

Professional Governance Act (PGA):
Part 1: Registrant Reporting
February 2023



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Purpose

- The purpose of this presentation is to:
 - Give registrants an understanding of the two different reporting requirements in the Professional Governance Act (PGA);
 - Explain the similarities and differences between the reporting requirements;
 - Explain the rationale for why statutory reporting requirements were included in the PGA; and,
 - Provide guidance and a framework for registrants in part 2 to help them identify if the statutory duty to report has been triggered.
- Although mentioned, this presentation does not focus on:
 - How the Statutory Duty to Report applies to non-registrants through sections 58(4) & 58(5) of the PGA;
 - Breaches of reserved practice or reserved title; or,
 - How to make a complaint.

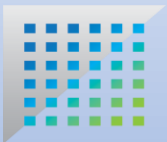


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Outline

- What are the Reporting Requirements under the PGA?
- What are the Differences between the Reporting Requirements?
- Did the Reporting Requirements exist before the PGA?
- What is the intent of the Reporting Requirements?
- What is the scope of the Reporting Requirements?
- What are some examples that would result in a Report?
- How does a Registrant make a Report?
- What happens if a Report is made?
- When might a Report be referred?
- Complainant Confidentiality
- Reprisals
- Reports about Government Policies and Authorization Decisions/Permit Requirements
- Key Take Aways
- Questions

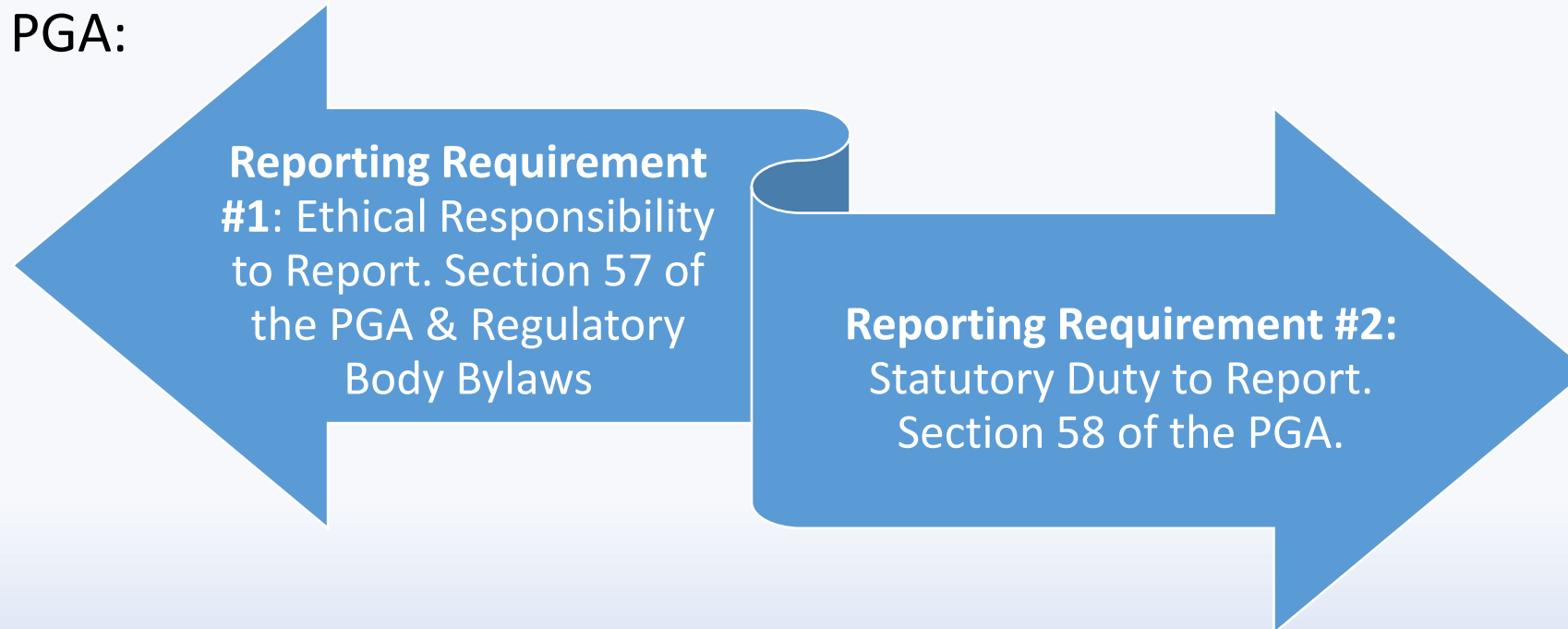


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What are the Reporting Requirements under the PGA?

