

Regulations Intentions Paper Consequent to the Proposed *Professional Governance Act*



Ministry of
Environment and
Climate Change Strategy

Table of Contents

1	Introduction
2	Scope
2	Feedback
3	Background
4	Review Findings
6	Legislative Development Process
8	Part 1 – Overview of Proposed <i>Professional Governance Act</i>
8	General Considerations
8	Establish an Office of the Superintendent of Professional Governance
10	Legislated Critical Elements of Professional Governance
11	<i>Organization of Regulatory Bodies</i>
11	<i>Standards of Conduct and Competence</i>
12	<i>Continued Professional Development</i>
12	<i>Complaints and Discipline</i>
12	<i>Bylaw Ratification</i>
13	<i>Advocacy</i>
13	<i>Duty to Report on Registrants</i>
13	<i>Whistleblower Protection</i>
13	<i>Title and Practice Rights of Professions</i>
13	<i>Regulation of Firms</i>
14	<i>Declarations for Competency and Conflicts of Interest</i>
14	Implementation of the Act
15	Part 2 – Key Areas for Regulation Development
15	<i>Province of British Columbia's Relationship with Indigenous Peoples</i>
16	A. Practice Rights of Professionals
16	<i>Background</i>
18	<i>Discussion</i>
22	<i>Considerations</i>
24	B. Regulation of Firms
24	<i>Background</i>
25	<i>Discussion</i>
29	<i>Considerations</i>
32	C. Competency Declarations and Conflict of Interest Declarations
32	<i>Background</i>
33	<i>Discussion</i>
33	<i>Considerations</i>
36	Providing Comment
37	Appendices
37	Appendix A: Glossary of Terms

Introduction

This Intentions Paper is organized into two parts. Part One of the paper describes the recently introduced Bill for the *Professional Governance Act* (Act)¹, with the main purpose to explain how the governance of **registered professionals**^{2,3} that operate in the natural resource sector will change with the passing of the Act. Part Two of the paper describes topics that government is seeking feedback on to help inform the development of future policy and regulations.

The Act will initially govern the following professionals that operate in the “Natural Resource (NR) sector” (though not exclusive to this sector): agrologists, applied biologists, applied science technologists and technicians, engineers and geoscientists, and forest professionals. The five regulatory bodies governing these professions will now operate under a consistent framework that incorporates best practices of governance regardless of the profession. Regulations and bylaws under the Act will allow regulatory bodies to meet the specific needs of their professions. The Act includes the ability to expand the framework to other professions operating in the NR and/or other sectors.

The proposed Act is intended to strengthen government oversight for professional associations (regulatory bodies) by establishing a statutory Office of the Superintendent of Professional Governance (Office) in the Ministry of Attorney General. This Office will be responsible for administering the Act and for ensuring that best practices for professional governance are implemented.

If passed, the draft legislation will come into force by regulation in stages beginning in 2019. The initial stage of implementation will enable the new Office and its policy, guidance, investigation and enforcement functions, and bring key provisions of the Act into force such as whistleblower protection. During the implementation period, these authorities would operate alongside the existing governance statutes of the five regulatory bodies currently included in this Act. Over time, regulations will be developed to support full implementation of the new Act, at which time the current five governance statutes would be repealed.

1 Professional Governance Act (Bill 49) is listed in the 2018 Legislative Session: 3rd Session, 41st Parliament, which at the time of publication can be found at http://www.bclaws.ca/civix/document/id/bills/billscurrent/3rd41st_alpha_list

2 Throughout this paper, the terms ‘registered professional’ and ‘registrant’ will be used interchangeably.

3 Terms defined in the glossary at the end of this paper first appear in **bold font**.

Scope

For clarity, government is not seeking feedback on the proposed Act. Comments on the regulation areas described in this intentions paper are welcomed. Once established, the Office will continue to engage on regulation development work as needed to support implementation of the legislation over the next several years.

Government is seeking feedback on the following key policy areas requiring regulation development under the proposed Act (Part Two of this intentions paper):

1. **Practice rights of professions:** what is required to support professions governed under the Act to operate with both ‘reserved titles’ and ‘reserved practices’? What considerations should guide the process of defining reserved practices for the professions?
2. **Regulation of firms:** what is required to support professions governed under the Act to regulate firms? What general and profession-specific considerations should this framework take into account?
3. **Competency declarations and conflict of interest declarations:** When and how should declarations be required and what should be considered to ensure this process is efficient and effective?

Feedback

Government is seeking feedback and comments over a 90 day period on the key policy areas for regulation development from: Indigenous nations, interested parties (industry, regulatory bodies governed by the Act, other professional associations, **registered professionals, qualified professionals** (QPs), other stakeholders), and the public. The following process will be applied:

- Indigenous, interested parties, and public comment on Part Two of the intentions paper;
- Discussions with regulatory bodies and other interested parties on the key policy areas; and
- A report summarizing feedback on this intentions paper.

Government will carefully consider input received as part of this regulation development process.

Background

The proposed Act follows recommendations on professional governance provided in the independent final report (the report) on **professional reliance** (PR) submitted by Mark Haddock to the Honourable George Heyman, Minister of Environment and Climate Change Strategy (the ministry) in June 2018⁴. The report provided recommendations following a review of the PR model in the NR sector. The ministry led the collection of information that Mark Haddock considered in developing the report and accompanying recommendations. The review was in accordance with the 2017 Confidence and Supply Agreement between the NDP and Green Caucus to “address failures in the professional reliance model in B.C.”⁵, as well as the 2017 mandate letter for Minister Heyman to meet the “public’s expectation of a strong, transparent process.”⁶

The provincial government accepted the governance recommendations in the report with the goal of “making tangible changes this fall to improve government oversight of registered professionals to enhance public confidence in natural resource decision-making”⁷. These recommendations involved restructuring the governance of the regulatory bodies by creating a new office to oversee professional legislation, developing best practices for governance and regulating professional associations as needed; and standardizing elements of professional governance through **umbrella legislation**.

The five regulatory bodies and statutes included in the review and which define the current scope of the proposed changes to professional governance and oversight under the proposed Act are:

- Applied Science Technologists & Technicians of B.C. (ASTTBC) (*Applied Science Technologists and Technicians Act*)
- Association of B.C. Forest Professionals (ABC FP) (*Foresters Act*)
- B.C. Institute of Agrology (BCIA) (*Agrologists Act*)
- College of Applied Biology (CAB) (*College of Applied Biology Act*)
- Association of Professional Engineers and Geoscientists of British Columbia, known as Engineers and Geoscientists B.C. (EGBC) (*Engineers and Geoscientists Act*)

These statutes provide powers and duties to regulatory bodies to establish rules for entrance to the profession, maintain competency of registrants, and establish standards of professional conduct. Registrants who do not meet those standards may face sanctions ranging from reprimand to suspended or revoked membership. Because the provincial government is responsible for the legislation that grants these rights and powers and has ownership and

4 The report can be found at: <https://engage.gov.bc.ca/professionreliance/>

5 <https://www2.gov.bc.ca/gov/content/governments/organizational-structure/ministries-organizations/central-government-agencies/government-communications/casa>

6 <https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/premier-cabinet-mlas/minister-letter/heyman-mandate.pdf>

7 <https://news.gov.bc.ca/releases/2018ENV0053-001306>

jurisdiction over provincial resources and in other public spheres, it has both a public and policy interest as well as oversight responsibility associated with the professions.

Review Findings

The report and previous investigations⁸ found opportunities for improvement to professional governance. These include:

Strengthening government oversight of regulatory bodies by establishing a dedicated Office of the Superintendent of Professional Governance

The review found that there is a lack of resources and staff expertise within government to adequately address ongoing governance matters of regulatory bodies. Some of the issues facing professional governance may be due in part to inconsistent oversight within government as the legislation for the five regulatory bodies is administered by four ministries.

Create a consistent framework for how regulatory bodies govern registrants.

The review found that regulatory bodies do not share consistent rules and processes for regulating their registrants, which makes it more difficult for the public to understand and trust the practices of professionals. A consistent framework has benefits for multidisciplinary teams of professionals working on the same land base, professionals working in areas of practice with overlap between multiple regulatory bodies, and multidisciplinary firms that may have expectations placed on them if regulated.

Emphasize the role of regulatory bodies as serving the public, not professional interests, through changes to the appointment process for councils and committees.

Each regulatory body was found to have different appointment processes for their councils and key committees. Regulatory bodies were also found to have varying levels of public representation on councils and committees. Public member involvement provides an outside perspective that is important for transparency and public confidence.

Strengthen the authority of regulatory bodies through the ability to pass bylaws without ratification by the general membership

The review recommended that while councils must have the ability to pass bylaws that are necessary for the regulatory body to carry out their mandate, ratification by the membership may elevate personal interests over effective governance (for example, membership fee increases, continuing professional development requirements).

