

OSPG Guidance: Applying for a Designation Assessment under the *Professional Governance Act*

VERSION 2.0

September 2024

Issued by:



Kate Haines, Superintendent



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Office of the Superintendent
of Professional Governance



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Version Control History

Version #	Date (YYYY-MM-DD)	Modification	Approved by
2.0	2024-09-19	<p>Replaces two prior documents:</p> <ul style="list-style-type: none">• OSPG Policy and Procedures: S. 85 Applications for Designation; and• OSPG Guidance: Designating Professions Initial Decision Criteria. <p>New document updates previous content to reflect process changes made by 2023 amendments to the <i>Professional Governance Act</i> and makes various other content changes to clarify process for applying for a designation assessment.</p>	Kate Haines, Superintendent



OSPG Guidance: Applying for a Designation Assessment under the *Professional Governance Act*

Purpose

This document provides information to prospective applicants on making an application for a designation assessment in accordance with section 85 of the *Professional Governance Act* (PGA, or the Act).

Background / context

For the purposes of this policy, “designation” under the PGA refers to bringing a profession under the PGA, which involves specifying a regulatory body responsible for governing the profession in accordance with the Act.

The PGA was designed to allow government to add new professions to the Act by making regulations. Professions that do not currently have governing legislation, or that are governed by another piece of legislation, could be designated under the PGA. Designation under the Act has the result that the PGA becomes the governing framework for the profession and for the regulatory body responsible for overseeing it.

Additionally, regulatory bodies under the PGA are overseen by the Office of the Superintendent of Professional Governance (OSPG), which undertakes a number of statutory functions such as reviewing regulatory body bylaws, issuing guidelines and directives and monitoring / auditing regulatory body operations.

PGA provisions respecting designation applications

Section 85 of the Act contemplates that a professional regulator or a professional organization may apply for designation of a profession under the Act. A “professional regulator” is a corporation that is responsible for the governance of a profession under an Act of British Columbia, Canada, or another province of Canada. A “professional organization” is a corporation that acts as an advocate for individuals who practice a profession but is not a professional regulator.

The superintendent has authority to establish the form of the application and determine the information that will be required. There is currently no application fee, though the Lieutenant Governor in Council may choose in the future to set an application fee by regulation.

The superintendent may refuse the application without assessment or conduct an assessment to determine if the profession should be designated under the Act.



Other applicable legislation - Freedom of Information and Protection of Privacy Act

Applicants must ensure that information provided in the application does not include personal information, as defined by the *Freedom of Information and Protection of Privacy Act* (FOIPPA). For example, the application should not include the personal information of registrants or clients. Only business contact information should be provided.

Applicants should be aware that any information provided to OSPG in relation to an application for designation is subject to the FOIPPA, which means that records held by the OSPG may be required to be disclosed under the Act in response to a freedom of information request. For more about freedom of information in B.C., see the Government of B.C.'s Open Information website here:

<https://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/open-government/open-information/freedom-of-information>

Office policy – application process

It is strongly encouraged to meet with the OSPG prior to submitting an application. The OSPG will provide prospective applicants with specific guidance on what to include in an application.

Please be aware that the OSPG may not be able to immediately commence review of an application upon receipt of the application. The office will keep applicants informed of timing and progress.

Office policy – application contents

The goal of the application process is for the superintendent to obtain enough information to assess the basic suitability of the profession for coming under the Act and to support an informed decision on whether to proceed to the next step of a detailed designation assessment.

There is no application form or specific requirements for how information must be presented in an application. In terms of required content, applications must contain information on the following:

- Size and scope of the profession, including the number of people practicing the profession in B.C. and anticipated growth or contraction of the profession in future;
- The current regulatory context for the profession in B.C.;
- Overview of the professional organization or professional regulator (as applicable), such as the governing legislation, history and mandate of the organization;
- Examples of risks to the environment and to the health or safety of the public from incompetent, unethical or impaired practice of the profession; and
- Explanation of the applicant's view on why the PGA would be an effective governing framework for the profession.



The OSPG might request additional information from an applicant. A preliminary meeting with the OSPG prior to submitting an application will assist in determining if any additional information would be requested as part of the application.

OSPG staff can provide factual information about the PGA, the role of the OSPG and other context in order to assist a prospective applicant in making a complete and comprehensive application. OSPG staff will not provide advice on achieving a successful application, or any indication on the potential outcomes of the superintendent's review of the application.

