

Guideline on the duty to report

July 2024

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Notice

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About this Engineers Canada paper

This national Engineers Canada paper was prepared by the Canadian Engineering Qualifications Board (CEQB) and provides guidance to regulators in consultation with them. Readers are encouraged to consult their regulators’ related engineering acts, regulations, and bylaws in conjunction with this Engineers Canada paper.

About Engineers Canada

Engineers Canada is the national organization of the provincial and territorial associations that regulate the practice of engineering in Canada and license the country's 295,000 members of the engineering profession.

About the Canadian Engineering Qualifications Board

CEQB is a committee of the Engineers Canada Board and is a volunteer-based organization that provides national leadership and recommendations to regulators on the practice of engineering in Canada. CEQB develops guidelines and Engineers Canada papers for regulators and the public that enable the assessment of engineering qualifications, facilitate the mobility of engineers, and foster excellence in engineering practice and regulation.

About equity, diversity, and inclusion

By its nature, engineering is a collaborative profession. Engineers collaborate with individuals from diverse backgrounds to fulfil their duties, tasks, and professional responsibilities. Although we collectively hold the responsibility of culture change, engineers are not expected to tackle these issues independently. Engineers can, and are encouraged to, seek out the expertise of Equity, Diversity, and Inclusion (EDI) professionals, as well as individuals who have expertise in culture change and justice.

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1 Introduction

The duty to report is a legal, professional or ethical obligation or expectation to report the conduct, activities, or behaviour or professional practice of another person or group of persons in order to protect or prevent harm to the public or the environment. This duty is a fundamental responsibility of all engineering registrants* in Canada as part of their licenses to practice.

This guideline is intended to provide assistance to engineers, engineering firms and other registrants (collectively, “**registrants**”) and seeks to help registrants connect their professional and ethical duties with reporting conduct and behaviour. Conduct or behaviour may warrant reporting if it is unethical, illegal, demonstrates a risk to the public and/or more generally, is contrary to the values embedded in the Codes of Ethics in each provincial and territorial jurisdiction and the Engineers Canada Code of Ethics.

This guideline is also intended to serve as a tool for the provincial and territorial regulators of the engineering profession in Canada (collectively the “**regulators**”) to help them enhance, adopt or implement best practices with respect to the duty to report, and regulate their registrants accordingly.

It will outline considerations for mandatory and permissive reports (collectively, “**regulatory reports**”) while continuing to place paramount importance on protecting the health and welfare of the public and the environment, and promoting health and safety within the workplace as it translates into registrants’ day-to-day lives.

2 Limitations, jurisdiction, and audience

This guideline has limits with respect to its applicability and enforceability on a national scale. It cannot create, mandate, or enforce regulations or rules, but will instead be a practical tool for registrants and regulators. This guideline is designed to support registrants in understanding their duty and options with respect to reporting certain behaviour, conduct, or activity.

The scope of this guideline is also limited to providing guidance to registrants and regulators with respect to regulatory reports by registrants, in accordance with their obligations under the regulators’ legislation, regulations, by-laws, and/or policies. While members of the public may make reports to the regulators, it is rare that there would be a “duty” for them to do so (although such duties do sometimes exist, for example, non-registrant employers in some jurisdictions have a legislative duty to report registrant employee misconduct).[†]

2.1 Overview of the role of the regulator

The regulators have a legislated mandate to protect the public interest, which is paramount. This mandate includes safeguarding life, health, property, economic interests, the public welfare, and the environment. The regulators regulate the practice of the profession and govern their registrants

* “Registrant” means an individual registered with an engineering regulator, and can include but is not limited to engineers, engineers-in-training, members-in-training, engineering interns, permit holders, and licensees.

[†] For example, employers of registrants in British Columbia are subject to such a requirement.

so that the public interest is served and protected. The public trusts that engineers have the technical and ethical competence to serve society and have a willingness to put the public interest first. That public trust is carefully conferred and must be protected; trust is fragile and easily lost. Regulatory reports play an important role in protecting that public trust, and safeguarding the integrity of the profession.

As part of their mandate to protect the public, regulators may be granted through legislation, or can create through policy or guidelines, a requirement or expectation for regulatory reports. Regulators may choose or be required to implement regulatory reports for a number of reasons, including that regulatory reports help to:

- ensure the public interest is protected;
- govern registrants and emphasize their professional and ethical obligations to protect the public; and
- protect the integrity of the profession and its registrants.

2.2 Overview of the registrant's role

Regulatory reports are consistent with the registrants' ethical duties outlined in the Codes of Ethics established by each regulator, which generally include duties on registrants to act with fairness, courtesy, and in good faith; to safeguard human life and welfare; and to protect the environment.


During the course of providing professional services, or sometimes even outside of their professional roles, registrants may become aware of various circumstances or conduct by another registrant that could pose a risk to the public. Examples of conduct or circumstances that could pose a risk to the public are discussed below in Section 5. Often times, this conduct and associated risk may not come to the attention of the regulator unless a regulatory report is made, or may come to the attention of the regulator only after risks have materialized. This is precisely why regulatory reports are so important.

3 Legal overview and definitions

A duty to report includes a legal, professional, or ethical obligation or expectation to report the conduct, activities, or behaviour of another person or group of persons in order to protect or prevent harm to the public or environment.


The duty to report can be either mandatory or permissive (collectively, “**regulatory reports**”).

A **mandatory report** means that a person is required by law to make a report. This legal requirement will often also include or dictate the circumstances under which a report must be made, a time period in which this report must be made and the nature of the report. Typically, there are also legal consequences (such as fines, charges, or misconduct proceedings) for failing to comply with a mandatory duty to report.

