

# Thomas M. Lutes



**Barrister & Solicitor\***  
**Suite 702 - 402 West Pender Street**  
**Vancouver, BC V6B 1T6**

---

## MEMORANDUM

**To:** Dave Crossley, Executive Director  
Sara Muir, RRP MCIP  
Planning Institute of British Columbia

**From:** Thomas M. Lutes

**Date:** October 17, 2023

**Re:** Planning Institute of British Columbia (“PIBC”) – *Professional Governance Act* (“PGA” or the “Act”) Transition Overview

**This memorandum is intended to provide both a broad overview of the PGA and a more detailed analysis of issues and options related to possible transition by the PIBC to this legislation.**

---

### 1.0 THE PGA: A BRIEF, SELECTIVE HISTORY

1.1 Passed in late 2018 and partially brought into force in 2019, the PGA can be seen as response legislation to specific natural resource sector incidents and broader concerns about professional regulation in BC – notably the ‘professional reliance’ model.<sup>1</sup>

#### The Professional Reliance Review

1.2 Public policy concerns related to these specific and more general issues were first addressed by an independent report commissioned by the Ministry of Environment and Climate Change Strategy, published in June 2018 and informally referred to as the “Professional Reliance Review”.<sup>1</sup> The specific incidents included the Mount

---

<sup>1</sup> Sometimes also referred to as the “Haddock Report” to reflect the primary author, Mark Haddock, seconded from the BC Forest Practices Board to undertake the work. The document’s full title is

Polley Mine tailings dam failure in August 2014, and the Shawnigan Lake Contaminated Landfill controversy beginning in 2013. Both of these high-profile environmental matters have their own long history of litigation and professional conduct investigations and discipline.<sup>2</sup> Another specific concern raised in the Professional Reliance Review report was the nitrate contamination of the Hullcar Aquifer in the Township of Spallumcheen/Splats' in First Nation area.

- 1.3 Broader natural resource/public policy concerns raised in the report included those identified by the Ombudsperson in relation to riparian areas regulations, and the Forest Practices Board and Auditor General in relation to decision-making and authority in forest operations and the mining sector.
- 1.4 The Professional Reliance Review Final Report is an extensive, 135-page document in which 121 specific recommendations are made. Most of the recommendations are targeted at specific environmental regulations, codes, and laws, or the management of natural resource sectors such as hazardous waste, municipal wastewater, etc. However, the most impactful recommendations (arguably, the only ones acted upon with policy intent) were the first two of the 121:
  - 1) Establish an Independent Office of Professional Regulation and Oversight to (among many tasks) administer professional legislation, address professional regulators' governance and best practices issues, amalgamate professional organizations where desirable; and
  - 2) Legislate Critical Elements of Professional Governance, notably merit-based appointments to boards/councils, regulation of firms (businesses), eliminate advocacy or dual-mandate professional bodies, and improve and standardize codes of ethics and public interest duties of registrants and organizations.

These first two recommendations that were acted upon with considerable pace and resource allocation by the province.

---

“Professional Reliance Review: The Final Report of the Review of Professional Reliance in Natural Resource Decision-Making”.  
[https://professionalgovernancebc.ca/app/uploads/sites/498/2019/05/Professional\\_Reliance\\_Review\\_Final\\_Report.pdf](https://professionalgovernancebc.ca/app/uploads/sites/498/2019/05/Professional_Reliance_Review_Final_Report.pdf)

<sup>2</sup> Engineers and Geoscientists BC (“EGBC”) brought disciplinary proceedings against three professional engineers for their conduct in relation to the Mount Polley Mine incident. All three were disciplined, with two resigning and the third suspended for two months (among other penalties/costs). EGBC investigated their registrants’ roles in relation to the Shawnigan Lake matter but concluded no reasonable grounds to proceed to the disciplinary stage. Summary reports can be reviewed here:

<https://www.egbc.ca/News/News-Releases/Mount-Polley-Investigation-Concludes-Three-Engine>

<https://www.egbc.ca/getmedia/6609d03b-5246-4742-a396-54839509f744/Legal-Backgrounder.pdf.aspx>

## The Province Responds: Immediate Legislation

- 1.5 The provincial government's response to the Professional Reliance Review was prompt and substantive: The report was published in June 2018, and by November of that year, the lengthiest professional governance legislation ever enacted in British Columbia had received Royal Assent.<sup>3</sup>
- 1.6 The story of the period between June and November 2018 is one of perspective. For those five professions identified in the reliance review and draft bill (engineers and geoscientists, professional foresters, biologists, agrologists, and registrants of the ASTTBC), the months were consumed with consultation sessions, reviewing draft legislation, and dealing with registrant, staff, and interested party concerns. Political and public messaging efforts varied, but included attempts to overturn the province's direction and what has been labelled a 'doomsday video' from one regulator. However, within a relatively short period, the five regulatory bodies whose previous legislation was repealed were operating under the PGA through a 'superintended' model.
- 1.7 Consistent with the first recommendation in the reliance report, the PGA established the Office of the Superintendent of Professional Governance, initially housed within the Ministry of the Attorney General, and as of the date of this document, within the Ministry of Post-Secondary Education and Future Skills.
- 1.8 The superintended model of professional regulation is not entirely new in Canada nor in BC: Quebec has been operating under a form of superintended professions since the 1970s, and in BC, both realtors and a broad swath of the 'financial services' industry are superintended (now together, under the BC Financial Services Authority). The most extensive professional regulation legislation in Canada, the *BC Health Professions and Occupations Act*, SBC 2022 c. 43 (not yet in force), would also establish a superintendent's office (at Section 435 of 645 ...), in addition to a centralized discipline tribunal. This legislation would propel the integration of professional regulation with government ever closer.

## Brief Legislative History

- 1.9 The PGA was brought partially into force in 2018, with most sections coming online in February 2021. The most recent amendments were made in February 2023 to both allow for 'designation' of the architectural profession and refine the designation language in the PGA for inclusion of future professions.

---

<sup>3</sup> That 'honour' would be eclipsed by the recent *BC Health Professions and Occupations Act* (formerly Bill 36-2022), which would become the most extensive professional regulation law in Canada if and when in force.

- 1.10 A series of regulations were successively passed, including General Regulations and an ‘Election Stagger’ Transitional Regulation to address the governance complexity of the number, election process, and term length differences among the five original professions. Finally, regulations for each profession have been passed (most recently, with the inclusion of the architectural profession, the *Architects Regulation* in February 2023). These profession-specific regulations are critical to the working of the PGA and address:
- Definitions of the “practice” of each profession;
  - Prescribing a “regulated practice” for each profession;
  - Establishing the “reserved practice” for each profession;
  - Setting “reserved titles” for each profession; and
  - Providing authorization, for two of the six current PGA professions, to register firms as registrants.