Superintendent's decision-making criteria – accepting or refusing an application

In determining whether to refuse an application or to conduct a designation assessment, the superintendent generally will consider similar factors as the superintendent is required to consider in the context of a designation assessment, set out in s. 87 of the PGA:

- the degree of risk to the environment and to the health or safety of the public from incompetent, unethical or impaired practice of the profession;
- the degree of supervision necessary or desirable in respect of a person practising the profession;
- the degree of supervision that a person practising the profession receives or is likely to receive with respect to that practice;
- the educational programs that exist in B.C. or elsewhere for the proper education and training of persons with respect to the practice of the profession and the contents of those programs;

The superintendent may also consider additional, related factors such as:

- Indicators that the profession is a distinct profession with a defined scope of practice, and that it is not currently regulated effectively by other means; and
- Indicators that a regulatory body would likely be able to meet the responsibilities of the Act in overseeing the profession, such as a large enough number of professionals to contribute to the governing of, and funding of, the regulatory body.

Next steps after an application

The OSPG's service standard is for the superintendent to make a decision on whether to refuse the application or to conduct a designation assessment within 60 days of receiving an application. Applicants will be advised if this service standard will not be met.

If the application is refused, the applicant will be informed in writing and provided with reasons for the refusal. Applicants are allowed to apply again in the future; however, there is no appeal or reconsideration of a superintendent's application decision provided in the PGA.

If the application is accepted and the superintendent decides to conduct a designation assessment, the PGA requires the superintendent to publish notice of the designation assessment



in the British Columbia Gazette to ensure all interested parties are aware the assessment will be undertaken. Notice will also be posted to the OSPG website. The applicant will be advised of next steps in the process.

A designation assessment is a lengthy and resource-intensive process. The superintendent is not the ultimate decision maker on whether a profession is designated under the PGA. The superintendent makes recommendations to the minister responsible for the PGA; the minister then makes a determination whether to recommend to the Lieutenant Governor in Council to designate the profession. The Lieutenant Governor in Council has the legal authority to make the regulations necessary to bring a profession under the Act, including addressing transitional matters.

Please see [OSPG Guidance: Designation Assessments under the *Professional Governance Act*](#) for more information on the designation assessment process.

[Additional information: deciding whether to apply for a designation assessment](#)

Before deciding whether to invest organizational resources in making an application, a prospective applicant should carefully evaluate whether governance under the PGA is a realistic and effective option for the profession – both in terms of the resources involved in transition to the PGA and in ongoing operations under the PGA.

Time

Coming under the PGA is likely to be a lengthy process. Making an application for designation is a significant time investment and must have the support of your organization's board, if applicable. Support of your membership may also be a consideration. If your organization makes an application that results in the superintendent undertaking a designation assessment, the designation assessment process also takes time, likely six months to a year. The amount of time for the government decision-making process that follows a superintendent recommendation for designation is hard to predict, as is the outcome of the final government decisions.

For professions that government decides to bring under the Act, recent experience suggests an approximately two-year transition period is needed to prepare for making the regulations to apply the Act to the profession and transitioning to the new governing framework. For example, organizations' bylaws need to be amended to meet the requirements in the PGA.

Costs

Government funding for any initial/start-up costs associated with transitioning to the PGA is not available. An organization may incur significant costs for professional services in working to align its structures and governance to comply with the PGA. Transitional costs could include fees for legal and accounting advice, change management initiatives and member engagement, and other organizational needs that may arise.

A regulatory body for a profession under the PGA is also required to self-fund on an ongoing basis. Registrants' professional fees are generally the main source of revenue for PGA regulatory bodies.



As such, the registrant base must be large enough to fund the baseline required operations of a regulatory body under the PGA.

Capacity / readiness

An organization that is relatively new and has only a modest membership base may benefit from building its profile and public support before considering pursuing PGA designation.

The PGA imposes restrictions on advocacy to reinforce that regulatory bodies regulate professionals in the public interest, as opposed to advancing or promoting the interests of the profession. An organization that is focused on growing the profession or increasing the recognition of the profession may be inhibited if it is restricted to the role and mandate of a regulatory body under the PGA. Additionally, depending on the organization's goals, an association model focused on advocacy for the profession, member education, networking and similar activities may be the most appropriate model for the organization.

Even for well-established or long-recognized professions and occupations, capacity to self-regulate under the PGA requires consideration. The Act and associated superintendent policy and guidance set high standards for regulating professions. To properly fulfil the responsibilities in the Act, significant financial and human resource capacity is needed.

A well-functioning regulatory body under the PGA requires at least a small complement of full-time staff to support the regulatory body's operations.

Capacity to support governance functions also warrants consideration. Under the PGA, a regulatory body's board must consist of seven registrants (individuals registered with the regulatory body who practice the professions it regulates) and four lay board members appointed by the Lieutenant Governor in Council.

