



College of Applied Biology's Response to the Intentions Paper Consequent to the *Professional Governance Act*

March 4, 2019

Preamble

The *College of Applied Biology Act* was proclaimed in 2003. The Act recognized the profession of applied biology as having an important role in the sustainable management of BC's resources. Since proclamation the College has worked tirelessly to fulfill its mandate:

- Registrants with the College have grown to over 2300
- 266 registrants have had peer audits completed over the past 9 years
- 59 complaints have been filed against registrant conduct since 2003 with 10% resulting with a conditional admission; Two complaints have gone to a discipline hearing

Throughout the Professional Reliance Review process the College of Applied Biology has consistently maintained its support for improvements to the current regime. We have also maintained that those improvements must include all partners in resource management – government, business, professional regulators and professionals.



Photo by: Cayla Naumann, RPBio



Right to Practice

Assessing and mitigating environmental impacts are now recognized as a fundamental part of any sound resource management regime – applied biology professionals are critical to that. Applied biology plays a significant role in the management of British Columbia’s resources. This includes important involvement in:

- Wildlife, vegetation, fisheries inventory, management and research
- Environmental assessments
- Riparian areas assessments
- Marine and terrestrial environmental monitoring
- Contaminated sites assessments
- Environmental risk assessments
- Habitat restoration and management and
- Aquaculture

For some of these activities there is a regulatory requirement to employ a professional – but for many others it is solely at the discretion of the employer. This has led to the unintentional consequence of some management recommendations not being made by an applied biology professional who is bound by their ethical obligations.

While there is no empirical data on what the frequency of this is, or the result, it is a fact that the College receives complaints about biologists that are not registered with the College and therefore not within our jurisdiction. The College is therefore unable to provide any actions or remedies to a situation where the individual in question may not have applied appropriate scientific rigor, may have displayed unprofessional conduct or may be in a conflict of interest situation. Having ‘title only’ provisions makes professional registration somewhat voluntary and does not adequately protect the public interest.

“Having ‘title only’ provisions makes professional registration somewhat voluntary and does not adequately protect the public interest.”

The current proposal to grant practice rights in the application of applied biology is an important step in the evolution of sustainable resource management in British Columbia. The College commends the provincial government in being a global leader in taking this action and recognizing that the practice of applied biology is a full partner in resource management, and that all who practice applied biology must be qualified, maintain competency and be held accountable.

The evolution to practice rights must be exactly that – an evolution. Professional applied biologists are already working side by side with other resource management professionals. They are recognized for their critical contributions to the environmental, economic and social sustainability in resource management. However, as with any working relationship, greater clarity and understanding will further improve results.



Prior to the Professional Reliance Review the College identified further refinement of practice scope – particularly as it relates to other professionals – as a priority undertaking. Overall the College supports overlapping practice with exclusions where necessary. What the College is doing to help define this is:

- Robust Scope of Practice engagement with registrants, other professions and non-registered applied biology practitioners;
- Producing practical recommendations on professional applied biology activities (both exclusive and overlapping) for recommendations to government for regulations;
- Working with other regulating professional associations to define mechanisms to address overlap issues when they arise;
- Developing clear regulations and corresponding policies and practice guidance documents to aid practitioners in the field

The College recognizes that there are capable, competent and ethical biologists currently working in resource management who are not regulated by the College. The College is actively working on developing achievable pathways for them to become accredited, regulated professionals.

To facilitate the development of pathways, the College has established a Credentials Task Force. The Task Force is actively reviewing potential pathways for non-regulated practitioners to become registered, thereby increasing protection of the public interest. This includes:

- Applying information and criteria gleaned from the Scope of Practice engagement;
- Identifying options for qualification for professional status including:
 - Reviewing training options to meet specific competencies;
 - Strengthening prior learning assessment pathways for university credit with public post-secondary training institutions; and
 - Exploring limited licenses options for specific areas of practice

The College has also identified the need to work with employers in the private, public and not-for-profit sector to determine how the evolution to practice rights will impact them, and how we can work with them and their employees to find ways to move forward while minimizing – if not eliminating – disruptions.

The path ahead must also recognize Indigenous Knowledge as recognized in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the role it plays in good resource management. This applies to all professionals working in resource management. The College has accredited three training providers that provide applied biology technician training in Indigenous communities. As well, the College recognizes informal learning as an optional pathway for recognition as an Applied Biology Technician (ABT) in our current credential standards. We also understand that that UNDRIP training and understanding should be expanded to other categories and standards. We look forward to working with Indigenous communities, government and other resource partners to better incorporate UNDRIP'S principles into our professional requirements.

There needs to be a well thought out transition to Right to Practice with adequate time and resourcing from both government and the College. For the College's part, we are facilitating that progression through increasing both staff and volunteer capacity. As well, the government must be a leader in the transition by employing professionals regulated by Right to Practice or Right to Title



The College has full confidence that we can by identify options for individual practitioners to attain a regulated professional standing that are appropriate and achievable.

Regulation of Firms

Under our current statute (the *College of Applied Biology Act*) there is no authorization for the College to regulate firms. Our initial research into the concept has led the College to conclude that in principle the public interest is better protected if firms that employ regulated professionals must also abide by ethical principles. While we do not believe that it is common practice, it is unacceptable that some firms “professional shop” to get the answer that they are looking for. The College sees this practice as “decision-based fact making” – instead of fact-based decision making.

While the College does not have the capacity to become a regulator of firms at this time, we are constructively engaged with our regulatory partners to further investigate how to adapt the current Organizational Quality Management Program (OQM) that has been developed by the Engineers and Geoscientists of BC.