#### PGA and OSPG Current Status and Immediate Future

- 1.11 The PGA was amended most recently in June 2023 to correct errors made in the *Architects Regulation* several months previously, and to make terminology changes such as “Council” to “Board” and “President” to “Chair”, etc.
- 1.12 As of October 2023, there are six professions designated, and thus six regulatory bodies recognized in the PGA. As the PIBC is aware, in 2022 the OSPG conducted an investigation or ‘assessment’ of the BC Society of Landscape Architects’ application for designation of that profession under the PGA. While no designation has yet been made, the BSCLA actively participates in various OSPG meetings with the other six regulatory bodies, and is in the process of PGA transition with a possible 2024 designation. The investigation/assessment and overall designation process are discussed below.<sup>4</sup>
- 1.13 The OSPG’s initial Superintendent, Paul Craven, has remained with the Attorney General’s Ministry as an Assistant Deputy Minister, Justice Services. The OSPG is now housed within the Ministry of Post-Secondary Education and Future Skills and is led by (Acting) Superintendent Kate Haines and a staff of eight to 10.

---

<sup>4</sup> The OSPG has also conducted an assessment of the home inspection profession, triggered by a request from the Deputy Solicitor General. Although it concludes with a recommendation supporting designation of the profession, not definitive further steps have been taken. The intentions report is found here: <https://professionalgovernancebc.ca/app/uploads/sites/498/2022/08/Home-Inspectors-Investigation-Intentions-Paper-v5-corrected-clean-20220824.pdf>

## 2.0 PGA OVERVIEW: CORE ELEMENTS

- 2.1 The PGA is divided into 11 “Parts”, then into Divisions, Sections, and subsections as is standard with BC legislation. It includes three “schedules”<sup>5</sup> and seven current regulations: the ‘general regulations’ and one regulation for each of the six regulatory bodies. This quick summary reviews the legislation’s constituent Parts only, with a brief commentary:

### Part 1: Definitions and Application (Sections 1-3)

- 2.2 In addition to standard definitions expected for such legislation, including “registrant”, “citation” and “superintendent”, the PGA establishes definitions for “conduct unbecoming a registrant”, “professional misconduct” and “incompetent” performance of duties.

### Part 2: Superintendent of Professional Governance (Sections 4-20)

- 2.3 This Part establishes the OSPG and sets out the Superintendent’s duties, responsibilities, and broad powers. Importantly, the extensive duties and responsibilities section (7(2)) is prefaced with a sentence stating that the individual is “primarily responsible for the oversight of systemic or general matters relating to professional governance ...”. This underscores that the role is not ground level, and the Superintendent and office of the OSPG are not intended (nor empowered) to interfere in specific regulatory matters, such as individual licensing or registration issues or a professional conduct investigation. In this respect it differs markedly from the much more hands-on co-regulation contemplated by the *Health Professions and Occupations Act*.
- 2.4 The Superintendent’s ‘broad powers’ are similarly calibrated at systemic or thematic interventions, including conducting ‘investigations or audits’ into any aspect of the administration or operation of a regulatory body or the state of practice of a profession. Formal and informal guidance and policy statements by the OSPG have been consistent: In the absence of clear, systemic public interest concerns about a regulator’s performance, the audit and investigations powers of the office are directed at measuring and improving standards of good regulation. It is important to note, however, that as with many other modern professional regulation statutes, the government has built into the PGA the clear authority to replace a governing Board

---

<sup>5</sup> These are: 1) Specific Definitions and Information for Regulatory Bodies (e.g., what a “professional forester” means); 2) Regulatory Bodies with Exclusivity for Reserved Titles (all six regulators); and 3) Regulatory Bodies with Right to Practice in Reserve Practice (all six regulators, although ASTTBC does not currently have a reserved practice.)

with an administrator – presumably in answer to multiple incidents in BC and across Canada of self-regulation governance dysfunction.

### Part 3: Regulatory Bodies (Sections 21-41)

- 2.5 This Part establishes the general duty of all PGA regulators: to serve and protect the public interest. A lengthy list of specific responsibilities follows, including standard regulatory expectations such as governing registrants in accordance with the law, regulations, and bylaws, establishing registration requirements, and setting and enforcing standards of professional ethics and competency.
- 2.6 This Part also provides the governance template for all PGA regulators, including the composition of the Board (seven registrant board members (elected), and four lay board members (appointed)); term limits; and merit-based selection principles for registrant board members. The merit-based criteria and process are set in both the PGA and the General Regulations, and were one of the first parts of the PGA to be ‘switched on’ by the government, underscoring their policy importance.
- 2.7 Part 3 also establishes the role and duties of the registrar for each regulator. The Part provides authority for the Board to establish committees in addition to the five ‘statutory committees’ set up throughout the *Act*: the nomination committee, credentials committee, audit and practice review committee, investigation and discipline committee. This Part also sets the requirement that all committees – including any new committees set up by the Board – must include at least one lay (public) member, who must be present at every meeting or proceeding.<sup>6</sup>
- 2.8 The concept of “general meetings” of registrants is intact in the PGA, but in 2022 the OSPG did remove by amendment sections in the original legislation that allowed for registrant referenda. A recent amendment to the PGA added a section (22.1) by which the government may make regulations setting and imposing requirements for payment by regulators of an “annual fee”. The provision does not confirm whether such fee, if imposed, would be directed to the operations of the Office of the Superintendent of Professional Governance, as one might expect, or be considered general revenue. This section created some debate and controversy prior to enactment, but the OSPG has informally played down both the short-term likelihood of such regulations being developed, and the amount of such fee if imposed, which would likely be nominal and tied to registrant numbers. As noted below, operationalizing the PGA can be a resource-heavy exercise, and most PGA regulators

---

<sup>6</sup> This effectively means that no committee decision is effective in the absence of at least one lay committee member. Some regulators have ensured at least two lay committee members to try to avoid this form of quorum paralysis issue.

have seen moderate to substantial registrant fee increases to reflection transition to the new co-regulation scheme.

- 2.9 Finally, Part 3 provides authority for the Board to make bylaws, and for the filing of bylaws with the OSPG and the ability for government disallowance. Other sections in other Parts also address bylaw authority, including some mandatory bylaw requirements.

