

## Two Major Reports on Professional Regulation in British Columbia

by Erica Richler  
Summer 2018 - No. 228

Two major reports on professional regulation in British Columbia were recently released. They share a number of common themes and both are of interest to regulators generally.

The first report deals with the natural resources sector and is entitled: *Professional Reliance Review: The Final Report of the Review of Professional Reliance in Natural Resource Decision-Making*. The report was prepared for the government by Mark Haddock, a senior law instructor at the University of Victoria. The report reviews the “professional reliance” model of regulation “in which government sets the natural resource management objectives or results to be achieved, and professionals hired by proponents decide how those objectives or results will be met”. The report specifically reviews this model with respect to five professions: applied science technologists and technicians, professional foresters, agrologists, applied biologists and professional engineers and geoscientists.

A fascinating discussion in the report relates to the topic of the public interest and how that concept can have a different meaning in different contexts (e.g., health vs natural resources). The report depicted the public interest in the area of natural resources in the following diagram:



The report then went on to state:

When the full suite of public interests in natural resource management is considered, it becomes apparent that the public interest regulated by professional organizations is both different and narrower. Their primary role is to ensure that professionals are competent to practice, that they comply with laws and codes of ethics, and generally uphold the standards of the profession....

This does not suggest that there is no role for professional regulation of the broader public interest. The more that government does to make known its management objectives and desired results in law and policy, the more clarity there is for professional organizations and their members to determine what constitutes professional and ethical conduct in a given context.

### FOR MORE INFORMATION

This newsletter is published by Steinecke Maciura LeBlanc, a law firm practising in the field of professional regulation. If you are not receiving a copy and would like one, please contact: Richard Steinecke, Steinecke Maciura LeBlanc, 401 Bay Street, Suite 2308, P.O. Box 23, Toronto, ON M5H 2Y4, Tel: 416-626-6897 Fax: 416-593-7867, E-Mail: [rsteinecke@sml-law.com](mailto:rsteinecke@sml-law.com)

### WANT TO REPRINT AN ARTICLE

A number of readers have asked to reprint articles in their own newsletters. Our policy is that readers may reprint an article as long as credit is given to both the newsletter and the firm. Please send us a copy of the issue of the newsletter which contains a reprint from Grey Areas.

# Grey Areas

## A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

A major section of the report addressed improvements in the regulation of the professions. Observations and recommendations included the following:

- Governing Councils and committees should be chosen through a merits-based selection process, receive governance training and have a significant proportion of non-professional members.
- Membership approval should not be required for matters such as setting practice standards, codes of ethics, continuing professional development and annual fees.
- The authority of regulators should apply not only to individuals, but to corporations (entities) engaging in regulated activities.
- Labour mobility solely on the basis of registration elsewhere should be reconsidered, at least in the natural resources sector to ensure competence in local issues.
- Regulators and government have a shared responsibility to develop practice standards and guidelines. Standards and guidelines should be proactively developed on the basis of risk rather than reactively developed after a pattern of problems has emerged.
- “Best practices in professional governance are that CPD [continuous professional development] should be mandatory, with explicit requirements for continuing education to ensure that eligible courses and activities align with the objective of maintaining competency.”
- While audits and practice reviews have limitations (e.g., over the breadth of the profession covered and the depth of individual reviews), they are an important regulatory tool. There should be flexibility in criteria for triggering them and there should be “broad remedial powers to address issues of concern uncovered”.
- While noting the importance of Codes of Ethics, the report does not come to the conclusion as to whether they should be aspirational or prescriptive in nature.
- On complaints and discipline, the report said: “There are strongly held differences of opinion on whether disciplinary processes are working as expected. [Regulators] are confident that they are fulfilling their responsibilities diligently and proportionally, while many government employees, professionals, and members of the public do not have confidence that the system is working as intended.”
- The report identified as a limitation to the complaints and discipline system the reluctance of a number of groups to use the system (e.g., colleagues of practitioners, government agencies who felt little would result in reporting a concern). Regulators are encouraged to review the discussion on the complaints process, substantive decisions and transparency found in section 6.2.9 of the report. The report concludes “Effective disciplinary systems are a cornerstone of professional governance, but they also have limitations. They should not be expected to bear the full weight of government’s expectations for quality assurance in natural resource management and environmental protection.”
- The report argued against dual mandates for regulators stating: “Having a venue for advocacy is important for professionals, because they have unique insights into the

issues they face daily dealing with laws, codes and industry practices; however, someone other than the professional regulator should play this role.”

