



ASSOCIATION OF CONSULTING  
ENGINEERING COMPANIES  
BRITISH COLUMBIA

**Provincial Government Review of the Professional  
Reliance Model –  
Submission from  
Association of Consulting Engineering Companies of BC**

**January 2018**

## ***Provincial Government Review of the Professional Reliance Model –***

### ***Submission from the Association of Consulting Engineering Companies of BC***

#### ***Executive Summary***

1. ACEC-BC endorses the view of the Professional Reliance Cross-Ministry Working Group, that while government “retains a responsibility to verify compliance with [statutory] requirements,... [Qualified professionals] play an important role in providing information, measurements, professional opinion and procedural oversight on which compliance determinations can be made.”
2. ACEC-BC supports the recommendation of the Engineers and Geoscientists of BC Task Force on Corporate Regulation **that the following types of engineering and geoscience organizations be subject to corporate regulation:**
  - Consulting firms providing professional engineering or geoscience services (including incorporated sole practitioners).
  - Engineering and geoscience testing and assessment companies (e.g., entities that carry out material testing for the purposes of certification of material properties in order to meet required standards/specifications or the confirmation of ore grades/mineral properties).
  - Private sector organizations that carry out the “practice of professional engineering or geoscience” for internal or external purposes (e.g., may include private utilities, resource companies, process industries, design-build organizations, construction companies, etc.)
  - Public sector organizations that carry out the “practice of professional engineering or geoscience” for internal or external purposes (e.g., provincial government agencies, regional and local governments, crown corporations, public utilities, institutions, etc.).
3. ACEC-BC endorses the concept that all entities that employ professional engineers and geoscientists on staff to procure engineering and geoscience services should be required to engage in best practices and use Qualification Based Selection as well as accepted industry standard contracts and agreements.
4. In the opinion of ACEC-BC, the use of professional reliance works best where the client retaining the services of Qualified Professional is a “knowledgeable owner”.

## **Background**

The provincial government is reviewing the professional reliance model. ACEC-BC suggests that the feedback from the industry should form the foundation for shaping how forests, minerals, metals, petroleum, fish and other natural resources are managed.

The provincial review will make recommendations on:

1. Whether professional associations that oversee qualified professionals (QPs) employ best practices to protect the public interest;
2. Whether government oversight of professional associations is adequate; and
3. Conditions governing the involvement of QPs in government's resource management decisions and the appropriate level of government oversight to assure the public their interests are protected.

Professional reliance takes different forms across the natural resources sector, but in general terms is a regulatory model 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. Generally, government oversight focuses on monitoring, compliance and enforcement, rather than reviewing and approving plans or project designs. In doing so, government relies on the professionalism of the qualified professional, the professional and ethical codes they are required to follow, and oversight by the professional associations to which they belong.

The review began with an audit of five professional associations, including Engineers and Geoscientists BC and the associations governing agronomy, applied science technology, applied biology, and professional forestry. The aim of the audit was to assess the enabling legislation and performance of professional associations that govern QPs. Engineers and Geoscientists BC participated in the audit on November 20, and provided a significant amount of information on the ways in which it utilizes proactive and reactive regulatory programs so that engineering and geoscience is conducted safely and using best practices.

This submission outlines the position of the Association of Consulting Engineering Companies of BC, the industry organization that represents the business interests of over 80 firms that provide consulting services to private and public sector clients. Collectively the members of ACEC-BC employ over 9,000 people, 3,000 of which are professional engineers.

## ***Professional Reliance***

In October 2012, the **Professional Reliance Cross-Ministry Working Group** produced a draft discussion paper on the use of QEPs for "compliance verification and enforcement." While emphasizing that government "retains a responsibility to verify compliance with [statutory] requirements," the paper concluded that: [Qualified professionals] play an important role in providing information, measurements, professional opinion and procedural oversight on which compliance determinations can be made."