Additionally, regulatory bodies are expected to establish five statutory committees:

- Nomination committee
- Credentials committee
- Audit and practice review committee
- Investigation committee and
- Discipline committee

Each committee is responsible for key regulatory functions. Members of the board generally cannot be on these statutory committees. Each committee must have at least one lay member recruited by the regulatory body. Regulatory body boards may also need to establish additional working groups or task forces for general management of board business and organizational priorities, though these groups are allowed to include board members.

Reserved practice is not automatically granted

The PGA provides for the possibility of establishing protected titles reserved for the members of a profession, or carrying forward existing protected titles. The Act can also be used to establish or



carry forward a “reserved practice,” which constitutes advice and services that may only be provided by a registrant of a particular regulatory body. See the document [OSPG Guidance: Regulated and Reserved Practice](#) for more information about regulated and reserved practice.

If a reserved practice does not currently exist under the profession’s existing legislation, it is at the Lieutenant Governor in Council’s discretion whether to establish a reserved practice using regulation-making powers under the PGA. The process of establishing a reserved practice may also take a considerable amount of time. For example, consultations with other affected professions may be needed to help define boundaries between professional scopes of practice.

Defining the issue to be solved and choosing the right model for the problem

Government regulation of professions and occupations may not always be necessary to achieve appropriate public and environmental protection. Even when enhanced regulation of a profession is warranted, the PGA may not be the ideal legislative model. Approaches to regulating occupations and professions should be in proportion to the harms and risks posed by the incompetent, unethical or impaired practice of the profession, and there are several models and tools in the potential regulatory toolbox.

Other examples of regulatory tools could range from consumer education / public disclosure approaches; enhanced education / certification for professionals; insurance or bonds; codes of ethics or practice; or voluntary accreditation approaches; laws setting minimum qualifications / standards to perform certain tasks and more. In BC, there numerous entities that have a role in occupational regulation in various sectors – examples include Skilled Trades BC, WorkSafe BC, Technical Safety BC, Consumer Protection BC and the Registrar of Security Services. There are also numerous voluntary associations that work to improve professional conduct and competence by setting standards for members.

Careful self-examination of effective solutions for a profession’s governance should be considered before deciding to pursue the PGA as an option.

No automatic assumption or “right” for the applicant to become the regulatory body

Prospective applicants should be aware that making an application involves making an application on behalf of the profession – not on behalf of the organization making the application. In making a recommendation to designate a profession under the PGA, the superintendent is required to make a recommendation to the minister respecting whether the regulatory body responsible for the designated profession should be:

- A new regulatory body established under the PGA;
- An existing professional regulator continued as a regulatory body under the PGA; or
- An existing regulatory body under the PGA.

The applicant organization is not guaranteed to become the entity that assumes responsibility for the profession under the PGA, if the Lieutenant Governor in Council decides to designate the profession.



Modernized legislative framework

The PGA establishes significant responsibilities for regulatory bodies under the PGA, with the objective of ensuring professional regulation is conducted in the public interest. Coming under the PGA can result in many positive changes that allow for modernized governance of a profession, improved public trust in the profession and reduction of the risk of harms from poor professional practice.

Highlights of the PGA's governance framework include:

- a merit-based nomination process for registrants who wish to stand for election to the board;
- mandatory inclusion of four government-appointed lay / public members on the board;
- required statutory committees for key facets of regulatory body business (a nomination committee; credentials committee; audit and practice review committee; investigation committee; and discipline committee);
- bylaw-making authority for the board without requirement for registrant approval of proposed bylaw changes (instead, the superintendent reviews all regulatory body bylaws for suitability under the PGA); and
- a duty to report if a registrant believes another registrant's practice poses a risk of significant harm to the environment or to the health or safety of the public.

These and other features reflect best practices in modern professional governance, seeking to ensure that regulatory body activities are focused on the public interest; however, the responsibilities require significant capacity to fulfil.

Relationships with other PGA regulators

Being under the PGA involves collaboration with other professions, particularly the other professions under the Act. This can be highly beneficial in general, but particularly if professions have areas of practice that intersect in the field.

Provincial oversight

The PGA involves superintendent oversight of regulatory bodies. Focused provincial oversight of certain professions can be beneficial for enhancing public trust in how a profession is regulated, and, by extension, enhancing public trust in government's decisions that rely on the advice of regulated professionals. In addition to the superintendent's specific statutory mandate, the OSPG strives to play a constructive role in fostering communication and collaboration between regulatory bodies and government program areas who make use of registered professionals in their regulatory frameworks.

Organizations considering applying for a designation assessment are invited to contact the OSPG for more information about the application requirements and process.