

# **APPENDIX 10**

## ***AUTHORITY TO DELEGATE***

## Appendix 10 – Analysis Regarding Authority to Delegate

Not all legislation for self-regulated professional organizations in Alberta contains clear statements on the express authority of the Registrar. In some cases, general references to such duties are specified in the Act or assigned by Council (Appendix 3A). In other cases, clear provisions are included (see British Columbia in Appendix 6A), often in the bylaws of the professional association (Appendix 5).

Delegation is specifically addressed in Alberta's *Health Professions Act* (HPA) (Appendix 5). The *HPA* expressly states that, subject to the bylaws, a person or committee to whom a power or duty is given under the Act or the bylaws may delegate that power or duty to one or more other persons or committees, and conditions may be imposed on the delegation. The *HPA* also expressly identifies certain powers and duties of certain persons and committees that cannot be delegated. Furthermore, certain powers of the Registrar can be delegated to an inspection committee if council establishes one. The *Agrology Profession Act* and the *Regulated Forestry Profession Act* in Alberta were structured and worded similar to the *Health Professions Act*.

Under Alberta's *Regulated Accounting Profession Act*, it is expressly stated that when an accounting organization is given a power, duty, or function, it is to be carried out by its governing body or the individual, committee, or other body prescribed by the governing body. Furthermore, that delegated power, duty or function may be sub-delegated, unless the governing body prescribes otherwise. That legislation also expressly states that any power, duty or function under the bylaws may be delegated or sub-delegated.

Under the *Legal Profession Act*, The Law Society of Alberta has an Executive Director rather than a Registrar. The Act contains specific provisions regarding the delegation of the Executive Director's powers and duties, including delegation to employees of the Society. In parts of the Rules of the Law Society of Alberta, the Executive Director definition includes employees holding certain positions or any other person designated by the Executive Director to perform any of his or her duties.

The provisions of some legislation indicate that a Deputy or Acting Registrar has all of the powers and can perform all of the duties of the Registrar when those powers and duties have been delegated to them. Some legislation also contains statements that a reference to Council, an officer, person or committee includes any delegate of those entities or individuals.

If legislation governing APEGA is changed so that the authority and duties of the Registrar are clearly expressed and expanded, practical limits should be considered to avoid bias. For example, if the Registrar is presenting evidence or taking an advocacy position before a statutory board or committee, the Registrar should not have a role in appointing members to that board or committee.

Regarding outlining sub-delegation of authority in the Act or Regulations (as opposed to an assignment of general duties not itemized in the governing legislation), it is recommended to add specific wording to allow a sub-delegate to sub-delegate further (e.g., Section 19 of the *Health Professions Act* (Appendices 4 and 5).

It is important that the wording to permit delegation be phrased broadly. If the wording is narrow, permitting the delegation of only certain functions, it is likely that a court would read the statute as limiting the power to delegate to only the specific matters referred to in the legislation.