⁸ Ombudsperson: *Striking a Balance: The Challenges of Using a Professional Reliance model in Environmental Protection – British Columbia’s Riparian Areas Regulation*; Auditor General: *An Audit of Compliance and Enforcement of the Mining Sector*; Forest Practices Board: *District Managers’ Authority Over Forest Operations*

Strengthen the authority of regulatory bodies to uphold practice standards, codes of ethics and reduce pressure on professionals to compromise their professional independence through the ability to regulate firms

The authority of the regulatory bodies to enforce practice standards and codes of ethics was found to be limited as it only applies to individual registrants and not the firms or corporate structures that employ those registrants. This situation has the potential to create a **conflict of interest** for employees who have a sense of duty to their employer and client while striving to meet their professional responsibilities.

Strengthen the authority of regulatory bodies over anyone practising the profession

The review noted that although ASTTBC, BCIA, and CAB have the responsibility to govern the activities of their registered professionals, they do not have the legislative authority to govern all who engage in the respective practice of those professions because they do not have practice rights. This limits the public interest protections a regulatory body can provide as not every person who practises the profession may be subject to the specialized knowledge, competence, ethical standards, professional accountability for the welfare of the public and environment, and compliance and discipline requirements that are and administered by the regulatory body.

Strengthen professionalism through standardized codes of ethics, competency declarations and conflict of interest declarations

The effectiveness of regulatory bodies was found to be strongly dependent on their codes of ethics and their ability to enforce them. Issues found in the current codes of ethics that were not well addressed including conflicts of interest, professional independence, reporting duties, and public interest. The ability of registrants to veto bylaws including improvements to codes of ethics is a current challenge for regulatory bodies.

Strengthen adherence to professionalism by standardizing best practices for complaints and discipline processes, expanding a professional's duty to report when another professional's actions pose a significant risk of harm, and providing whistleblower protection

A regulatory body's ability to respond to complaints about its registrants was found to be critical to its effectiveness and to public confidence in the PR model. The report highlighted many concerns from government staff, registered professionals, and the public about the effectiveness of regulatory bodies' complaints and discipline processes, including a lack of transparency throughout the investigation of a complaint, and a lack of confidence in the complaint being adequately addressed and registered professionals being held accountable. Registered professionals and government staff have indicated a reluctance to file complaints, especially in smaller communities because of potential personal and business implications.

Legislative Development Process

Development of the new legislation has been guided by the following principles:

- Increased oversight,
- Increased consistency (i.e., in applying best practices),
- Accountability,
- Efficiency (i.e., legislative, operational, oversight),
- Transparency,
- Maintaining self-regulation,
- Responsiveness (all parties),
- Flexibility for growth of the model over time, and
- Balancing standardization with recognition of differences between associations (e.g., size, culture).

Following the release of the report and government's commitment to move forward with recommendations on professional governance, the ministry worked extensively with the five regulatory bodies over 11 half-day sessions on the policy areas to be included in new enabling legislation, including the establishment of a new oversight Office. Indigenous nations throughout the province were invited to provide input on professional governance. Key proposed elements were discussed at five face-to-face meetings and two online sessions, with eight Indigenous nations participating. A two day advisory roundtable workshop involving the regulatory bodies to be included in the Act (on day one), community groups, other professional associations, businesses, unions, environmental organizations, and an Indigenous organization allowed for these interested parties to provide input into the proposed framework. The resultant legislation tabled in the fall session reflects the principles set out above, and the practical advice provided by regulatory bodies, Indigenous nations and interested parties.

This umbrella legislation and Office is not intended to undermine processes that are working well for professional governance, rather to put in safeguards in the event that additional oversight is needed to protect the public interest. Some of the proposed elements of the new legislation and oversight model were informed by real issues observed with the current model such as conflicts of interest and professional independence. In other cases, the legislation is putting a modern governance framework in place that follows international best practices and helps regulatory bodies to strengthen their role in protecting the public interest and improve public trust in professional oversight.

Best practices in professional governance, at a high level, should apply across professions regardless of whether or not the work is within the NR sector. Umbrella legislation is one way to ensure consistent and efficient standards across professions. The following are some examples of umbrella legislation governing professions:

- Professional code of Quebec (all professions - 46)
- New Zealand *Health Practitioners Competence Assurance Act* (most health professions)
- B.C. *Health Professions Act* (most health professions)
- Ontario *Regulated Health Professions Act* (all health professions)
- Ontario *Fair Access to Regulated Professions and Compulsory Trades Act* (13 professions, 23 compulsory trades)
- Nova Scotia *Fair Registration Practices Act* (58 occupations, 68 trades)
- Nova Scotia *Regulated Health Professions Act* (20 health professions)
- Alberta *Professional and Occupational Associations Registration Act* (23 regulators)

Moreover, in places such as the United Kingdom, Australia, Manitoba, Alberta, Nova Scotia, Quebec, various US states, and B.C. (for health professions) a single office, operating either within or independent from government, provides an oversight role to multiple regulatory bodies that govern professionals.

Other best practices for regulatory bodies address council size and composition, how council members are chosen, and how bylaws governing the regulated professionals are passed. These are reflected in the legislation tabled in the fall session.

Part 1 – Overview of Proposed *Professional Governance Act*

It is anticipated that the new Act and Office will contribute to the following outcomes, which government desires to see with an improved professional reliance model:

- Ensure the appropriate QP is hired for the work and that they are competent;
- Ensure registered professionals are giving unbiased advice;
- Ensure equal oversight of regulatory bodies and registered professionals;
- Increase transparency and accountability in PR model; and
- Increase Indigenous nations' and public trust in natural resource decisions.

Developing legislation is only one step, albeit an important one, in producing the change desired on the ground. Bylaws, administrative procedures in the public and private sectors, individual business transactions, and the attitudes and cultures they are imbedded in will need to change as well to implement the intent of this legislation.

General Considerations

Key components of the proposed Act will be brought into force in 2019. The Office will administer the new Act⁹ as well as take over the oversight of the existing governance statutes of the five regulatory bodies, which will remain in effect for the short term. Over time, the existing governance statutes will be repealed and replaced by regulations under the new Act, similar to how the British Columbia *Health Professions Act* is structured. The Office will work closely with the five regulatory bodies and the ministries they currently report to over the implementation period to ensure a gradual and smooth transition.

Once the Act comes into force, professionals governed by the Act will retain their designations and privileges and will continue to practice much the same as they do now. However, professionals will be subject to the elements of professional governance that become standardized under the Act.

Establish an Office of the Superintendent of Professional Governance

The proposed Office will be a centre of expertise in government for professional governance matters outside the health sector and will have authority to carry out various functions as required or authorized by the Act. The Office will be led by a Superintendent with statutory decision-making authority and will include policy and compliance staff with expertise in professional governance.

⁹ At the time of publication of this intention paper, the Act has not been approved. Therefore, any references to the Act should be interpreted as proposals.

The functions of the Office include:

- Overseeing the regulatory bodies in order to provide support and advice where needed on professional governance ensuring that regulatory bodies comply with their duties under the Act;
- conducting research and policy development concerning professional governance best practices;
- Implementing the Act through the development of regulations, and administering the Act;
- Investigating potential breaches of whistleblower protections for those who report unethical or **hazardous** practices, and administering fines/penalties;
- Investigating and recommending to Cabinet whether to designate additional professions under this new regulatory framework;
- Administering **rosters** if requested by NR ministries (ministries would be responsible for establishing any roster, including setting criteria);
- Chairing a Professional Governance Advisory Committee, if appointed; and
- Reporting regularly to government concerning the effectiveness of regulatory bodies and the Office and other professional governance matters covered by the Act.

Through discussions with Indigenous nations over the course of the legislation development, nations identified the potential role of the Office in facilitating cultural awareness and reconciliation among regulatory bodies. This role is described in the proposed Act and will see the Office continuing to liaise with Indigenous nations in fulfilling its duty. Additionally, the proposed legislation mandates regulatory bodies to establish continuing education programs or requirements respecting legal rights and principles that inform engagement with Indigenous nations in B.C. and supports reconciliation through the implementation of principles of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

The scope of application of the Act may be expanded over time to include additional professions (regulatory bodies) with the aim of applying consistent standards and ensuring that best practices for professional governance and practice are adhered to across a range of professions. The Office, through its authority to conduct investigations and audits, may look into the state of practice of a profession in British Columbia, with the express goal of determining whether it would be in the public interest to designate professions (either professions governed under other existing statutes, or professions not currently regulated by government) under the Act.

