

Association of Professional Engineers and Geoscientists of BC

Advisory Task Force on Corporate Practice

Phase 1 Recommendations Report

April 12, 2017

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Dear APEGBC Council Members:

On behalf of the Advisory Task Force on Corporate Practice, I am pleased to submit this Phase 1 summary report.

As per the Terms of Reference for the Advisory Task Force, Phase 1 included two components:

1. strategic consultation with members and stakeholders; and
2. development of a recommendation as to whether APEGBC should pursue regulatory authority for corporate practice, and if so, to define the types of entities that should be subject to APEGBC regulatory oversight.

The Task Force held its first meeting in February 2016, and has investigated this subject in depth over the past 14 months, supported by APEGBC staff and Compass Resource Management. On this basis, the Task Force members have become very informed on the subject matter.

This report documents the significant consultation program that was undertaken with members and stakeholders. The program included two rounds of member surveys, as well as targeted consultation with key stakeholders. Attachment 3 provides a summary report on the consultation program.

In addition to the consultation program, the Task Force performed a jurisdictional scan of Canadian provinces and territories, as well as nearby US states. Interviews were also conducted with some other professional associations, including the Association of Professional Engineers and Geoscientists of Alberta (APEGA) which currently has the most comprehensive regulatory program in Canada, the Association of Professional Engineers and Geoscientists of Saskatchewan (APEGS), and the BC Law Society which has recently embarked on a program of corporate regulation.

On the basis of its deliberations, it is significant to report that the **Advisory Task Force reached consensus in support of APEGBC pursuing regulatory authority over corporate practice**. Section 3 provides the full recommendation, along with the supporting rationale.

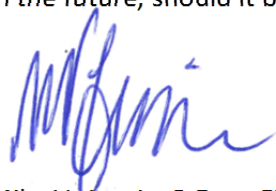
Regarding regulatory coverage, Section 4 suggests three categories of organizations:

- organizations that should be subject to corporate regulation (consulting firms, most public and private sector organizations that perform professional work, and testing companies);
- organizations that require further consideration before determining whether they should be included in corporate regulation; and
- organizations or entities that should be exempt from corporate regulation.

Subject to Council approval, the Terms of Reference for the Advisory Task Force contemplated the following two subsequent phases:

- Phase 2 – recommend a model for corporate practice oversight; and
- Phase 3 – develop a business plan.

We look forward to discussing the Phase 1 summary report with Council, and providing further assistance in the future, should it be requested.



Mike V. Currie, P.Eng., FEC
Chair, APEGBC Advisory Task Force on Corporate Practice

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1. Introduction

This report documents the Phase 1 recommendations of the Advisory Task Force on Corporate Practice, as appointed by APEGBC Council.

1.1 Overview

The Association of Professional Engineers and Geoscientists of British Columbia (APEGBC) is the regulatory body that oversees the practice of professional engineering and geoscience in BC. It is the duty of APEGBC to uphold and protect the public interest respecting the practice of professional engineering and the practice of professional geoscience (*Engineers and Geoscientists Act*, Section 4.1 (1)(a)). In the fall of 2015, APEGBC's Council established an Advisory Task Force (comprising APEGBC members plus one non-member) to lead a three phase examination of corporate practice and corporate regulation¹. Phase 1 of the evaluation was to include a structured review and assessment of corporate practice (and regulation) with strategic consultation with members and stakeholders. The purpose of Phase 1 was to provide an informed recommendation to Council on whether APEGBC should pursue regulatory authority over corporate practice and if so, to define the types of organizations that should be subject to regulation. Further phases of the evaluation would be subject to Council approval and would involve more detailed work to develop an appropriate regulatory model and business plan.

What is Corporate Practice and Corporate Regulation?

The term **corporate** in this document and initiative is used in a broad sense to refer to *all organizations* in both the private and public sectors, including any type of private entity formed for business purposes (e.g., corporations, partnerships, sole proprietorships) and any type of public entity (e.g., municipalities, crown corporations, ministries). The term **corporate practice** refers to the provision of engineering or geoscience services and products by organizations. The term **corporate regulation** refers to the licensing and regulation of organizations authorized under legislation.

Corporate regulation would likely involve the prohibition of organizations practising engineering and geoscience in BC unless they have a licence from APEGBC, or are a type of organization that is not required to have a licence. For most jurisdictions in Canada, such licences mean that regulated organizations need to comply with the engineering or geoscience legislation of the jurisdiction, and the Code of Ethics and bylaws issued by the regulating authority. Across jurisdictions, there are also a variety of other requirements and responsibilities of licence holders (for more information, see Attachment 2 - Jurisdictional Scan of Corporate Regulation across Canada).

The Task Force is made up of a diverse cross-section of representatives from the engineering and geoscience sectors, representing industry, government, manufacturing, construction, the Association of Consulting Engineering Companies – BC (ACEC-BC), and others. At the beginning of the review process, most Task Force members had limited direct experience or

¹ See the Advisory Task Force Terms of Reference in Attachment 1.

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knowledge on the subject of corporate regulation, but all members became very informed on the subject through the 14-month process to date. During the process, Task Force members committed to keeping open minds to learn; and become well informed during Task Force deliberations and consultations with members and stakeholders.

The Task Force approached its work based on what would be in the best interest of the public and the professions in BC, not as spokespeople or advocates for the organizations or firms that members are affiliated with². The Task Force strived for broad agreement throughout the review process and it is significant to note that the recommendations included in this report **represent consensus recommendations** (accepted by all Task Force members) based on the decisions made at the final Phase 1 Task Force meeting on March 14, 2017.