 *As an example of a mandatory report, registrants in British Columbia are required by legislation to report other identified registrants if there are reasonable or probable grounds to believe that the*

identified registrant is engaged in the practice of engineering in a manner that may pose a risk of significant harm to the health or safety of the public or to a group of people, or to the environment.

A **permissive report** means that there is no legal requirement for a person to make the report. However, the person is permitted (and/or encouraged) to make the report if they believe that it is reasonable to do so. Permissive reporting can still be legislated but the language will typically say “may” instead of “shall.”

 *As an example of a permissive report, registrants in Ontario are permitted, but not required, to report the professional misconduct or incompetence of other registrants.*

Broadly speaking, the purpose of regulatory reports is to facilitate or encourage risky or problematic conduct being brought to the attention of authorities with jurisdiction to mitigate the risk and protect the public. Registrants should refer to their respective regulator’s current legislation, by-laws, and policies to determine whether reporting in a specific circumstance is mandatory or permissive.

3.1 Existing common or widespread reporting requirements

There are many duties to report embedded in legislation, and policies applicable to specific professions or industries, and even some that apply to the Canadian population at large. As an example of the latter, every person has a duty to report child abuse or neglect under Canadian child welfare laws. Other widespread reporting obligations include obligations to report unsafe working conditions to either the federal or provincial ministry of labour and obligations to report a privacy breach to the federal or provincial privacy commissioner.

Some reporting obligations relate to the type of information that professionals are likely to come across in the course of their practice of the profession. For example, physicians and other health professionals in some jurisdictions are required to report to the appropriate government body certain communicable diseases, or patients with conditions that make it unsafe for them to operate a motor vehicle.

In the context of reports to professional regulators, there is sometimes a legislated duty on the employers of professionals to report to the regulator when an action is taken with respect to the employed professional (including termination, suspension, or an imposed leave of absence) as a result of the professional’s unethical or unsafe conduct.

Legislation can sometimes impose an obligation on professionals to self-report to their regulatory body if they are the subject of criminal, civil, and/or regulatory proceedings and/or findings. A broader duty can also be imposed on registered professionals to report concerns about their fellow registered professionals, where the reported professional is engaged in unethical or unsafe conduct.

4 Existing legal framework and duties for registrants

With the general principles outlined in sections 2 and 3 in perspective, this Section will now discuss regulatory reports in the context of the regulation of engineering in Canada, and will

include a concise summary of the current legal framework related to regulatory reports for registrants. It is important to note that this is only a summary, and full review of the legal framework related to regulatory reports for each regulator is beyond the scope of this guideline. It is also important to note that the legal framework governing regulatory reports to the regulators is subject to change, as the regulators' enabling legislation, as well as regulations, by-laws, and policies made thereunder, are subject to change. Accordingly, it is important for registrants to consider the general recommendations contained in this guideline in conjunction with their respective regulator's current legislation, by-laws, and policies.

With these important limitations in mind, most regulators currently include in their Code of Ethics an expectation that registrants must report to their regulator, or to other appropriate authorities, regarding certain conduct by registrants or others. While specific reporting criteria differs by jurisdiction, this generally includes conduct that is unethical, illegal, and/or unsafe. Although not every jurisdiction explicitly addresses regulatory reports in their Code of Ethics,[‡] regulatory reports can still be viewed as consistent with and flowing from other express obligations included in the Code of Ethics, such as obligations for registrants to:

- hold paramount the health, safety, and welfare of the public and have regard for the environment;
- conduct themselves with integrity, honesty, fairness, and objectivity in their professional activities; and
- uphold and enhance the honour, dignity, and reputation of their professions and thus the ability of the professions to serve the public interest.

In addition to reporting obligations in the Codes of Ethics, some jurisdictions have legislated requirements with respect to regulatory reports. In some jurisdictions, this includes an obligation for registrants to self-report to their regulator with respect to criminal, civil, and/or regulatory investigations or proceedings.[§] Even regulators that do not have a specific legislated requirement to disclose such proceedings may require registrants to disclose these proceedings as part of their initial license applications and annual renewal applications.^{**}

One jurisdiction, Engineers and Geoscientists British Columbia, has a legislated requirement for registrants to report other identified registrants if there are reasonable or probable grounds to believe that the identified registrant is engaged in the practice of engineering in a manner that may pose a risk of significant harm to the health or safety of the public or to a group of people, or to the environment. The legislation governing registrants in British Columbia^{††} also contain provisions protecting reporting registrants and employers of registrants who make reports (or the “reporters”)

[‡] The Code of Ethics for the Association of Engineers and Geoscientists of Alberta does not explicitly address regulatory reports, but does interpret a duty to report as flowing from express obligations included in its Code of Ethics, https://www.apega.ca/docs/default-source/pdfs/standards-guidelines/code-of-ethics-5-rules-of-conduct-reference-guide-march-2023.pdf?sfvrsn=ef0d8c00_3

[§] Currently, these obligations exist for registrants of the Association of Engineers and Geoscientists of Manitoba; l'Ordre des Ingénieurs du Québec; and the Northwest Territories and Nunavut Association of Professional Engineers.

^{**} For example, New Brunswick currently requires disclosure of proceedings as part of their annual renewal application.

^{††} *Professional Governance Act*, [SBC 2018] CHAPTER 47

from retaliatory actions, which are commonly referred to as “whistleblower protections.” Examples of retaliatory actions that are prohibited include terminating the employment of the reporter or filing a lawsuit against the reporter related to making the report, such as a lawsuit for defamation.