Two reporting requirements apply to Registrants of Regulatory Bodies under the PGA:



The terms “report” and “complaint” are used interchangeably throughout this presentation.



What are the Reporting Requirements under the PGA? Cont'd

Ethical Responsibility to Report	Statutory Duty to Report
<p>“57(2)The (regulatory body) bylaws made under subsection (1) must include a code of ethics that must include at least the following ethical principles:</p> <p>(i)report to the regulatory body and, if applicable, any other appropriate authority, if the registrant, on reasonable and probable grounds, believes that the continued practice of a regulated practice by another registrant or other person, including firms and employers, might pose a risk of significant harm to the environment or to the health or safety of the public or a group of people”</p>	<p>“58(2)If a registrant has reasonable and probable grounds to believe that an identified registrant is</p> <p>(a) 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, or</p> <p>(b) engaged in a matter or conduct prescribed by the Lieutenant Governor in Council,</p> <p>the registrant must promptly report this to the registrar of the identified registrant's regulatory body.”</p> <ul style="list-style-type: none">• 58(4)&(5) extends the duty to report to non-registrants



What are the Differences between the Reporting Requirements?

Differences	Ethical Responsibility to Report	Statutory Duty to Report
Who makes the report?	Registrant	Registrants and other persons (other persons involved in the project or who have knowledge of the project; typically, employers, partners & associates, or contractors etc).
Who receives the report?	<ul style="list-style-type: none"> Regulatory Body of the Registrant the complaint is about (could be your own Regulatory Body or another Regulatory Body) Any other applicable authority (i.e., Ministry, etc.). Review your bylaws 	The registrar of the identified registrant's regulatory body.
What is the scope?	Broader scope: see bylaws to understand what triggers a report.	Narrower scope: see section 58 of the PGA to understand what triggers a report.



Did the Reporting Requirements exist before the PGA?

Ethical Responsibility to Report:

Existed prior to the PGA in each Regulatory Body's bylaws under the previous statutes.

Statutory Duty to Report:

New requirement under the PGA
(Feb 2021).




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What is the intent of the Reporting Requirements?

Reporting Requirements are included in the PGA to protect the public interest. See Professional Reliance Report.



Ethical Responsibility to Report:
Ensure that Professionals understand the responsibility to hold paramount the public interest in their work and the work of others.



Statutory Duty to Report:

- Overcome reluctance to professionals reporting; and
- Increase the instances of serious concerns about competence or unprofessional and unethical conduct coming to the attention of Regulatory Bodies.



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What is the scope the Reporting Requirements?

1. The Ethical Responsibility to Report has a broader scope and many complaints will fall under it.
2. The Statutory Duty to Report has a narrower scope and a subset of complaints will fall under it.



What are some examples that would result in a Report?

Unethical Behaviour

- Removal of another consultant's signed report
- Tampering with documents
- Conflicts of interest
- Providing false or misleading information (misrepresentation)

Incompetent Behaviour

- Technical errors observed in the conduct of the regulated practice
- Engaging in regulated practice without the technical expertise needed to do so.

Note: this list is not exhaustive and has been provided for illustrative purposes only



How does a Registrant make a Report?