The Superintendent will have the ability to take actions against both regulatory bodies and individuals to protect the public interest should issues arise with respect to professional governance. The powers of the Superintendent will include:

- Issuing guidelines (statements of policy) that must be considered by regulatory bodies (e.g., interpretation guidelines relating to code of ethics principles);
- Conducting or overseeing investigations and audits of regulatory bodies focusing on general/systemic matters;
- Issuing a directive (a legal order) to regulatory bodies to meet best practices or recommendations resulting from investigations or audits;
- Appointing a public administrator to take over some or all duties of a regulatory body if the Superintendent considers this to be necessary in the public interest;
- Imposing administrative penalties on a person, other than a regulatory body, if the Superintendent is satisfied that the person has contravened the Act or the regulations; and
- Enforcing offences under the Act (e.g., contravening whistleblower protections).

The intent is that the Superintendent and regulatory bodies will work collaboratively to identify issues and make improvements without having to resort to using more punitive measures. However, directives and the ability to appoint a public administrator are available as safeguards to ensure public interest is protected.

Legislated Critical Elements of Professional Governance

The Act will set the duty of a regulatory body to serve and protect the public interest with respect to governance of a profession and ensure that professionals uphold the standards of the profession. The Act will legislate and contain authorities for the Lieutenant Governor in Council (LGIC) to make regulations concerning critical elements of professional governance now recognized as best practices in other sectors in B.C. and in other jurisdictions.

To address inconsistencies and lack of uniformity between the regulatory bodies, the Act and Office will standardize the following critical, high-level governance functions:

Organization of Regulatory Bodies

Following the transition from the existing professional statutes to the new Act, all regulatory bodies will be required to have a council consisting of 11 voting members that must:

- Be made of four public members (appointed by the LGIC after a merit-based process involving government's Crown Agencies and Board Resourcing Office (CABRO)); and
- Be made of seven elected professional registrants (candidates for election must first be nominated by a panel from the regulatory body in accordance with merit-based selection principles laid out in regulations).

The past president will be the twelfth member of council but will be a non-voting member.

Quorum for council meetings must include at least one public member. Terms for council members will be three years and between two and four consecutive terms (six to twelve years) will be allowed, depending on the role(s) played on the council (for instance, a registrant councillor may serve two terms on council, but then may also serve two more terms as either President or Vice-President, for a total of no more than 12 years on council). Appointed public members may not serve more than two consecutive terms on council.

A council may establish committees, in addition to nomination, credentials, **audit** and **practice review**, investigation, and discipline committees, for any purpose that is consistent with the Act. Chairs of these committees will be appointed by the regulatory body through the same merit-based process as for the election of professional registrants on council. These committees will be required to have at least one public member. Regulatory bodies will be empowered to choose these members as well as the registrant members of these committees. However, chairs and members of committees and panels may not be council members.

New council and committee members will be required to take and sign an oath of office administered by the registrar for the regulatory body.

In addition to consistent organization of councils, the mandate and functions of councils and committees will be clarified through provisions in the Act, including:

- A consistent set of duties and responsibilities;
- Requirements for general meetings of the regulatory body;
- Authorities for developing bylaws of council;
- Bylaws for registrant enrolment, admission and reinstatement;
- Bylaws for audits (proactive) and practice reviews (reactive);
- Bylaws for the **regulation of firms**
- Bylaws for complaints and discipline; and
- Requirements for councils to develop mandatory bylaws on standards of conduct and competence.

Standards of Conduct and Competence

The Act will require regulatory bodies to have bylaws concerning standards of conduct and competence, including a code of ethics. The Act lays out minimum ethical principles to

guide all professionals that must be reflected in each regulatory body's code of ethics. The principles touch upon areas such as safety, health and welfare of the public and protection of the environment, competency of the professional, having regard to applicable laws, standards, policies and practices, professional independence, avoiding conflicts of interest, duty to report unethical conduct, transparency of the inputs and limits to professional work, and adhering to guidance on document management. The Act allows for additional prescriptive, profession-specific codes developed by regulatory bodies that, if applicable, recognize national consistency requirements.

Continued Professional Development

The Act will require regulatory bodies to develop bylaws to establish continuous education programs or requirements, including addressing legal rights and principles that inform engagement with Indigenous nations and that support reconciliation with Indigenous nations, as well as requirements for registered firms to provide continuing education programs.

Complaints and Discipline

The complaints and discipline process for regulatory bodies under the Act will standardize existing processes to address complaints. Regulatory bodies may establish investigation committees and authorize an investigation into the conduct or competence of a registrant if there is reason to believe a registrant may be guilty of:

- A breach of the Act or the regulatory body's bylaws;
- **Professional misconduct;**
- **Conduct unbecoming a registrant;** or
- **Incompetent performance** of duties undertaken while carrying out the regulated practice.

Regulatory bodies will be given authorities, including, but not limited to:

- Suspend registrants before the conclusion of an investigation for the protection of public safety;
- Initiate a practice review or investigation in the absence of a complaint; and
- Use alternative remedies for complaints, as provided in bylaws.

Where discipline hearings are held, regulatory bodies will be required to publish a notification in advance of the hearing and publish final disposition information as a result of the hearing, in a matter set out by regulation.

Bylaw Ratification

The Act will give councils the authority to adopt bylaws without registrant ratification, subject to oversight by the Office. Bylaws must be delivered to the Superintendent for filing with the minister (of Attorney General) within 45 days and will come into effect once the

Superintendent has confirmed that the bylaw has not been disallowed. The Superintendent will have the authority to disallow a bylaw within the 45 day period, based on specified criteria, or request a council to amend or repeal an existing bylaw.

Advocacy

The Act will eliminate certain forms of advocacy by regulatory bodies through consequential amendments to the *Engineers and Geoscientists Act* and *Foresters Act* and require regulatory bodies to only act in an advocacy role in accordance with the Act and its regulations.

Duty to Report on Registrants

Each of the regulatory bodies currently require registrants to report alleged unethical conduct (in their respective codes of ethic), although the extent of this responsibility varies. The Act and its regulations will strengthen this duty to report by clarifying the triggers to report (where a risk of significant harm to the environment or to the health or safety of the public could result from a registrant's actions or a matter or conduct described in regulation) and expanding the duty to report on any registrant governed under the Act, not just within one's own profession. The appropriate regulatory body will be responsible for investigating allegations and taking action as appropriate.

Whistleblower Protection

The Act bans any form of reprisal against a person who reports unethical or hazardous conduct and places responsibility on the Office to investigate and enforce these provisions through offences and penalties.

Title and Practice Rights of Professions

The Act will provide exclusive use of a reserved title to regulatory bodies included in a schedule to the Act. All five regulatory bodies currently have title protections in their existing statutes, meaning only registrants to those regulatory bodies can use the titles associated with the profession. New professions that may be designated under the Act in the future would need to be included in the schedule in order to be granted these reserved title rights.

The Act will provide practice rights (defined in regulations) to regulatory bodies included in schedules to the Act. Engineers, geoscientists and foresters already have defined reserved practices in their existing statutes that prohibit non-registrants from practising in these areas. Biologists, agronomists and applied science technologists and technicians do not currently have practice rights and could be granted these rights under the Act once regulations are developed. *The ministry wishes to initiate a conversation with interested parties on what granting practice rights would look like for these professions. Further information is provided in Part Two of this intentions paper.*

Regulation of Firms

Regulatory bodies governed by the Act will be enabled through regulation to register firms that employ professionals or carry out reserved practices. Through carrying out their duty to protect the public interest, regulatory bodies will be able to set requirements for firms in key areas,

including ethics, continuous professional development, and quality management. *The ministry wishes to initiate a conversation with interested parties on what regulation of firms might look like for these professions. Further information is provided in Part Two of this intentions paper.*

Declarations for Competency and Conflicts of Interest

The Act will require registrants to declare their competency and that they are not in a real or perceived conflict of interest for the work they do. *The ministry wishes to initiate a conversation with interested parties on the process and requirements for these declarations, to be developed by regulation. Further information is provided in Part Two of this intentions paper.*

Implementation of the Act

Some provisions of the proposed Act will be brought into force shortly after the Act receives Royal Assent (becomes law), but most will be brought into force by regulation over the next several years. Provisions to establish the authorities of the Office, transition the administration of the existing statutes from the current ministries to the Office, implement a merit-based nomination process to select candidates for council elections, and expand the duty of professionals to report hazardous conduct and ensure whistleblower protection, will be enacted first, along with any supporting regulations. Policy and engagement work to support regulation development for the areas described in Part Two of this intentions paper will commence immediately with the aim of having some of these regulations in place following a robust engagement process. The Office will continue to focus on regulation development and engagement to enact the rest of the provisions in the Act over the coming years. When the necessary regulations have been developed, it is expected that government will repeal the five existing governance statutes and regulatory bodies will be fully governed by the Act.

