forum.

See your regulatory body's website for information and policies on making statements in a public forum.

5. What happens if my employer takes a reprisal against me because I complied with the Statutory Duty to Report and submitted a complaint about another Registrant?

- Section 103 of the PGA makes it an offense to take a reprisal against a Registrant for complying with the Statutory Duty to Report under section 58 or for making a complaint, including under the Ethical Responsibility to Report.
- If a reprisal is taken against a Registrant because they made a complaint, the Registrant should report this to their regulatory body. The regulatory body will then determine:
 - If they have jurisdiction or if they believe that OSPG has jurisdiction.
 - If they will investigate the matter.
 - If they will refer the matter to the OSPG to determine if it will investigate (if the OSPG has jurisdiction).

Note: regulatory bodies and the OSPG have different jurisdiction over matters regarding individual registrants under the PGA, which is relevant to deciding which regulator is best placed to pursue a potential reprisal.

6. Is each Registrant on a team who has knowledge of the situation required to make a duty to report if section 58 is triggered?

- The Statutory Duty to Report applies equally to all Registrants who have knowledge of a situation.
- In a team environment, if one Registrant makes the duty to report complaint for a team, they should include the names of the other Registrants on whose behalf they are making the report and provide proof to the other Registrants that the report has been made.
- Registrants may also choose to make one complaint where all the Registrants who observed the behaviour are signatories to the complaint.
- Regardless of which team member makes the report, the other Registrants will be witnesses to the situation and the regulatory body may need their information if it proceeds with an investigation.



- Registrants should keep detailed notes if a report is made on their behalf in a team environment so they can show an awareness that the statutory obligation was discharged.
7. Can a firm be an identified Registrant and make a duty to report?
- A registrant firm can be an “identified Registrant” and it can make a duty to report complaint.
8. Can a firm be an identified Registrant and have a duty to report complaint made against them?
- Yes, as an identified Registrant, a firm is subject to the requirements of section 58 in the same way as any other Registrant under the PGA.
9. When does repeat substandard work, or identified consequence of substandard work, reach a point of triggering the Statutory Duty to Report?
- If you are concerned that a Registrant is continually engaging in substandard work or that there might be an impact arising from substandard work, but you are unsure if there is a risk of significant harm to the environment or the health and safety of the public or a group of people, you can make a complaint to the regulatory body of the Registrant. The regulatory body will then determine an appropriate course of action, which could include a practice review or investigation.
10. What happens if I make a Statutory Duty to Report complaint?
- If you make a Statutory Duty to Report complaint the regulatory body will have to review the complaint to determine if there is substance to the complaint and if an investigation to gather more information is warranted. The regulatory body may contact you to discuss the process after a complaint is made.
11. What happens if I don't make a Statutory Duty to Report complaint when I should have?
- If you don't make a Statutory Duty to Report complaint when you should have, you failed to comply with the PGA. Failure to comply with the PGA may result in an investigation and/or enforcement action.
 - See question 6 above for information on how to make a Statutory Duty to Report complaint in a team environment where more than one Registrant has had their Statutory Duty to Report obligation triggered.