5 When a regulatory report could and/or should be made

5.1 Reporting of registrants

5.1.1 General considerations

Regulators have a legislative mandate to protect the public interest, and regulatory reports are implemented by regulators in support of fulfilling this legislative mandate. Protection of the public interest includes ensuring that registrants are practicing engineering in a safe, ethical, and professional manner and guarding against tangible risks to the public, such as a risk to life, health, the environment, property, economic interests, and the public welfare.

It is important to note that the risk posed should relate to the registrant’s failure to meet the standards of practice of engineering in a manner that creates this risk, not to inherent risks with respect to a particular area of practice. Risk management is an integral part of the practice of engineering and it is generally understood that engineering works often cannot be accomplished with zero risk, but must be accomplished within an acceptable level of risk, in accordance with the standards of practice with respect to that particular area of practice.^{##} Engineers Canada’s *Public Guideline on risk management* provides helpful guidance on risk management processes and strategies that registrants can use to ensure that engineering works are accomplished within an acceptable level of risk.^{§§} However, where a registrant fails to meet these standards of practice and the risks posed exceed the generally accepted level, the regulator may need to take action to protect the public interest.

 *For example, nuclear energy poses a small but controlled risk to the environment. Where a nuclear engineer meets the standards of practice and keeps the level of risk within generally accepted levels, no regulatory action will likely be warranted. On the other hand, if the nuclear engineer fails to meet the standards of practice in a manner that poses risks above the generally accepted level, the regulator may need to take action to protect the public interest.*

Protection of the public interest also includes protecting less tangible interests, including protecting the public perception in the professionalism and integrity of engineers and engineering as a profession. Accordingly, the regulation of unprofessional conduct, even where it does not create an obvious and tangible risk to the public, still falls within the regulator’s public interest mandate. This is because unprofessional conduct can degrade or damage the public’s perception of engineering as a profession. ^{***}

The following are examples of circumstances where a regulator may determine that a regulatory report is required or encouraged, although this list is not exhaustive:

^{##} <https://engineerscanada.ca/public-guideline-on-risk-management>

^{§§} <https://engineerscanada.ca/public-guideline-on-risk-management#-background>

^{***} See e.g. *Green v. Law Society of Manitoba*, 2017 SCC 20 (CanLII), [2017] 1 SCR 360, <<https://canlii.ca/t/h2wx1>>, para. 79.

- a. Criminal proceedings or findings:** With respect to criminal proceedings, or findings, crimes of moral turpitude are generally the primary concern of regulators. Moral turpitude is generally defined as conduct that is considered contrary to community standards of justice, honesty or good morals.^{†††} Where a registrant is charged with, or is found guilty of committing, a crime of moral turpitude, this gives rise to concern that the registrant is not of “good character”, which is a requirement that all registrants must meet upon registration and throughout their professional practice.^{†††} A list of crimes that involve moral turpitude can be found in the [Engineers Canada Guideline on good character](#). Sometimes a criminal conviction may, in and of itself, be viewed as an act of misconduct. As such, registrants may be required or encouraged to self-report or report others who are convicted of such findings. Specific reporting obligations vary by jurisdiction; a report may be required or encouraged at the initiation of proceedings, or it may only be required or encouraged at the conclusion of proceedings, when findings are made.
- b. Civil proceedings or findings:** With respect to civil proceedings or findings, lawsuits directly related to the registrant’s practice (such as malpractice lawsuits) can give rise to a concern that the registrant is not practicing in a competent, safe, and/or ethical manner. In addition, as with criminal proceedings, civil proceedings may also raise concerns with respect to the registrant’s good character, even where the allegations are not directly related to the registrant’s practice. For example, civil proceedings alleging human rights violations (such as discriminatory conduct based on protected grounds) can give rise to concerns with respect to the registrant’s good character. Consult the [Engineers Canada Guideline on good character](#) for details about discrimination and protected grounds. While specific reporting obligations vary by jurisdiction, unlike criminal proceedings, usually registrants are not required or encouraged to report upon the initiation of civil proceedings. Instead, registrants are usually required or encouraged to report at the conclusion of the proceeding, and only when findings are made. While a final decision where findings have been made may potentially be relied on by a regulator to take regulatory action, it is important to note that all of the evidence submitted in the course of a proceeding is generally subject to the “implied undertaking” rule, meaning that it cannot be used for any purpose outside of the civil proceeding without leave of the court. This means that any evidence obtained in the course of a civil proceeding cannot be submitted to a regulator in connection with a regulatory report without leave of the court.
- c. Regulatory investigations, proceedings, or findings:** With respect to regulatory investigations, proceedings, or findings, it is not uncommon for registrants to register and practice engineering in more than one Canadian jurisdiction. Where there is an investigation, proceeding, or finding by a regulator in one jurisdiction with respect to whether the registrant has committed professional misconduct or is fit to practice, this will

^{†††} *Re Button and Minister of Manpower and Immigration*, 1975 CanLII 2246 (FCA), [1975] 1 FC 277, <<https://canlii.ca/t/gwgrs>>.

^{†††} Most professions have a requirement that the professional be able to practice with defined as: “1. the collective qualities or characteristics, especially mental and moral, that distinguish a person or thing. 2. moral strength. 3. reputation”. Good character connotes moral and ethical strength and includes traits such as integrity, candour, honesty and trustworthiness.

be a relevant concern for regulators in other jurisdictions where the registrant also practices engineering.

In addition, investigations, proceedings, or findings by other regulatory bodies may also raise concerns about whether the registrant's practice is competent, safe, and ethical, or concerns about whether the registrant is of good character. For example:

- an investigation by a provincial or federal privacy commissioner involving a breach of client personal information;
- an investigation by an environmental regulator with respect to concerns about environmental damage caused by a project for which the registrant is or was responsible;
- an investigation by a municipality with respect to building code violations related to a project for which the registrant is or was responsible; or
- a proceeding before a human rights tribunal alleging that the registrant has committed human rights violations, such as discrimination or harassment based on protected grounds.