Part 2 – Key Areas for Regulation Development

The ministry wishes to engage on three key areas for regulation development:

- A. Practice Rights of Professionals
- B. Regulation of Firms
- C. Declarations of Competency and Conflict of Interest

The sections below present the background to the topics, and areas for discussion and consideration. In some cases, an intended policy direction is outlined for feedback. Questions are included in an online feedback form which can be found on the Professional Reliance engagement website.¹⁰

Province of British Columbia's Relationship with Indigenous Peoples

The Province of B.C. has committed to the full implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the Truth and Reconciliation Commission of Canada (TRC) Calls to Action and the Supreme Court of Canada's decision in *Tsilhqot'in v. B.C.*, and to collaborating on changes to policies, programs and laws to support these commitments.

To guide regulation development under the Act, the ministry has embraced the *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*¹¹, including the following specific points:

- Enable traditional Indigenous knowledge to be incorporated into resource management; and
- Build processes and approaches aimed at securing consent, as well as creative and innovative mechanisms that will help build deeper collaboration, consensus, and new ways of working together.

Participating in dialogue about the key areas for regulation development presents an opportunity to identify interests, issues, and concerns of Indigenous nations as they relate to how professions are governed in B.C.

¹⁰ <https://engage.gov.bc.ca/professionalreliance/>

¹¹ https://news.gov.bc.ca/files/6118_Reconciliation_Ten_Principles_Final_Draft.pdf

A. Practice Rights of Professionals

The proposed Act includes the legislative framework to provide the right of practice of reserved practice as well as the exclusive use of reserved titles – known as “**right to practice**”, and “**right to title**”, respectively. These authorities will be brought into force by regulation for the five professions to be governed under the Act. For clarity, the rights and privileges currently granted to the regulatory bodies in their governance statutes will remain until the Act is fully implemented by regulation. All five regulatory bodies within the scope of the PR review have right to title protection; however, only EGBC and ABCFP currently have right to practice authority. This variation between the professions means there are people providing advice in the NR sector who are not required to be registrants of three of the five regulatory bodies active in that sector. During the PR review, CAB, BCIA and ASTTBC stated they are not able to fully protect the public interest in carrying out their mandate as they are unable to hold unregulated practitioners in their fields accountable to professional standards. To address this gap, right to practice authority for CAB, BCIA, and ASTTBC has been enabled in the proposed Act. These authorities would only come into force through regulation, which may be introduced as early as 2020, but may take longer to accommodate appropriate engagement and implementation timelines.

Background

The government regulates professions to protect the public and public resources by ensuring there are accountability mechanisms in place. Through the three main functions of regulatory bodies – gatekeeper, quality assurance, and enforcement – the regulatory bodies set education and experience requirements; establish ethical and practice standards for practising registrants; and enforce these requirements through a discipline process. These mechanisms provide assurance to the public that professionals are accountable and can be trusted. There are two primary methods the government can use to assure the public that those holding themselves to be professionals are accountable.

The first method is to regulate a profession by granting right to title. A right to title profession has legislation that prohibits the use of reserved professional titles by those who are not registrants. It does not prevent non-registrants from providing similar if not identical services as long as they do not use the reserved title. By granting right to title, government can require that individuals using those titles meet requirements for education and experience, and are subject to standards and disciplinary processes. Membership with a regulatory body grants the use of the title, but is also an assurance of accountability to peers and to the public. A regulatory body has no jurisdiction over non-registrants who are practising that profession unless they are unlawfully using the protected title of that profession. As registration with the respective regulatory body is voluntary for right to title professions, the non-registrants who are practising this profession are not accountable to codes of ethics, qualification requirements, competencies and other measures to protect the public interest. Unless specified in legislation, a **proponent** may choose to employ the services of registered professionals or non-registered professionals. Currently CAB, BCIA and ASTTBC only have right to title protection.

NR legislation and regulations specify when a QP is required to undertake work, such as monitoring or producing plans for proponents. By virtue of the requirement for QPs to be registered with their respective regulatory body, proponents are required to employ the services of registered professionals. A requirement in NR legislation to use QPs is not the same as granting practice rights to a profession. Regulation development under the Act will not change where and how QP involvement is specified in NR legislation.

The Province can also regulate a profession by granting right to practice, in addition to right to title. Right to practice grants registered professionals rights to provide professional services as defined by the **scope of practice** of the regulated profession. Right to practice is intended to restrict practice of certain activities where practice of those activities could present a risk to public safety or resources. For example, a medical doctor who completes a medical procedure or an engineer who builds a dam or bridge must be registered with their respective regulatory body as their activities have the potential to have significant risk to the public. By granting right to practice, government can require that individuals practising these activities meet requirements for education, experience and competencies, and are subject to standards and disciplinary processes. If an individual would like to conduct activities within the scope of practice of a regulated profession with practice rights, they must register with the respective regulatory body as a registered professional. Within a regulatory body, different classes of registrants may be granted the right to practice to a more limited extent, or conversely, certain professional activities may be restricted to a subset of registrants who have specific credentials relevant to the work. As registration is mandatory for practitioners, all individuals providing the professions' services are accountable to codes of ethics, competencies, and other measures to protect the public interest.

Within a regulated profession, different classes of registrants may exist with different access to right to title and right to practice. Some examples of classes are:

- Registered Professionals – have full practice rights, but may not practice certain specialized activities. May use protected title specific to registered professionals.
- Registered Professionals with specialist designation – have full practice rights, may practice specialized activities specific to their specialist designation. May use protected title for registered professionals and protected title specific to their specialist designation.
- Enrolled /Student Registrants – practice rights granted only under the supervision of a registered professional or registered professional with specialist designation. May use protected title specific to enrolled or student registrants.

- Retired Registered Professionals – no practice rights, may use protected title that specifies retirement.
- Holders of Special Permits or Limited License – have practice rights but practice is limited, limits specified when special permit or limited license is granted. May use protected title specific to their permit or license.
- Associate Registrants – no practice rights, but can be given limited rights via specialized certificate. May or may not have right to use protected title.
- Honorary Registrants – no practice rights, may be granted an honorary title specific to their status as an honorary registrant.

A responsibility of a regulatory body is to regulate its members and protect the profession from infringement of title and practice rights (if granted), meaning that the regulatory body must act where an individual who is not a professional registrant is using a protected title, or practising protected professional activities. Administration of these responsibilities requires resources; changes to practice rights will change the resource requirements of the regulatory body as well.

Discussion

There are multiple models to grant right to practice to a profession or a profession's activities. The proposed Act enables the granting of practice authorities for all five professions covered by the Act. Government is seeking input on the specific scope, model, and implementation timeline for introducing these rights for BCIA, CAB, and ASTTBC. Implementing practice rights under the Act may not be uniform across the five professions. For example, some professions may only be granted practice rights to aspects of their professional practice. EGBC and ABCFP will continue with their current right to practice model which allows for overlapping scopes of practice with other professions to be addressed.

Exclusive practice

The exclusive practice model, also known as the guild model, grants registrants of a regulatory body the right to practice a defined set of activities. The definition of the professional practices which are reserved and prohibitions for non-registrants are laid out in legislation. Registrants are therefore granted the right to practice their profession by virtue of their membership in that regulatory body. Those who are not registrants may not practice, regardless of education and training. In the exclusive practice model, there are no **exclusions** or **exemptions** for non-registrants to practice within the defined set of activities, including registered professionals of other regulatory bodies.

Implications of exclusive practice model

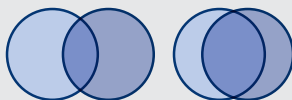
An exclusive scope of practice model offers clarity to registrants and the public on who is qualified to practice in different professions. It also allows for professions to operate independently, without requiring collaboration or input from other regulatory bodies. However, it is difficult to find examples of a profession which operates strictly in the exclusive

Practice Rights Relationships

Exclusive practice:



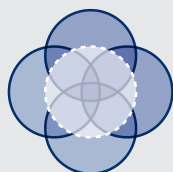
Overlapping scope of practice:



Overlapping with reserved practice:



Shared scope with restricted activities:



practice model in modern professional governance. This model would require a professional scope of practice to be prohibitively narrow to ensure there are no areas of overlap with other professions, and does not allow for exclusions or exemptions.

QUESTIONS:

Do you have any comments on benefits of, or concerns with applying the exclusive practice model to professions that are granted practice rights under the Act?

Do you have any additional comments on the exclusive practice model?

