

OSPG Guidance:

Designation Assessments under the *Professional Governance Act*

VERSION 2.0

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Issued by:

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OSPG

Office of the Superintendent
of Professional Governance



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: Application for Designation under the <i>Professional Governance Act</i> <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 the designation assessment process, including criteria the superintendent considers in a designation assessment.</p>	Kate Haines, Superintendent



OSPG Guidance: Designation Assessments under the *Professional Governance Act*

Purpose

This document provides information about designation assessments conducted by the superintendent in accordance with sections 86 and 87 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 the Lieutenant Governor in Council to add new professions to the Act by making regulations. To establish a structured process for determining if and when new professions should be added to the Act, the PGA includes the authority for the superintendent to undertake a designation assessment.

The superintendent can undertake a designation assessment in response to an application for designation from a professional regulator or a professional organization. The superintendent also has authority to undertake an assessment at the superintendent’s own initiative. For example, the superintendent may decide to initiate an assessment if the superintendent became aware of evidence of harm resulting from the practice of a profession, or if another government body asked the superintendent to undertake a designation assessment.

The Lieutenant Governor in Council has authority to make regulations to add professions to the PGA without the superintendent first conducting a designation assessment. However, it has been common since the PGA came into force that potential new professions to come under the Act have been evaluated through the designation assessment process.

See https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18047#division_d1e8800 for the full legislative text of sections 86 and 87.

PGA provisions respecting designation

The procedure for a designation assessment is similar whether a professional regulator or professional organization made an application to the superintendent, or the superintendent initiated the designation assessment.



Public notice

The superintendent will provide public notice of the designation assessment in the British Columbia Gazette and on the website for the Office of the Superintendent of Professional Governance (OSPG).

PGA section 86(2)

Information gathering

The superintendent has specific information gathering powers set out in section 86 of the Act, including the power to require the professional regulator or professional organization to provide information; to hold hearings; and to take other actions the superintendent considers necessary and incidental. Subject to the regulations, the superintendent has the authority to charge assessment-related costs to the professional regulator or professional organization that made an application for a designation assessment. There is currently no application fee set in a regulation; as such, there is no cost to apply at this time.

PGA section 86 (6).

Required superintendent recommendations

As part of the designation assessment, the superintendent must provide a report to the minister responsible for the PGA that includes a recommendation on whether the profession should be designated. If the superintendent recommends designation of the profession, the superintendent must recommend 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.

PGA section 87 (1)

Required considerations

Section 87 of the Act sets out specific matters the superintendent must consider when creating a report with recommendations to the minister on whether a profession should be designated.

The mandatory factors the superintendent must consider are:

- i. 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;
- ii. the degree of supervision necessary or desirable in respect of a person practising the profession;
- iii. the degree of supervision that a person practising the profession receives or is likely to receive with respect to that practice;
- iv. the educational programs that exist in British Columbia or elsewhere for the proper education and training of persons with respect to the practice of the profession and the contents of those programs;



- v. any information obtained during the assessment;
- vi. any prescribed criteria respecting matters of public interest that must be considered by the superintendent.

Additional considerations

Questions that will be relevant to the superintendent's assessment may also include:

Risk / harm

- Is there evidence of harm having occurred in the past, or a likelihood of harm arising in the future, in relation to the practice of the profession? What is the nature of the harm?
- What level of independent professional judgement are the professionals required or authorized to engage in? Is the delivery of their services supervised, reviewed or otherwise subject to controls that mitigate the risks that could arise from their practice?
- Who uses the professionals' services? Are the clients in a position to assess the quality of the service provided?

Knowledge and practice standards

- Is there a defined route of entry into the profession, and a body of knowledge that could form the basis for practice standards?
- Is there a specific area of practice that is distinct from other professionals?

Capacity

- Is the number of professionals practicing the profession sufficient to participate in a self-regulated governance model? For example, can enough board members and committee members be expected to be recruited from within the profession?
- Can the costs of the robust regulatory model provided by the PGA be reasonably borne by the professionals that would be regulated?

Existing regulatory frameworks and possible alternatives

- What aspects of how the profession is currently governed are cause for concern, and why?
- What does the public need in order to have confidence that the profession is upholding the public interest?
- Have other, non-PGA options for improving regulation of the profession been considered?

Other considerations

- Does the profession operate in similar spheres as any of the existing PGA professions? Is there benefit to applying the same legal framework to the profession for consistency across a "family" of professions?
- Is oversight by the superintendent necessary or desirable for the public to have confidence that the profession is being governed in the public interest?



- Are the costs to the government and to the profession of applying the PGA regulatory model to the profession outweighed by the benefits of the model?

PGA requirements - procedure before making a report to the minister

Before providing a report with recommendations to the minister, the superintendent must provide a copy of the superintendent's proposed report and an opportunity to be heard, as specified in the PGA.

After receiving final input from these entities, and the applicant, if applicable, the superintendent must make a recommendation to the minister responsible for the PGA.

PGA section 87(2)

Minister's role

The responsible minister must consider the superintendent's report and decide whether it would be in the public interest to recommend to the Lieutenant Governor in Council to designate the profession under the PGA, and if so, what arrangement should be put in place for a regulatory body to oversee the profession.

The minister determines whether to recommend designation of a profession to the Lieutenant Governor in Council. The minister must provide written reasons for the minister's decision to the entities described above, and the superintendent must publish the minister's reasons on the superintendent's website. The minister brings a recommendation to the Lieutenant Governor in Council.

PGA section 87(3) – (5)

Lieutenant Governor in Council role

The Lieutenant Governor in Council is the final decision maker in a designation assessment process. The minister makes a recommendation to the Lieutenant Governor in Council, which holds the authority to make the regulations necessary to designate a profession under the PGA.

PGA section 89

See Appendix for a visual representation of the steps in the designation assessment decision-making process.

Office policy – designation assessment process

Timing

The order in which designation assessments are completed may not follow the order in which designation applications were received. The OSPG's capacity and existing workload will be considered in prioritizing designation assessments, as well as strategic factors, such as real or imminent risks or challenges related to the practice of, or governance of, the profession. If applicable, OSPG staff will keep the applicant informed of the process and timeline for the designation assessment.



Information gathering

Staff will schedule meetings to collect or discuss additional information required in the course of the designation assessment.

Consultation and information sharing

The superintendent may choose to undertake public consultation and/or seek input from selected organizations. For transparency and to stimulate constructive dialogue, the superintendent may publish information on input received during public consultation processes.

Next steps after a designation assessment

In the event the Lieutenant Governor in Council decides to designate a profession under the PGA, the next steps will depend on the specifics of the situation – for example, the transition time needed may depend in part on complexities of the profession’s current regulatory framework.

Considerations such as whether a new regulatory body is to be established, an existing professional regulator is to be continued as a regulatory body under the Act, or an existing PGA regulatory body will be made responsible for the new profession, will also affect what is needed to effectively transition under the Act. The OSPG will work closely with directly affected entities on transition planning and implementation.



Appendix: designation assessment decision-making process