The first two sections of this recommendations report contain background information about the Task Force and the review process that was undertaken. Sections 3 and 4 contain recommendations specific to the Phase 1 questions posed by Council. Section 5 provides supplemental information and insights gained during the course of the review, and which should be considered further if Council decides to move forward with corporate regulation. Appended to this report are a number of attachments which provide relevant supporting material.

It should be emphasized that throughout this report, whenever there is a reference to professional services or the “practice of professional engineering” or the “practice of professional geoscience,” these terms are defined in their broadest sense according to the definitions in the *Engineering and Geosciences Act* (Section 1(1)) and these definitions are repeated below for easy reference.

² Some Task Force members were appointed by their respective organizations: ACEC-BC, BC Ministry of Transportation and Highways, BC Hydro and AMEBC. AMEBC subsequently removed their representative due to an inability to attend meetings. APEGBC Council appointed two representatives to the Task Force.

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"practice of professional engineering" means the carrying on of chemical, civil, electrical, forest, geological, mechanical, metallurgical, mining or structural engineering, and other disciplines of engineering that may be designated by the council and for which university engineering programs have been accredited by the Canadian Engineering Accreditation Board or by a body which, in the opinion of the council, is its equivalent, and includes reporting on, designing, or directing the construction of any works that require for their design, or the supervision of their construction, or the supervision of their maintenance, such experience and technical knowledge as are required under this Act for the admission by examination to membership in the association, and, without limitation, includes reporting on, designing or directing the construction of public utilities, industrial works, railways, bridges, highways, canals, harbour works, river improvements, lighthouses, wet docks, dry docks, floating docks, launch ways, marine ways, steam engines, turbines, pumps, internal combustion engines, airships and airplanes, electrical machinery and apparatus, chemical operations, machinery, and works for the development, transmission or application of power, light and heat, grain elevators, municipal works, irrigation works, sewage disposal works, drainage works, incinerators, hydraulic works, and all other engineering works, and all buildings necessary to the proper housing, installation and of the engineering works embraced in this definition³;

"practice of professional geoscience" means reporting, advising, acquiring, processing, evaluating, interpreting, surveying, sampling or examining related to any activity that Potential Criteria for determining regulatory coverage (a) is directed towards the discovery or development of oil, natural gas, coal, metallic or nonmetallic minerals, precious stones, other natural resources or water, or the investigation of surface or subsurface geological conditions, and (b) requires the professional application of the principles of geology, geophysics or geochemistry;

1.2 Background on Corporate Regulation in BC

An early consideration of possible corporate regulation of the engineering and geoscience professions in BC arose from the Closkey Commission, which reviewed the roof collapse on April 23, 1988 at Station Square Mall in Burnaby. The Commission made a series of recommendations⁴ including the following two specific recommendations pertaining to the registration of engineering firms:

5. Companies, partnerships, firms and other associations that provide professional engineering services to the public should be required to be registered under the Engineers and Geoscientists Act and should apply to all engineering disciplines.

6. Such companies, partnerships, firms and other associations should face deregistration for unethical, unprofessional or incompetent practice. Such measures should be in addition to disciplinary proceedings taken against individual members.

³ "For the purposes of the definition of "practice of professional engineering" [...], the performance as a contractor of work designed by a professional engineer, the supervision of construction of work as foreperson or superintendent or as an inspector, or as a roadmaster, trackmaster, bridge or building master, or superintendent of maintenance, is deemed not to be the practice of professional engineering within the meaning of this Act." (as per Section 1(2) of the Act).

⁴ *Report of the Commissioner Inquiry, Station Square Development, Burnaby, British Columbia*, Dan J. Closkey, P. Admin., Inquiry Commissioner, August 1988.

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As a result, APEGBC established a Special Review Committee which developed a response to the recommendations in the Closkey Commission Report. The report of the Special Review Committee, published in the *BC Professional Engineer* in June 1991 (APEGBC's professional journal), recommended that:

Companies, partnerships, firms and other organizations that provide professional engineering services must be registered under the Engineers and Geoscientists Act and that the Engineers and Geoscientists Act be amended accordingly and that they must face deregistration for incompetence, negligence or unprofessional conduct.

A letter ballot was issued to APEGBC members in 1991 and 28% of the membership participated. The results of the letter ballot were:

- 92.8% voted in favour of the following recommendation: “organizations that provide professional engineering services must be registered”; and,
- 93.2% supported the recommendation that “organizations that provide professional engineering services must face deregistration for incompetence, negligence, or unprofessional conduct.”

In 1993, Section 10.1 (now Section 14) entitled “Issue of Certificates of Authorization” (CoA) was added to the *Engineers and Geoscientists Act*.

At the time the CoA was proposed, APEGBC also proposed an addition to Section 18, Prohibition on Practice. This provision would have made it illegal for companies to practise professional engineering or geoscience unless they held a CoA. The proposed amendment to this section was not included when Section 10.1 was added to the *Act* in 1993.

In 1996, APEGBC engaged in extensive consultations and recommended to the BC government that, at a minimum, corporations, partnerships or other legal entities should be prohibited from practice unless they held a CoA specific to the following fields:

- consulting engineering or consulting geoscience;
- designing and manufacturing custom design engineered products, structures, processes or facilities; and
- engineering and/or geoscience testing and assessment.

In 2002, after discussions with stakeholders, the BC Government stated that they would not implement APEGBC's recommendations. Since then, the issue of corporate regulation has periodically been raised by members and organizations that look to APEGBC to protect the public.

