

Bill 21 - Professional Governance Amendment Act

Q&As for Regulatory Bodies

General

Why were amendments needed to the PGA?

- The proposed legislative amendments to the *Professional Governance Act* (PGA) are necessary for improved function of the PGA based on operational experience.
- The Architectural Institute of BC is planned to be brought under the PGA later this year, which will only be possible if these amendments are made.
- Amendments also correct consequential amendments to other statutes which were not brought into force yet due to these errors.

How do amendments improve operational efficiency and effectiveness and reduce red tape?

- The majority of amendments have been made based on operational experience of OSPG and of regulatory bodies. Examples of amendments that improve operational efficiency and effectiveness include:
 - New ability for regulatory bodies to address a registrant's non-compliance of administrative matters, such as meeting continuing education requirements, outside of a lengthy and resource intensive discipline process, while also ensuring that the process is procedurally fair.
 - Updates to the declaration requirements based on feedback that the process as outlined in the statute was administratively burdensome. Amendments will require a regulation to be made for more specific instances where declarations add value and move away from the concept of filing a declaration every time a registrant is engaged to provide services.
 - An exception to lay councillor term ends to allow for continued service delivery in the event that there is a delay in an appointment or reappointment.
 - Updated requirements for committee chairs to still be appointed based on selection principles but not requiring the more onerous selection process to be followed.
 - An updated firm definition to clarify the intent that regulated firms include those where the regulated practice is carried out for internal purposes as well as for external clients.
 - A new Superintendent authority for inspections to determine if investigations or audits are necessary for the public interest.

What amendments reflect best practices in professional governance/maintain modern governance framework?

- Proposed amendments draw from recommendations made in recent reviews of professional governance models in BC (health and legal professions) to reflect ongoing development in governance best practices. Examples of amendments that reflect governance best practices include:

- Updated terminology from ‘council’ and related terms to ‘board’ and related terms, from ‘professional association’ to ‘professional regulator’, and from ‘member’ to ‘registrant’ to reinforce the message that regulatory bodies are not membership organizations or clubs.
- Updated rules around motions from the floor at annual general meetings to shift away from binding resolutions and requirements for referendums to be held respecting resolutions. A regulatory body must not be influenced by the interests of its registrants but instead must carry out its duty and responsibilities in the public interest.
- A new offence for a person who provides false or misleading information to a regulatory body when applying for enrolment, reinstatement, or admission as a registrant.
- Removal of the term and rules related to a certified non-registrant to reflect the more modern approach of regulating through the rights and limits that can be assigned to different classes of registrants.

How do the amendments support right-touch regulation of professions?

- The concept of right touch regulation is aimed at ensuring minimal government intervention while allowing regulatory bodies under the PGA to fulfil their roles.
- These include the ability for regulatory bodies to deal with registrant non-compliance of administrative matters outside of the discipline process in a manner that is procedurally fair.
- These amendments further provide LGiC the ability to specify the right level of regulation needed for a profession through the authority to:
 - Exempt the profession from mandatory bylaw requirements,
 - Specify bylaw authorities not available to the profession, and
 - Exempt the profession from duty to report requirements.

What consultation was done leading up to these amendments?

- The OSPG has engaged through the Professional Governance Advisory Committee, which consists of members of various affected government ministries and agencies, including regulatory bodies.
- The OSPG has done extensive consultation with the regulatory bodies under the PGA as well as with the Architectural Institute of BC to construct this list of amendments to the PGA. Regulatory bodies provided feedback on the proposed changes and have submitted business cases to further justify certain amendments.
- Consultation with local governments is not required as proposed amendments will not impact local governments.
- OSPG engaged the First Nations Leadership Council and the BC Alliance of Treaty First Nations on the specific amendment addressing reserved practice limitations.

When and how will these amendments come into force?

- All provisions will come into force on the date of Royal Assent, except for provisions related to terminology changes from ‘council’ to ‘board’ and the associated terms, which will come into force through regulation of the Lieutenant Governor in Council.

- These changes will require significant work on the part of regulatory bodies to update their bylaws and related materials and the delayed coming into force will allow for regulatory bodies to appropriately plan for this work.

Are there economic implications from these amendments?

