

The Professional Governance Act: Has the Duty to Report Been Expanded?

It is common for natural resource professions to be overseen by self-governing associations of fellow professionals. However, the recently enacted *Professional Governance Act (PGA)* will change this arrangement for at least five professional regulatory bodies. The five formerly self-governing professions to be brought within the *PGA* are:

1. Applied Science and Technologists and Technicians of BC,
2. Association of BC Forest Professionals,
3. BC Institute of Agrologists,
4. College of Applied Biology, and
5. Association of Professional Engineers and Geoscientists of BC¹.

The stated purpose of the *PGA* is to strengthen the authority of regulatory bodies to uphold practice standards and codes of ethics, and to reduce pressure on professionals to compromise their professional independence by placing the same obligations on the professionals' firms or employers. The legislation is intended to ensure that decisions regarding the province's natural resources are handled in a transparent and consistent manner². The *PGA* will apply to professionals working in-house for government employers as well as employers themselves, whether private firms or public entities, such as local governments.

On November 27, 2018, the *PGA* became law, though its provisions will not be fully adopted until the Fall of 2020. The *PGA* has come into effect in stages. Implementation of the *PGA* began in June 2019, and the Office of the Superintendent of Professional Governance (OSPG) has

been formed, the Superintendent has been appointed, and some preliminary requirements for regulatory bodies have been adopted³. During the transition to the *PGA*, regulations and bylaws will be developed to replace the existing five governance statutes, which will ultimately be repealed⁴. *The Foresters Act and the Engineers and Geoscientist Act* have both already been repealed as part of this process⁵.

The *PGA* establishes several offences and penalties. Non-compliant registrants and firms may be subject to fines, imprisonment, injunctions, or other penalties as imposed by the Superintendent⁶. Most offence provisions and penalties have yet to come into force⁷.

Further, the *PGA* also creates specific duties on registrants and firms. Although not currently in force, section 58 creates a duty to report fellow registrants where "a registrant has reasonable and probable grounds to believe that an identified registrant is engaged in the regulated practice in a manner that may pose a risk of significant harm to the environment or to the health or safety of the public or a group of people, or engaged in a matter or conduct prescribed by the Lieutenant Governor in Council"⁸. This duty applies not only to one's own profession, but all professionals governed by the Act. In other words, an engineer may have an obligation to report the conduct of a forester for example, or vice versa. Those who report another registrant are protected under the *PGA* from reprisals⁹.

The reporting duty extends to firms or employers, which includes local governments¹⁰. The intention is to make employers responsible for the work they undertake¹¹. Under the *PGA*, firms have the same obligations and

duties as individual professionals and are also subject to discipline¹². The extension of the duties to the employers addresses a concern that considerable pressure is sometimes placed on professionals in their work environment to compromise their professional independence due to a firm's desire to please its clients, or an employee's desire to please his or her employer. The purpose of this regulation of employers under the *PGA* is to enhance the protection of the public and increase public confidence¹³.

During the legislative debates of the proposed Act, concerns were raised about the ambiguity of the language of the duty to report provision. Issues of concern that were raised included the uncertainty around what the standard for 'significant harm' would be, and the practicality of reporting on professions aside from one's own¹⁴. The OSPG has stated that it will collaborate with regulatory bodies to develop and provide guidance regarding the scope of this duty, which will be released after this provision is in force. The OSPG's focus, at least initially, will be on education and compliance, rather than enforcement of this provision.

Hopefully, the OSPG guidance will address the concerns that have been raised, and more specifically what triggers the duty to report. In the meantime, case authority provides some direction, as the words from the provision, 'reasonable and probable grounds', has been found to mean a 'suspicion founded on circumstances where a reasonable person would believe it to be true'. We also note that the duty to report does not apply to situations involving minor harm, as the provision is limited to circumstances where it is believed that there may be 'significant' harm to the natural environment or to the health and safety of the public or group of people.

By Fall 2020, the implementation of the *PGA* is expected to complete, at which point, the remaining statutes which currently govern the five professional bodies will be repealed. The intent of the *PGA* is to provide consistency with regards to natural resource professions, to enhance the protection of the public and to increase public confidence. The *PGA* imposes regulations and duties upon its

registrants as well as their employers to ensure that the employers' interests and obligations are aligned with those of their professional employees. As it stands, the duty to report extends beyond one's own profession and applies to other natural resource professionals. The industry will no doubt welcome further guidance to clarify the duties under the *PGA*.

¹ Province of British Columbia. "About." Office of the Superintendent of Professional Governance. Last modified, 2020. <https://professionalgovernancebc.ca/about/>.

² Province of British Columbia. "Qualified professional legislation to restore public trust in natural-resource decision-making." The Government of British Columbia. Last modified, 2020. <https://news.gov.bc.ca/releases/2018ENV0078-002045>.

³ Province of British Columbia. "About." Office of the Superintendent of Professional Governance. Last modified, 2020. <https://professionalgovernancebc.ca/about/>.

⁴ Province of British Columbia. "Implementing the *PGA*." Office of the Superintendent of Professional Governance. Last modified, 2020. <https://professionalgovernancebc.ca/about/implementing-the-act/>.

⁵ *Supra*.

⁶ *Supra*.

⁷ *Supra*.

⁸ Professional Governance Act [SBC 2018] Chapter 47, Part 6 – Protection of the Public Interest with Respect to Professional Governance and Conduct, Division 1 – Standards of Conduct and Competence, at section 58. Duty to Report [not yet in force]

⁹ Professional Governance Act [SBC 2018] Chapter 47, Part 8 – Enforcement of Act, Division 2 – Offences and Injunctions, at section 103 [not yet in force]

¹⁰ Province of British Columbia. "Regulations Intentions Paper Consequent to the Proposed Professional Governance Act." Ministry of Environment and Climate Change Strategy. Last modified, 2018. <https://professionalgovernancebc.ca/app/uploads/sites/498/2019/05/Regulations-Intentions-Paper-Consequent-to-the-Proposed-Professional-Governance-Act.pdf>.

¹¹ Supra.

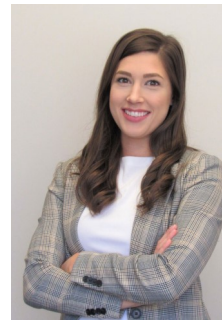
¹² Supra.

¹³ Supra.

¹⁴ HC Deb (30 October 2018) Issue No. 173 available at: <https://www.leg.bc.ca/content/Hansard/41st3rd/20181030pm-Hansard-n173.html>

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