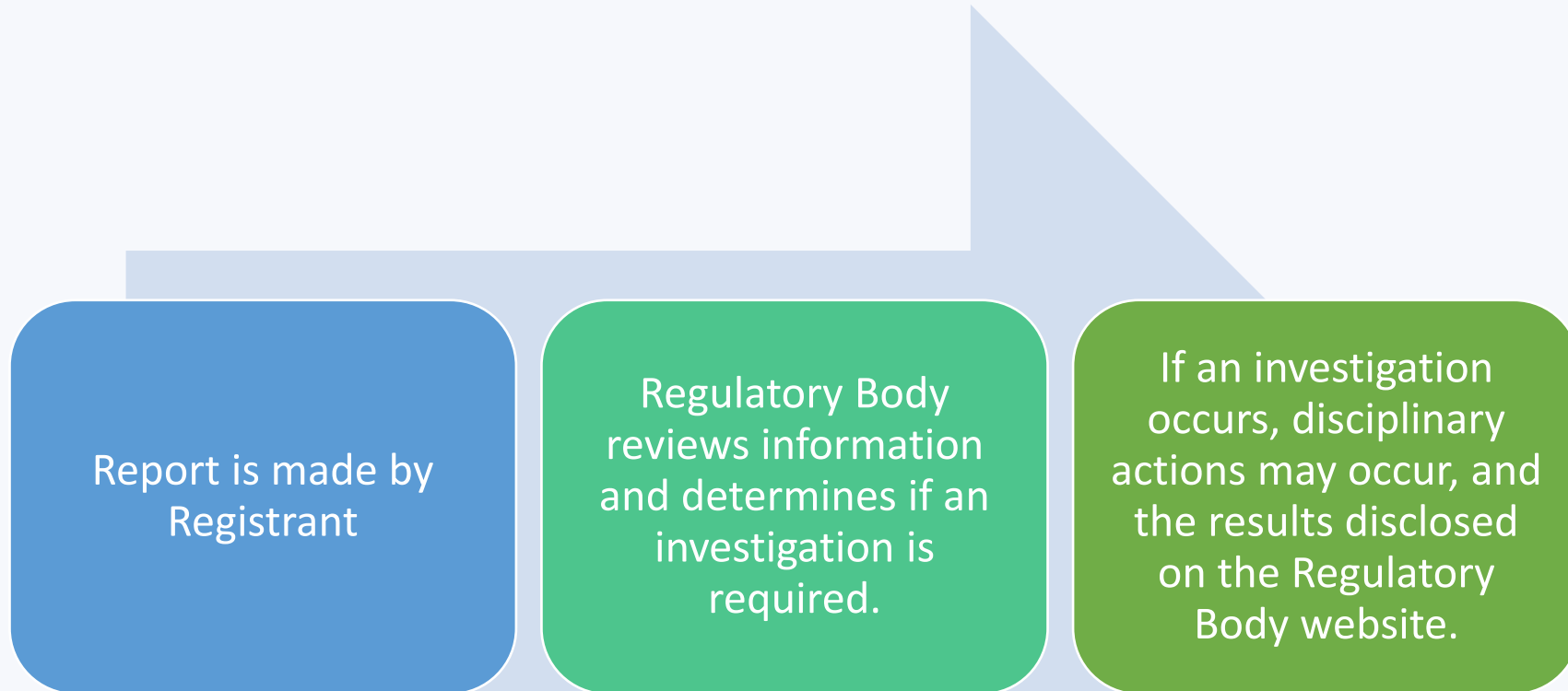
1. Regulatory Body bylaws contain information on how to submit complaints for:
 - the Ethical Responsibility to Report; or
 - the Statutory Duty to Report.



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What happens if a Report is made?



When might a Report be referred?

Subject of Report:

- A Registrant makes a report to their own Regulatory Body concerning the behaviour of another Registrant who is a member of a different Regulatory Body

Referred to:

- The Registrant may be asked to make the report to the applicable Regulatory Body
- The Regulatory Body may refer the report to the applicable Regulatory Body.



Complainant Confidentiality

- Protecting the identity and safety of a complainant is one of the fundamental tenets of administrative law.
- It may be necessary to reveal a complainant's identity when:
 - The complainant's material information is evidence to the complaint itself; or
 - The complainant is required to present information at a disciplinary hearing.
- For transparency and to protect the public interest, the results of disciplinary hearings are posted on Regulatory Body's websites and the complainant's identity may be recorded in the Disciplinary Decision.
- The bylaws of your Regulatory Body may have more information on confidentiality, including the ability to sever or protect a complainant's or registrant's identity.



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Reprisals

1. Section 103 of the PGA was included to protect registrants making a complaint under the Ethical Responsibility to Report or the Statutory Duty to Report from a reprisal.

“A person must not evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on or otherwise discriminate against a registrant because that registrant

(a) has reported a matter as described in section 58 [duty to report] with respect to a registrant or other persons,

(b) complains or is named in a complaint under section 65 [complaints], or

(c) gives evidence or otherwise assists in respect of a prosecution, a complaint or another proceeding under this Act.

2. If a Registrant experiences a reprisal after making a complaint, they should report this to their Regulatory Body for investigation. The Regulatory Body or the OSPG may lead the investigation, depending on the circumstances.



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Reports about Government Policies and Authorization Decisions/Permit Requirements

- Both the ethical responsibility to report and the statutory duty to report are focused on a registrant's practice posing a risk of harm, but in some cases it may be hard to distinguish this from the activity/industry posing a risk of harm.
- Registrants may be tempted to report to regulatory bodies a concern with government policy or an authorization for the activity rather than the work of the professional.
- However, regulatory bodies do not have jurisdiction over these types of complaints and may ask registrants to refer these matters to government or the authority having jurisdiction.



