

## Regulatory Oversight Bodies Proliferating in British Columbia

by Erica Richler  
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Oversight bodies for professional regulators are well established in a number of jurisdictions around the world. Two prominent examples are the Office des professions du Québec and the Professional Standards Authority in the UK. Tentative steps in common law Canada include the Health Professions Regulatory Advisory Council of Ontario (HPRAC) and the Fairness Commissioners in some Canadian provinces. However, the activities of HPRAC have been scaled back in recent years to being almost exclusively a policy advisor to the government and Fairness Commissioners are limited to reviewing registration practices.

Following the 2016 report of the Independent Advisory Group, the Office of the Superintendent of Real Estate has been expanded to include oversight on both a policy level and for individual decisions by the Real Estate Council of British Columbia (RECBC). RECBC is no longer self-regulatory.

In the Summer 2018 issue of Grey Areas we reported on the report of Mark Haddock entitled: Professional Reliance Review: *The Final Report of the Review of Professional Reliance in Natural Resource Decision-Making*. That report has been implemented through Bill 49 creating the *Professional Governance Act (PGA)*. The *PGA* is not yet in force likely awaiting the required regulations to be put in place.

In short, the *PGA* establishes an overarching framework for the regulation of multiple professions.

At the current time, the *PGA* applies to five regulated professional bodies related to natural resources including those that regulate professional foresters, professional engineers and professional geoscientists. However, the *PGA* has the authority to designate additional regulatory bodies after conducting an investigation as to whether doing so is in the public interest. The Superintendent can also amalgamate two or more regulatory bodies.

The *PGA* has a number of similarities with the *Health Professions Act* of that province establishing (or continuing) regulators for different professions and providing for powers and procedures to address registration of practitioners, the handling of complaints and other concerns including through discipline, continuing competence provisions and other enforcement tools such as establishing restricted acts that unregistered persons cannot perform, providing for protected titles and creating offences and authorizing the obtaining of injunctions.

The most novel aspect of the *PGA* is the creation of the office of a Superintendent of Professional Governance operating under a single Ministry (the Attorney General). The Superintendent has the authority to:

- Monitor the performance of the regulatory bodies;
- Administer rosters of practitioners for practising professions that are not overseen by the Superintendent.
- Advise and submit reports to the Minister;
- Enforce compliance by regulatory bodies both informally (e.g., guidance and advice) and formally (e.g., conducting investigations and

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#### FOR MORE INFORMATION

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audits, issuing public directives for which compliance is mandatory);

- Appoint a public administrator to assume the role of the Council of the regulatory body;
- Impose administrative penalties, similar to fines, on persons other than the regulatory bodies for not complying with the legislation;
- Disallow or rewrite by-laws proposed by the Council of a regulatory body where the Superintendent does not believe that it is necessary and advisable.
- Require annual reports from the Council or a regulatory body including specifying the information to be contained in the report.
- Receive declarations of conflicts of interest from practitioners and issue guidance to regulatory bodies on their use.

The Councils of the regulatory bodies will consist of twelve members, eight elected by the profession and four public members. However, only candidates from the profession who have successfully completed the nomination process and meet the established criteria can be elected. One professional member, the past-president, does not vote.

Unlike the Professional Standards Authority in the UK, there does not appear to be any built-in mechanism for the Superintendent to review individual decisions (e.g., complaints, discipline). However, the Superintendent may use its audit authority to review individual cases as part of an audit or investigation into a general or systemic matter.

The *PGA* also eliminates the concept of ‘members’ and much that flows from that relationship. It replaces it with ‘registrants’. Several of the regulators will face significant changes to their mandates, which had

traditionally included member advocacy but which will become limited to and focused only on professional regulation. For some, the work they currently do to support members, through branches and committee work, will need to find a new home, likely in the form of a professional association that is distinct from the regulator.

Darrel Pink, recently retired as Executive Director of the Nova Scotia Barristers’ Society, currently practising in association with Steinecke Maciura LeBlanc and frequent commentator on professional regulation, said this about the *PGA*:

Though the government’s stated intentions are limited to one sector, the Act gives significant authority to the Superintendent of Professional Governance. The authority given to the Superintendent is unique in Canada. Though there are other models where there is oversight of regulators (such as Québec) the power given to a single person who can make decisions without hearing from the affected regulators is exceptional. Most of the powers of the office are exercised with no hearing process before decisions are made.

So unilaterally the Superintendent could extend the reach of the Act to another sector. If the government is dissatisfied – on any basis – with how one or a number of regulated professions are acting, the Superintendent could, with the stroke of a pen, bring them under the Act with all the requirements of it.

That may be a very remote prospect, but it is a circumstance which no regulator in British Columbia can ignore. It will dramatically change the way regulators carry on as they

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will now have one eye over their shoulder wondering if what they do may raise the ire of government, an outcome which strikes at the heart of independent regulation. I expect many regulators will be forced to strengthen their government relations portfolios in order to address the nature and extent of their dealings with the government of the day.

The *PGA* can be found at:

<https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/3rd-session/bills/third-reading/gov49-3>