#### Part 4: Registrants (Sections 42-50.1)

- 2.10 These sections allow for creation in bylaws of different registrant categories, restricted and specialized practice, and creation of the “credentials committee”. Various sections provide bylaw authority to address admission and reinstatement of registrants and “trainees” (professionals in training, interns, etc.).
- 2.11 This Part also provides the mandatory structure for “reviews on the record”, which are effectively appeals of applications of various kinds – primarily in relation to admission and reinstatement. Other sections address certificates of registration, bylaw authority for use of any “seal” by registrants, and an important bylaw authorization section for fees and special assessments. Finally, one of the most recent amendments to the PGA provides authority to create bylaws for cancellation or suspension of registration for various ‘administrative breaches’, such as non-payment of fees, failure to satisfy continuing education requirements or non-cooperation with such processes as audits and practice reviews. (This provision allows regulators to bypass the complaint and discipline process for many routine administrative lapses by registrants and was much sought after by the PGA regulators.)

#### Part 5: Reserved Titles and Reserved Practice (Sections 51-55.1)

- 2.12 This Part establishes prohibitions for both the use of title and the practice of a “reserved practice” by any person not entitled to the title or scope. There are narrow exceptions in these sections for title and practice, including a specific exception for otherwise protected practices when a person is exercising an Indigenous right.

#### Part 6: Protection of the Public Interest With Respect to Professional Governance and Conduct (Sections 56-83.1)

- 2.13 This weighty Part is one of the most significant in the PGA and includes sections that:
- Make the professional standards and conduct/discipline applicable to “former registrants” for the period of time they were acting as a registrant

(in other words, resignation does not allow for escape from professional conduct processes);

- Mandate Boards to make bylaws setting standards for “professional and ethical conduct” and “standards of competence”, continuing education programs for individual and firm registrants (if applicable) and for supporting Indigenous reconciliation efforts;
- Mandate that each regulator’s bylaws must include a code of ethics that must include at least the 12 “ethical principles” itemized in Section 57(2) (see later discussion);
- Create a statutory “duty to report” (Section 58) for registrants whenever such person has “reasonable and probable grounds to believe that” another registrant’s practice poses a risk of significant harm to the environment or health or safety of the public;
- Allow for the making of regulations requiring registrants to make “competence declarations” and “conflict of interest declarations”<sup>7</sup>;
- Authorize the Board to establish an “audit and practice review committee” (one of five authorized statutory committees) and provides many of the mechanics and remedies of such audits and reviews;
- Authorizes creation of an “investigation committee” and sets some of the mechanics for complaints and investigations;
- Provides a statutory process for an “extraordinary action to protect the public” allowing for limits, conditions or suspension of practice in certain circumstances, during an investigation or prior to a hearing;
- Authorizes appointment of “investigators” and assigns broad powers to investigate, including attending premises and retrieving registrant records;
- Allows for application to court for a search and seizure order;
- Establishes several resolution pathways for complaint investigations, including “reprimand or remedial action by consent”, a “consent order” prior to a hearing, an “alternative complaint resolution” and discipline hearings, including the penalty orders that can be made;

---

<sup>7</sup> The sections relating to these “declarations” was amended from their initial wording, which would have required all registrants to make such declarations prior to providing services. As of 2023, no regulations or other declaration requirements have yet to be enacted, but the requirement is an ongoing discussion among regulators and the OSPG. This somewhat unusual regulatory measure is clearly associated with the ‘natural resource’ regulatory failures identified in the Professional Reliance Review and is one of many examples of the PGA’s provisions linked to that origin story rather than at the broader scope of regulators now under or anticipated to come under the PGA.

- Provisions in relation to the powers of the “discipline committee” and procedural details such as witnesses, costs, and a time limit on judicial reviews of discipline matters and the reviews on the record in relation to registration applications; and
- Broad requirements for making bylaws for making information publicly available about discipline hearings and consent orders.

#### Part 7: Applicable Regulatory Bodies (Sections 84-98)

- 2.14 This Part ‘continues’ the status of the first five regulators under the PGA through their now-repealed legislation, including their bylaws, council<sup>8</sup>, registrar, and registrants. It addresses the various ways by which new professions/regulators can be “designated” to come under the PGA, and an extensive mechanism for “amalgamations” of two or more regulatory bodies (both processes discussed below).

#### Part 8: Enforcement of Act (Sections 99-108)

- 2.15 This Part begins in dramatic style, with a provision empowering the Superintendent to impose an “administrative penalty” on any person (other than a regulatory body) for contravening the Act or regulations or failing to comply with an order under the Act. (This power is subject to regulations, which have not been enacted and appear not yet to be contemplated.)
- 2.16 The Part also established offences for contravening various sections of the PGA, and sets up a ‘no reprisal’ protection for registrants who have reported under the duty to report obligation, brought or been named in a complaint, or give evidence in any PGA proceeding. It includes injunction authority for the superintendent or regulators in relation to contravening the Act, regulations, or bylaws, and provides for a finding of contempt by a court in relation to mis-use of protected titles or incursions into reserved practice (often called ‘unauthorized practice’ or ‘illegal practice’ when it relates to breaches by non-registrants of a profession).

#### Part 9: General (Sections 109-116)

- 2.17 A grab-bag of varied but important sections, this Part includes:
- Strong confidentiality mandates and protections for persons exercising a power or performing duties under the PGA, with some exceptions;

---

<sup>8</sup> As of the date of this memo, the PGA has not yet been updated online to reflect changes in terminology brought about by order-in-council earlier this year, including terminology changes such as replacing “council” with “board” throughout.

- Confidentiality obligations for the audit and practice review committee;
- Various legal protections including personal liability protection for the superintendent, boards and others acting for regulators (including employees) for actions and decisions made in good faith; and
- A detailed section (115) on the important, practical regulatory matter of how documents are delivered or served (standardizing an issue that is otherwise found in various ways in regulators’ bylaws).

Part 10: Regulations (Sections 117-122)

2.18 In this Part, the PGA authorizes the government to make a myriad of regulations in relation to all the other Parts of the statute. As a statutory device, it effectively ensures that virtually any aspect of governance and regulation not already addressed by statute or existing regulations can be made into law. As one example, it allows for regulations “prescribing criteria for amalgamations” of regulatory bodies. It also allows for “ministerial” regulation-making in certain areas (normally regulations require Lieutenant Governor in Council – cabinet – approval) such as additional information that regulators must include on their registers. This allows for speedier, more responsive regulation-making in areas that are generally non-controversial or administrative.