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Questions

1. If a Statutory Duty to Report is triggered, isn't it automatic that there is also an ethical duty to report?
2. Why is sec 57 not specifically identified within the sec 103 PGA reprisals limitation
3. When OSPG leads enforcement action against a non-registrant for reprisal, how will it publicly document the result of that process?
4. Is it encouraged that individual employers (multi disciplinary consulting companies) implement a complaint process to deal with complaints in house (vs reports to regulatory bodies).
5. Is there a time limit in play? What if the risk was imposed 3 years ago? 10?
6. What should you do when it's a condition of your employment to not retain any documents related to your work or a project?



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Key Take Aways

- There are two reporting requirements under the PGA:
 - Ethical Responsibility to Report
 - Statutory Duty to Report
- Ethical Responsibility to Report:
 - Is not new.
 - Has a broad scope.
 - See Regulatory Body bylaws.
 - Applies to Registrants only.
- Statutory Duty to Report:
 - Is new.
 - Has a narrow scope.
 - See section 58 of the PGA.
 - Applies to Registrants[s.58.2] and non-registrants [s.58.4 & 58.5].



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Professional Governance Act
(PGA):
Part 2: Section 58 Statutory Duty
to Report
February 2023



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Outline

- Registrant Statutory Duty to Report
- Has the Statutory Duty to Report been triggered?
- Duty to Report Questions: 4 Questions
- Registrant's Ethical Responsibility to Report
- Scenarios: 3 Scenarios
- Key Take Aways
- Questions
- Resources
- Contact Information



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Registrant Statutory Duty to Report

“58(2) If a registrant has reasonable and probable grounds to believe that an identified registrant is

(a) 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, or

(b) engaged in a matter or conduct prescribed by the Lieutenant Governor in Council,

the registrant must promptly report this to the registrar of the identified registrant's regulatory body.”



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Has the Statutory Duty to Report been triggered ?

1. Is there a risk of significant harm to the environment or health or safety of the public or a group of people?

Yes

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

Yes

3. Was the registrant whose behaviour caused the risk engaged in their regulated practice at the time?

Yes

4. Do you have reasonable and probable grounds to believe there is a risk?

Yes

Section 58 Duty to Report is triggered

Statutory Duty to Report:

If the answer to these four questions is yes, the statutory duty to report has been triggered and you must make a duty to report complaint to the regulatory body of the identified registrant.

Best Practice: when making the complaint you should self-declare that it is a section 58 duty to report complaint.

Ethical Responsibility to Report:

If you answer no to any of these questions, then the statutory duty to report has not been triggered; However, the ethical responsibility to report may have been triggered. Check your bylaws to confirm.



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Duty to Report Questions: Question 1

Question 1: Do you think that the behaviour of an identified Registrant may pose a risk of significant harm to the environment or health or safety of the public or a group of people?

Items to consider:

1. What behaviour is presenting or presented the risk of significant harm?
2. What environment is at risk? Why?
3. What group of people is at risk? Why?



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Duty to Report Questions: Question 2

Question 2: Is the person responsible for the risk of significant harm an identified registrant under the PGA? An “Identified Registrant” is a registrant that is engaged in the conduct described in section 58(2)(a).

Items to consider:

1. Who is the Registrant?
 - a. If you only know the company or are unsure of the Registrant’s name, you can check the searchable public register on the Regulatory Body’s website to try to identify the individual.
2. What Regulatory Body under the PGA do they 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?
 - a) If the person is not an “Identified Registrant”, the statutory duty to report has not been triggered.



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Duty to Report Questions: Question 3

Question 3: Was the Registrant engaged in their regulated practice when the risk of significant harm occurred?

Items to consider:

- a) What work was the Registrant doing?
- b) Was the Registrant engaged in their regulated practice at the time?
- c) When did the behaviour that caused the risk of significant harm occur?
 - a) When the Registrant was doing the work or after? If after, does anything lead you to believe that the risk of significant harm can be tied back to the Registrant?
 - b) The Statutory Duty to Report applies to situations that occurred after the *Professional Governance Act* came into effect in February 2021. This means that the Statutory Duty to Report applies to the past behaviour of Registrants as long as the behaviour occurred after February 2021.



Duty to Report Questions: Question 4

Question 4: Does the Registrant who identified the risk of significant harm have reasonable and probable grounds to believe there is a risk?

Items to consider:

1. Is there objective and credible information that led you to believe that the behaviour of the Registrant may pose a risk of significant harm to the environment or health and safety of the public or a group of people? Note: 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)?
 - a. 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., same, or similar area of practice)?



Registrant's Ethical Responsibility to Report

- If you answer no to any of the four questions, the statutory duty to report has not been triggered.
- However, you may still need to make a report because the ethical responsibility to report may have been triggered.
- Check your bylaws to confirm if the ethical responsibility to report has been triggered.