In a 2015 **Environmental Law Centre Report: *Professional Reliance and Environmental Regulation in British Columbia*** it was noted that “once it is determined that the threshold criteria are met and some degree of professional reliance is appropriate for a given field or activity, the question arises as to the best practices for incorporating it into regulation. The Cross-Ministry Working Group has identified three important criteria that apply at a high level:

**Competency:** A professional’s competence has to be backed by appropriate education, training, and experience.

**Clarity of expectations:** Clear guidance is needed as to the objectives, standards, guidelines and protocols that are relevant to the work professionals undertake. Clear expectations also support quality assurance, and standards, guidelines and protocols can be used to monitor or audit performance.

**Accountability:** Clear mechanisms for accountability are needed, with consequences if performance is unacceptable. This can be achieved through complaint resolution, compliance and enforcement actions by government, monitoring, or independent audits that assesses individual competence in a given field.”

### **Recommendations**

#### **a) Corporate Regulation**

In 2016, Engineers and Geoscientists of BC (APEGBC at the time) established a Task Force to look into “corporate regulation”. As noted in its **Advisory Task Force on Corporate Practice, Phase 1 Recommendations Report** (April 12, 2017) the fundamental issue underlying corporate regulation is that there are two main influences on the quality of professional practice – *the influence of the individual practicing professional and the influence of the organization within which that individual carries out their practice.*

The Task Force made the following recommendation:

**That the following types of engineering and geoscience organizations be subject to corporate regulation:**

- Consulting firms providing professional engineering or geoscience services (including incorporated sole practitioners).
- Engineering and geoscience testing and assessment companies (e.g., entities that carry out material testing for the purposes of certification of material properties in order to meet required standards/specification or the confirmation of ore grades/mineral properties).
- Private sector organizations that carry out the “practice of professional engineering or geoscience” for internal or external purposes (e.g., may include private utilities, resource companies, process industries, design-build organizations, construction companies, etc.)
- Public sector organizations that carry out the “practice of professional engineering or geoscience” for internal or external purposes (e.g., provincial government agencies, regional and local governments, crown corporations, public utilities, institutions, etc.).

***ACEC-BC supports this recommendation.***

In its presentation to the EGBC Task Force, ACEC-BC noted that “the price of public safety is immeasurable, and as such, the enhanced benefits of defined and widely accepted corporate

regulations in this industry represent a win-win solution for both private and public interests, setting a new standard for organizations as is the precedent for individual professionals, and increasing government confidence in the industry, at every level.”

#### **b) Adoption of Qualification Based Selection**

It is the recommendation of ACEC-BC that ***EGBC require all entities that employ professional engineers and geoscientists to procure engineering and geoscience services to using best industry practices and use Qualification Based Selection as well as accepted industry standard contracts and agreements.***

Through the experiences of our members, ACEC-BC has learned that in most cases an inherent problem lies in the manner by which Qualified Professionals are selected. As noted in the 2006 document, ***Selecting a Professional Consultant Version 1.0*** published by the Federation of Canadian Municipalities and National Research Council, “the procurement of goods and services in Canada is often obtained through a public tendering process. The product or service is described in detail in a tender document and sealed bids are invited. The lowest bid normally receives the contract.”

Selecting a Qualified Professional on the basis of lowest bid can result in one or all of three possible outcomes:

1. Selection of an individual without the most appropriate qualifications. As noted in the Environmental Law Centre’s report, “The sector is very broad and requires diverse expertise. This is evident if one simply considers the variety of professionals required to carry out a competent environmental assessment for a major project, or the curriculum in university and post-secondary training programs for environmental studies, engineering, geoscience, biology, agronomy and forestry. Even within a single profession there is a broad range of specialization, and membership in the profession does not entail competence in every aspect of the profession.”
2. The scope of work is unclear, and the qualified professional has not included all factors in the fees to undertake the full job, thus leading to shortcuts.
3. Agreeing to fees that do not address the full scope can lead to undue pressure by the client.

