

via electronic mail: George.Anderson.MLA@leg.bc.ca

November 17, 2025

George Anderson, MLA
Parliamentary Buildings
Victoria, BC V8V 1X4

Dear Mr. Anderson:

Re: Bill M 216, *Professional Reliance Act*

West Coast Environmental Law Association (“West Coast”) is a non-profit group of environmental lawyers, strategists and communicators dedicated to safeguarding the environment through law, which has helped shape environmental law and policy in BC for over 50 years. We write to express our serious concerns with your private member’s bill M 216, the *Professional Reliance Act*.

The stated goals of the bill – to get homes built faster to help address BC’s housing crisis – is a laudable one. It is not clear, however, that this bill will do that. The bill as drafted provides broad-ranging exemptions from local government authority with few guardrails. At best, the bill would lead to regulatory deadlock with projects tied up in under-resourced dispute resolution processes; at worst, it could result in catastrophic harm to human health, property, and the environment.

By assigning liability to certifying professionals, the bill implicitly acknowledges that significant harm may befall members of the public or the environment from negligent professional actions. However, the goal should be to prevent harm, rather than to provide a possibility of compensation after the fact through costly and time-consuming litigation. The proposed allocation of liability to professionals is unlikely to be effective at preventing the harms that can result from deficient work before they occur.

In order for professional reliance systems to be effective, they must be carefully designed and incorporate clear mechanisms for oversight and accountability – not just liability. BC has learned these lessons over years of experience with the benefits and risks of professional reliance systems, culminating with the Review of Professional Reliance in Natural Resource Decision-Making in 2018 (the “Professional Reliance Review”).¹ The Professional Reliance Review provided 34 general recommendations and 87 regime-specific recommendations to improve the use of professional reliance in BC. Many of the recommendations made in that report are relevant to the proposed bill, and few of them are reflected in its provisions. In particular, the bill directly conflicts with several of the Professional Reliance Review’s recommendations on the topic of accountability by expressly prohibiting peer review and preventing local governments from stepping in when problems arise.

Risks of Professional Reliance

Giving unchecked decision-making authority to a consultant hired by the project proponent creates the risk of conflicts of interest. This is perhaps most clearly illustrated by the phenomenon of “expert shopping”, whereby

¹ M. Haddock, *Professional Reliance Review: The Final Report of the Review of Professional Reliance in Natural Resource Decision-Making*, 2018 (<https://professionalgovernancebc.ca/app/uploads/sites/498/2019/11/Final-Report.pdf>)

a proponent may seek out consultants most likely to give them a favourable opinion. They may hire multiple consultants until they find one willing to certify the project – or simply threaten to do so to compel their consultant to certify. When consultants’ reports and recommendations are not subject to government oversight or peer review, they become accountable only to their clients and may face significant economic pressure to reach findings favourable to those clients. There is an inherent and perceived conflict of interest in allowing final determinations to be made by agents that are hired by a project proponent.

However, even well-intentioned consultants can and do make mistakes. Local government decision-makers and experts are most familiar with the local conditions that can affect professional assessments, and are best-positioned to catch and correct errors before construction begins. The proposed bill affords them no opportunity to do so.

Examples of Failures of Professional Reliance

Numerous examples of deficient work by qualified environmental professionals have been documented in reports by the University of Victoria’s Environmental Law Centre (“ELC Report”)² and by BC’s Office of the Ombudsperson,³ as well as in the Professional Reliance Review.

Of particular relevance to the local government context is the story told at page A-29 of the ELC Report. In that case, a qualified environmental professional issued a riparian assessment report (pursuant to the *Riparian Areas Regulation*) that indicated that 24 hectares of land in Salmon Arm could be developed for the construction of a shopping centre. After numerous reviews by the Ministry of Environment, complaints by residents knowledgeable of local conditions, and an independent assessment report commissioned by the Ministry, it was eventually determined that only 6.5 hectares of the property were suitable for development.

A later decision of the BC Court of Appeal held that the Ministry’s oversight powers for professional reliance under the *Riparian Areas Regulation* were strictly limited⁴, meaning that the Ministry likely lacked the authority to require the additional reviews that caught the deficiencies in the shopping centre proposal. Amendments to the regulation were required to ensure that the Ministry had the power to provide effective oversight and accountability for riparian assessments⁵ – but those amendments did not occur until 2019, eight years after the court decision and not until after the Professional Reliance Review reiterated the need for reforms.

Similarly, professional reliance and deregulation under the *Sewerage System Regulation* in 2004 led to numerous problems, including septic systems being installed in unsuitable soil conditions causing harm to neighbouring wells and water bodies, and in other cases to the installation of “overkill” sewerage systems that cost homeowners tens of thousands of dollars more than was necessary.⁶ Again, in this case lessons were

² M. Haddock, *Professional Reliance and Environmental Regulation in British Columbia*, 2015 (https://envirolawcentre.ca/wp-content/uploads/2015/02/Professional-Reliance-and-Environmental-Regulation-in-BC_2015Feb9.pdf)

³ Office of the Ombudsperson, *Striking a Balance: the Challenges of Using a Professional Reliance Model in Environmental Protection – British Columbia’s Riparian Areas Regulation*, 2014 (<https://bcombudsperson.ca/wp-content/uploads/2025/08/Public-Report-No-50-Striking-a-Balance.pdf>)

⁴ *Yanke v. Salmon Arm (City)*, 2011 BCCA 309.