APEGBC occasionally conducts public opinion polls to assess awareness of APEGBC, and to determine which activities are viewed as most important. In its most recent poll in 2014, of those surveyed, 81% indicated that an important function of APEGBC was to regulate firms to ensure they have qualified professionals and set standards for quality assurance.

After the Mount Polley Dam incident in 2014, renewed questions were raised surrounding the lack of regulation of organizations that practise engineering and geoscience in BC. The BC Ministry of Energy and Mines contacted APEGBC to request a summary of issues related to the potential regulation of companies that carry out professional engineering and geoscience. Motivated by this incident, government's request, and APEGBC's responsibility to uphold and protect the public interest respecting the practice of professional engineering and geoscience,

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Council initiated examination of corporate practice and corporate regulation through the Task Force. Government has expressed strong support for APEGBC's evaluation of this issue.

BC and Quebec⁵ are the only jurisdictions in Canada where engineering and geoscience organizations remain unregulated. In BC, other professions that regulate organizations include architecture, land surveying, public accounting, as well as a number of the medical professions. The Law Society of BC has also recently been granted the authority by the Provincial Government to regulate law firms and is currently undergoing consultation on a proposed approach for corporate regulation.

⁵ Note that in July 2016, the Ordre des ingénieurs du Québec was placed under trusteeship of the provincial government; accordingly, it is no longer a self-governing body for its 60,000 members.

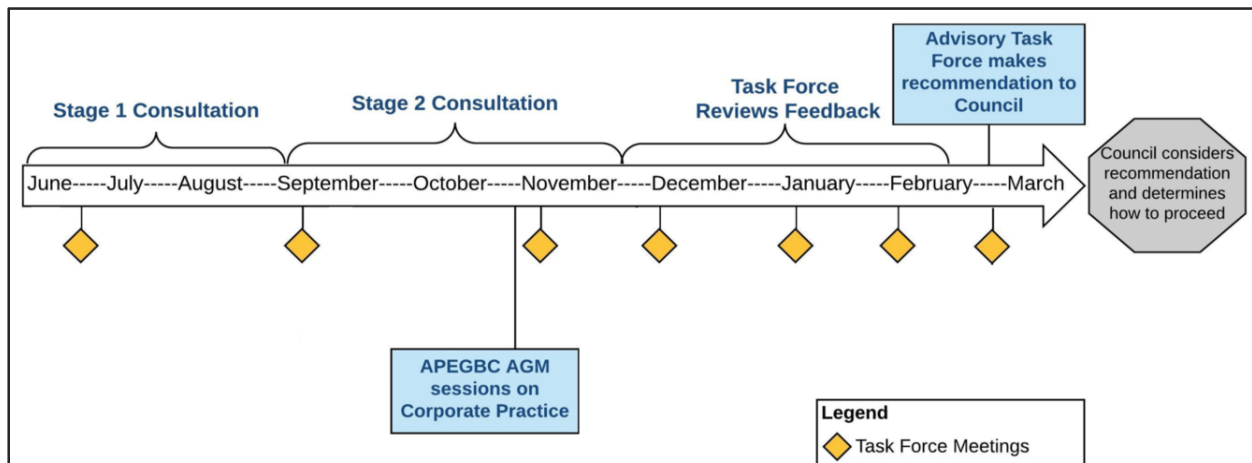
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2. Overview of Task Force Process

2.1 Task Force Review Process

The Task Force was established at the beginning of 2016 and held its first meeting on February 24, 2016. Since that time it met approximately every 6 to 8 weeks and held its final (ninth) meeting on March 14, 2017. The Task Force formed adhoc sub-committees that met on an as needs basis to work on special tasks (e.g., survey design, drafting reports and a discussion paper).

Figure 1: Advisory Task Force on Corporate Practice Review Process



The Task Force's evaluation process consisted of three main components, as noted below.

- 1. Background Review and Analysis** – The Task Force spent its first few months researching and assessing the status of corporate regulation in jurisdictions across Canada and neighbouring US States (i.e., in the Pacific Northwest) and across other professional sectors in BC. The preliminary background research included interviews and webinars with regulators from these jurisdictions and sectors. The results of this jurisdictional scan are included as an appendix to Attachment 2.
- 2. Consultation with Members and Stakeholders** – The Task Force directed the development and implementation of a comprehensive two-stage communications engagement strategy with members and stakeholders (see Section 2.2 for a more detailed description). Task Force members were actively involved in the development of consultation materials and participated directly in consultation activities.
- 3. Detailed Review and Assessment** - The Task Force undertook a detailed review of the consultation feedback which provided a basis for a structured assessment of corporate practice and regulatory models in order to make an informed and defensible recommendation to Council. While the Task Force's Phase 1 recommendations are limited to whether corporate regulation was warranted, the Task Force's evaluation needed to look more deeply at potential corporate regulatory models from across Canada in order to better understand the possible implications that corporate oversight may entail given the context in BC.

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Additional support was provided to the Task Force by APEGBC staff who assisted with meeting logistics and consultation activities, and served as a technical resource when called upon. As well, an independent consulting firm (Compass Resource Management) was hired to provide research, facilitation, and strategic decision support to the Task Force.

2.2 Consultation with Members and Stakeholders

Over the last year, APEGBC and the Task Force has engaged in a thorough consultation with members and stakeholders on the topic of corporate practice and corporate regulation. A detailed summary of the consultation activities and feedback is included in Attachment 3: Consultation Summary Report.

Consultation was conducted in two stages (see Figure 1). **Stage 1** (June to August 2016) focused on early input from members and stakeholders to understand the issues and help guide the development and assessment of different regulatory models to explore during the review. **Stage 2** (October 2016 to February 2017) focused on more detailed input from members and stakeholders on their preferences for non-regulatory and regulatory options for corporate oversight.

