

**MINISTRY OF ENVIRONMENT AND
CLIMATE CHANGE STRATEGY
DECISION NOTE**

August 14, 2018

File: 280-20

CLIFF/tracking #:328962/11189

PREPARED FOR: Honourable George Heyman, Minister of Environment and Climate Change Strategy

ISSUE: Regulation of firms under the proposed professional governance legislation and the inclusion of public organizations under the definition of “firms”.

BACKGROUND:

On June 28th, the government released the final report on the independent professional reliance (PR) review, commissioned by government last fall. The purpose of the review of Professional Reliance in the Natural Resource Sector is to ensure the highest professional, technical and ethical standards are being applied to resource development in British Columbia.

The second recommendation in the report calls for the government to standardize 10 elements of professional governance through umbrella legislation, two of which are:

- enabling professional organizations to regulate firms as well as individuals; and
- improving the reporting duties of professionals who become aware of unprofessional conduct, and extending those duties to firms and employers.

DISCUSSION:

Presently, the affected professional associations only have jurisdiction over individual members. Enabling these associations to regulate firms or corporate structures that employ Qualified Professionals (QPs) is an emerging development in professional governance due to the recognition that employers can significantly influence the work environment and decisions of QPs.

Further to information gathered during the engagement phase of the PR review, information was collected and considerable pressure was 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 are not regulated, individuals have little support or recourse in these situations.

Given that ‘employer’ interests may sometimes be inconsistent with professional ethics, individual practitioners may find themselves in a situation where their duty to their employer conflicts with their duty to the profession and the public interest. Regulation of firms is intended to address this potential conflict by making employers corporately responsible for the professional work that they carry out. The entity, whether a person, partnership, corporation or other association of persons, would be bound by legislation, the Code of Ethics, and be subject to the associations’ disciplinary processes.

Potential benefits from the regulation of firms include:

- provides opportunity to address issues that have implications for public protection;
- attempt to balance private/business prerogative (ie. Profit) with public interest;
- increase public and government confidence by strengthening the current professional reliance/self-regulatory system; and
- increase awareness and support from employers for the responsibilities of professionals.

Implications of firm regulation could include:

- increased costs and effort to address obligations/compliance — especially for small companies/sole-practitioners and organizations practising in multiple jurisdictions;
- (depending on definition of “firm”) could discourage outsourcing of internal professional expertise;
- could lead to loss of clients or future opportunities;
- (depending on definition of “firm”) could direct professionals away from corporate practice into sole proprietorships;
- could dilute individual professional responsibility; and
- could be ineffectively enforced, especially by small regulators with limited resources, resulting in public disenchantment with system.

Four types of entities could be subject to regulation:

- private sector entities employing QPs in BC to provide professional services to external clients (e.g. Stantec, Golder, etc.);
- private sector entities employing QPs in BC for professional services internal to the operations of the entity (e.g. a forestry or mining company);
- private sector entities consisting of a single unincorporated sole practitioner¹; and
- public sector entities (e.g. BC government, BC Hydro).

Past attempts to regulate firms in BC have faltered over the scope of the regulation and whether it included all public and private organizations, or only those firms employing QPs to provide professional services to external clients. The final report on professional reliance only acknowledges this question.

The 1988 collapse of a supermarket roof at Station Square Mall in Burnaby and the 2014 Mount Polley Tailings Storage Facility breach both led to calls for regulation of engineering firms and in a 2016 report by Engineers and Geoscientists of BC (EGBC), regulating corporate practice was recommended to:

- enhance protection of the public interest and the environment by improving the practice of engineering and geoscience;
- increase government and public confidence in the self-regulatory system administered by EGBC on behalf of the professions; and
- provide value to organizations and the professionals they employ.

¹ An Engineers & Geoscientists BC task force specifically recommended that unincorporated sole practitioners not be subject to corporate regulation as they are already subject to regulation individually.

Regulation of corporate practice in the engineering profession is common across Canada and the US. In a 2017 jurisdictional scan, every province and territory in Canada regulates engineering and geoscience organizations under a mandatory legislated authority except BC and Quebec. Further, every state in the US northwest, with the exception of Oregon, regulates engineering organizations.

However, most Canadian jurisdictions exempt public sector organizations from corporate regulation. Exceptions are Alberta (if the public sector organization is incorporated), Yukon, Government of Northwest Territories, and Nunavut. The Territorial governments also subject Crown corporations and public utilities to their corporate regulatory models.

The respective legislation in Northwest Territories, Nunavut, and Yukon all require firms (partnerships, corporations, and associations of persons) practicing engineering and/or geoscience to have a Permit to Practice. The respective engineering and geoscientist associations in those jurisdictions take the position this includes the public sector (including the territorial and federal governments). Accordingly, many municipalities, power corporations and utilities have acquired the necessary Permits. However notable exceptions include the NWT and Yukon governments – although QP employees of those governments and federal departments are registered individually.

The five affected associations have expressed a preference that public sector entities be included as regulated firms/entities. They feel that it is important for there to be an equal playing field, which includes government (including federal government) being compelled to follow the rules. They stated exemptions can compromise best practices and expose hypocrisy. The associations also recognize that regulating firms will have resourcing impacts on those same associations.

Within BC, other professions have identified the need to regulate firms and are taking steps in this direction. The *Legal Profession Act* now enables Law Society regulation of law firms, and in December 2017 the Law Society decided to implement a pilot to implement those provisions.

OPTIONS:

s.12,s.13

s.12,s.13

/

DECISION & SIGNATURE

DATE SIGNED

Contact:

Jennifer McGuire
Assistant Deputy Minister
Ministry of Environment
778-698-8521

Alternate Contact:

Leon Gaber
Director, Professional
Reliance Review
Ministry of Environment
778-698-4850

Prepared by:

Bob Brown
Policy Analyst
Ministry of Environment
778-698-4023

Reviewed by	Initials	Date
DM	MZ	Aug. 21/18
DMO	KK	Aug. 20/18
ADM	JLM	Aug. 20/18
Dir./Mgr.	LG	Aug. 16/18
Author	BB	Aug. 14/18