⁵ *Riparian Areas Protection Regulation*, BC Reg 178/2019

⁶ ELC Report at p. A-31

learned and the regulation was amended in 2010 to correct some of these deficiencies,⁷ including by providing additional opportunities for oversight by provincial health officers.⁸

As an organization that provides legal support to members of the public faced with irresponsible development, we regularly encounter situations of industry-hired professionals who reach questionable results.

Bill M 216 risks repeating the mistakes of the *Riparian Areas Regulation* and the *Sewerage System Regulation*, long after those regulations were amended to reintroduce greater accountability and oversight in response to clear failures of the professional reliance approach.

Role and Capacity of the Superintendent of Professional Governance

The only remedy available under Bill M 216 to a local government who is concerned about the quality or accuracy of a professional certification is to refer the matter to the superintendent of professional governance for dispute resolution.

The superintendent of professional governance is an office established by the *Professional Governance Act* to provide oversight of professional regulators. The office's focus is on the mechanics of professional regulation, not on the substantive expertise exercised by regulated professionals. The superintendent does not employ subject matter experts who could adjudicate a dispute between two or more engineers, biologists, foresters, or architects about the technical aspects of a development proposal.

Requiring the superintendent to resolve technical disputes would necessitate a significant increase in operational scope, budget, and staffing capacity – none of which is provided by Bill M 216. Without such an expansion, the office will likely be incapable of serving this dispute resolution function efficiently or at all, and professional certifications disputed by local governments could fall into a regulatory purgatory that effectively prevents the project from proceeding indefinitely.

Additionally, shifting decision-making authority from local governments to the superintendent means a shift from those most familiar with the geography, economy, and community dynamics at issue to a remote provincial government office in Victoria that has no such connection. Moreover, while local governments have the option to refer a question to the superintendent, it is not clear that members of the public who are affected by a deficient professional certification would have any such recourse.

Contrast with Existing Municipal Professional Reliance Systems

In your remarks on the bill in the Legislature on October 27, you drew parallels to existing professional reliance systems used by municipalities such as Vancouver, Surrey, and Prince George, and suggested that this bill “takes these local successes and scales them across the province.”

This comparison is problematic, for two reasons. First, the professional reliance systems in these municipalities are carefully constrained, applying to specific types of certifications and decision-making processes and with varying degrees of municipal oversight. Bill M 216 would force professional certifications to be accepted for all local government permit or bylaw requirements indiscriminately; there would be no opportunity for the local

⁷ Professional Reliance Review at p. 120-121.

⁸ See e.g. *Sewerage System Regulation*, BC Reg 326/2004, ss. 2.1(1)(c) and (d).

government to determine which of their requirements are suitable for certification by professionals and which are not.

In particular, Surrey recently undertook a comprehensive review of its professional reliance regime that resulted in, among other things, clarifications being made with respect to which functions would be delegated to qualified professionals and which would be retained by the City.⁹ Surrey determined that while it was appropriate to rely on professionals to certify compliance with the Building Code, it should be up to the City to determine whether the proposal complies with zoning, design guidelines, and land-use regulations. Under Bill M 216, Surrey would be required to accept the certification of a professional on all of these matters and could no longer choose which aspects of the development permit approval process should be reserved for City staff.

Second, the cited examples are all bylaws passed by municipalities. Locally-elected councils in those communities made a decision to apply these tools in a manner that they considered to be appropriate for their communities. Even among the three communities cited, the approaches chosen are not identical. Other local governments have the same opportunity to adopt these processes, and have not done so. Communities should be trusted to make their own decisions about their regulatory capacity, their tolerance for risk, and the extent to which they wish to permit reliance on qualified professionals.

As the Union of BC Municipalities noted in a recent statement, local governments were not consulted on the development of Bill M 216.¹⁰ Legislation that so dramatically undercuts the existing authority of local governments must be carefully considered in discussion with those governments to ensure that its consequences are actually in the best interests of British Columbia's communities.

Conclusions and Recommendations

Professional reliance systems dramatically reshape regulatory processes, and with that comes the potential of significant harms if sufficient safeguards are not built in. BC has learned these lessons from past failures, and the recommendations of the Professional Reliance Review serve as a baseline that should be reflected in any new legislation to avoid repeating the errors of the past. Unfortunately, Bill M 216 fails to meet this standard, and cannot do so without substantial changes. We urge you to withdraw this bill, and to consult meaningfully with local governments and experts on whether the proposed system is actually needed and how it can be better designed to avoid potential pitfalls.

Thank you for your consideration. I would be pleased to meet with you at your earliest convenience to discuss this matter further.

Sincerely,

WEST COAST ENVIRONMENTAL LAW ASSOCIATION



Matthew Nefstead, Staff Lawyer

⁹ City of Surrey Corporate Report, "Improvements to the Certified Professional Program", July 7, 2025 (https://www.surrey.ca/sites/default/files/corporate-reports/CR_2025-R157.pdf)

¹⁰ Union of BC Municipalities, November 6, 2025, "UBCM expresses concern with private members bill" (<https://www.ubcm.ca/about-ubcm/latest-news/ubcm-expresses-concern-private-members-bill>)

CC/

Hon. David Eby, K.C., Premier

Hon. Christine Boyle, Minister of Housing and Municipal Affairs

Hon. Brittney Anderson, Minister of State for Local Governments and Rural Communities

Tony Luck, MLA

Jeremy Valeriote, MLA

Darlene Rotchford, MLA

Sheldon Clare, MLA

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