During the Stage 1 consultation period, updates and background information on the Corporate Practice Review were made available on the APEGBC website and in APEGBC Enews publications. The Task Force solicited members and stakeholders for feedback on the potential benefits and challenges associated with corporate regulation through an online survey, which ran from July 6, 2016 to August 31, 2016. The survey was promoted through two APEGBC Enews publications and received 312 responses. The Task Force also interviewed representatives of engineering and geoscience regulators across Canada to learn about the corporate regulatory models that are operating in other provinces and territories.

To kick-off the Stage 2 consultation period, the Task Force published a discussion paper (Attachment 2) to summarize its learnings and discussions, and outline options for the potential regulation of engineering and geoscience organizations. The discussion paper was paired with an online survey to get feedback from membership on key questions regarding corporate practice and corporate regulation. The survey was open from September 26 to November 30, 2016 and was promoted through consultation presentations, social media, and two direct emails to membership. The survey received a high rate of participation with 1,307 respondents. In addition to the online survey, members provided feedback through in-person consultation events at the 2016 Annual Conference in Victoria and branch meetings held across the province.

During the Stage 2 consultation period, a webinar was held, with participation at approximately 70 locations around the province (with some sites consisting of multiple participants). The webinar was then made available for viewing by all members via the APEGBC corporate practice website.

3. Recommendations on Corporate Regulation

The Advisory Task Force on Corporate Practice reached agreement on the following recommendations:

- That APEGBC pursue regulatory authority over corporate practice.
- That a corporate regulatory model be developed which demonstrates positive impacts to protect the public interest and the environment, and provides benefit to the regulated organizations and the professionals that they employ.
- That the corporate regulatory model be scaled according to the size and nature of the organization, and be administratively efficient.

Why Corporate Regulation?

The fundamental issue underlying corporate regulation is that there are two main influences on the quality of professional practice – *the influence of the individual practising professional and the influence of the organization within which that individual carries out their practice.*

Numerous examples were received during consultation with members and stakeholders to show how organizational influence can have either a positive or negative effect on individual professional practice. It was encouraging to hear how many APEGBC professionals take professional responsibility very seriously and support adherence to the *Act*, Code of Ethics and Bylaws, not only with respect to individual practice, but also at the corporate level. The Task Force also heard from members who expressed concerns, or who were aware of, organizations putting their own interests before professional practice obligations (see Consultation Summary Report for examples of this). As well, APEGBC's Investigation Committee and Practice Review Committee continue to see evidence of shortcomings in how organizations adhere to quality management practices (e.g., lack of checking and review, insufficient direct supervision, inadequate project documentation, etc.).

Based on the review of issues surrounding corporate practice and corporate regulation, and consultation with members and stakeholders, the Task Force is of the opinion that a corporate regulatory model can, and should, be designed and implemented in a way that encourages regulated organizations to support good professional practice, and avoid conflicts of interest with APEGBC's Code of Ethics and Bylaws.

The main reasons leading to the Task Force recommendation in favour of corporate regulation are outlined below.

1. Corporate regulation would enhance protection of the public interest and the environment by improving the practice of professional engineering and professional geoscience.

It would:

- align organizational responsibilities with individual professional responsibilities, thereby reducing the potential for conflicts of interest between organizational interests and professional standards;

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- provide confirmation that organizations are employing professional engineers and/or geoscientists that are competent for all area(s) of practice within an organization; and
- enable APEGBC to establish more specific guidelines for professional practice at the corporate level.

2. Corporate regulation would increase government and public confidence in the self-regulatory system administered by APEGBC on behalf of the professions.

Through a proactive self-determined approach, it would:

- implement a regulatory mechanism that is used in most Canadian and US jurisdictions for the engineering and geoscience professions, thereby reducing the perception of a regulatory gap in BC's engineering and geoscience professions;
- increase the quality of professional practice provided by regulated organizations;
- enable APEGBC to investigate and hold engineering and geoscience organizations accountable in the event of a complaint or suspected misconduct; and
- increase consistency with other professional sectors in BC where there has been a trend towards corporate regulation (e.g., law, architecture, land surveying, public accounting, as well as a number of medical professions).

3. Corporate regulation would provide value to organizations and the professionals they employ.

It would:

- increase awareness and support from organizations on the responsibilities of practising professionals;
- increase awareness and support from organizations on the importance of maintaining good standards for professional practice;
- establish a mechanism to hold organizations accountable if they are pressuring professionals to act in contravention of the *Act*, Code of Ethics, and Bylaws; and
- help to increase public confidence and the value that society places on the engineering and geoscience professions.

In summary, the Task Force believes that the key purpose of corporate regulation should be to ensure appropriate organizational oversight over professional practice, rather than continuing to rely solely on the oversight of individual professionals.

While member and stakeholder consultation generally showed strong support for a move toward corporate regulation by APEGBC, a range of concerns were raised. These concerns are summarized in Table 1, as expressed through formal and informal consultation, as well as stakeholder submissions. All of these concerns are considered to be valid, but the Task Force believes that a well thought out corporate regulatory model will be able to address these concerns and provide benefit to the public and the professions at large.