Part 11: Transitional and Related Provisions, Repeals and Related Consequential Amendments (Sections 123-158)

2.19 This last Part provides technical but important transitional sections to ensure continuation of governance, operations, and registrant status. One of the most important provisions provides for continuation of authority of officers and committees, such as existing investigation and discipline committees. This is vital in order to preserve the integrity and fairness of ongoing registration and licensing (admissions) and complaint and discipline matters through a transition.

2.20 The balance of this Part is an itemization of the repealed regulation legislation and consequential amendments to a variety of other BC statutes.

**3.0 THE OFFICE OF THE SUPERINTENDENT OF PROFESSIONAL GOVERNANCE**

Coming under the PGA: “Designation”

3.1 The PGA uses the term “designation” to refer to what could be described as ‘approving’ a profession for regulation under the Act.

3.2 There are three streams for designation:

- 1) by formal application by a “professional regulator” or “professional organization”, which is initiated by completion of a form and payment of a fee (if applicable);
- 2) by the Superintendent, of their own accord, conducting an assessment; or
- 3) by designation of a profession by regulation (thereby bypassing the Superintendent’s designation process – this was the case for the first and current six regulatory bodies). The Superintendent can refuse an application for designation without assessment or conduct an assessment.

However the Superintendent’s assessment designation process begins, if it is pursued, the process is as follows:

- Public notice is given in the BC Gazette or OSPG website of the intention to assess;
- The Superintendent undertakes the assessment through various means: seeking information from the regulator, examining individuals such as directors or officers of the regulator, seeking advice from other regulators, all the way to holding more formal hearings into the assessment;
- Once an assessment is complete, the Superintendent “must determine whether it would be in the public interest to designate a profession under the Act, considering the following” (Section 87(1)):
  - (a) the degree of risk to the environment and to the health or safety of the public from incompetent, unethical or impaired practice of the profession;
  - (b) the degree of supervision that may be necessary or desirable for a person practising the profession;
  - (c) the degree of supervision that a person practising the profession receives or is likely to receive with respect to that practice;
  - (d) the educational programs that may exist in British Columbia or elsewhere for the proper education and training of persons with respect to the practice of the profession and the contents of those programs;
  - (e) any information obtained during an assessment under section 86 (1), if applicable;
  - (f) any criteria prescribed under section 88 (c).

- 3.3 After conducting an assessment, the Superintendent is required to inform the minister of the outcome. The minister may then recommend to the Lieutenant Governor in Council (the provincial cabinet) that a profession be designated.
- 3.4 By whatever means a designation occurs, regulations are required for that profession, which would include the name of the regulatory body, one or more protected titles for registrants and various provisions related to services that may be provided by registrants or under the supervision of registrants. The regulation powers are broad and allow the government to make very specific regulations for particular professions, down to limiting the type of bylaws that would otherwise be allowed by the PGA and the ability to recognize two or more professions within a single designation (Section 89).

### Amalgamations

- 3.5 It is worth mentioning that the PGA provides extensive provision (more than seven pages of the Act) for “amalgamation” of two or more regulatory bodies. Readers may be aware that amalgamation is a recent and ongoing public policy decision in relation to BC’s health colleges, which are being compressed from the more than 20 extant colleges a number of years ago, to six in the near future. This process can be undertaken by request of regulatory bodies or upon the Superintendent’s initiative. If amalgamation occurs – again, by way of specific regulation – the Act covers a wide swath of practical matters, including governance of the amalgamated entity and how property, records, and legal matters are addressed, and the impact on registrants of the former entities.
- 3.6 No amalgamations are currently under way by application or assessment by the Superintendent, but the breadth of law developed in the PGA, and the influence of the health professions, suggests amalgamation is a viable and perhaps likely outcome in the coming years.<sup>9</sup>

### Designation Decision-Making

- 3.7 As a general statement, the decision whether to designate a profession under the PGA is largely a measure of the impact of the decisions and services by registrants of that profession on the public and environment. Put another way, a designation decision should be based on the potential harm to the public interest and environment that incompetent or unethical practice may cause. This is an elastic test and varies widely across professions – even those currently under the PGA, or on the process of

---

<sup>9</sup> In one of Harry Cayton’s reports (Inquiry into the ...College of Dental Surgeons of BC and the Health Professions Act, December 2018), the author notes that “fewer, large colleges with resources adequate to do their job should be the objective. This should also reduce fees to registrants”.

designation. What is clear is that the size of a profession (in terms of registrant base, economic or political influence, etc.) matters less under the PGA than do metrics related to risk and harm.

- 3.8 The PIBC or any regulator considering designation should review the two current “Designation Intentions Papers” from the OSPG – both publicly available on the OSPG website.<sup>10</sup> These establish a template and process for designations including, in the case of landscape architecture, a table of “Potential Risks of the Practice of Landscape Architecture” with three headings: Public Health and Safety/Environmental Health and Safety; Public Trust; and Economic Risk. The ‘body of knowledge’ of each profession is also considered, as is the capacity of the regulator (and the profession) to carry out its PGA duties. In the case of landscape architecture, the OSPG expressed some concerns about the regulator’s capacity, but noted that the BCSLA provided the OSPG with a ‘business case’ outlining changes it would undertake in relation to governance.
- 3.9 The ‘intentions papers’ provide valuable guideposts to the OSPG’s analysis in relation to designation, and arguably go farther than the Section 87 considerations in the PGA. As an example, the BCSLA paper spends considerable time addressing the principles of ‘right touch regulation’, which continues to hold sway with the province and among most regulatory bodies.<sup>11</sup>

#### **4.0 PRACTICAL MATTERS: THE PIBC AND PGA**

##### General

- 4.1 The BC regulatory ‘community’, notably regulatory staff, boards, councils, administrators, and legal and policy advisors, are perhaps more unified in their opinion about the future of professional regulation than ever before.
- 4.2 There are few, if any, sacred professions untouched by the past five to eight years of strong government intervention into how the professions manage themselves. The legal profession, perhaps the last bastion of “self-regulation” and independence from

---

<sup>10</sup> <https://professionalgovernancebc.ca/category/notices/>

<sup>11</sup> Right touch regulation is a shorthand phrase in professional regulation for the concepts associated with Harry Cayton, formerly with the UK’s Professional Standards Authority for Health and Social Care. His influence has been particularly strong in BC. “Right touch” refers to a series of principles (e.g., proportionate intervention, consistent rules and standards, accountable decision-making) and practical tools for regulators (e.g., identify the problem before solutions, quantify risks of regulation, etc). See this report for a deep dive into “Harry’s World”:  
[https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015.pdf?sfvrsn=eaf77f20\\_20](https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015.pdf?sfvrsn=eaf77f20_20)

government, has been audited (in BC) by Harry Cayton, criticized by the province, and will almost certainly be required to address governance shortcomings and incorporate a broader swath of legal service providers, including paralegals and notaries.