Overlapping scope of practice

In an overlapping scope of practice model, reserved practices are defined in legislation (which prohibits practice of individuals who are not a registered professional of the regulatory body); however, this model allows for exclusions which grant a subset of reserved practices to be shared between two or more professions. Where these exclusions have been defined, certain registered professionals of another regulatory body may also practice within the overlap. Exemptions may also be defined to allow specific unregulated persons to practice within the scope of practice for a profession.

There are multiple mechanisms to implement the overlapping scope of practice model. In B.C., EGBC and ABCFP currently have right to practice with overlapping scopes of practice. The *Engineers and Geoscientists Act* and the *Foresters Act* define the practices of engineering, geoscience, and forestry, and explicitly prohibit those who are not registrants from engaging in the defined professional practices, unless they are permitted under relevant Acts. Within definitions of professional activities, some areas of practice may be further restricted to a subset of membership. For example, the practice of structural engineering is restricted within the practice of engineering; a professional engineer must meet further requirements for education and experience to practice activities that are defined as structural engineering. Once these requirements are met and that person is accepted as a structural engineer, they gain the right to use the title of Structural Engineer and practice activities defined as structural engineering.

Exclusions may be made to allow for overlapping scope of practice between two regulated professions. For example, the B.C. *Engineers and Geoscientists Act* s. 2(3) states, “this Act does not apply to a professional forester as defined in the *Foresters Act* as long as the professional forester does not hold himself or herself out as a professional engineer or professional geoscientist.” The definition of forestry as defined by the B.C. *Foresters Act* includes practices contained in the practice of engineering as defined by the *Engineers and Geoscientists Act*.

Management of the overlapping scopes is formalized by both regulatory bodies, using a memorandum of understanding, a joint practice board, and joint practice guidelines. Cooperation to develop and maintain joint scopes of practice between regulatory bodies requires ongoing resources from the involved bodies to participate in joint practice boards and to develop and update practice standards.

Exemptions may also allow certain individuals to practice in the defined scope of practice without being a registrant in any regulatory body. For example, the B.C. *Engineers and Geoscientists Act* includes an exemption for those employed in the armed forces, and the Saskatchewan *Agrologists Act* makes an exemption for persons carrying out the business of farming. Those exempt under these clauses may not use the associated professional titles, but may freely practice activities included in the definition of that profession as defined by the exemption.

Another example of the overlapping practice model was introduced in Alberta in 2009 for ‘Professional Technologists’ governed by the Association of Science and Engineering Technology Professionals (ASET) to perform a subset of practices governed by the Association of Engineers and Geoscientists of Alberta (APEGA). This approach to overlapping right to practice prohibits practice outside the membership of the professional organization, but enables exclusions such that the overlap of scope of practice between the professions is broad. This has led to two regulatory bodies trying to regulate the same scopes of practice and rights to practice, which is not without its challenges.

Implications of overlapping scope of practice model

Any exclusions in the overlapping scope of practice model must be specifically and clearly laid out and formally agreed upon by the involved regulatory bodies. Exclusion and exemptions that are too general can lead to unintended overlapping scopes of practice resulting in duplication of effort in regulation, or unintended gaps. Poor collaboration between regulatory bodies could also result in inconsistent standards and regulation of professionals, duplication of effort, and inefficiencies. These negotiations can take significant resources from all organizations involved. Where joint practice boards are not used, inconsistent standards and regulation of professionals are more likely to occur.

QUESTIONS:

Do you have any comments on aspects of the overlapping scope of practice model that should be considered for the five professions governed under the Act?

Do you have any comments on how overlap between professions should be defined and communicated?

Do you have any comments on aspects of regulatory oversight that should be jointly administered?

Do you have any additional comments on the overlapping scope of practice model?

Shared scope of practice with restricted activities

The shared scope of practice model in the health sector was designed to enhance inter-professional and multidisciplinary practice and increase consumer choice, while maintaining patient safety and public protection. In essence, this enables multiple professions to do similar activities and moves away from the pre-existing notion of professional exclusivity. This model,

currently used in the B.C. Health Sector, is characterized by two elements: scope of practice statements and restricted activities.

In this model, scope of practice statements are descriptions, in broad, non-exclusive terms, of each regulated profession's activities and areas of professional practice. These statements describe in general what each profession does and how it is done. They are not exhaustive lists of every service the profession may provide, nor do they exclude other regulated professions or unregulated persons from providing services that fall within a particular profession's scope of practice, unlike the current right to practice model for EGBC and ABCFP.

Restricted activities are a narrowly defined list of high risk activities which are restricted to professionals who are educated, trained and competent to perform that activity. Individual professions are then granted specific restricted activities that are considered high risk. This allows the same restricted activities to be granted to more than one profession. For example, in the health sector, administering drugs by injection is a restricted activity but the authority to perform this activity is granted to multiple types of professionals such as nurses, physicians and naturopathic physicians. In comparison, writing a prescription is also listed as a restricted activity but the authority to perform this activity is not always granted to those professions who could administer it, for example, licensed practical nurses. The restricted activities can only be performed by regulated professionals who have been authorized via regulation to perform the activity, or by those who have been delegated the authority to perform the activity by an authorized regulated professional.

When a health profession is recognized under the *Health Professions Act*, a regulatory body is created and regulations are developed to protect the title of these health professionals. This means that only the profession that has been granted that title can use it. For example the title "registered massage therapist" can only be used by registrants of the College of Massage Therapists of BC. However, other non-regulated (or regulated) individuals can practice massage therapy as it is not a restricted activity.

Implications of a shared scope of practice/restricted activities model

The shared scope of practice/restricted activity model is designed to address the complexities of the health sector and was intended to improve interdisciplinary care while still allowing for consumer choice. Work carried out in the NR sector may also require interdisciplinary teams. The potential for a shared scope of practice/restricted activities model to work in non-health sectors is yet to be fully analyzed.

QUESTIONS:

Do you have any comments on the appropriateness of this model for the professions that are granted practice rights under the Act?

Do you have any additional comments about the shared scope of practice/restricted activities model?

Considerations

Implementing practice rights under the Act may not be uniform across the five professions. This is in part due to the varying degrees of overlapping scope between the professions. The areas of practice for applied biology (e.g. botany, zoology, ecology, biochemistry, and microbiology) and agrology (e.g. agriculture business, animal science, food science, soil science, resource science, and environmental science) are fairly distinct but may have overlapping activities or practices with each other as well as with the areas of practice of forestry. Just as the engineers, geoscientists and foresters have worked collaboratively to define the overlap between their professions (e.g. road building and forest road building) and determined particular activities that are scoped to each profession, a similar process would be required before these professions are granted practice rights.

The degree of overlap of scope between EGBC and ASTTBC may require more time and resources to determine how to best implement practice rights for ASTTBC. Applied science technicians and technologists operate in 18 disciplines of registration. The area of practice related to engineering technology can be characterized as a subset of the area of the practice of engineering and applied science. For these two regulatory bodies, it may be challenging to define distinct practices or activities for the purpose of granting practice rights. The process to work collaboratively and the resultant model that is best suited to the applied science technicians and technologists may differ from the rest of the professions if justified.

The shift to right to practice status for all five professions under the Act will require a review of practice areas and existing scope of practice of each profession. Significant analysis will be needed to ensure right to practice is granted to the appropriate field(s) of work and ensure flexibility is built into the model to accommodate changes to the practice of the professions over time. Impacts to existing practitioners brought under the authority of the regulatory bodies will need to be understood, and options contemplated to incorporate them in a way that does not limit their ability to continue to practice. In addition, justifiable exemptions must be studied prior to determining the scope of reserved practices. Examples that may be considered include academic teaching or scientific research, farming on one's own land, or the application of traditional ecological knowledge.

Potential consequences of any option will need careful consideration, including impacts to:

- Current professionals;
- Practitioners brought under the authority of regulatory bodies;
- The application of traditional and ecological knowledge;
- Businesses relying on or offering professional services;
- Regulatory functions relying on professionals; and
- Members of the public and public resources.

Regulatory bodies will need time to negotiate and collaborate on areas where scopes of practice may overlap, adjust capacity to accommodate the responsibility to preserve and protect reserved practices and deal with any resultant flux in membership numbers. Once practice rights are granted through regulation, a transition period will be important for the regulatory bodies, existing registrants, those that will be required to register, and those that rely on the services of the profession.

QUESTIONS:

Do you have any comments on exemptions that should be considered when defining reserved practices?

Do you have any comments on potential impacts to various groups in the granting of practice rights?

Do you have any comments on the process that should be put in place for reviewing professional scopes of practice to ensure that multiple perspectives are considered?

Do you have any comments on what will be important to include in a transition period?

Do you have any comments on accommodations that should be given for practitioners brought under the authority of the regulatory bodies where this might limit their ability to continue to practice?

Do you have any additional comments on considerations for granting practice rights to professions?