As with criminal and civil matters, the specifics of whether a report is required or encouraged will vary by jurisdiction; registrants may be required or encouraged to report when investigations are initiated, and/or at the conclusion of proceedings when findings are made. There may be times where an investigation is underway and the allegations or complaint could be frivolous or vexatious or without merit or does not result in any action. The existence of an investigation therefore should never be taken as proof positive of professional misconduct. Where regulators do require or encourage reporting at the investigation stage, a best practice would be to ensure that there is also follow-up reporting regarding the outcome of the investigation.

- d. Competence:** Competence generally means having the knowledge, skill or judgment to provide the engineering services in question. Registrants should only offer services, advise on, or undertake engineering assignments in areas of their competence by virtue of their training and experience.

Examples of providing engineering services in an incompetent manner include:

- failing to provide adequate supervision for engineering works that the registrant is responsible for;
- providing services that are beyond the scope of the engineer's training, expertise, or scope of practice;
- failing to comply with regulatory requirements in relation to the use of the registrant's professional seal; and
- failing to execute necessary due diligence that demonstrates unskilled practice.

- e. Unethical or unprofessional conduct:** Each regulator has an established Code of Ethics setting out expectations for the ethical practice of engineering. Ensuring that all registrants adhere to these ethical practices is especially important for ensuring public trust in the integrity of engineers and engineering as a profession. Examples of unethical practices include:

- providing professional engineering services with an undisclosed conflict of interest;
 - engaging in inappropriate conduct such as sexual harassment, discrimination, or bullying;
 - accepting or offering covert payment or other considerations for the purpose of securing, or as remuneration for, engineering assignments; and
 - billing in a fraudulent manner or submitting a false or misleading account for services.
- f. Fitness to practice:** Fitness to practice in the Canadian regulatory context usually refers to having the necessary physical and mental health to provide safe, competent, careful, diligent and ethical services to the public. A registrant is not fit to practice if they are incapacitated, which means that the registrant:
- a. has a medical, physical, or mental condition, disorder, or illness; and
 - b. their medical condition either:
 - i. makes them unable to carry out their professional responsibilities entirely; or
 - ii. impacts their ability to carry out their professional duties such that their license or certificate of registration should be subject to terms, conditions, or limitations.

It is important to note that a registrant is not incapacitated simply because the registrant has a medical, physical, or mental condition that could impact their ability to practice. If the registrant has insight and understanding into how their condition could or does impact their ability to practice, and voluntarily manages their condition or limits their practice such that they are providing services in a competent and safe manner, the registrant is not incapacitated.

Incapacity issues generally become problematic when the Registrant lacks insight or refuses to accept that their condition is impacting their ability to practice in a competent and safe manner. Since registrants lack insight into how their condition is impacting their ability to practice, often a regulatory report may be necessary to mitigate the risk to the public. Examples of conditions that could result in an incapacity finding include:

- Substance use or abuse (e.g., drugs, alcohol);
- Cognitive health issues (e.g., dementia, Alzheimer’s);
- Physical health issues (e.g., brain injury, cancer, neurological conditions, physician limitations); and
- Mental health (e.g., depression, anxiety, PTSD).

Requiring or encouraging registrants to self-report or to report other registrants for fitness matters can be very complex and raise a number of legal and ethical issues. For this reason, in jurisdictions where regulators require or encourage registrants to report themselves or other registrants for fitness matters, there would typically be legislative requirements and supports or significant guidance to the profession regarding reporting of fitness matters.

5.1.2 Self-reporting, by individual or firm registrants

Some jurisdictions have a legislated duty for registrants to self-report to their regulator when they are subject to criminal, civil, and/or regulatory investigations, proceedings, or findings in other jurisdictions.^{§§§} Regulators could also request self-reports about investigations, proceedings or findings by way of policy, which could occur at the time of registration with the regulator, upon annual renewal, or even within a specified time of a certain event occurring.

5.1.3 Reporting of other registrants, by individual registrants

Regulatory reports may be made (or be required to be made) by one registrant about another^{****}.

The overarching question that a registrant should ask when considering whether to make a regulatory report is whether the circumstances give rise to a reasonable concern that the registrant's practice poses a significant risk to the public interest. In making this assessment, it is important for the registrant to consider that protecting the public interest includes safeguarding both tangible and intangible interests. Safeguarding the public interest includes mitigating tangible risks to the public, such as a risk to life, health, the environment, property, economic interests, and the public welfare. Protection of the public interest also includes protecting less tangible interests, including protecting the public perception in the professionalism and integrity of engineers and engineering as a profession.^{****}

Generally, a mandatory reporting requirement will be based on a reasonableness standard (or similar wording contained in the applicable legislation).^{****} This standard means that the reporter does not need to be certain that there is a risk to the public interest in order for the regulatory report to be warranted. If the facts available to the reporter give rise to a reasonable belief that there may be a risk to the public interest, that is sufficient to warrant a regulatory report. This is a relatively low threshold.

5.1.4 Reporting of other registrants, by firm registrants

Firm registrants should apply the same principle as outlined above in Subsection 5.1.3 for individual registrants when determining whether or not a regulatory report regarding another registrant is required or appropriate.

Firm registrants should also recognize that they are specially placed to facilitate and support regulatory reports because they are more likely than the average individual registrant to become aware of conduct that could pose a risk to the public interest. Firm registrants might receive

^{§§§} Currently, these legislative obligations exist for registrants of the Association of Engineers and Geoscientists of Manitoba; l'Ordre des Ingénieurs du Québec; and the Northwest Territories and Nunavut Association of Professional Engineers.