- 4.3 The health professions have undergone a series of reports, reviews, and now new legislation – Bill 36, or the *Health Professions and Occupations Act* – which is the longest, most complicated and government-intensive piece of professional legislation in Canada. Many health colleges have already amalgamated, and in the coming year, the remaining eleven, disparate colleges (ranging from psychologists to occupational therapists to dieticians and traditional Chinese medicine practitioners) will be welded into two very similar regulatory bodies. The very notion of “college” and similar nomenclature is also very much under review, with government more and more cleaving towards ‘administrative’ or technical terms and way from words and concepts that may be criticized as elitist or opaque to the public.
- 4.4 The PGA is part of this trend. Its concepts, notably the superintendent model, aggregating professions that may appear disparate, and providing for more uniform governance, admissions, and discipline processes, are no longer novel.
- 4.5 What appears clear is that the gravitational pull of ‘umbrella legislation’ such as the PGA and the *Health Professions and Occupations Act* is both irresistible (for those regulators forced or invited into the fold) and attractive (to many other professions operating under outdated legislation, or right-to-title legislation or the *Societies Act*). There is a growing sense that individual, so-called independent regulators and professions must ‘seek the protection’ of broader legislation, which invariably in BC now means co-regulation or shared regulation with government. However, this view is not universal, and moving to new legislation is complicated. The balance of this letter addresses some of the challenges and opportunities for the PIBC and the BC professional planning profession in considering whether to seek designation or continue in its current model.

### Governance

- 4.6 As noted above, the PGA prescribes a seven-registrant, four public appointment board. While elections are still in place for registrant board members (unlike for the health professions under the pending HPOA, which will also establish 50-50 boards), a fairly rigorous merit-based<sup>12</sup> nomination process must be established. This requires, at minimum, establishing a nomination committee (a statutory ‘must-have’) with

---

<sup>12</sup> The specific selection principles set out by regulation are: merit (having regard to skills and experiences of a nominee that best meet the governance needs); and integrity (reviewing information about the nominee, including relevant information about conduct and competency)

terms of reference and processes that reflect the requirements set out in detail in the PGA and the *General Regulations*. The regulations are granular in relation to process and procedures, prescribing both mechanical steps (e.g., creation of a list of qualified nominees, making a reasonable attempt to include “at least one more nominee than the number required” to fill vacancies) and procedural principles (e.g., transparency in advertising for appointments or elections). Only those registrant nominees who are selected by the nomination committee are allowed to run for the board.

- 4.7 As with many other PGA requirements, one advantage available to the PIBC and other regulators considering designation is the public availability of PGA governance/nomination committee documents such as terms of reference. The wheel does not require re-invention, but the election and nomination process must be contemplated in terms of committee recruitment, documentation, and support.

### Bylaws

- 4.8 A suite of PGA-compliant bylaws is arguably the most substantive ‘deliverable’ required for PGA designation. Unlike some other professional regulation statutes (e.g., the HPOA), the PGA’s bylaw authorization language is generally permissive: Boards “may” make bylaws rather than “must” make them, in most cases. This gives each regulator a reasonable amount of latitude in most bylaw areas. None of the six current set of bylaws under the PGA is identical, and the variation across them is remarkably broad, particularly in relation to registration (admission) criteria and processes, professional conduct and discipline details, and administrative aspects such as fees and finances. Some of the current bylaws are spare, running roughly 30 pages, and others span close to 200 pages, including schedules.
- 4.9 The bylaw development process is iterative, with the OSPG taking a very active and (in my experience) helpful role in reviewing, advising, recommending, and ultimately approving bylaws as is the Superintendent’s right. However, each regulator must undertake its own review and drafting and revision process: There is no set of ‘model bylaws’ directed or recommended by the OSPG, unlike some statutes such as the *Canada Not-for-profit Corporations Act* or indeed as available under the *BC Societies Act Regulations*.
- 4.10 While drafting latitude is broad, one of the few mandated bylaw elements is among the most important: Section 57 of the PGA requires each board to make bylaws that establish:
- Standards of professional and ethical conduct for registrants;

- Standards of competence for registrants;<sup>13</sup>
- Aspect of practice that registrants may or must not delegate or authorize a non-registrant to perform, including under supervision or not;
- A program to assist registrants with professional or ethical issues (known to most regulators as ‘practice advice’ or similar approach);
- Continuing Education programs/requirements for individual registrants;
- Separately, continuing education programs/requirements to support reconciliation with BC’s Indigenous peoples; and
- Continuing education programs to be provided by registrants that are firms. (Note that this and many other PGA provisions only apply to those regulators who register and regulate firms – a decision that must be approved by the OSPG and enacted in the specific regulation for that profession. The PIBC will want to give due consideration to ‘firm regulation’ as it undertakes deeper PGA transition analysis.)

4.11 Perhaps even more importantly as a practical matter for registrants, subsection (2) of Section 57 goes farther with professional standards, and states that the mandatory bylaws required above “must include a code of ethics that must include at least the following principles” (copied from the Act):

- (2) The bylaws made under subsection (1) must include a code of ethics that must include at least the following ethical principles:
- (a) hold 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;
  - (b) practice only in those fields where training and ability make the registrant professionally competent;
  - (c) have regard for the common law and any applicable enactments, federal enactments or enactments of another province;
  - (d) have regard for applicable standards, policies, plans and practices established by the government or the regulatory body;
  - (e) maintain competence in relevant specializations, including advances in the regulated practice and relevant science;

---

<sup>13</sup> As with most similar legislation, the PGA uses various language in and around ‘professional standards’. What is clear is an expectation that standards (whether identified as conduct, ethics, competency or otherwise) are established and are clearly identified as such, including consequences for non-compliance.

- (f) provide accurate information in respect of qualifications and experience;
- (g) provide professional opinions that distinguish between facts, assumptions and opinions;
- (h) avoid situations and circumstances in which there is a real or perceived conflict of interest and ensure conflicts of interest, including perceived conflicts of interest, are properly disclosed and necessary measures are taken so a conflict of interest does not bias decisions or recommendations;
- (i) report to the regulatory body and, if applicable, any other appropriate authority, if the registrant, on reasonable and probable grounds, believes that the continued practice of a regulated practice by another registrant or other person, including firms and employers, might pose a risk of significant harm to the environment or to the health or safety of the public or a group of people;
- (j) present clearly to employers and clients the possible consequences if professional decisions or judgments are overruled or disregarded;
- (k) clearly identify each registrant who has contributed professional work, including recommendations, reports, statements or opinions;
- (l) undertake work and documentation with due diligence and in accordance with any guidance developed to standardize professional documentation for the applicable profession.