- Natural resources regulators should have one oversight body and should report through one Ministry.

The report on professional regulation is consistent with many other recent analyses of best regulatory practices.

The second report was prepared by the Professional Standards Authority (PSA) of the UK for the Association of Professional Engineers and Geoscientists of British Columbia (EGBC). The PSA had previously conducted a similar review for the College of Registered Nurses of British Columbia. The PSA reviewed legislation and governance documents of the EGBC, interviewed key people and compared the organization’s structure and activity against standards the PSA has used for other regulators. Some of the PSA’s observations and recommendations are as follows:

1. The dual role of the EGBC involved an inherent conflict of interest between its public protection role and its professional support functions. An example was the requirement for two-thirds approval by members for by-law changes. This requirement prevented the EGBC to introduce mandatory professional development requirements because the membership rejected the proposal twice.
2. The proportion of publicly appointed members of the Board should be increased from under 25% to 50%. This suggestion was based not just on policy reasons, but also to assist in

providing continuity where professional members had only two-year terms. The selection process should be rigorous including ensuring a good mix of skills and experience. The PSA also recommended that public members have a larger representation on regulatory committees.

3. The size of the Council should be reduced from 17 members to a more manageable size. This would require some reassignment of functions as currently committees could not be effectively composed with a smaller number of Board members.
4. The Code of Conduct for Board members should be mandatory (e.g., some Board members decline to take an Oath of Office despite its being expected). The PSA commended the EGBC’s efforts to obtain a statutory mechanism to remove Board members in appropriate cases.
5. The PSA’s own experience and research suggests that the context in which a practitioner works is a significant factor in their safe and ethical practice. The PSA commended the EGBC initiative to regulate entities (organizations / corporations) as well as individual practitioners.
6. The PSA also commended the EGBC on its introduction of risk management to its regulatory functions through its Audit Committee. However, the process is still in its early stages and the PSA identified areas where more work needs to be done (e.g., ensuring that there is a process for identifying emerging risks, have a process for addressing lower level risks, ensuring the incorporation of the risk register and risk management process into Board and committee work).

7. The PSA generally commended the EGBC for its transparency but recommended that Board minutes include not just the decisions, but also some details of the discussion. [As an aside, in some circumstances we recommend minutes only contain the decisions and not the discussion so as to mitigate some legal risks.]
8. While the PSA was generally positive about the EGBC's governance choices, there were a number of governance recommendations. For example, it recommends that Board members not serve on operational committees. Of particular interest is the comment in para. 4.73 of its report which reads:

It remains our view that voting on motions is an inappropriate form of organisational governance for a regulator. In our experience, modern practice in governance favours a board-like management structure. Decision-making in such structures usually proceeds by discussion and agreement on a course of action.

The PSA report on the EGBC tended to share a similar perspective to Mr. Haddock and tended to be more specific in its actual recommendations particularly in respect of Board / Council matters.

The Haddock report can be found at:

[https://engage.gov.bc.ca/app/uploads/sites/272/2018/06/Professional\\_Reliance\\_Review\\_Final\\_Report.pdf](https://engage.gov.bc.ca/app/uploads/sites/272/2018/06/Professional_Reliance_Review_Final_Report.pdf).

The PSA report can be found at:

<https://www.professionalstandards.org.uk/news-and-blog/latest-news/detail/2018/07/10/the-authority's-review-of-the-engineers-and-geoscientists-of-british-columbia-published>.