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Table 1: Range of Concerns Regarding Corporate Regulation

Concern	Advisory Task Force Comments
<p>Corporate regulation could dilute individual professional responsibility.</p>	<ul style="list-style-type: none"> • This issue was discussed with several other Canadian jurisdictions that have implemented corporate regulation in engineering and/or geoscience. They stated that their corporate regulatory models do not dilute the responsibility of individual professionals, and in fact support individual professionals in fulfilling their responsibilities (e.g., by requiring their organization’s structure, policies and procedures to be conducive to meeting the requirements of the <i>Act</i>, Code of Ethics and Bylaws). • However, while corporate regulation should not dilute individual professional practice responsibilities, there may be a risk that corporate regulation could result in a <i>perception</i> that individual professional responsibility is reduced. For this reason, it is suggested that measures be taken when implementing a corporate regulatory model to avoid the perception that individual professional responsibility is diminished.
<p>Corporate regulation will not be effective in enhancing public protection due to difficulty in enforcing regulatory requirements (e.g., difficulty in acquiring documents from multi-national companies).</p>	<ul style="list-style-type: none"> • A regulatory system is not likely to yield intended benefits unless there are effective compliance mechanisms. However, enforcement alone is not the sole mechanism for effective regulation and often only comes into play after an incident or complaint. • Corporate regulatory models in most other Canadian jurisdictions allow investigation of organizations in the event of an incident or complaint. It is acknowledged that there are shortcomings with this enforcement approach⁶. Firstly, waiting until an incident occurs is not initially⁷ protective of the public or the environment. Secondly, relying on a complaint-based system has limitations. Most people that would be in a position to make a complaint would be employees of the organization, and these people may be reluctant to ‘blow the whistle’ on their own organization without knowing how their complaint may play out in an investigation. Effective corporate regulation would provide a means to influence organizational practices before an incident or complaint. • The corporate regulatory model administered by APEGA and APEGBC’s voluntary organizational quality management (OQM) program both use audits as a proactive check on organizational compliance with quality management requirements. These audits often identify either minor or major compliance issues. When this occurs, the associations work with the organization to resolve the issue and thereby improve the organization’s professional practice. • APEGA recently completed an investigation against a resource development company for a tank roof-support structure that failed

⁶ The Task Force knows of no Canadian jurisdiction that has revoked a corporate license to practice as a result of an investigation.

⁷ Recognizing that after an incident occurs there may be mitigative or preventative measure put in place which will be more protective in the future.

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Concern	Advisory Task Force Comments
	<p>during construction on April 24, 2007, resulting in loss of life and injuries to workers. The investigation considered whether the company as a permit holder with responsibility for approving designs, design changes, and construction plans, as well as meeting building and safety code requirements, did so in a skilled or professional manner. The company voluntarily admitted to unprofessional conduct in its engagement and supervision of contractors performing engineering work and is subject to sanctions.⁸</p> <ul style="list-style-type: none"> • Development of a corporate regulatory model should include further analysis on enforcement mechanisms, including sanctions that may be imposed on entities that fail to comply, and how enforcement would work with multinational companies. The audit system used by APEGA and APEGBC's OQM Program should be considered for application as well as exploring the potential for whistleblower protection.
<p>Current system is sufficient, therefore corporate regulation is redundant and does not add value to the public or the profession.</p>	<ul style="list-style-type: none"> • The current regulatory system focuses on individual professional engineers and professional geoscientists, and does not address the significant influence that organizational structure, policies, and culture can have on the practice of the professions. In addition, the current system does not allow investigation of organizations. • Examples were received showing where organizational influence has negatively affected professional practice, including: <ul style="list-style-type: none"> ○ pressure from employers and managers (which sometimes originates from clients) for quicker or cheaper solutions that can lead to outcomes that are not in the public interest and can contravene professional practice; ○ unwillingness or inability of private sector firms to obtain sufficient fees from clients, or public entities to allocate sufficient resources, to perform project services to a high level (this may give rise to the internal pressure noted above); ○ unwillingness or inability of client firms to award to qualified firms who are not necessarily providing services at the lowest price; ○ organizations that have engineers or geoscientists working in areas that they are not qualified or competent in (e.g., signing off or supervising work outside of their area of expertise); ○ organizations that perform in-house professional work that is reviewed by higher levels of management who are not qualified and leading to greater risks to public interests and/or the environment; and ○ lack of supervision and training of inexperienced workers.

⁸ See APEGA News Release: <http://www.marketwired.com/press-release/apega-announces-discipline-decision-for-2007-cnrl-tank-roof-collapse-2186249.htm>

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Concern	Advisory Task Force Comments
	<ul style="list-style-type: none"> The current regulatory system places a burden on individual professionals to deal with the above situations on their own; in some cases, leaving professionals to choose between their job and adherence to professional practice standards. A corporate regulatory system administered by APEGBC would provide a mechanism to hold organizations to account if their structures, policies, or culture are in contravention with the <i>Act</i>, Code of Ethics and Bylaws. It can be argued that the current system is not adequate in the eyes of the public, given the reaction to recent incidents such as the Mt. Polley mine tailings dam failure. The profession must be able to demonstrate it can effectively (and proactively) regulate itself to the standard expected by government and the public⁹.
Cost and effort for compliance, especially for small organizations and sole-practitioners.	<p>Fees:</p> <ul style="list-style-type: none"> The Task Force heard concerns around the additional fee burden that could result from corporate regulation. Most of these concerns came from small organizations and sole practitioners, especially if practicing in multiple jurisdictions. The fees levied on regulated organizations by engineering and geoscience regulatory authorities in Canada range from \$150 to \$1,186 per year, with an average annual fee of about \$500. In the Fall 2016 survey, the following question was posed: “Taking for example the average annual fee of \$500 across existing corporate regulatory models for engineering and geoscience organizations in Canada, do you think a fee of this magnitude would be too costly?” Out of 1,295 respondents, 59% of respondents selected “No – this would be a reasonable fee, especially if a sliding scale was applied to give smaller organizations a break” and 20% of respondents stated that “Yes – This fee is too costly.” The other 21% were undecided, neutral or provided written comments. The most common theme in the written comments for this question was that the fee structure should vary according to the size and nature of an organization (e.g., the number of professionals employed or the level of revenue). The Task Force agrees that the fee burden on small organizations and sole-practitioners is an important consideration in the development of a fee structure for corporate regulatory oversight by APEGBC. For this reason, part of the recommendation for corporate regulation is that the costs to regulate organizations be scaled according to the size and nature of the organization. Additionally, it is thought that corporate regulation by APEGBC should adhere to a cost-recovery model (e.g., similar to the OQM Program).