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Scenario 1 – Project Manager and Subject Matter Expert

Entities in scenario:

Registrant A = Project Manager

Registrant B = Subject Matter Expert

Scenario:

Two registrants of different regulatory bodies worked together on a project. It was discovered that the Project Manager downplayed the project effects identified by the Subject Matter Expert in e-mails to the client about the project. There was an incident of significant harm to the environment that related to the advice of the Subject Matter Expert.

Questions:

1. Is there a risk of significant harm to the environment or health or safety of a person or group of people?
2. Is the person responsible for the risk of significant harm an identified registrant under the PGA?
3. Was the registrant whose behaviour caused the risk engaged in their regulated practice at the time?
4. Do you have reasonable and probable grounds to believe there is a risk?

NOTE: more detailed questions are included in the [Duty to Report Framework](#), [Practice Scenarios](#) and [FAQs](#)



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Scenario 2 – Letter to the Editor

Entities in scenario:

Registrant A – Letter writer

Registrant B – Consultant to the municipality

Scenario:

The local newspaper published a letter from a writer stating their opposition to a municipal approval of a project for a recreational use opportunity. The municipality based their approval on a report prepared by their Consultant. The project location is owned and managed by the municipality and the Consultant was hired to provide recommendations for the design of the project. The letter writer identified themselves as a Registrant and suggested that they have expertise in the area of practice covered by the Consultant's report. The letter writer does not have expertise in the area of practice. The Consultant is concerned that the letter may damage their professional reputation and that the letter writer is providing an opinion outside of their scope of practice.

Questions:

1. Is there a risk of significant harm to the environment or health or safety of a person or group of people?
2. Is the person responsible for the risk of significant harm an identified registrant under the PGA?
3. Was the registrant whose behaviour caused the risk engaged in their regulated practice at the time?
4. Do you have reasonable and probable grounds to believe there is a risk?

NOTE: more detailed questions are included in the **Duty to Report Framework, Practice Scenarios and FAQs**



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Scenario 3 – Crossing Structure Integrity

Entities in scenario:

Registrant A = Professional

Registrant B = Inspector

Scenario:

A temporary crossing structure was established on a forest road. The professional responsible for the crossing, signed a Crossing Assurance Statement (CAS) confirming the structure was safe to cross. Shortly after and during active vehicle crossing by workers and the public the Inspector observed heavy mechanical damage on the structure. The integrity and function of the structure was called into question. The Inspector determined the damage could not have occurred from regular vehicle use and was a direct result of previous mechanical damage and further determined that the structure had been installed with the damage. The Inspector is concerned that the Professional did not adequately inspect the structure before signing the CAS.

Questions:

1. Is there a risk of significant harm to the environment or health or safety of a person or group of people?
2. Is the person responsible for the risk of significant harm an identified registrant under the PGA?
3. Was the registrant whose behaviour caused the risk engaged in their regulated practice at the time?
4. Do you have reasonable and probable grounds to believe there is a risk?

NOTE: more detailed questions are included in the **Duty to Report Framework, Practice Scenarios and FAQs**



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Questions

1. Is it the act or the consequences of the act that need to pose a risk of significant harm?
2. When considering Duty to Report and approaching another Registrant with expertise in the area, what liability/role do they have in the reporting process?
3. Can one registrant file a report on behalf of a group (2+ registrants) or should each registrant file a report?
4. If 58 only applies to registrants - what happens if significant harm is caused by a non-registrant providing a regulated practice? Who should they be reported to?



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Key Take Aways

- All 4 questions must be answered yes to trigger the Statutory Duty to Report.
- Registrants determine if there is a risk of significant harm to the environment or the health or safety of the public or a group of people.
- Consider keeping records about the rational for making a report or deciding not to make a report.



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Resources

Further information on registrant reporting is available in the Duty to Report section of the OSPG website here: <https://professionalgovernancebc.ca/duty-to-report-to-regulatory-bodies/>

Links to the materials that supported development of this presentation:

- [*OSPG Guidance: Duty to Report and Reprisal Protection*](#)
- [*OSPG Guidance for Registrants and Employers or Partners of Registrants on the Duty to Report and Reprisal Protection.*](#)

See also the [*Professional Reliance Review Report*](#) by Mark Haddock, 2018



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Contact Information

Questions about this slide deck, the OSPG and the PGA, can be sent to:

Email: OSPGENquiries@gov.bc.ca

Phone: 1 (236) 478 1940

Questions about the complaint process and the ethical responsibility to report should be fielded by your Regulatory Body.



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