

# AUTHORITY TO DELEGATE

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## 1. Overview

This discussion paper addresses the authority of APEGA's Council and Registrar to delegate to others. APEGA's existing legislation does not expressly give APEGA's Council, the Registrar, statutory bodies and CEO (entities) the authority to delegate to others.

## 2. Executive Summary

APEGA's legislation should be revised to give these entities the express authority to delegate. This would bring clarity to APEGA's legislation, authorize the appropriate entities that execute Association business, and align the legislation with that of other professional associations in Alberta and other jurisdictions in Canada.

It is recommended that *The EGP Act* be amended to expressly authorize APEGA's Council, the Registrar, statutory bodies (Board of Examiners, Practice Review Board, Appeal Board, Discipline Committee and Investigative Committee) and CEO to delegate their authority and duties, as appropriate.

*(The specific express authority and duties for entities will be detailed in subsequent papers released in fall 2015 and 2016.)*

## 3. Existing Legislation

### ***Express authority of APEGA's Council and APEGA's Registrar***

The governing legislation for APEGA comprises *The Engineering and Geoscience Professions Act*, RSA 2000, c E-11 (*The EGP Act*), *The Engineering and Geoscience Professions General Regulations*, Alta Regulation 150/1999 (Regulation), and the By-laws.<sup>0F1</sup>

The express authority of APEGA's Council, as it currently exists, is found throughout the Act, Regulations and By-laws (Appendix 1). Some of the more significant authority of Council includes:

- Managing and conducting the business and affairs of the Association
- Governing the Association and exercising the authority of the Association
- Establishing committees and boards and appointing members to them
- Appointing the Registrar and Deputy Registrar
- Making regulations and bylaws

The express authority of APEGA's Registrar, as it currently exists, is found throughout the Act, Regulations and By-laws, and falls under the following main themes (Appendix 2):

- Maintenance of registers and records
  - Enter memoranda of suspension or cancellation
- Duties related to registration
  - Receive applications<sup>1F2</sup>

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<sup>1</sup> Also under *The EGP Act*, but not governing APEGA (other than in the context of joint boards), are the *ASET Regulations*, Alta Reg 282/2009, the *Professional Technologists Regulations*, Alta Regulation 283/2009 and the Bylaws of the Association of Science and Engineering Technology Professionals of Alberta.

- Register the names of those who have been approved by the Board of Examiners (BOE)
- Issue evidence of registration
- Issue annual certificates
- Cancel registrations and strike names from the register/record at the direction of Council
- Receive surrendered evidence of registration
- Reinstate registrations at the direction of Council
- Receipt of complaints and provision of notice regarding investigations
- Duties related to hearings by the APEGA Discipline Committee
- Duties related to appeals
- Miscellaneous other duties

### ***Express Authority to Delegate***

A small number of provisions exist in the legislation expressly authorizing Council to delegate its authority or duties (Appendix 2, Regulations, Sections 29(2), 30(1) and 62(6)). Otherwise, APEGA's Council is not expressly authorized to delegate specific or general authority and duties to the Registrar or others.

The authority and duties of the APEGA Registrar can be performed by a Deputy Registrar appointed by Council (Appendix 1, By-laws, Section 22), but there are no provisions in the current legislation expressly authorizing the Registrar to delegate specific or general authority and duties to others.

## **4. Research Summary**

APEGA reviewed the legislation (Acts, Regulations and By-laws) governing the organization and other self-regulated professions within Alberta relating to the authority of Councils or analogous entities (Appendices 3A-B) and of Registrars (Appendices 4 and 5). APEGA also reviewed the legislation governing the constituent Professional Engineering (Appendices 6 A-B and 7) and Professional Geoscience (Appendix 8) associations across Canada, as well as three self-regulated professions outside of Alberta: architects, lawyers and physicians (Appendix 9).

Some of these legislative documents contain clear statements expressly giving the Registrar and Council the authority to delegate to others (Appendix 10).

The research also showed that professional regulatory legislation that has been updated recently does grant Council and the Registrar (or similar entities) the express authority to delegate to others.

## **5. Discussion**

The authority and duties of any entity involved in the administration of self-regulated legislation can be express or implied.

### ***Express Authority and Duties***

There are two types of express authority and duties:

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<sup>2</sup> Upon receipt of applications, the Registrar ensures that all necessary documentation has been obtained from the applicants before forwarding the applications to the BOE.

1. Those granted directly to an entity as stated in the legislation
2. Those expressly delegated to an entity by a body that is expressly authorized to do so per the legislation

### ***Implied Authority and Duties***

Implied authority and duties are those that have not been expressly granted to an entity in the legislation, nor have they been expressly delegated to the entity. Instead, on the basis of legal principles related to delegation that apply to self-governing bodies, an entity may perform certain duties based on an implied delegation.

### ***Delegation***

The authority to delegate may be express or implied.

Express authority to delegate is found in clear statements in the legislation expressly granting an entity (e.g., Council or the Registrar) the authority to delegate to others.

Implied authority to delegate is not clearly stated in the legislation but is implied in the context of the administration of the legislation.

Pertinent to this discussion are the established legal principles associated with delegation of authority. Council derives its authority from the legislation and, as such, is a delegate of authority from the Legislature. There is a general rule against sub-delegation (i.e., a delegate must not sub-delegate unless the legislation expressly permits otherwise). However, this rule has primarily only been enforced for legislative enactment functions or specific judicial functions. Everything else is considered an administrative function. By implication, administrative functions are generally permitted to be delegated.