⁹ In September 2014, APEGBC conducted a public opinion poll to assess public awareness of APEGBC, and to find which activities are viewed as most important. Of those surveyed, 81% indicated that an important function of APEGBC was to regulate firms to ensure they have qualified professionals and set standards for quality assurance.

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Concern	Advisory Task Force Comments
	<p>Effort:</p> <ul style="list-style-type: none"> • The administrative effort in Canadian jurisdictions with a basic corporate regulatory model is low. The basic model typically involves filling out a form that requires answering the following types of questions: <ul style="list-style-type: none"> ○ What engineering and/or geoscience disciplines are practiced by the organization? ○ Who in the organization has the authority and will accept responsibility for ensuring the practice of the professions can be conducted in accordance with the requirements described in the <i>Act</i>, Code of Ethics and Bylaws? ○ Who are the professional engineers, geoscientists, and/or licensees in the organization that will have responsibilities such as responsible direction and personal supervision? • A quality management focused regulatory model would require more effort than a basic model. If elements of a quality management focused model are considered for BC, it is important that the additional effort involved in this approach is justified by the additional value it would bring to regulated organizations and the professionals that they employ. Feedback from OQM-certified organizations gives confidence that regulatory requirements can be developed that organizations can meet with a reasonable amount of effort, and that bring commensurate value to the organization's professional practice. • For large organizations, special consideration may need to be given to the administrative burden associated with audits and the complexity of implementing a quality management model where there are a large number of practicing professionals across a diversity of practice areas and/or departments.
<p>Lack of confidence that APEGBC can administer a corporate regulatory program effectively and concern that corporate regulation is just a fee grab by APEGBC.</p>	<ul style="list-style-type: none"> • To date, APEGBC has carried out its duty of regulation of the professions under the <i>Engineers and Geoscientist Act</i> of BC. APEGBC operates under a governance structure that supports ongoing delivery of its obligations. The BC Government has the final authority over the <i>Act</i> and has not questioned the association's ability to fulfill its regulatory role. • APEGBC is a not-for-profit organization. Fees, which are the primary source of revenues, are in line with fees paid by other professionals in BC and across Canada, and are considerably lower than other regulated professions such as lawyers, doctors, accountants, etc. • APEGBC has successfully implemented a voluntary form of corporate oversight through the Organizational Quality Management program. Despite being voluntary, as of February 2017, the participation in the program included 253 organizations that have been certified and 228 organizations that are going through the certification process. The program includes participating organizations from a wide range of both private and public sectors and has received positive reviews from participating organizations. The success of this program is

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	<p>demonstrated by Engineers Canada’s recent partnership with APEGBC to implement a National OQM Pilot Program which involves engineering organizations in 10 different Canadian jurisdictions becoming OQM certified.</p> <ul style="list-style-type: none">• The OQM program uses a cost-recovery model, meaning the fees for participating organizations are structured to cover APEGBC’s additional costs for administering the program and not raise any additional revenue for the association. It is understood that APEGBC took considerable care to develop a fee structure for participating organizations that would both recover administrative costs and be scaled according to the size of the organization. The Task Force is confident that APEGBC could do the same in the development of a corporate regulatory model.

4. Recommendations on Regulatory Coverage

The Advisory Task Force on Corporate Practice recommends 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”¹⁰ 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”¹¹ for internal or external purposes (e.g., provincial government agencies, regional and local governments, crown corporations, public utilities, institutions, etc.).

Further, the Advisory Task Force on Corporate Practice recommends a **more detailed review** of the following types of organizations that practise professional engineering or geoscience to see whether they are already sufficiently covered under other regulatory mechanisms or standards to ensure protection of the public interest and the environment. These include:

- Organizations that design and manufacture custom design engineered products, structures, software, processes or facilities.
- Organizations that design, build and manufacture (off-the-shelf) engineered products (e.g., equipment, vehicles) whose quality and safety are regulated through other existing standards and requirements.
- Organizations that carry out research and development.

The Advisory Task Force on Corporate Practice also recommends **further review** of federal government agencies operating within BC to see whether corporate regulation would be warranted and possible in view of jurisdictional issues.

The Advisory Task Force on Corporate Practice also recommends that **unincorporated sole practitioners** who provide consulting professional engineering and geoscience services should not be subject to corporate regulation, as they are sufficiently regulated as individuals under the existing *Act* and are also subject to APEGBC’s Practice Review Program.

¹⁰ As defined in the *Engineers and Geoscientists Act* (Section 1 (1)) and as copied earlier in this document in Section 1. For example, this would include organizations that execute in-house design services.

¹¹ Ibid.

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Why Regulatory Coverage of these Organizations?

The Task Force considered a range of possible criteria for the selection of organizations which should be included under corporate regulation.