- The amendments will provide the authority to create an annual fee paid by regulatory bodies to offset a small percentage of the budget of the OSPG. Further work is required to determine whether this authority will be used on what basis. Accordingly, there is no clear amount associated with the fee levy at this point though initial thinking is that the fee will be capped.
- The changes to the declaration scheme will result in a less administratively burdensome requirement which will prevent associated cost impacts to professionals and to the clients they serve.
- Other changes proposed to the PGA follow operational experience and identified corrections in consequential amendments and are entirely administrative. These amendments have no known impact related to business and the economy.

Declarations

Why were the declaration provisions repealed and replaced with regulation-making authority?

- Sections of the PGA requiring professionals to provide declarations that they are competent and free from real or perceived conflicts of interest when engaged to provide professional services were not brought into force along with the rest of the PGA in February 2021, due to the onerous administrative requirements and volume of declarations involved.
- Several policy measures have been implemented to meet the same policy intent as the declaration provisions. These include registrants annually declaring scope of practice for publishing on the register, and enhanced guidance and continuing education requirements to support registrants having a strong understanding of conflict-of-interest obligations. Strengthened supports are also envisioned through regulation of firms.
- The proposed amendment replaces the not-in-force requirement (all declarations mandatory unless exemption prescribed by LGiC) with a more flexible requirement that can be brought into force immediately (LGiC may prescribe requirements for specific declarations on a case-by-case basis).
- The framework also shifts away from the concept of declarations needing to be filed with the regulatory body to the concept of declaration record-keeping and a requirement to submit these to a regulatory body, the superintendent, or to a person or entity in prescribed circumstances. This shift acknowledges how declarations may be utilized by different parties in different circumstances. Examples include compliance verification, information considered in an investigation or discipline hearing, or information considered to support statutory decision making.

How/when will regulations on declarations be developed?

- Development of regulations on declarations will not be pursued immediately. OSPG will work with government and with industry in evaluating when specific project-based declarations of competency and declarations of conflict of interest may be necessary.

- Broader consultation will also be carried out as part of the regulation-development process.

Fees

Why does the PGA need an annual fee authority?

- The OSPG is currently 100% government funded. Adding an authority to collect fees from Regulatory Bodies will provide flexibility for funding options to support long term operations of the office.

How will the annual fee be determined?

- Following a decision to develop regulations to enact the annual fee, OSPG will engage with regulatory bodies and with Treasury Board in determining the annual fee amount. This work will follow a principled approach to ensure that fees are predictable and reasonable, tied to service, equitable across regulatory bodies, and will support effective implementation of the PGA by all parties.
- A jurisdictional scan will also be carried out to understand how fees are levied on regulators in other jurisdictions.
- To avoid the perception of regulatory capture and ensure OSPG's regulatory independence will be maintained, the majority of OSPG's budget will remain publicly funded.

What will the annual fee be used for?

- Since shifting to the PGA from existing statutes, regulatory bodies have gained new services and supports from government through a dedicated office and a focus on standards of good regulation to raise the bar on professional governance.
- Accordingly, the annual fee will be used to fund the performance management oversight functions of OSPG.
- The new fee authority is balanced with requirements for the Superintendent to report annually to the legislature. OSPG has developed a matrix of its own performance measures, including a measure on financial effectiveness, which will be included in the annual report for 2021-2022.

Why do only PGA professions have to pay this annual fee?

- At present, the model of a dedicated oversight office and the services gained has only been implemented for the PGA professions.
- In the future, additional professions may be added to the PGA and be subject to the annual fee or other statutes could require professions in other sectors to fund performance management functions.
- A fee authority was also recommended following the review of the Health Professions Act.

What will be the impact of annual fees on registrants?

- If it proceeds, the annual fee would be levied on regulatory bodies who may adjust their annual fees required of registrants to cover the amount.
- The amount collected from each regulatory body could be proportionate to the number of registrants, such that as the number of regulatory bodies governed under the PGA goes up or the number of registrants goes up, the cost per registrant to contribute to the fee levy would decrease.

- It is anticipated that the amount per registrant will be nominal.

Traditional Knowledge

Why does the PGA need to provide certainty about reserved practices not impacting traditional knowledge practices?