How, then, are various authorities and functions likely to be characterized? Are they legislative enactment, judicial function or administrative? This is critical in deciding whether there is an implied authority to delegate, or whether those authorities and functions can be delegated to others only if there is express authority to delegate them in the legislation.

Legislative-enactment functions involve the creation of a rule adopted into a statute, a regulation or a bylaw. An example is Council's authority to make regulations and bylaws. These authorities and functions cannot be sub-delegated unless expressly permitted in the legislation.

Judicial acts or functions involve particular positions or committees making decisions in certain contexts. Often these decisions involve a quasi-judicial hearing process and cannot be sub-delegated unless the legislation expressly permits otherwise.

Administrative acts are those tasks that are not specifically legislative enactment functions or judicial act functions. Administrative tasks may include the application of a general rule to a particular case according to policy. For example, issuing Permits to Practice involves considering facts and circumstances against general policy guidelines and standards that have been established by the authorized entity. Issuing a permit constitutes an administrative action. Courts are generally prepared to frame most actions of a statutory authority's sub-delegate as administrative, providing the tasks performed are not specifically legislative or judicial.

Council's authority to delegate is expressly stated only in limited instances, leaving Council to rely on implied authority to delegate. Similarly, there are no provisions in the current legislation to expressly authorize the Registrar to delegate specific or general authority and duties.

## 6. Recommendations

It is recommended that *The EGP Act* be amended to expressly authorize APEGA's Council, the Registrar, statutory bodies (Board of Examiners, Practice Review Board, Appeal Board, Discipline Committee and Investigative Committee) and CEO to delegate their authority and duties, as appropriate.

### **Rationale**

Implementing these recommendations would bring APEGA's legislation in line with other professional associations in Alberta and in other jurisdictions in Canada. It would enable the public, APEGA, and its Members to reap the benefits of improved efficiency and enhanced effectiveness, in the primary goal of serving the public interest. It would also bring clarity to the governing legislation.

Specific reasons to grant the APEGA Council and Registrar the express authority to delegate include:

- Removing or minimizing uncertainty surrounding the ability of Council and the Registrar to delegate authority and duties. The legislation should include clear statements to expressly authorize Council and the Registrar to delegate authority and duties. This will eliminate uncertainty around whether Council or the Registrar can delegate a given authority or function.

Express authority of delegation, similar to Sections 19 and 20 of the *Health Professions Act* (Appendix 5), clearly indicate that Council and the Registrar are authorized to delegate their authority and duties. This minimizes the uncertainty associated with having to determine whether there is an implied authority to delegate, tied to whether the functions are categorized as legislative enactment, judicial or administrative. It also minimizes legal challenges by parties who claim a function was delegated improperly.

- The legislation should include clear statements regarding Council's ability to delegate authority and duties to the Registrar and others. This will minimize the need to interpret various provisions of *The EGP Act, Regulations and By-laws* to determine whether there is an implied delegation of authority to the Registrar and whether a given function is intended to fall within the Registrar's mandate.
- The authority of Council and the Registrar to delegate their authority can be stated in a clear manner while still allowing for flexibility in administering the legislation. Using appropriate language, the authority to delegate certain duties can be granted in a way that it can be exercised at the discretion of Council or the Registrar when appropriate and proper. Council and the Registrar would be able to revoke any delegation of authority and could impose conditions as they see fit. This approach makes it easier to accommodate new circumstances and realities in regulating the professions.

- Modernizing the legislation. Newer legislation that governs self-regulating professions in Alberta includes clear language that expressly authorizes Council and the Registrar to delegate their authority and duties. The *EGP Act, Regulations and By-laws* should include similar express provisions.

Similar reasoning applies to granting APEGA's Chief Executive Officer and statutory bodies (Board of Examiners, Practice Review Board, Appeal Board, Discipline Committee and Investigative Committee) the express authority to delegate. The specific express authority and duties for Council, the Registrar, Statutory Boards, and the Chief Executive Officer will be detailed in subsequent papers released in fall 2015 and 2016.

## **7. Appendices**

Appendix 1 – Existing legislation excerpts from *The Engineering and Geoscience Professions Act, Regulations and Bylaws* Authority and Duties of APEGA's Council

Appendix 2 –Existing legislation excerpts from *The Engineering and Geoscience Professions Act, Regulations and Bylaws* - Authority and Duties of APEGA's Registrar

Appendix 3A – Authority and Duties of Council in Other Self-Regulated Professions in Alberta

Appendix 3B – Analysis of Council Authority in Other Self-Regulated Professions in Alberta

Appendix 4 – Authority and Duties of Registrars in Other Self-Regulated Professions in Alberta

Appendix 5 – Bylaws under the *Health Professions Act* and Regulations – Registrar's Authority and Delegation

Appendix 6A – Authority and Duties of Council in Constituent Associations of Engineering and Geoscience

Appendix 6B – Analysis of Council Authority in Constituent Associations of Engineering and Geoscience

Appendix 7 – Authority and Duties of Registrars in Constituent Associations of Engineering and Geoscience

Appendix 8 – Analysis of Provincial P.Geo. Legislation regarding Registrar's Authority

Appendix 9 – Relevant provisions from legislation of professional associations of architects, physicians and lawyers – outside Alberta

Appendix 10 – Analysis Regarding Authority to Delegate