^{****} Registrants should always have regard to any legal requirements when making a report and may wish to seek legal advice about whether a report needs to be made and /or in what manner the report should be made.

^{****} See *e.g. Green v. Law Society of Manitoba*, 2017 SCC 20 (CanLII), [2017] 1 SCR 360, <<https://canlii.ca/t/h2wx1>>, para. 79.

^{****} Where there is no legal guidance about or requirement to make a regulatory report, the considerations should be similar.

reports about concerning conduct of one of their employed registrants from fellow employees, clients, or others, or may become aware of such conduct through other means.

In British Columbia, firm registrants are specifically required to have a written Code of Conduct that sets out how the firm registrants will ensure compliance with legislative requirements, including the duty to report.

When an employed individual registrant reports concerns about a firm registrant's conduct to the firm, such action alone may not fulfill the individual registrant's professional and ethical obligations to make a regulatory report. It is essential to consult and consider specific provincial and territorial requirements in this regard. However, even without a legal requirement to do so, if an individual registrant is not satisfied with or privy to the steps taken by a firm to address the concerning conduct and the resulting risk to the public, the individual registrant may wish to then make a report directly to the regulator.

5.2 Reporting of non-registrants

5.2.1 General considerations

The Codes of Ethics, in many jurisdictions, extend the duty to report beyond self-reporting and reporting of other registrants. Registrants may be required or encouraged to report any conduct that poses a risk to the public, whether the person engaged in this conduct is an engineering professional or not.

The appropriate authority to receive a report about a non-registrant will depend on factors including whether there is any applicable legislation, the nature of the conduct and the risk posed to the public. For example, if the conduct poses an environmental risk, the federal or applicable provincial ministry of the environment would be the appropriate authority. For fraud or other illegal activities, local law enforcement would be the appropriate authority. Registrants may wish to get advice about reporting non-registrants in terms of whether a report should be made, to whom and in what manner.

The following are examples of circumstances where a regulatory report may be required or encouraged, although this list should not be viewed as exhaustive:

- 1 **Employers or clients:** A registrant's employer or client may choose to overrule or ignore an engineering decision or recommendation. Where that choice poses a risk to the public interest, it will be in conflict with the registrant's duty to safeguard the public.
- 2 **Unlicensed practice of engineering:** Each jurisdiction prohibits the practice of engineering or the use of titles such as "professional engineer" by an individual or entity who is not registered to practice with the regulator in that jurisdiction. Other actions that could lead the public to believe that the individual is licensed to practice engineering, such as the use of a seal, are also generally prohibited. Each regulator's enabling legislation authorizes the regulator to take enforcement action against individuals or entities for the unlicensed practice of engineering, which could result in the individual or entity having to pay significant fines. Unlicensed practice of engineering can pose a risk to the public, and accordingly reporting to the regulator

may be warranted or required.

- 3 Other licensed professionals:** Registrants may be working in inter-disciplinary settings where they are working alongside professionals licensed by other regulatory bodies (e.g., architects, land surveyors, foresters, lawyers, etc.). Where the registrant becomes concerned that another professional is practicing in a way that is unethical or otherwise poses a risk to the public, it may be required or appropriate for the registrant to report their concerns to the professional's regulatory body.

5.2.2 Reporting of non-registrants, by individual registrants

In the context of reporting non-registrants, the overarching question that a registrant should ask is whether the non-registrant's conduct poses a risk to the public interest. This will usually involve tangible risks, such as a risk to life, health, the environment, property, economic interests, and the public welfare.

[Engineers Canada's Guideline on Code of Ethics](#) provides guidance on how to manage circumstances where a registrant's employer and/or client intend to overrule or ignore an engineering decision in a manner that poses a risk to the public:

- The registrant should clearly explain to the employer and/or client the potential consequences of overruling or ignoring the registrant's decision or recommendation.
- Where the registrant is employed, the registrant should first notify the employer.
- Where the employer does not adequately respond to the registrant's concern, the registrant must raise this concern with the client directly. If the registrant is acting as a consultant and there is no employer, the concern can be raised with the client at first instance.
- If attempts to have the concern addressed by the employer and/or client are unsuccessful, the registrant should report the concern to the regulator and/or other appropriate authority.
- Care should be taken by registrants not to enter into legal arrangements which compromise this obligation to report.

Generally, a mandatory reporting requirement will be based on a reasonableness standard (or similar wording contained in the applicable legislation).^{§§§§} This standard means that the reporter does not need to be certain that there is a risk to the public interest in order for the regulatory report to be warranted. If the facts available to the reporter give rise to a reasonable belief that there may be a risk to the public interest, that is sufficient to warrant a regulatory report. This is a relatively low threshold.

^{§§§§} Where there is no legal guidance about or requirement to make a regulatory report, the considerations should be similar.

5.2.3 Reporting of non-registrants, by firm registrants

Firm registrants should apply the same principle as outlined above in Subsection 5.2.2 for individual registrants when determining whether or not a regulatory report regarding a non-registrant is required or appropriate. As outlined in that Subsection, where a client intends to overrule or ignore an engineering decision or recommendation in a manner that poses a risk to the public, the firm registrant may have an obligation to notify the client that the client's decision is in conflict with the firm registrant's duty to safeguard the public. The registrant should clearly explain to the client the potential consequences of overruling or ignoring the registrant's decision or recommendation.

If attempts to have the concern addressed by the employer and/or client are unsuccessful, the registrant may be required or encouraged to report the concern to the regulator and/or other appropriate authority. Care must be taken by registrants not to enter into legal arrangements which compromise their legal or ethical duty to report. It is advisable for the registrant to seek legal advice on any such confidentiality provisions in contracts.