***Selecting a Professional Consultant*** goes on to note that “this approach {of selecting on the basis of lowest fees} is not appropriate for professional consulting services because it is frequently not possible to provide sufficient detail about the services required to ensure that all firms are bidding on equal footing. This is because part of the undertaking may be an exploration for the most appropriate solution. The most appropriate solution is not necessarily the cheapest design solution.”

The report states that the recommended best practice is a competitive qualifications-based process that is principle-based and meets the following objectives: ■ selecting a consultant who is best qualified for a specific project, and ■ providing a client the benefit of the consultant’s skill, knowledge and experience **to jointly develop a scope of services** that considers all opportunities for adding value.

The recommended method encourages clients to view consultants as “trusted advisors” who share their priorities and interest in achieving the best outcomes for their project. The best practice diverges from price-based selection practices in that it frees consultants to demonstrate how they can add maximum value to a client’s project rather than focusing on how to minimize their fees to ‘win’ an assignment.

The method most often cited is qualifications-based selection (QBS). QBS facilitates the selection of consultant services based on qualifications, including technical competence, availability, methodology, local knowledge, long-term relationship, past performance and other factors of relevance to a specific project; and the subsequent determination of a fair and reasonable price, all relative to the scope and needs of the project.

The QBS methodology encourages the development of a close working relationship with the client, which in turn ensures open exploration of project issues, needs and opportunities, all leading to the maximization of value and minimization of the risk of unforeseen costs for the owner. Using the QBS methodology, the Client jointly develops the scope of services with the highest-ranked firm as determined through the technical evaluation process. This methodology:

- Allows the consultant, through its proposal, to identify opportunities that may add value to the client's project, rather than seeking ways to minimize the fee.
- Affords the opportunity for the client and the consultant **to develop the scope of services jointly**, thereby ensuring that all opportunities for adding value to the assignment are provided for and properly accounted for within the budget.

The final fee or price responds directly to the **jointly developed and agreed to scope of services**, greatly minimizing future disagreements or misinterpretations.

### c) Client as "Knowledgeable Owner"

The use of professional reliance works best where the client retaining the services of Qualified Professional is a "knowledgeable owner".

The report from the Environmental Law Centre defines "knowledgeable owner":

"Unlike a lay person who lacks any knowledge or expertise about the professional services being provided, a knowledgeable owner is one who is informed and has a level of competence and sophistication, such as the following:

1. The in-house expertise to know how to do the work;
2. Knowledge of the qualifications required for individuals who are capable of doing the work, and be able to assess whether an individual has the qualifications;
3. Knowledge of the right questions to ask of someone carrying out the work and the ability to converse with them in refining the understanding of the problem; and
4. Ability to assess, understand, evaluate and interpret the results received from the retained professional, plus an understanding of the limitations and risks of the management issue and the results.

The BC Ministry of Transportation and Infrastructure Engineering Roundtable has developed the following criteria to aid its understanding of what it means for the agency to retain "knowledgeable owner" status:

- Application of engineering and business judgment
- Understanding of provincial interests in addition to technical requirements

- Value for money and the reality of available budgets
- Risk management (including identification, assessment, and mitigation) and tolerance
- Consideration of other priorities (community, economic, etc.)
- Legislative obligations and requirements (non-delegable duties)
- In house technical expertise in the six core engineering disciplines
- Technical continuity through project phases
- Research and development responsibilities, being on the forefront of industry knowledge
- Manage, review and accept work to ensure appropriate level of quality and value for money.”

## **Conclusion**

ACEC-BC supports the use of the Professional Reliance Model on the basis of:

1. Qualified Professionals are retained to undertake the services using a Qualification Based Selection approach
2. Industry standard agreements are used
3. The client engaging the Qualified Professional for reliance must meet the criteria of being a knowledgeable client.
4. EGBC Corporate Regulation being put in place to provide oversight of Professional Corporate entities utilized to execute regulation in the same manner as individuals
5. It is irrelevant where the contractual relationship lies as long as the professional responsibilities are clear and the resources (funding and qualifications) are available to meet the responsibilities.