B. Regulation of Firms

56% of QPs surveyed during the review felt those using QP information disregarded their advice or influenced the information they provided¹². Engineers, foresters and other professionals reported that considerable pressure is sometimes placed on QPs in their work environment, stemming from a firm's desire to please its clients, or an employee's desire to please his or her employer. This pressure has resulted in: 1) professionals being given direction to change their opinion or how it is expressed in a professional document; 2) supervisors modifying and signing professionals' documents; and 3) termination of employment where a professional refused to change their opinion. Because firms in B.C. are not regulated, individuals have little support or recourse in these situations.

Background

The regulation of firms is a trend in professional governance due to the recognition that those organizations significantly influence the work environment and decisions of professionals. In B.C., architects, land surveyors, public accountants and some medical professions currently regulate firms, and the Law Society of B.C. is currently piloting a model of firm regulation. In the engineering and geoscience professions specifically, regulating firms is common across Canada and the United States. In Canada, every province and territory, except B.C. and Quebec, regulates engineering and geoscience firms under a mandatory legislated authority, and in northwestern US, every state, except Oregon, regulates engineering firms.

EGBC has called for the regulation of firms since the Save-on-Foods roof collapse in Burnaby in 1988. More recently, in 2014 following the Mt. Polley tailings pond breach, the Ministry of Energy and Mines requested that EGBC prepare a summary of the issues involving the regulation of firms. After a thorough review of the engineering and geoscience professions across Canada, EGBC developed a model that has the potential to be applied in B.C. for all professions. Much of the discussion of the regulation of firms below is based on EGBC's work¹³, particularly, their *Phase 2 Report to Council: Recommended Model for the Regulation of Engineering and Geoscience Organizations* from June 2018.¹⁴

12 What We Heard – Public and Stakeholder Engagement Summary Report: <https://engage.gov.bc.ca/app/uploads/sites/272/2018/06/Professional-Reliance-Review-Engagement-Report.pdf>

13 See EGBC's website for work on corporate governance: <https://www.egbc.ca/About/Initiatives-and-Consultations/Corporate-Practice-in-BC>

14 <https://www.egbc.ca/getmedia/64b5e314-db31-46da-9236-7280228a9331/Corporate-Practice-Phase-2-Report.pdf.aspx>

Discussion

Regulation of firms is intended to address the potential conflict between employees and their employers, by making employers legally responsible for the professional work that they carry out. “Firms” in this context may be a company, partnership, corporation or other association of persons including consulting firms, industry companies, and provincial and local governments. These firms would be bound by the same applicable legislation, bylaws, codes of ethics, and documentation requirements as the individual professional, as well as subject to the regulatory bodies’ disciplinary processes.

Three key principles that guide this work are listed below.

1. The regulation of firms should enhance protection of the public interest and the environment by:

- Aligning firms’ responsibilities with individual professional responsibilities, thereby reducing the potential for conflicts of interest between firms’ interests and individual professional practice obligations.
- Providing confirmation that a firm employs the appropriate registered professionals so competent professionals are available to deliver professional services in all areas of a firm’s practice.
- Enabling regulatory bodies in BC to establish more specific guidelines for professional practice at the corporate level.
- Protecting professional independence through measures to prevent firms from placing undue influence on professional advice or work products.

2. The regulation of firms should increase public confidence in professional reliance by:

- Implementing a regulatory mechanism that is used in most Canadian and US jurisdictions for engineering and geoscience and some other professions, thereby reducing the perception of a regulatory gap in B.C.’s professional regulation.
- Increasing consistency with other professional sectors in BC where there has been a trend towards corporate regulation (e.g., law, architecture, land surveying, public accounting, as well as certain medical disciplines).
- Increasing the quality of professional practice performed within regulated firms.
- Enabling regulatory bodies to investigate and hold registrant firms accountable in the event of a complaint or occurrence of a project incident.

3. The regulation of firms should provide value to organizations and the professionals they employ by:

- Increasing the attractiveness of a firm as both an employer and contractor with a reputation as an honest broker in supporting professional decision-making and upholding the public interest.
- Increasing awareness and support from firms for the importance of maintaining good standards for professional practice.
- Providing a proactive and educational approach to facilitating compliance.
- Establishing a mechanism to hold firms accountable if they are pressuring professionals to act in contravention of the Act, code of ethics, or bylaws.
- Helping to increase public confidence and the value that society places on professional work.

Models for the Regulations of Firms

The following models have been adapted from the work of EGBC on the regulation of engineering and geoscience firms. While it is government's intent to use the third model below as the basis for the regulation of firms, all three models are discussed to illustrate how they improve on each other to build a robust regulatory system.

Basic Model

The basic model is applied in most Canadian jurisdictions to regulate engineering and geoscience firms and can be described as a reactive approach to public protection. It provides a disciplinary system in the event of a public incident or complaint regarding violations of the Act, bylaws or code of ethics. The disciplinary system provides a deterrent to poor practice but does not actively encourage good practice. Firms are required to obtain a permit/certificate to practice, which involves the completion of an application form and payment of a fee.

The basic model provides the following functions:

- Prohibits the practice of professional engineering and/or geoscience by firms unless they obtain a permit/certificate. (Onus is on the firm/organization to apply for registration.);
- Provides for a registry of regulated firms practising engineering and geoscience;
- Ensures regulated firms employ professionals;
- Specifies the responsibility of regulated firms to comply with the Act, bylaws and code of ethics of the regulatory body;
- Designates corporate representatives that assume some responsibility for supporting corporate practice that complies with the Act, bylaws and code of ethics; and
- Provides the regulatory body the authority to investigate regulated firms in the event of an incident or complaint and the authority to require the production of relevant documents to inform the investigation.

Alberta Model

Alberta's corporate regulatory model for engineering and geoscience organizations is the only one in Canada that goes beyond the basic model.

This model includes all the requirements of the basic model but additionally requires firms to develop and submit a Professional Practice Management Plan (PPMP). A PPMP is a written description of corporate policies, procedures and systems used to ensure that appropriate standards of professional practice are maintained. A PPMP addresses the following five elements:

- Management, Organization, and Responsibilities – ensuring that management is conducive to professional practice;
- Ethical Standards – ensuring that the professional practice of the firm is defined, communicated, and implemented in accordance with the code of ethics and that due diligence is fulfilled;
- Professional and Technical Resources – ensuring that the work is carried out by appropriate registered professionals and that appropriate technical facilities and resources are maintained, communicated, and available - commensurate with the professional services being provided;
- Quality Control – ensuring that the firm has adequate supervision and controls of all the professional work to ensure that it is done competently and with due diligence;
- Professional Documents and Records – ensuring that appropriate and sufficient records are produced, maintained, and available as required; and
- Documented company support for continuing professional development.

EGBC Model

In 2012, EGBC initiated a successful pilot program whereby engineering and geoscience firms voluntarily became certified by developing management plans that allow EGBC to audit firms' work processes.

The EGBC program has over 320 Certified Organizations including 24 of the top 25 B.C. engineering firms and includes organizations from 7 other provinces. EGBC has recommended that regulation of firms under the proposed Act incorporates the characteristics of the EGBC pilot program.

The model being proposed includes:

- **Regulatory Coverage:** Firms to be regulated include those legal entities engaged in providing services in respect of regulated practice, excluding those entities exempted by regulation. (See below for discussion of inclusions/exclusions);
- **Registration:** It is anticipated that individual firms will initiate the registration process with the regulatory body (though this is still to be established/confirmed);
- **Regulatory Model:** A corporate regulatory model based on three pillars:
 - **Ethics:** Regulated organizations must:
 - Provide an environment that ensures the practice of professionals is conducted in accordance with the Code of Ethics.
 - Adhere to ethical business practices addressing corruption, conflict of interest, and contractual matters.
 - **Quality Management:** Regulated organizations must have documented policies and procedures consistent with the quality management requirements in the *Professional Governance Act* and bylaws that apply to their area(s) of practice.
 - **Professional Development:** Regulated organizations must have a documented continuous professional development policy that is appropriate for the professional products and/or services provided by the organization;
- **Documentation:** All regulated organizations must have a Professional Practice Management Plan (PPMP) in place and available for review upon request. The PPMP will document the organization's policies and procedures with respect to addressing the three pillars of ethics, quality management and professional development;
- **Compliance and Enforcement:** A range of mechanisms (e.g., audit, investigations, discipline processes) need to be available to the regulatory body to deliver effective and proportional compliance and enforcement of corporate practice requirements. Audits of regulated organizations should be performed on a regular basis to support regulated organizations in meeting professional responsibilities; and
- **Cost-Recovery:** The administrative costs for a corporate practice program should be funded through a cost-recovery model where a fee is scaled in proportion to the number of registrant professionals that are employed by a firm. The funding formula used should be reviewed on a periodic basis and adjusted to reflect true costs.