6 Reporting process

6.1 Before reporting

Registrants who are uncertain about whether or not to make a report can look to the regulator or other appropriate regulatory body's legislation, by-laws, and published guidance related to reporting. Registrants may also seek guidance from the regulator or other regulatory body directly with respect to when a report is required or encouraged, or seek legal advice.

Before making a regulatory report, it may be appropriate for the reporter to raise their concerns directly with the other registrant (or other person) engaged in conduct that is considered to pose a risk to the public. A reporter may also wish to seek legal advice or assistance. As discussed in further detail in Section 7.3 below, insurance coverage for this legal consultation may be available under Engineers Canada's Secondary Professional Liability Policy.

When reporting the conduct of another Registrant, some regulators require a Registrant who is making a report to first raise concerns with the other Registrant directly.**** Some regulators also require or expect registrants to raise their concerns with their employer or client directly, before reporting their concerns to an appropriate regulatory body. This is sometimes referred to as the "duty to inform." As outlined in further detail above in Subsections 5.2.2 and 5.2.3, Guidance from Engineers Canada recommends that in circumstances when an employer and/or client intends to overrule an engineering decision in a manner that poses a risk to the public, the Registrant should first explain to employer and/or client that the decision is contrary to Registrant's duty to safeguard the public. If the Registrant is not successful in persuading the employer and/or client, then the Registrant should make a regulatory report to the appropriate authority.

Where notifying the impacted party is not strictly required, the reporter should still consider whether it would be appropriate to do so. It is important to recognize that there may be some

**** This is currently an expectation of registrants in Alberta and Prince Edward Island.

circumstances where a concern could be based on a misunderstanding of the facts, in which case an honest discussion with the impacted party could lead to a conclusion that the regulatory report is not in fact warranted.

However, if the reporter has reason to fear retaliatory action from the impacted party or a physical safety concern, it may be preferable to forego a discussion with the impacted party and proceed directly to making a regulatory report.

A registrant may have concerns that another legal obligation that they have conflicts with making a regulatory report. For example, the registrant may be subject to a confidentiality agreement or may have learned of the information giving rise to the concern in the course of a legal proceeding. In circumstances where the registrant is uncertain about the impact of conflicting legal obligations, the registrant should seek legal advice.

6.2 Who makes a regulatory report

Regulatory reports (in this context) are made by individual or firm registrants because they are governed by the regulators.⁺⁺⁺⁺

6.3 To whom are regulatory reports made

To whom a regulatory report should be made will depend on 1) who has engaged in conduct posing a risk to the public, 2) the specific facts and the risk(s) posed to the public, and 3) governing legislation in the jurisdiction where the conduct occurred.

For instance, where a Registrant is concerned that another registrant has engaged in the practice of engineering in a manner that is incompetent, unsafe, or unethical, the concerned registrant may be required or encouraged to make a report to the registrant's regulator. There is often a difference between a regulatory report and a complaint. However, depending on the regulator's enabling legislation, reports may be dealt with as complaints, or the regulator may have legislated jurisdiction to deal with reports separately. Where there is legislated jurisdiction to deal with reports separately, the reporting registrant may not have to act as a complainant or participate in the complaints process, and may not be entitled to any information about the investigation.

A best practice for regulators is to ensure that reporters have clear guidance about which department or entity in the regulatory body is authorized to receive reports. Often regulators will include this information in a policy, guideline, FAQ, or advice to the profession document. Where a regulator does not have a legislative process to deal with reports outside of the complaints process, the regulator may have to address the situation where information is provided to the regulator but the individual does not wish to participate in the complaints process.

Depending on the particular facts and the specific risk(s) posed to the public, a concurrent report to another regulatory body or authority may also be appropriate. For example, where there is an

⁺⁺⁺⁺ Members of the public may make reports to the regulators but it is rare that there would be a "duty" for them to do so (excluding employers or employing or affiliating entities who may have a legislative duty to report registrant employee conduct).

environmental risk, it may be appropriate to make a concurrent report to the federal or provincial Ministry of the Environment. Where there is a concern that the Registrant may have committed fraud, it may be appropriate to make a concurrent report to local law enforcement authorities.

Where the conduct posing a risk to the public is by a non-Registrant, the regulator will not have jurisdiction to deal with the report and address potential risk to the public, unless the conduct involves the unlicensed practice of engineering. In those circumstances, a report should be made to the authority with jurisdiction to mitigate the risk to the public. Registrants should generally be aware of the regulatory bodies that are relevant to their particular area of practice. If the reporter is uncertain about which authority or regulatory body concerning conduct should be reported to, they should seek legal advice.

It is important for registrants who consider bringing their concerns to the media, or raising their concerns on social media or other online forums, to note that these actions do not absolve them of their obligation to make a regulatory report where one is required. Regulators may have general requirements or policies related to statements made to the public, advertising, or the use of social media. Where applicable, these should be considered to ensure that the content of statements to the media or online are appropriate and in accordance with the Registrant's professional obligations.^{****} Further, a social media post can be subject to defamation claims. Unlike the protections available to individuals filing a complaint with a regulator or a regulatory report, posting on one's social media lacks similar safeguards.

6.4 What should be included in regulatory reports

Often legislation or policy will specify what needs to be included in a regulatory report. Regulatory reports should typically include:

- a clear, chronological, and concise summary of the facts giving rise to the reporter's concern that there is a risk to the public;
- where a concurrent report has been made to another regulatory body with jurisdiction to address the risk, and details about the concurrent report;
- the name and contact information of other individuals in a position to provide information relevant to the concern raised in the regulatory report; and
- Copies of all documentary evidence supporting the allegation.