- Section 3 of the *Declaration Act* requires government to ensure that the laws of British Columbia are consistent with the UN Declaration.
- It was determined that the PGA unintentionally gives contrary intention to Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) by reserving practices to certain individuals who are registered with a regulatory body.
- Reserved practices for biology, agrology and even forestry may appear to overlap with some Indigenous knowledge and practices that relate to activities including, but not limited to, species, habitat or crop management.
- The reserved professional practices in the PGA are not intended to limit traditional knowledge or practices or how they are relied upon.
- The amendment clarifies that reserving practices to certain qualified professionals does not interfere with practice of traditional knowledge and that no exception under the current s.54 of the PGA is required.
- This express inclusion limits regulatory bodies' ability to overextend in their protection of practice rights outside of the scope of the PGA and regulations.

Why is article 31 in particular reflected in the amendment?

- While Article 31 is reflected in the amendment, the section is inclusive of other relevant Articles of the UN Declaration.

Why doesn't section 8.1 of the *Interpretation Act* cover what is needed?

- Section 8.1 of the *Interpretation Act* is a universal non-derogation clause that responds to longstanding calls from Indigenous representatives to explicitly acknowledge and affirm these constitutional rights across the statute book, and to do so in a modern, positive formulation.
- The UN Declaration clause represents a small but important step forward in government's commitment to take all measures necessary to ensure the laws of British Columbia are consistent with the UN Declaration. This clause is not a substitute for the alignment of laws work that all ministries must undertake in accordance with Section 3 of the *Declaration Act*, but it provides an important tool for achieving consistency with the UN Declaration as we undertake the work of aligning BC laws with the UN Declaration in consultation and cooperation with Indigenous peoples.

Who did government consult with for this provision?

- The OSPG engaged with the First Nation Leadership Council and the Alliance of BC Treaty First Nations on this provision and no issues were raised.

Limited Liability Partnerships

Why do the amendments authorize registrants to practice as part of Limited liability partnerships?

- The *Partnership Act* was amended in 2004 to create the Limited Liability Partnership (LLP) structure for BC corporations. These amendments included a requirement that if a profession is to be allowed to use limited liability partnerships, then the act that creates the profession must explicitly state they may use LLPs.
- LLPs are currently allowable corporate structures for the professions of law and accounting. In the Hansard, it was acknowledged that the LLP structure may well be appropriate for other professions and could be enabled through relatively straightforward amendment to a profession's statute.
- This amendment provides that regulatory bodies under the PGA may, through bylaw, allow registrants to practice using the LLP corporate structure.

How do LLPs impact a registrant's accountability?

- The amendment to allow the LLP corporate structure does not provide any ability for a registrant to circumvent accountability when engaged in regulated or reserved practice.

Judicial Reviews

Why is there a new time limit on judicial reviews?

- The inclusion of a limitation period of 60 days was introduced to provide a limitation period that previously existed for appeal of decisions in the statutes of regulatory bodies before coming under the PGA. It is also consistent with limitation periods outlined in the *Administrative Tribunals Act*.
- The limitation on judicial reviews is related to statutory decisions by regulatory bodies only and is not applicable to statutory decisions made by the Superintendent.
- The provision provides an allowance for the court to extend the time for bringing an application for judicial review if satisfied of certain matters.

Designation Provisions

Why did the designation provisions need amending?

- The change in terminology to designate a profession rather than a regulatory body is required for the PGA to function as originally intended, and properly provide for inclusion of more regulatory bodies and professions in the future.
- The existing provisions contained in the PGA provided inconsistent language in the designation section, speaking interchangeably about designating a profession and designating a regulatory body, and as a result are not functional.
- The amendments to the designation provisions achieve clarity and correctly reference the designation of a profession while establishing a regulatory body to oversee that profession.

Why did the term change from investigation to assessment in Part 7?

- The change in terminology from investigation to assessment is to provide clarity in the PGA and distinguish the s. 10 authority for the superintendent to conduct investigations from the assessments for designation or amalgamation purposes.
- The change in terminology has no further implication to the processes outlined in Part 7.

Definitions

Why are the terms related to council being changed to board and associated terms?

- The terminology “Council”, “Councillor”, “President”, and “Vice president” is generally associated with a membership based organization rather than a regulatory body, which is contrary to the intention of the PGA.
- Amending the PGA with terminology more consistent with regulatory function is preferred by the OSPG and the regulatory bodies under the PGA, who have adopted the terms interchangeably already in practice.
- This amendment will be implemented at a later date through regulation once regulatory bodies have had the opportunity to plan for amending all related material referencing this amendment.