QUESTIONS:

Do you have any comments on elements that should be added to one or all the models described, or additional models that should be considered?

Do you have any comments on the appropriateness and ability of the regulatory bodies governed by the Act to regulate firms?

Do you have any comments on whether the model should be consistent across professions or whether different iterations could apply to different professions?

Do you have any comments on the appropriateness of applying the model to EGBC first?

Do you have any comments on sanctions that regulatory bodies could take against firms that do not comply with the requirements to be a regulated firm?

Considerations

It is envisioned that EGBC, who have done considerable preparation and are best positioned to regulate firms, may be granted the ability as early as 2020. The other regulatory bodies may work with the Office to set reasonable timelines for the development of their bylaws and implementation of this provision. Capacity issues, especially for smaller regulatory bodies, may dictate these timelines. Transition periods may be set to allow time for firms to register and for regulatory bodies to work proactively with firms prior to taking on an enforcement role. Some of the considerations for discussion are listed below.

Exemptions

Though regulation of firms is intended to apply broadly, the Act provides authorities for exemptions to be addressed in regulation. If such exemptions are created, criteria will need to be developed in the regulation.

Though the public sector is included in the definition of firm in the Act, there may be services within government that should be exempted. There may be legal barriers to including federal government employees, but voluntary participation could be encouraged. For the provincial government, there are complications with having regulatory bodies putting requirements on the government that regulates them.

Currently, the definition of firms in the Act includes sole proprietors (i.e., having a single employee who is also a professional). As individuals, these professionals are already regulated and an additional level of oversight may not be warranted. However, an incorporated sole practitioner can easily expand to include more professionals, student registrants or other employees, even temporarily, and thus may fluctuate between being an incorporated sole practitioner and being a small corporation employing other professionals.

Regulation of all firms, regardless of how many people are employed is simpler and more effective from an enforcement perspective. Sole practitioners tend to practise with relatively

little interaction with other professionals in their field; tend to be less exposed to new information relevant to their practice; have less checking, review or scrutiny of their work; and tend to have higher rates of complaints levied against them compared to larger firms. Similar observations have been made with sole practitioners in the law field. In addition, APEGA currently regulates incorporated sole proprietors and are reconsidering their inability to regulate sole practitioners.

QUESTIONS:

Do you have any comments on criteria that should be considered for exempting firms or entities?

Do you have any comments on how firms that employ professionals for services entirely internal to the firm (e.g., companies that employ in-house professionals) should be regulated?

Do you have any comments on functions with the provincial government, including Crown corporations that should or should not be considered for exemption?

Do you have any comments on whether incorporated or unincorporated sole proprietors should be regulated as firms?

Do you have any additional comments on exemptions that should be considered for regulation of firms?

Multidisciplinary Firms

Numerous firms in BC employ professionals from more than one discipline. As more regulatory bodies start to regulate firms, consideration is needed for an efficient and effective way to regulate these multidisciplinary firms.

QUESTIONS:

Do you have any comments on how regulatory bodies could collectively implement the regulation of firms, specifically multidisciplinary firms?

Do you have any additional comments on the regulation of multidisciplinary firms?

Other Areas of Consideration

The information required for the Professional Practice Management Plan, especially for large firms, will change regularly as professionals are hired and leave, and scope of work changes; potentially posing an administrative burden on the firm. Regulation or bylaws will need to consider triggers for a requirement to update plans on file, and whether a variation in the details required or expected in plans is justified based on the size and scope of the firm (e.g. sole proprietor vs. large multi-national firm).

As firms become regulated, there will also be resource requirements for regulatory bodies to administer firm regulation, as well as for firms to be regulated. A full understanding of the resource requirements for firms of different sizes and capacities, as well as for regulatory bodies, is needed.

Other considerations include details of the auditing programs, determining the roles and responsibilities between regulatory bodies in dealing with multidisciplinary firms, and the oversight role of the Office.

QUESTIONS:

Do you have any comments on the information that should be required in Professional Practice Management Plans? (see the Alberta model for base information)

Do you have any comments on triggers that should be used to require submitting or providing updates to Professional Practice Management Plans?

Do you have any comments on resource implications for various sized firms that may be regulated?

Do you have any comments on mechanisms that should be considered to minimize the administrative burden on firms?

C. Competency Declarations and Conflict of Interest Declarations

Under the proposed Act, when a registered professional provides services that are within their scope of practice, they may be required to sign separate competency declarations and conflict of interest declarations. Regulations will be developed to provide further detail and direction, including: thresholds which will trigger a requirement to submit declarations, the appropriate time period for filing, the manner and form these declarations will be filed, with whom these declarations will be filed, and when the Office will be informed of potential conflicts of interest. The proposed Act will enable councils of regulatory bodies to make bylaws to specify the requirements for competency in a regulated practice. The Office may also provide guidelines with respect to real or perceived conflicts of interest beyond what is already provided for in the interim measures.

The anticipated timeline for introducing regulation concerning competency declarations and conflict of interest declarations is 2020, with engagement and further discussions throughout 2019 to inform the regulation development process.

Background

Under the current PR model, the provincial ministries define activities in legislation that require registered professionals, referred to as QPs, to carry out work. Ministries rely on QPs to provide sound and impartial advice, recommendations, and in some cases decisions in relation to land and resource use. The B.C. government, Indigenous nations, proponents, and the general public expect that registered professionals employed to do this work have the knowledge, skills and objectivity to support the best environmental outcomes and ultimately to protect the public interest. However, basic entry requirements of a profession do not necessarily ensure a registered professional is competent for specific activities within the scope of practice of a profession. There is therefore a limit on relying on professional status alone to address and determine qualifications of a registered professional to undertake certain work.

Competency declarations and conflicts of interest declarations act as assurances to the public, proponents, government ministries, and regulatory bodies that a registered professional has considered that his or her level of competency is sufficient to complete the job they are tasked with, and are not influenced by conflicts of interest. Further, declarations can assist regulatory bodies in holding their registrants accountable to the highest professional, technical and ethical standards by providing a mechanism to verify registrant compliance with codes of ethics and practice standards.

Requesting competency and conflict of interest declarations can:

- Reinforce professional accountability;
- Assist ministry decision-makers to make informed statutory decisions;
- Support proponents to exercise their due diligence in hiring a registered professional; and
- Assist regulatory bodies with their oversight role.

Current Ministry of Environment and Climate Change Strategies policy is to encourage proponents to request competency declarations and conflict of interest declarations from registered professionals who do work on their behalf. These declarations will be considered by statutory decision-makers and will be publicly available. This is considered an interim measure while government develops further policy and regulations under the proposed Act regarding mandatory declarations.

Discussion

Declarations will ask registered professionals to confirm that they have considered the scope of their expertise and their objectivity in the context of specific work they have been hired to do. Regulatory bodies, the Office, and statutory decision-makers reviewing registered professional work or proponent applications have an interest in the assurances provided by these declarations. In the event a registered professional declares their competency to undertake an activity, and has declared no conflict of interest, but evidence later demonstrates they lacked the required competency for the professional task and/or are in a perceived or real conflict of interest (e.g., stand to personally benefit from a project approval), disciplinary proceedings could be initiated, and could result in the registrant being fined or having their professional licence suspended or revoked if they are found guilty.

Assurance statements are used by some regulatory bodies to confirm appropriate standards of practice, due diligence and level of effort have been followed when carrying out a specific professional activity identified in the range of Acts and regulations governing natural resources. It may be appropriate for declarations to build upon these assurance statements by revising templates to incorporate competency and conflict of interest components. Details regarding if and how these existing assurance statements could be modified to align with declarations will be part of engagement as this regulation is developed.

Considerations

Expectations for when declarations are required

Ministry policy is that signed competency declarations and conflict of interest declarations are requested anytime a QP is engaged by a proponent to do work that falls under a variety of provincial legislation. Declarations can be mandatory if required by the decision-maker or at the discretion of the proponent to include in applications for permits or authorizations to the relevant ministry. The proposed Act will require all professional registrants to file a competency declaration and conflict of interest declaration. However, exceptions to this blanket requirement may be determined by regulation. Exceptions may speak generally to the type of work being performed or to job-specific parameters. For example, different considerations

may be warranted for professional registrants who are government employees¹⁵, professional registrants undertaking work as QPs, and professional registrants undertaking work that is not regulated by provincial legislation (e.g., research and development).

Job-specific declarations could be required when specific thresholds are reached (e.g., environmental risk, health and safety risks, or high cost projects that are above a certain cost threshold). These job-specific declarations could be included in proponent applications for permits and authorizations to relevant ministries or municipal authorities, and made available upon request to the relevant regulatory body - for instance, as a potential reference during practice reviews or complaint investigations.