These criteria included a number of factors:

- private versus public organizations;
- internal (i.e., in-house) versus external professional services;
- organizations who employ professionals, but do not carry out professional services; and
- the degree to which organizations providing professional services may directly or indirectly affect the safety, health and welfare of the public, and protection of the environment.

Other factors considered include fairness, consistency and effectiveness. Consideration was also given to the possibility of screening organizations according to the potential implications of their work on the interests of the public and the environment.

Following this review, the Task Force suggests including all private and public organizations that carry out the “practice of professional engineering and geoscience” and then exempting organizations that can demonstrate sufficient coverage by other regulatory mechanisms or requirements. This exemption principle should be the litmus test for deciding whether a particular type of organization should be excluded from corporate regulation. This thought process led to the recommendation to exclude unincorporated sole practitioners from corporate regulation; and, possibly, to exclude other types of organizations where it can be shown they are meeting other regulatory requirements or standards¹² to ensure protection of the public interest and the environment. Candidates for exemptions could include organizations in the manufacturing, medical, high tech (R&D), and/or software and information technology (IT) sectors.

Sole Practitioners

The Task Force makes a distinction between sole practitioners providing professional services who are incorporated and unincorporated. Unincorporated sole practitioners are considered to be adequately regulated as individual practicing professionals subject to the *Act*, Bylaws, and Code of Ethics. A condition for exempting unincorporated sole practitioners was that they continue to be subject to APEGBC’s Practice Review Program. Incorporated sole practitioners should be subject to corporate regulation and treated as a consulting firm, if they are providing professional services.

In order for APEGBC to be able to regulate incorporated sole practitioners and exempt unincorporated sole practitioners, the registration system would need some way to distinguish between these two categories of members. In the event that APEGBC ever decides to regulate unincorporated sole practitioners, it would also become necessary to distinguish such members from those members who are not affiliated with an organization, and are not providing professional services.

¹² Some examples of additional requirements include: peer-review of research, NSERC reviews, CSA, IEEE, ASME, FDA, Health Canada, EU MDD, ISO, COR and other certifications.

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Public Sector Organizations

Under the *Act*, APEGBC has the obligation to regulate the “practice of professional engineering” and the “practice of professional geoscience.” If a public sector organization (i.e., provincial government agencies, regional and local governments, crown corporations, public utilities, etc.) employs staff to carry out professional services as defined by the *Act*, the Task Force believes that they should be subject to corporate regulation regardless of whether the work is for internal or external purposes. During the consultation program, arguments were heard for and against the regulation of public sector organizations. A persistent argument against corporate regulation was that such organizations have additional internal systems and procedures in place to protect the public interest and the environment. In contrast, examples were received of organizational influences having a detrimental effect on practicing professionals and, in some instances, an absence of organizational quality management practices. Fears were also expressed that exempting public sector organizations could lead to disincentives for hiring consulting firms. In the end, the Task Force feels that public sector organizations carrying out professional services should be subject to corporate regulation to ensure minimum standards of corporate practice are established. As noted above, however, federal government organizations operating in BC require further consideration.

The Task Force recommendation considered which public sector organizations are typically exempted by other Canadian jurisdictions,¹³ and consistency across the private and public sectors. Additionally, there was a recognition that, while there may be additional checks and balances for some public sector organizations, these requirements do not always align directly to the quality of the practice of the professional services.

Where a public sector organization does not practise professional engineering or geoscience, or that it can be demonstrated that there are additional regulations to adequately protect the public interest and the environment, the Task Force suggests that a public sector organization could be exempted from corporate regulation (consistent with the exemption principle described above for private sector organizations).

Private Sector Organizations that Procure but do not provide Professional Services

The Task Force also considered whether APEGBC should regulate private sector organizations that procure professional services, but do not have staff carrying out professional services. This was in recognition that these organizations’ business practices may influence and detract from the quality of the professional services being carried out by other organizations, particularly consulting firms. Regulating these types of organizations would probably lead to improved business practices, and improved professional practice. After review, however, it was determined to be impractical for APEGBC to regulate such organizations, given that their business operates well outside of the *Act* and APEGBC jurisdiction.

¹³ Most other Canadian jurisdictions exempt public sector organizations from corporate regulation except: Alberta (if incorporated), Yukon, Government of Northwest Territories, and Nunavut. Territorial governments also subject crown corporations and public utilities to their corporate regulatory models.

5. Other Learnings and Considerations

While the Phase 1 Task Force recommendations are limited to whether APEGBC should pursue corporate regulation, and which types of organizations should be included, there are a number of areas where the Task Force obtained insights that may be beneficial to APEGBC Council should it decide to move forward with evaluating corporate regulatory models. Some of these insights are shared in this section.

Basic versus Quality Management Focused Corporate Models

The Task Force looked into corporate regulatory models from across Canada in order to better understand the possible implications of corporate regulation. Through this jurisdictional scan, it was concluded that the corporate regulatory models across Canada can be grouped into two broad approaches: *basic* and *quality management focused*.

Most Canadian jurisdictions¹⁴ apply a similar model for engineering and geoscience organizations that can be considered the ‘basic model.’ In order for an organization to receive a permit/certificate in a basic model, it needs to submit an application form and pay a fee. A few jurisdictions also require submission of some supporting documents. Such a basic model can be described as a reactive approach to public protection, in that it assumes good practice is occurring. It provides a disciplinary mechanism in the event of an incident or complaint pursuant to the Act, Bylaws and Code of Ethics. The disciplinary system may provide a deterrent to poor practice, but does not actively encourage good practice.