Certified Non-Registrant

Why are certified non-registrant being removed?

- This term was contemplated to regulate occupations tangential to the regulated professions; however, in exploring its use, OSPG and regulatory bodies concluded that these occupations are better regulated through the rights and limits that can be assigned to different classes of registrants.
- Removal of the term certified non-registrant will avoid confusion in the PGA and reduce redundancy.
- Removing an obsolete term that has not been utilized in the PGA will not affect the functioning of the PGA.

Regulation of Firms

Why was the definition of firm amended?

- The previous definition of firm created confusion when an organization’s employees were engaged in the regulated practice of a profession, but did not provide that service outside of the organization.
- The new definition makes it clear that a firm is considered to be engaged in providing services in respect of a regulated practice and is required to be a regulated firm regardless of whether the services are provided to a third-party client or are being provided internally by an employee to another employee, contractor or other individual acting on the firm's behalf.

Why do services provided internally within a firm require regulatory oversight?

- Engaging in a regulated or reserved practice within an organization fall into the scope of a firm that must be registered with a regulatory body, as the risks to public safety and the environment are still present.
- Regardless of the consumer of regulated professional services, the purpose of the PGA is to ensure that any advice or services in a regulated practice are provided in accordance with the public interest purpose of the PGA (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).

Administrative Matters

What constitutes an administrative matter that may be dealt with by suspension and cancellation of registration?

- Administrative matters address clear non-compliance areas that can be connected to ungovernability of registrants, such as:
 - Payment of fees
 - Completion of continuing education programs
 - Make or submit declarations
 - Participate in an audit or practice review
 - Other matter prescribed through regulation
- Administrative matters in this section are intended to be clear and not based on an interpretation of material. The authority generally relates to all instances where a registrant refuses to complete a clear requirement, whether it be paying a fee, submitting required education course completion or refusal to comply with requests in an audit or practice review.
- Regulatory bodies must have bylaws that provide for a procedurally fair process in exercising this authority as well as transparent steps for a registrant to be reinstated.
- This amendment is consistent with recent case law, (*Green v Law Society of Manitoba*), which outlined that these authorities met the reasonableness test.

Who will decide when to suspend or cancel a registrant's registration?

- The authority is provided to the council of a regulatory body to ensure registrants comply with essential requirements in professional governance without being required to administer the resource-intensive investigation and discipline process.
- Council may delegate the decision making in accordance with the authorities that exist in the PGA.

How will the process be administratively fair?

- The section sets out the administrative matters that may be dealt with by suspension or cancellation of registration but also requires bylaws setting out the process of administrative fairness in exercising these powers and the reinstatement requirements.

New Inspection Authority for Superintendent

Why is an express inspection authority needed in addition to the investigation authorities the superintendent already has?

- An inspection authority is needed in order to gather information to support the Superintendent's decision whether to open an investigation.
- OSPG has been relying on the *Interpretation Act* to date for this function but needed to formalize this authority in the Act.

False/Misleading Information Offense

Why was a new offence added regarding providing false/misleading information to a regulatory body in an application for registration?

- Recent examples from the natural resource and health sectors have surfaced the need for this offence which is a stronger deterrent than simply denying application for registration.
- The new offense provision makes allowances for someone who submits false or misleading information by accident, for example, they submit the wrong version of an application.

Duty to Report Exemption

What are the criteria for exemption from statutory duty to report?

- The statutory duty to report is required to protect public safety, including the environment. It is possible that a profession that does not cause a risk to the environment or the health and safety to a person or group of people is designated under the PGA and this exemption authority allows the principles of right touch regulation to be met.
- The exemption authority will apply to new professions designated under the PGA and discretion is given to LGiC in determining when to apply the exemption.

Consequential Amendments

Why were consequential amendments to other statutes repealed and replaced?

- The consequential amendments related to the Business Practices and Consumer Protection Act, the Interpretation Act, and the Water Sustainability Act were not brought into force along with the PGA on February 5, 2021.
- The amendments as originally drafted in PGA were not brought into force as it would have introduced an unintended substantive policy change rather than reflecting the status quo of these acts.
- The new amendments address the transition to the PGA and the desire to maintain the status quo.