As we proceed there are some critical issues to consider to ensure that we avoid unintended consequences:

- Avoiding regulatory overlap – in many cases there are multiple professions working for one company: having 5 separate regulators per firm would be both administratively burdensome and an inefficient use of resources;
- Resourcing to ensure adequate and effective enforcement without becoming a cost deterrent for firms – in particular small to medium sized operations;
- Avoiding becoming overly bureaucratic – ensure that the public is truly being protected and not just regulating for regulation’s sake;
- Appropriately defining “firm:” A sole proprietor is already under regulation as a professional and it may be redundant to also regulate them as a firm; and
- Conversely, the regulation of firms should not deter smaller firms from hiring other professionals – and therefore potentially working outside their scope of practice – to avoid coming under regulation

The College is actively engaged with our regulatory partners. We will continue to work with them to explore opportunities and mitigate potential drawbacks in moving this initiative forward while keeping protection of the public interest clearly in focus.

Competency Declarations & Conflict of Interest Declarations

The College has always held the principle that applied biology professionals must work within their areas of competency. That principle is clearly articulated in our Code of Ethics, Principle 2.

Undertake assignments and offer opinions only in areas in which they are competent.

To meet this principle members must:

- ensure that they practice only in areas in which they are competent;



- competence can be achieved through education, study, experience and training;
- competence can be demonstrated by the ability to complete a task to the same standard as trained professionals in similar situations;
- maintain competence in their field of practice and keep abreast of advances in practice and the relevant science;
- ensure that, where a member takes responsibility for the work of another, the work meets the appropriate standard;
- ensure that, where a member is the coordinating professional or project supervisor, all other team members are competent and qualified to perform their required duties; and
- retain or advise of the necessity to retain the services of others, where additional expertise is required

Also in the College's Code of Ethics (Principle 4) is the requirement for registrants to assess and address any real or perceived conflicts.

Provide a professional standard of service to clients and employers by conducting business practices fairly, avoiding conflict of interest and respecting client/employer confidentiality.

To meet this principle members must:

- recognize that the requirement to provide a professional standard of service applies whether the member provides services in the private or public sector, as a contracting professional, volunteer, sole proprietor or an associate in a corporation, or working at the staff or management level;
- exercise fairness in business practices by following practices that are just and reasonable, open and honest, fair and respectful, and undertaken properly;
- consider employer/client materials confidential
 - a member must not use the proprietary/confidential information for personal gain or the advantage of other parties;
- recognize the expectation of confidentiality does not hold where
 - the employer/client actions are unlawful, in which case the member is obliged to report the activity to the appropriate authority; or
 - the member has been otherwise directed by the employer/client or legal authority;
 - where the member is required by law to disclose confidential information, the member must so advise the employer/client, unless directed otherwise by the legal authority;
- avoid situations and circumstances where there is a conflict of interest;
 - there is a real or perceived conflict of interest where a member's interests conflict or appear to conflict with the member's professional responsibilities;
 - in determining whether a conflict exists or appears to exist, members should consider whether a reasonably well-informed individual in possession of the facts would believe a conflict exists;



- members must take measures necessary to ensure a conflicting interest does not bias decisions or recommendations that the member may be called upon to make; in extreme situations this might require the member to withdraw from a project.

Understanding of these and the other ethical obligations laid out in the College's Code of Ethics is a requirement of registration with the College. As part of the College credential process, each applicant must take the Ethics course and pass the final exam with a 100% score.

Adherence to the Code of Ethics is mandatory for all members and is taken seriously by the College. Specific to the conflict of interest the College pursued a possible breach of that principle in 2018. The decision rendered by the Hearing Tribunal did find the College's member to be in violation.

The College currently requires verifiable annual declarations of competency within scope, and as outlined above in our Code of Ethics, any real or perceived conflict of interest must be addressed before taking on work. Any additional requirement must be meaningful and reasonable and should not add an unnecessary administrative layer.

Many College members are small practitioners who have multiple clients. Should declarations become a requirement those documents should be kept and be readily available for any and all audit, practice review or discipline actions. However, the College maintains that it would not be in the public interest to have professionals fill out numerous forms at the expense of doing their job professionally.

Nevertheless, the College agrees that it needs to provide registrants with better guidance and clarity when signing their annual declarations. To that end the Scope of Practice initiative is actively engaging College registrants, other professionals and the public to better define the applied biology scope. Greater clarity and transparency will improve public confidence.

As well government has an important role to play. If the problem that is being addressed is practitioners operating outside their scope or that they are possibly in position of conflict of interest, government needs to invest the resources in auditing field work. These audits were a big part of the promise of going to the professional reliance (or results based) model and it was never fulfilled. This cannot be a back door way of not dealing directly with recommendations 3 to 121.



Conclusion

Since being announced in October of 2018, the Professional Reliance Review and the resulting *Professional Governance Act* have taken a significant amount of the College's staff and volunteer capacity, and financial resources. It has been time and money well spent. While there is a lot more work ahead as the initiative moves forward, the College is encouraged by government's willingness to hear our perspective on specific issues, and allow adjustments to policy and legislation to improve the final product.

Collectively – both as regulator and government – we have the duty to work in the public interest. It is imperative that we not only fulfill that duty – but that we enhance the public's trust in our abilities to meet that objective. The College of Applied Biology is committed to continue to work collaboratively to improve on successes to date to further a robust and effective professional regulatory regime.