4.12 While many of these principles are already embedded or ‘inferable’ in most regulators’ standards, including the PIBC’s Code of Ethics (e.g., conflicts of interest), the fact that this language must be effectively replicated in bylaws has proven challenging in several ways.

4.13 First, existing language directed at the same or similar principles, such as conflicts of interest, must either be replaced by the PGA language, or supplemented/coordinated in a way that is complementary but understandable and enforceable. Second, some of the principles have no direct application, or only a tangential application, to the practice of a particular profession. The reference in subsection (e) to competency in “relevant specializations” collides with regulation of those professions that do not designate specializations.<sup>14</sup>

---

<sup>14</sup> Specializations are often either deeply ingrained in a profession (e.g., medical and engineering) or considered the antithesis of a professional’s scope of practice (law, architecture, etc.). Even in those professions with specializations, there is much debate and open conflict about the regulation of specializations.

- 4.14 Oblique application may include the reference to the specific formatting or organization of “professional opinions”: they must distinguish between facts, assumption and opinion. This principle raises questions about what is considered a professional opinion in a particular profession, versus an exercise of judgment, routine decision, supervisory work, etc. It also imports a very legalistic organization or document format to whatever service it applies to, as the ‘facts, assumptions and opinion’ distinction is clearly directly drawn from the expectations for expert witness evidence in the civil litigation context.
- 4.15 These specific bylaw issues are brought to the PIBC’s attention not because they are at all insurmountable, but because unlike some of the other more administrative changes that are internal to governance and operations, they apply ‘outward’ to the registrants, and of course have a practical impact on how the profession is practiced and how complaints, investigations, practice resources, and overall enforcement may need to adapt. They require, at least, a deeper level of analysis and consultation or feedback with practitioners.
- 4.16 While I have not conducted a detailed comparison of PIBC Bylaws with PGA requirements as part of this overview, one advantage the PIBC has over other regulators currently in the PGA, or considering transition, is the strength of your current bylaws, including the Code of Ethics.
- 4.17 A PGA “re-write” would require reorganization and the drafting of many new sections or parts to the bylaws, but the PIBC has both a solid bylaw base, and a culture of updating and adhering to its bylaws, that has been a deficiency for other regulators. That is, an organization that recognizes bylaws as foundational will tend to adapt to PGA requirements – even those that are at some remove from current bylaws and practices – more easily than organizations that have poorly-developed or rarely-updated bylaws.
- 4.18 There are several bylaw-related issues worth raising for further consideration:
- 1) Admissions standards for the key registrant categories (primarily PIBC Bylaw 2.13) will require a higher level of detail, probably best developed through a Schedule in the Bylaws for various registration categories).
  - 2) The connection to the Canadian Institute of Planners and reciprocity agreements for admission requirements in the bylaws, and in other aspects of regulation, will require some consideration from several perspectives. These include meeting the “Standards of Good Regulation” established for registration by the OSPG, one of which is copied below:



OSPG STANDARDS	PERFORMANCE INDICATORS
<p><b>12. Regulatory body has a registration process that is transparent, objective, impartial and fair</b></p>	<p>Regulatory body demonstrates the standard by:</p> <ul style="list-style-type: none"> <li>• Having a registration process, requirements and forms that are easily accessible and understandable.</li> <li>• Having guidance for decision-makers (credentials committee, staff and board) that supports consistency and fairness of decision-making, including being aware of and avoiding biases when assessing applications for registration.</li> <li>• Evaluating applications against registration requirements in a consistent, fair and equitable way and documenting rationale for decisions.</li> </ul> <p>Having a timely process for review of registration complaints/ decisions that is clearly outlined and consistently applied.</p>

- 3) Online ‘register’ requirements are very detailed and complex in the PGA and regulations. The impact of the bylaw requirements and practical cost and maintenance of the register have been a hurdle for some PGA regulators, notably in relation to ensuring all PGA information requirements are met for each registrant, and that such information is current, including handling the mandatory limits/conditions and disciplinary record requirements.<sup>15</sup>
- 4) The registrants’ permitted use of reserved titles (such as, in the case of the PIBC, “Registered Professional Planner” and “RPP”) is expected to be described in the bylaws. However, the actual legal strength of reserved titles is found in the PGA itself (broadly), and in more detail in the particular regulation for each designated profession. For example, the Forest Professionals Regulation includes this provision for the professional forestry profession:

### Reserved title

- 3 For the purposes of section 51 (1) (a) [*exclusivity of reserved titles*] of the Act, the following titles are reserved for the exclusive use of registrants:

(a) "professional forester";

<sup>15</sup> In addition to the PGA and regulation requirements for the register of each profession, the OSPG has three standards of good regulation applicable to the register, and a document entitled “OSPG Guidance: The Register” that provides an overview and specific ‘policy direction’ for the public register for each profession.

<https://professionalgovernancebc.ca/app/uploads/sites/498/2023/07/Register-Guidance-20230413.pdf>

- (b)"forester in training";
- (c)"registered forest technologist";
- (d)"trainee forest technologist";
- (e)"accredited timber cruiser";
- (f)"accredited timber evaluator";
- (g)"silvicultural accredited surveyor".

#### Regulated and Reserved Practice Concepts

- 4.19 As noted above, the PGA establishes the concepts of “regulated practice” and “reserved practice”. A shorthand distinction is that regulated practice comprises all the services a professional undertakes in practice (including, for example office administration, business communication, and work that may be done by others, whether professionals or non-registrants). Reserved practice, on the other hand, is the narrower, exclusive scope of practice that only a professional from a particular designated profession is permitted to undertake, with some exceptions (e.g., overlap with another profession’s reserved practice or specifically-itemized aspects that amount to a “shared” reserved practice). The OSPG publishes a practice rights guidance document that attempts to explain regulated and reserved practice, with some helpful graphics.
- 4.20 Without engaging too deeply with concerns some regulators and other interested parties have with the “reserved practice” model, the following observations may be helpful:
- A profession that is not able to articulate a public interest “reserved practice” may not meet the designation criteria for the PGA (see comments above in relation to the designation process);
  - The establishment of a reserved practice in regulations, more than perhaps any other aspect of designation, is undertaken with high attention and broad, deep consultation expectations by the OSPG. All existing PGA professions are consulted, as are other interested parties in multiple ways prior to any reserved practice language moving to the legislative drafting stage – at which point, the regulators effectively lose control of how reserved practice will be articulated in BC law. This suggests that some care be taken in anticipation of advancing a reserved practice case.