Regulators should make it clear what information is required to be included in the report and not seek to collect more information than is necessary.

6.5 Timing of regulatory reports

Regulatory reports will be most effective when they are made promptly. This places regulators and other regulatory authorities in the best position to mitigate potential risks to the public. Timelines

^{****} For example, under the Code of Ethics for the Professional Engineers of Ontario, registrants are required to "endeavour at all times to enhance the public regard for the practitioner's profession by extending the public knowledge thereof and discouraging untrue, unfair or exaggerated statements with respect to professional engineering".

for legislated regulatory reports range from forthwith upon a certain event (i.e., immediately) to 30 days. For regulatory reports that are not specifically set out in legislation, the principle of “sooner is better” should be applied since a delay in reporting can lead to, among other things, challenges in investigations.

6.6 Possible outcomes of regulatory reports

Once a report has been made to the regulator, it will be up to the regulator to determine what further actions are necessary. Likely, this will include an investigation into the conduct of the Registrant alleged to be practicing in an incompetent, unsafe, or unethical manner. The results of that investigation will determine whether further action is necessary, and what that further action may be. The type of action will depend on the nature of the conduct at issue. The following are examples of possible outcomes (which are not exhaustive):

- where the regulator has reasonable grounds to believe that the Registrant may be guilty of professional misconduct, next steps may include disciplinary proceedings;
- where the regulator has a concern that the Registrant may be incapacitated, next steps may include referring the Registrant for an independent medical examination;
- where the regulator believe that an individual or entity may have engaged in unlicensed practice, next steps may include an enforcement action; and
- where the regulator is satisfied that the alleged conduct does not pose a risk to the public interest or finds that the conduct is not within the regulator’s jurisdiction, the regulator will not take any further action. For conduct that is outside of the regulator’s jurisdiction, the regulator may refer the matter to appropriate authorities with jurisdiction over the conduct in question.

Depending on the outcome of an investigation into a regulatory report, the reporter may not be entitled to receive any further information.

Regulators may wish to consider process maps or flow charts to demonstrate what can happen as a result of regulatory reports. Regulators should also consider including notification that the reporter may not be able to be informed as to the outcome of their report. The reporter’s potential role in regulatory proceedings should also be considered (and is discussed in further detail below).

Where reports are made to regulatory bodies other than the regulators (such as law enforcement agencies, human rights tribunals, environmental compliance regulators, etc.), outcomes will depend on the jurisdiction and powers of that regulatory body and applicable legislation.

7 Reporting consequences and challenges

7.1 Failing to make a regulatory report

Regulatory reports are a professional and ethical duty of all registrants. Registrants may be reluctant to make a regulatory report for a number of reasons, including a sense of camaraderie or loyalty to fellow professionals, resulting in a reluctance to “turn in one of our own.”

However, failing to make a regulatory report where one is warranted is a breach of the Codes of Ethics, and may also be a breach of the legislation, depending on the jurisdiction in which the registrant is practicing. It is possible that failing to make a regulatory report where one is warranted could constitute professional misconduct, which could have disciplinary consequences for the Registrant. Disciplinary consequences or legislative penalties will generally only be appropriate for a failure to make a mandatory report, since professionals have discretion to decide whether to make a permissive report. It is also possible that members of the public harmed by the conduct could bring a lawsuit against the registrant for failing to report.

Registrants should ensure that they understand their regulator's legislation, regulations, by-laws and policies related to regulatory reports. To support registrants in making regulatory reports, regulators should endeavour to provide clear policies and guidance to registrants setting expectations about what types of conduct must be reported (i.e., is a mandatory report) and what types of conduct may be reported (i.e., is a permissive report).

7.2 Making an improper regulatory report

Regulatory reports should be made in good faith. This regulatory process should not be weaponized or used to harm registrants or others with whom the reporter has personal or professional disagreements or problems (e.g., business competitors, former employers, former romantic partners, political adversaries, etc.). The regulatory process is also not the appropriate forum to address ideological disagreements with the type of work that a registrant is engaged in (e.g., oil refining, fracking, nuclear energy, etc.) or as a means of political activism.

Where a regulatory report is made and the resulting investigation reveals that the report was completely unfounded, and the overall facts suggest that the report was made for ulterior and improper purposes, there may be professional or personal consequences for the reporter. Registrants are required to act with honour and integrity and making a false report does not accord with these duties. Making a false report could result in disciplinary consequences for the reporter, as this type of conduct is likely to be found as conduct that the profession would generally find to be disgraceful, dishonourable, or unprofessional and may result in disciplinary consequences, up to and including loss of licensure.

In addition, registrants making a false report could face lawsuits from reported individuals or entities. As noted above, whistleblower provisions may protect reporters from retaliatory actions, including lawsuits. However, these protections will typically only apply to reports made in good faith. To determine whether a report was made in good faith, the overall facts and circumstances would be considered. Where the circumstances demonstrate that the allegations made in the report are without merit, and suggest that the reporter had an ulterior motive for the report, such as a personal vendetta against the reported Registrant, the regulator is likely to conclude that the report was not made in good faith.

This warning should not dissuade would-be reporters with a reasonable belief that a Registrant or other person has engaged in conduct that poses a risk to the public. As outlined in Subsection 5.1.3, the reasonableness standard does not require absolute certainty that there is a risk to the public. If an objective third party, in considering the known facts and circumstances, believes that there may be a risk to the public, then it is appropriate to make a regulatory report.

7.3 Protections for reporters

Reporters may be concerned about retaliatory actions, particularly when the reported person or entity is in a position of power over the reporter, such as an employer.

