

Explanatory Note: Public Interest Decision-Making

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Background

The *Health Professions and Occupations Act* (HPOA) gives the Superintendent of the Health Professions and Occupations Regulatory Oversight Office (Oversight Office) authority to make certain discretionary decisions based on what is in the "public interest". To support transparency, this document identifies and outlines factors, referred to as "lenses", that the Superintendent may consider when determining what is in the public interest. This document is intended to be non-exhaustive, and the Superintendent retains full discretion to make decisions based on the specific circumstances of each case.

Purpose

The HPOA does not define what "public interest" means. This is common in British Columbia legislation and allows decision makers to consider the specific circumstances of each case.

There is no single definition or checklist for determining what is in the public interest. Determining what is in the public interest will be an ongoing and case-specific process that considers the circumstances, the purpose of the Act, and the specific provision being applied.

In this document, several factors have been identified and organized into a set of "lenses" to help explain how public interest decisions may be approached under the HPOA by the Superintendent. Depending on the situation, some lenses may be more relevant or carry more weight than others.

As an independent body, the Oversight Office recognizes the importance of upholding its independence. The Superintendent has the sole authority to decide what is in the public interest within the areas set out in the HPOA, the lenses identified in this document, and other relevant factors as needed.

We recognize that there is no single, universal interpretation of the public interest. People and communities may have different perspectives on what public interest means. Consistent with the Oversight Office's commitment to reconciliation and respect for Indigenous rights, we acknowledge that Indigenous Peoples, including First Nations, Inuit, and Métis, have unique interests and perspectives relevant to public interest decisions.

Superintendent Public Interest Decisions

Under the HPOA, the Superintendent may need to decide whether something is in the public interest in several situations:

1. **Initiating a designation assessment** when it is in the public interest to assess whether a group of health practitioners should become regulated under the HPOA
2. **Initiating a restructuring assessment** when it is in the public interest to assess whether changes to a regulator's structure would support more effective and efficient governance, or whether the current governance structure is no longer appropriate for one or more health professions or occupations
3. **Considering regulator actions** when determining whether a regulator is acting, or has acted, in a manner that is not consistent with the public interest
4. **Initiating an oversight investigation** when a regulator may have acted in a manner that is not in the public interest
5. **Initiating a systemic review** when it is in the public interest
6. **Distributing an oversight report to the Minister of Health immediately** when a matter in the report is relevant to the public interest
7. **Publishing information, records or reports, or making comments publicly** when it is in the public interest to make information publicly available

Public Interest Lenses

Lens	Considerations
Guiding Principles	The guiding principles within the Health Professions and Occupations Act (section 14) identify values that the Superintendent has a duty to uphold. Does the decision uphold the guiding principles?
Serving the Public	Public interest decisions are made for the benefit of the public as a whole. While there are different legitimate interests and perspectives to be considered, a public interest decision should not be made to favour private, individual, institutional, professional, or other vested interests. Even a decision that produces a defensible outcome can fail to protect the public interest if it was driven by a narrow or particular interest. Is the decision genuinely prioritizing the public interest?
Evidence-based Decisions	Public interest decisions should be made based on credible information weighed for its cumulative significance, not on any single concern, statistic, media report, or anecdote. This includes considering the independence and quality of sources, gaps in the evidence, and the possibility that an absence of evidence may be due to underreporting or

Lens	Considerations
	inadequate systems to capture issues rather than an absence of a problem. Is the decision grounded in reliable evidence and fairly assessed as a whole?
Proportionality	The public interest is served by responses that fit the specific circumstances of the matter. This includes taking into account an issue's seriousness, scope, frequency, persistence, manageability, and by reserving more significant interventions for more significant concerns. Is the course of action proportionate to the nature and magnitude of the issue?
Fair Process	The public interest arises from, and is served by fair, transparent decision-making procedures. Even a sound outcome can be seen as failing the public interest if the process was unclear or applied inconsistently. Was the process for reaching the decision adequate?
Public Confidence	Regulatory actions that are genuinely in the public interest build public confidence in both the decision maker and the broader system they oversee. That confidence is earned and sustained when those decisions are made in good faith, are responsive to genuine public concern, are communicated appropriately, and make good use of available time and resources given the landscape of competing priorities. Would the decision increase a reasonable member of the public's confidence in the Superintendent's decision making and the regulatory system?

Reaching a Decision

For each public interest determination, the Superintendent considers the following questions when reaching their decision:

- **Determining jurisdiction:** Is the Superintendent the correct decision maker to address the issue?
- **Identifying the provision engaged:** Which section(s) under the HPOA require or permit a public interest determination? What is the nature of the determination being made?
- **Gathering the relevant evidence:** What credible information is available? Has adequate evidence been gathered, or is additional information needed before a determination can be made? If information is limited, does the nature of the potential risk of harm justify acting, or is the action justifiable in absence of evidence?

- **Considering statutory purpose:** Within the context and statutory purpose of the entire HPOA, what was the purpose of allowing the Superintendent to make this determination? Based on that, what does the HPOA require the Superintendent to consider when making this determination?
- **Assessing potential decisions against the relevant criteria:** What does the relevant criteria say about whether any particular course of action is in the public interest?
- **Weighing the criteria:** What competing interests are at play? What course of action best meets the public interest criteria as a whole? Where criteria point in different directions, protecting the public from harm and discrimination should be a priority.
- **Reaching a determination:** What is the decision? Has the determination and the reasons for it been clearly documented?