## Regulation of Firms

4.21 One of the more challenging aspects of PGA regulation is the handling of firm or business regulation, particularly when registrants may also be public sector employees practising the profession, including the reserved practice. This is common in the engineering, forestry and biology professions in particular, and would appear to apply as an issue for the planning profession. There are at least three issues to consider:

- 1) How to ensure that private sector firms (e.g., planning consultants) are regulated consistent with the PGA, as firms are not currently registered or regulated as separate entities by the PIBC;
- 2) In the case of RPPs working for government, whether and how to address the fact that the PGA defines “firm” to include “government registrants”, which are those ministries or agencies prescribed in regulation by the cabinet.

Currently, only the engineering profession has the “government registrant” complication. In the PGA *General Regulations*, “government registrant” is defined to include, for the purposes of EGBC only, the ministries responsible for parts of the *Transportation Act*, *Forest and Range Practice Act* and *Forest Act*, as well as agencies that include BC Hydro and Power Authority, the Oil and Gas Commission, and the Workers’ Compensation Board. While I am aware of the breadth of RPP participation in local government, I am not sure if planners working for the province would also be practising the profession in a manner requiring consideration of this very complicated, novel, and arguably unworkable concept. As noted on the OSPG’s website:

- Including government ministries in such regulation is novel and has its own challenges, due to the size and complexity of these bodies and the complex regulatory environment they already operate in. Many of the ministries and agencies that would be logical to include have been named and once the details of this process are worked out, the others will likely be added.

- 3) Whether the nature of RPP practice in the private sector lends itself to firms being regulated by more than one PGA regulatory body. Often referred to as joint firm regulation or multi-disciplinary practice, some consideration should be given to how and whether to regulate such entities. Other important issues include ownership structure of firms, whether to allow limited liability partnerships, and identifying a responsible registrant or similar designation for the purposes of regulating firms efficiently.

## National Regulation Issues: Canadian Institute of Planners and Yukon

- 4.22 Two modest issues to consider as part of a possible PGA designation are the relationship with the national body (the CIP), and the current Yukon membership jurisdiction. The PIBC would have to ensure that its admission and continuing education requirements meet the PGA and bylaw expectations. The relationship with the CIP should be reviewed from all perspectives, including the advocacy ‘prohibition’ discussed in more detail below. The national insurance coverage is one example of a program that may require review.
- 4.23 Yukon membership could certainly continue, as with other regulators who register and regulate (or co-regulate) individuals world-wide, but any statements that the PIBC is a professional planning regulator for Yukon would have to be revised as the PGA has no specific Yukon jurisdiction.

### Advocacy

- 4.24 As discussed at some length in an earlier presentation<sup>16</sup>, the PGA’s duties and responsibilities are public protection-focussed. The legislation was in part intended to eliminate the conflict between regulation and advocacy and the ‘dual-mandate’ or ‘association’ model of professional regulation. Section 22(3) of the PGA expressly limits advocacy:

(3) A regulatory body may only act in an advocacy role in accordance with this Act and in accordance with rules, conditions or limits prescribed by the Lieutenant Governor in Council.

- 4.25 While no such rules, conditions, or limits have yet been prescribed, the OSPG has issued a guidance document on advocacy<sup>17</sup>. The heart of the guidance is an admonition for regulators to avoid any activity that could be perceived to be putting the interests of registrants ahead of the public interest. The practical aspect of the guidance is an evaluation framework for regulators which proposes linking any activity to one of its statutory duties and responsibilities in Section 22 of the PGA. Regulators are encouraged to consult with the OSPG if in doubt whether an activity or initiative is questionable. Boards transitioning to the PGA are encouraged to review current activities prior to legislative shift, and to undertake periodic program reviews thereafter.

---

<sup>16</sup> See Schedule 1 PPT: *Professional Governance Act: Past, Present, Future ...*

<sup>17</sup> <https://professionalgovernancebc.ca/app/uploads/sites/498/2023/07/Advocacy-Framework-Web-20230728.pdf>

- 4.26 While there is little specific direction or veto on any one activity, awards programs have been criticized informally, and many regulators have revised their programs to eliminate ‘excellence’ or other judgments of professional quality of practice or sense of registrant/firm favouritism or influence.

#### Labour Mobility and Credentials Recognition

- 4.27 One current public policy issue that the current PGA regulators (among others) are dealing with on a weekly basis is the government’s labour mobility and foreign-credentialling policies and laws. The general policy move to reduce barriers to professional entry (largely triggered by the health care sector) is being felt across the professions.
- 4.28 In some cases, longstanding entrance standards, including those set nationally, are under review and may, with new legislation in the near future, be out of compliance with BC law. The PIBC should ensure it is keeping a watching brief on such developments, in part because the OSPG is housed in the very Ministry that is actively undertaking legislative change on this issue (the Ministry of Post-Secondary Education and Future Skills, with Minister of State for Workforce Development Andrew Mercier taking the driver’s seat).
- 4.29 Government consultation has been deep and wide on this issue, and may already have included the PIBC. While no legislation has yet been introduced, it is widely believed that this government will bring a bill forward reasonably soon to remove credentialling barriers across the BC workforce, including and in particular in relation to internationally-trained professionals.

## **5.0 GENERAL OBSERVATIONS**

- 5.1 This overview has touched on key aspects for the PIBC to consider in relation to possible PGA designation. I conclude with some broad observations that I would be pleased to discuss in more detail.

#### The PIBC Today

- 5.2 As a general statement, the PIBC is in a much stronger position for PGA designation than almost all the current regulatory bodies under the PGA were before transition. With more than 1500 registrants (“member” being a synonym the PGA tries to expunge from the lexicon), the PIBC has a larger registrant base than about half of the current PGA regulators. This is important in several respects: it generally allows for a stronger public protection case than smaller professions; it allows for broader engagement and participation in regulation – governance, committees, surveys, etc.);

and, to speak financially frankly, means there is a larger ‘tax base’ when it comes to funding the regulator’s PGA-enhanced operations.