QUESTIONS:

Do you have any comments regarding when declarations are required?

Do you have any comments on the criteria government should consider when developing thresholds for when declarations are required?

Do you have any comments on types of activities that should be exempt from declarations?

Do you have any comments on how the declaration requirements should apply to regulated firms?

Do you have any comments on how the declaration requirements should be enforced?

Do you have any comments on how the declaration requirements should be applied to registered professionals when they are government employees?

Filing and record keeping process for declarations

Statutory decision-makers in government ministries can consider declarations when they are reviewing permit or authorization applications. These decision-makers may raise concerns if a QP declares a real or perceived conflict of interest with a project they have been hired for. A regulatory body's main interest in declarations is for oversight of registrant competency, adherence to code of ethics, enforcement of disclosure requirements, or complaint investigations. The Office's main interest in conflict of interest declarations is to provide guidance to regulatory bodies in their role of ensuring conflicts are avoided or properly mitigated.

¹⁵ Objectivity is currently required as part of the standards of conduct for provincial government employees. Please see the B.C. provincial government policy here. <https://www2.gov.bc.ca/gov/content/careers-myhr/about-the-bc-public-service/ethics-standards-of-conduct/standards-of-conduct>

Consideration needs to be provided for how competency declarations and conflict of interest declarations are to be filed. Important considerations for filing of these declarations include:

- How the declarations will be reviewed and used by the appropriate bodies (e.g. government ministries and/ or municipal authorities, regulatory bodies, the Office), and therefore who needs to receive filed declarations;
- The appropriate time period for filing declarations;
- The appropriate form and manner (i.e., paper, electronic);
- The appropriate amount of time to maintain filed declarations as records; and
- Systems in place for the appropriate bodies to receive filed declarations.

QUESTIONS:

Do you have any comments regarding the filing process for declarations?

Do you have any comments on appropriate role of statutory decision-makers, regulatory bodies, and the Office in the filing process for declarations?

Do you have any comments on the appropriate role for registered professionals in maintaining records of filed declarations?

Do you have any comments on the appropriate form and manner for submitting declarations (i.e. template content, time period for filing, how often declarations are filed)?

Do you have any comments on how long declarations should be kept as records?

Do you have any comments related to the transparency of declarations?

Implications of a perceived or real conflict of interest

The Office is interested in looking systematically at the declared conflicts of interest to identify patterns and develop advice and policy for how to address or mitigate instances of conflict of interest. Statutory decision-makers would be looking at the conflict of interest declarations on a case by case basis to inform decisions on authorizations. The regulatory body may use the conflict of interest declarations to assess whether a registrant is operating within the codes of ethics. If required, the regulatory body could develop bylaws with guidance from the Office to address on-going patterns of conflict of interest.

QUESTIONS:

Do you have any comments on the role of the Office in identifying patterns and developing advice and policy for regulatory bodies on how to avoid or mitigate perceived or real conflict of interests?

Do you have any additional comments regarding this proposed approach?

Providing Comment

The ministry welcomes comments on the proposals outlined in Part Two of this intentions paper. Government will consider input given during the public comment period when developing policy and regulations pursuant to the *Professional Governance Act*. Comments can be provided to the Ministry of Environment and Climate Change Strategy by using the online feedback form (<https://engage.gov.bc.ca/professionalreliance/>) or via a separate email submission to NRS.PR.Review@gov.bc.ca.

Feedback received by January 31, 2019 will be incorporated in a “what we heard” summary report, which will be released publicly in spring 2019.

All submissions will be treated with confidentiality when preparing a summary engagement report. Please note, comments you provide and information that identifies you as the source of those comments may be publicly available if a Freedom of Information request is made under the *Freedom of Information and Protection of Privacy Act*.

Appendices

Appendix A: Glossary of Terms

Note: Terms included in the glossary are in **bold** at the first occurrence in the paper. Definitions are explanatory and should not be interpreted to be legal definitions.

Audit: a systematic review or assessment of something. In the context of the Act, an audit could be a random or routine assessment, conducted internally or by a third party, of the conduct or competence of a registrant of a regulatory body, or of any aspect of a regulatory body's operations. An audit may also include a third party review of practices or procedures of a regulated firm.

Competency declarations: describes a situation where a registered professional declares they have the knowledge, skills, and experience to complete a specific professional activity.

Conduct unbecoming a registrant: defined in the Act to mean conduct of a registrant that

- a) Brings the regulatory body or its registrants into disrepute,
- b) Undermines the standards, methods or principles that are the foundation of the profession, or
- c) Undermines the principle of holding paramount the safety, health and welfare of the public, including the protection of the environment and the promotion of health and safety in the workplace in the manner that reflects the stewardship of a given profession by each regulatory body.

Conflict of interest: describes a situation where a registered professional or firm, and its directors and employees, or their relatives, close associates or personal friends, are, or are perceived to be, in a position to derive personal benefit (beyond the customary fee for service) from actions or decisions made by the registered professional in their professional capacity. Not all conflict of interest is wrong; there may be situations where it needs only be disclosed and monitored.

Exclusions: is when practice rights for a subset of activities are granted to certain registered professionals of another regulatory body, or for specific activities to non-professionals.

Exemptions: is when restrictions created by practice rights do not apply, therefore, allowing certain individuals to practice what is in the scope of the regulated profession. Generally, exempt individuals may not use the associated professional titles, but may freely practice activities included in the scope of practice of that profession as defined by the exemption.

Hazardous: in relation to the duty to report, means a risk of significant harm to the environment or to the health or safety of the public or a group of people.

Incompetent performance: defined in the Act and includes

- a) A lack of competence or fitness to engage in the regulated practice, or
- b) An incapacity or impairment that prevents a registrant from engaging in the regulated practice with reasonable skill, competence and safety to the public.

Practice Review: a formal assessment of a professional registrant with the intention of instituting change if necessary and typically in response to a complaint. The Act includes triggers for when a practice review could be initiated by the council of a regulatory body, including on the basis of a complaint concerning an alleged contravention of the Act, regulations or bylaws; failure to comply with a required standard, limit or condition; professional misconduct; or incompetent practice. The practice review could be conducted internally or externally by a third party. Following a practice review, a council may impose practice restrictions, supervision requirements, or training requirements on a registered professional.

Professional misconduct: defined in the Act to mean misconduct by a registrant as a professional, relating to the performance of duties while engaged in a regulated practice, including a failure to comply with, or a breach of, this Act, the regulations or the bylaws.

Professional reliance: in the context of the NR sector, is a regulatory model in which government sets the NR management objectives or results to be achieved, and professionals hired by proponents decide how those objectives or results will be met. Generally, government oversight focuses on monitoring, compliance, and enforcement, rather than reviewing and approving plans or project designs. In doing so, government relies on the professionalism and specialized competence of the qualified professional, the professional and ethical codes they are required to follow, and oversight by the professional associations to which they belong.

Proponent: an individual, company or other entity applying to do or doing business under ministry legislation.

Qualified professional (QP): in relation to a duty or function under ministry legislation, regulations or codes of practice, means an individual who: (a) is registered in B.C. with a professional association, is acting under that organization's codes of ethics, and is subject to disciplinary action by that association, and; (b) through suitable education, experience, accreditation and knowledge, may reasonably be relied upon to provide advice within their area of expertise, which is applicable to the duty or function. QPs are a subset of registered professionals.

Registered professional or registrant: refers to a professional registered with a regulatory body within scope of the proposed *Professional Governance Act*. Registrant also captures registered firms.

Regulation of Firms: means allowing the regulatory bodies who currently regulate individual professionals to regulate legal entities or combinations of legal entities engaged in providing services in respect of their regulated practices, excluding those entities exempted by regulation.

Right to Title: is when a profession has legislation that prohibits the use of reserved professional titles by those who are not registrants of the respective regulatory body. It does not prevent non-registrants from providing similar if not identical services as long as they do not use the protected title.

Right to Practice: is when a profession has legislation which grants registered members' rights to provide professional services as defined by scopes of practice (the definition of the practice of the profession found in the respective legislation). If an individual would like to practice within a scope of the profession, they must register with the respective regulatory body as a professional registrant. Right to practice is intended to restrict practice of certain activities where practice of those activities could present a risk to public safety, resources or public interest.

Roster: means a list of registrants designated by a minister to perform specific work functions under that minister's legislation.

Scope of practice: includes those activities and procedures that a member of a regulatory body with a specified level of education, training and competency is authorized to engage in under the relevant profession's legislation.

Umbrella Legislation: refers to a single comprehensive statute for the governance of those regulatory bodies that are covered by the Act.



BRITISH
COLUMBIA