A reporter faced with retaliatory conduct as a result of making a regulatory report should report the retaliatory conduct to the regulatory body where the initial report was made.

If a Registrant engages in retaliatory conduct, the registrant could face regulatory consequences for this conduct. Registrants have an ethical duty to act with honour and integrity and engaging in retaliatory actions is contrary to this duty. Engaging in retaliatory conduct could be found to be professional misconduct, as it is conduct that would generally be viewed as disgraceful, dishonourable, or unprofessional.

Depending on the specific facts and jurisdiction in which the retaliatory conduct occurs, the retaliatory conduct could be a breach of engineering legislation with other consequences as well.^{§§§§§}

Similarly, under particular circumstances, other legislation may also provide whistleblower protections against retaliatory actions. For example, some provincial employment statutes include whistleblower protections for employees who report unsafe or illegal conduct.

These protections typically ensure that if a report is made in good faith, no action or proceeding shall be taken against the person making the report. Engaging in retaliatory actions against a reporter who has made a report in good faith would be regarded as a violation of these protections. Such actions could result in fines and other possible repercussions for the party involved in the retaliatory conduct. These types of legislative protections would be considered a best practice to provide protection to reporters.

While legislated whistleblower protections provide the strongest form of protection and support for would-be reporters, whistle-blower insurance can be helpful in providing economic support. Whistle-blower insurance cannot prevent retaliatory actions from happening, it can provide monetary support to help the reporter manage the consequences of retaliatory actions. For example, as part of its Secondary Professional Liability Coverage, Engineers Canada offers whistleblowing coverage, which provides coverage for the economic costs associated with whistleblowing, including: legal costs, loss of employment, and the expenses of finding new work.^{*****}

7.4 Participation in the complaint or discipline process

^{§§§§§} In British Columbia, retaliatory actions against a reporter (which could be either a registrant or an employer of a registrant) is an offence under the legislation that is subject to a fine of up to \$200,000 for individual registrants and up to \$500,000 for firms registrants.

^{*****} <https://engineerscanada.ca/services/insurance-financial-and-other-benefits/secondary-professional-liability-insurance/whistleblowing-coverage>.

The reporting Registrant may be asked to participate further in the investigation process, or to act as a witness where the regulator determines that disciplinary proceedings are appropriate. While the regulator will consider requests from reporting registrants to remain anonymous, and may honour these requests where possible, it will not always be possible for regulators to guarantee anonymity.

Where the reported registrant is facing disciplinary proceedings, because of the potential serious consequences for the reported registrant, they are entitled by law to a full and fair hearing. This will generally include full disclosure of the information that is being relied upon by the regulator, so that the registrant can understand and fully respond to the allegations that have been made against them.

Similarly, an individual or entity prosecuted for unlicensed practice of engineering will be entitled to broad discovery of relevant documents and information under the rules of the court in the jurisdiction where the enforcement proceeding occurs.

In certain situations, it is unlikely for the reporter to be asked for further involvement or to be provided any additional information on the reported matter. For example, in cases concerning fitness to practice, where the professional's personal health information is involved, the reporter might not be called upon as a witness. It is also unlikely that the reporter would have the opportunity to observe the fitness hearing as such hearings are usually closed to the public in order to protect the registrant's privacy, who is the subject of the report. Additionally, only the outcome would typically become public knowledge, and only if it resulted in the removal of the professional from practice or restrictions on their ability to practice. Specific details about the situation usually remain undisclosed to the public.

8 Conclusion

Regulatory reports are an important professional and ethical obligation that registrants must abide by in order to do their part to safeguard the public interest. While this guideline provides general guidance and best practices, registrants should always consider the best practices outlined above in conjunction with the specific requirements of the jurisdiction(s) in which they are registered to practice engineering.

Regulators are appreciative of the essential role that registrants play in making regulatory reports, which supports regulators' mandates to protect the public interest. Regulators should continue to work towards making the reporting process clear, streamlined, and supportive for registrants.

Appendix A - Glossary

Good character: most professions have a requirement that the professional be able to practice with defined as: “1. the collective qualities or characteristics, especially mental and moral, that distinguish a person or thing. 2. moral strength. 3. reputation”. Good character connotes moral and ethical strength and includes traits such as integrity, candour, honesty and trustworthiness.

Mandatory report: means that a person is required by law to make a report. This legal requirement will often also include or dictate the circumstances under which a report must be made, a time period in which this report must be made and the nature of the report. Typically, there are also legal consequences (such as fines, charges, or misconduct proceedings) for failing to comply with a mandatory duty to report.

As an example of a mandatory report, registrants in British Columbia are required by legislation to report other identified registrants if there are reasonable or probable grounds to believe that the identified registrant is engaged in the practice of engineering in a manner that may pose a risk of significant harm to the health or safety of the public or to a group of people, or to the environment.

Moral turpitude: is generally defined as conduct that is considered contrary to community standards of justice, honesty or good morals.

Permissive report: means that there is no legal requirement for a person to make the report. However, the person is permitted (and/or encouraged) to make the report if they believe that it is reasonable to do so. Permissive reporting can still be legislated but the language will typically say “may” instead of “shall.”

As an example of a permissive report, registrants in Ontario are permitted, but not required, to report the professional misconduct or incompetence of other registrants.

Registrants: an individual registered with an engineering regulator, and can include but is not limited to engineers, engineers-in-training, members-in-training, engineering interns, permit holders, and licensees.

Regulators: the provincial and territorial regulators of the engineering profession in Canada.

Regulatory reports: mandatory reports and permissive reports (see above for definitions of mandatory reports and permissive reports).