- 5.3 In terms of ‘member-based’ bodies, the PIBC in my view spans the classic dual-mandate identity that the PGA disavows. However, the PIBC, unlike some of the regulators who were required to transition, actually undertakes important regulatory duties with gravity, including complaint investigations and discipline and continuing education.
- 5.4 The organization already operates under a policy governance model with a relatively small council, has experienced professional staff engaged in regulatory operations, and appears to benefit from an active and interested volunteer base of registrants. These strengths are far from universal across the professions. As a final plaudit, the planning profession in BC takes continuing education seriously. As noted above, such requirements are mandated by the PGA and unlike some others under the Act’s umbrella, the concept is embraced by both the regulator and the planning profession as a baseline expectation.

#### Costs

- 5.5 Transition to the PGA carries real costs, both in relation to analyzing transition options and engaging in the early conversation with government, and in the actual ‘standing up’ of new structures and operational and governance requirements. Some of the smaller regulatory bodies under the PGA have had to fairly dramatically increase fees from the nominal amounts that had been charged when they were, arguably, more member-based associations than professional regulatory bodies.
- 5.6 One aspect of cost is the amount of time needed to tend to the PGA meetings, document review, and reporting obligations that the OSPG has established. While not intentionally onerous and generally beneficial, this new ‘connective tissue’ with government is new to each organization and requires planning and, in some cases, adequate budgeting of time and human resources.
- 5.7 A less quantifiable cost, but one that has been articulated by various registrants, staff, and boards across the PGA community as real, is the cost to the identity of the organization and profession. There is no doubt that transition to the PGA is at least moderately transformative in terms of identity and a narrowing, precision approach to regulation. One challenge some professions may face is being able to continue to engage with registrants, post-transition, notably to encourage volunteer participation on the board and committees.
- 5.8 Another cost – perhaps best described as a risk – is that of not transitioning. There is a growing sense that individual, standalone professional regulators are likely to be

few and far between in the coming years, although much may depend on the government of the day. It is possible that a change in government could bring a return to regulatory ‘stasis’ across the profession, with the result that existing legislation (including the PGA and *Societies Act*) remains intact until government priorities change.

- 5.9 However, we have seen that even in Alberta, where self-regulation has not come under the same degree of scrutiny and reform as BC, the government of the day introduced its own *Professional Governance Act* (since off the order paper) that went even further than BC’s in many respects, including aggregating more than 20 professions and occupations in one law (including the Alberta Professional Planners Institute).

#### Transition: The Positive

- 5.10 PGA designation does carry benefits, some felt immediately, some less prone to quantification but nonetheless genuine. One is that the government cannot fail to pay attention to a PGA profession’s concerns. Whereas many regulators have had to bend the knee over the years to seek a Minister’s time in relation to a public policy issue or legislative renewal, the PGA regulators benefit from direct, same-day communication with the Superintendent and the OSPG staff.
- 5.11 Monthly meetings of the entire PGA regulatory community are supplemented by one-on-ones with the Superintendent and less frequent but scheduled topical task meetings, such as those related to international credentialling, the ‘duty to report’ obligation, and firm regulation. Each meeting, planned and directed by the OSPG, generally includes an update on government activities relevant to regulation of the professions, including legislative or policy initiatives that are otherwise not available outside government. This is invaluable information and the ‘new deal’ with government under the PGA has generally proven to be positive – if time-consuming in terms of meetings.
- 5.12 The second, at least equal benefit of PGA designation is the collaboration and cross-professional learning that comes with regular meetings and shared issue influence with six or seven other regulators. While occasional regulatory conflicts between professions do arise, regulation of professions is a uniform, principles-based activity. It is fair to say that all of the regulatory bodies under the PGA, even the larger or more mature, have benefitted from collaboration with colleagues.
- 5.13 As a general and further positive observation, the OSPG has acted in its first few years as more of a partner than an overseer. There have been few, if any surprises in terms of policy direction, and the office has taken the approach of early and lengthy

consultation with the regulators prior to issuing guidance and other documents that would affect professional practice and/or the operations of regulatory bodies.

The ‘Threshold Issue’

- 5.14 My primary observation, verging on a recommendation, is in relation to the public protection duty and related responsibilities of PGA regulators - the mandate of each body. Some professions and occupations struggle to ‘make the case’ that the work their registrants perform is impactful enough to require admission and practice standards and oversight and accountability. This is, at its core, the threshold issue for designation under the PGA. If designation is under serious consideration, time and care should be given to producing documents that support the public protection mandate and meet the threshold. The OSPG’s own guidance documents (including the designation reports in relation to landscape architects and home inspectors) are invaluable for this evaluation.
- 5.15 It is also critical to note that the establishment of a statutory reserved practice creates the ‘mandatory boundaries’ for registration with a regulator. If the boundary is narrowly-drawn, many individuals currently registered may find they are no longer either interested in or required to maintain registration. A too broadly-drawn scope attracts the attention of government and other industry players who may advance the case that the regulator has ‘put out of business’ individuals who were previously free to work and might not meet the admissions standards for the new scope.
- 5.16 The economic impact of reduced registration has been felt acutely in at least one current PGA regulator, which has experienced and continues to experience substantial registrant attrition and revenue reduction as they await a reserved practice embedded in law.
- 5.17 I look forward to discussing any aspect of the PGA with you and your colleagues, and would be happy to supplement this overview, particularly if I have missed or under-examined an area of interest or concern.

Sincerely,

A handwritten signature in black ink, appearing to read 'T M Lutes', is centered on the page. The signature is fluid and cursive.

Thomas M. Lutes  
TML/ms

---

ENDNOTE:

<sup>i</sup> As the author of the Professional Reliance Review notes, the concept of ‘professional reliance’ is essentially a regulatory model where government sets objectives, but professionals (often hired by proponents) determine how objectives are achieved. The following paragraphs from page 25 of the report highlights some of the competing issues in the professional reliance model in the natural resources sector:

*Professional reliance has been embraced as a modus operandi in government for about 15 years, so it is well ensconced in the public servant’s psyche. Some newer employees might not have working experience of other modes of administration. But as noted by the earlier quote from the chief inspector of mines, professional reliance is not well understood or defined. It therefore competes with other expectations about the proper role of government as the owner and regulator of resources. Public servants expect that their education and training is valued too, and that they have a duty to apply it in the public interest.*

*One of the reasons that professional reliance lacks clarity of meaning is that there are many different regulations across the natural resource sector, and there is no single, consistent approach to the discretion of statutory decision makers. Most statutes provide for discretion, so agency culture is relevant to how it is exercised. For some there are no issues; they are doing what they have always done, and professional reliance just means that government relies on professionals to prepare and submit certain plans, designs or reports. For others, professional reliance is interpreted as political direction to defer to the professional’s opinion.*