Quality management focused models include all of the functions of the basic model and add requirements and compliance mechanisms to proactively encourage good practice and reduce impacts to the public interest and the environment. Alberta has the only corporate regulation model in Canada that is quality management focused. In order for regulated organizations to obtain a permit to practice from APEGA, they must develop and submit a Professional Practice Management Plan that contains five elements:

1. organizational chart;
2. ethical standards;
3. professional and technical resources;
4. quality control; and
5. professional documents and record retention.

Aside from prescribing that the plan must cover these five elements, APEGA does not prescribe the content for the plan. It is the responsibility of the regulated organization to develop a Professional Practice Management Plan that is appropriate to their industry and practice discipline.

If APEGBC Council decides to move toward corporate regulation, the Task Force suggests that a quality management focused model be a starting point, given the potential enhanced protection to the public interest and the environment, and the potential for added benefit to the regulated organizations and the professionals they employ.

¹⁴ Canadian jurisdictions employing a basic regulatory model include: Saskatchewan, Manitoba, Yukon, Northwest Territories, Nunavut, Ontario, Prince Edward Island, and Newfoundland.

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APEGBC Organizational Quality Management (OQM) Program

BC's voluntary OQM Program provides another model for quality management focused corporate oversight. The OQM program certifies participating organizations only after they have developed processes and procedures for quality management that meet the standards established by the program. Processes and procedures are implemented in seven areas:

1. APEGBC practice guidelines;
2. retaining project documentation;
3. checking engineering and geoscience work;
4. independent review of structural designs;
5. use of APEGBC seal;
6. direct supervision; and
7. field reviews.

OQM differs from APEGA's approach in that OQM establishes a minimum bar for quality management that certified organizations must meet.

Both Alberta's corporate regulatory model and the OQM Program use audits to verify compliance. If issues are identified in the audits, the associations enter into proactive discussions to resolve issues and improve professional practice. APEGA finds the audit system to be a useful and effective mechanism for identifying and resolving compliance issues. APEGBC reports that in their experience, OQM audits help organizations identify where quality management practices can be improved, and provides a framework for making those improvements. This helps organizations increase efficiencies and customer satisfaction, reduce risk, and support their professionals in meeting their professional requirements. In addition, auditors frequently receive positive feedback on the audit process from organizations and are regularly asked by organizations to conduct additional audits.

A quality management focused corporate regulation model in BC could be modeled after the approach implemented in Alberta, the OQM Program, or could be a hybrid model that incorporates elements of both the Alberta model and the OQM Program.

The Task Force believes that the OQM program¹⁵ may offer a good complementary framework in the development and review of viable quality management focused regulatory models, if Council decides to proceed with further evaluation of corporate regulation.

Practice Review Program

In recognition of the organizational commitment to quality management, individual professional employees within an OQM certified organization are exempted from APEGBC's Practice Review Program, except in cases where this is directed by the Investigation Committee as a result of a complaint.

The Practice Review Program will need to be altered to reflect the corporate regulation program that APEGBC ultimately decides to proceed with.

¹⁵ It should be noted that if an OQM framework were to be investigated as a basis of a quality management focused regulatory model, further analysis would be required to take into account non-structural design work which, to date, has been an emphasis of the independent review component of the OQM program.

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If APEGBC proceeds with a quality management focused regulatory model, the Task Force makes the following suggestions regarding the Practice Review Program:

- individual professional employees of regulated firms should be exempt, similarly to what is presently done through the OQM program;
- it should continue to review unincorporated sole practitioners, as this would be the only form of regulatory oversight that unincorporated sole practitioners would be subject to; and
- it should continue to review practicing professional employees of organizations that are not covered by corporate regulation, or are exempted from corporate regulation.

Definition of the Practice of Professional Services

The Task Force supports APEGBC better defining the “practice of professional engineering” and the “practice of professional geoscience” in light of the growth of non-traditional engineering disciplines such as software engineering, IT and research and development. This would be particularly relevant for determining whether certain organizations within these disciplines should be subject to corporate regulation to ensure consistency, fairness, and protection of the public interest and the environment.

Other Quality Management Business Practices

Through the Task Force review of corporate regulation, a number of ideas were put forward that would potentially improve the quality of professional services delivered. While many of these are considered good ideas, not all of them were within the Task Force mandate, therefore it was not possible to directly incorporate them all in the Phase 1 Task Force recommendation.

A key theme is that provision of high quality services requires sufficient resources and/or budget. If APEGBC is serious about supporting improvements to professional practice, this is an area that should be subject to further attention.

Some ideas that were put forward were:

- a. qualifications based selection (QBS) for procurement of consulting engineering services;
- b. standardized client – consultant agreements; and
- c. change to a proportional liability system from the present joint and several liability system in BC.

It is suggested that APEGBC work with ACEC-BC and other organizations in an effort to make progress on these issues.

Member Feedback during the Consultations

Almost all feedback received during member consultation was informative, constructive and helpful to the Task Force. However, a small number of respondents used the opportunity to express a lack of confidence in APEGBC. This response suggests that APEGBC should continue to demonstrate the necessity to implement appropriate controls on professional practice in order to maintain its privilege of self-regulation.

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Attachments

[Attachment 1 – Advisory Task Force on Corporate Practice Terms of Reference](#)

[Attachment 2 – Discussion Paper](#)

- **Appendix 1: Jurisdictional Scan**

[Attachment 3 – Consultation Summary Report](#)

- **Appendix 1: Detailed List of Consultation Activities**
- **Appendix 2: Summer 2016 Survey Results**
- **Appendix 3: Fall 2016 Survey Results**