

**WHAT DOES IT MEAN TO BE A  
SELF-GOVERNING  
REGULATED PROFESSION?**

A Discussion Paper  
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# 1. Introduction

## Preface

This discussion paper grew out of an initial research exercise designed to develop a vision and set of objectives for the Saskatchewan Assessment Appraisers' Association (SAAA). It soon became apparent that a thorough understanding of what it means to be a self-governing regulated profession was needed in order to identify direction for our association. This discussion paper is the result of this research.

The views presented herein are those of the author and not necessarily representative of SAAA Council, Education Committee or any other SAAA member. This discussion paper is designed to provide an understanding of self-governing regulated professions; to develop an appreciation for what we, as professional members, have in our association; and to provoke and stimulate meaningful thought and dialogue as to where the SAAA is, and should be, directed. This paper is not considered a thorough exploration of these topics but a brief introduction to the relevant concepts and functions of self-governing regulated professional organisations. Readers are directed to the reference list at the end of this paper for more in-depth discussions and additional information.

## Introduction

This discussion paper will start with a brief history of regulated professions and will move to the primary purpose of a regulated profession. This will be followed by identification of major stakeholders and the essential aspects of a regulated profession. Discussion will then turn to the importance of ethics and professional conduct, continuing professional development, discipline and the competing roles of regulation and advocacy.

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## History of Regulated Professions

Canadian law, based on English law, adopted the English tradition of self-regulating professions. Among the first to emerge were the military, church, legal profession, civil service and the medical profession. These professions all reflect a common trait of placing duty above that of self-interest. The civil service reflects a unique dual role of duty to the government and duty to the public. By the mid-nineteenth century, the essential characteristics of self-regulating professions were established as featuring:

- a unique combination of knowledge and skills;
- a commitment to duty above self-interest or personal gain; and
- independence from external interference in the affairs of the profession (self-government).<sup>1</sup>

The end of the nineteenth century saw two additional factors starting to overshadow these essential characteristics: the prestige as a learned profession and the market advantage of exclusive use of a professional title and right to practise. These latter two factors soon eclipsed knowledge, duty and independence as the defining characteristics of a self-regulating profession. It is no surprise then that, at the beginning of the twentieth century, professions lobbying for self-regulating status did so with mixed motives.

This led to the eventual question as to what was the true intent of self-regulation: professional benefit or public protection? As the twentieth century progressed, courts examined the statutes of self-regulating professions and alternately focused on professional benefits and public protection as the rationale for granting self-regulated status. In the late-1960s and 1970s, questions were raised as to whether the public interest and rights of individuals were adequately protected in the self-governing model. A number of provinces investigated various self-governing professional organisations.<sup>2</sup> These studies generally affirmed the desirability of the self-governing model, but recommended greater emphasis on public accountability and protection of individual rights.<sup>3</sup> The courts have recently

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<sup>1</sup> Reader, Roberta. *Drafting the Proposed Biologists Act: A Discussion Paper Prepared for the Ministry of Forests and the Association of Professional Biologists*. (Vancouver, July 2002. p.4.

<sup>2</sup> See the McRuer Report: *Ontario Royal Commission Inquiry into Civil Rights McRuer Report*, (Report No.1, Vol.3). Commissioner James Chalmer McRuer (Toronto: Queens' Printer, 1968-1971) 1163.

<sup>3</sup> Casey, James T. *Regulation of Professions in Canada*. (Carswell, Toronto, 1994). 1 v. looseleaf. 2005 – Release 2., p.1-2.

concluded that the rationale for creating self-regulating professions is protection of the public, as noted in the following comments of the Supreme Court of Canada:

*“It is difficult to overstate the importance in our society of the proper regulation of our learned professions.”<sup>4</sup>*

## **2. Attributes of Self-Governing Professions**

### **Primary Purpose**

*“In our society, certain professions and occupations perform work activity of such a nature that if it is carried on in a negligent or fraudulent way, it can be dangerous to the public or contrary to the public interest. As a result, it has been the accepted practice to regulate the activities of groups such as doctors and nurses, engineers and lawyers, real estate and insurance brokers, carpenters and electricians.*

...  
*Self-regulation is a privilege delegated to a professional or occupational group by the Legislature only when it is clear that the public can best be served by regulating the profession or occupation.”<sup>5</sup>*

The above quotes are taken from a document prepared by Saskatchewan Justice that details the reasoning and criteria for determining whether a profession or occupation should be granted self-regulating status. Two key points are clear: (1) self-regulation is granted in order to serve the public interest; and (2) self-regulation is a privilege.

Saskatchewan Justice will measure a group’s request for self-regulating status against two sets of criteria before granting such status: a primary set of 12 criteria that must be met and a secondary set of 10 criteria that are desirable but not fatal to a group’s success if not satisfied. The introductory comments to this review contain the following statement:

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<sup>4</sup> Cited in: Reader, Roberta, supra, p.4. *Rocket v. Royal College of Dental Surgeons of Ontario*, [1990] 2 S.C.R. 232 at 249.

<sup>5</sup> Provincial Secretary’s Department. *Discussion Paper: Towards the Development of a Profession’s Policy for Saskatchewan*. (1990). p.1.

*“The overlying principle in such a review would be the primacy of the public interest over the interest of the membership.”*

Further strengthening this view is the first criterion of the primary criteria set:

1. Whether the group requesting self-regulation will serve to protect the public against incompetence and misconduct that could affect the life, health, welfare, safety or property of the public and whether it is in the public interest that the group be given self-regulation.

The view of Saskatchewan Justice is echoed from many other sources. Although the professional benefits are real and recognised, the primary purpose of regulating professions is the protection of the public. The Supreme Court of Canada<sup>6</sup> stated that “...*the self-governing status of the professions ... was created in the public interest.*” In Regulation of Professions in Canada, James Casey states:

*“The protection of the public is achieved in two ways. Firstly, the conduct of individual members of the profession is regulated in order to ensure that the public is properly served. Secondly, it is recognized that it is a valid objective to protect the profession itself, because a vibrant, self-governing profession which has the public’s interests at its heart is itself in the best interests of the public.”<sup>7</sup>*

This opinion is recognised by other professional associations in Canada. For example, consider the following quotes.

*“...it is obvious that the primary role of a professional body is to regulate the practice of the profession as a public service... The professional association must be very careful to ensure that the public interest always remains paramount... in all its various roles the professional association has an overriding objective – the public good.”<sup>8</sup>*

Alberta Land Surveyors’ Association

*“When a government makes a decision to impose regulation on the practice of a profession, it does so in recognition of the fact that the practitioners being regulated are providing a service that may involve some risk to the public... All*

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<sup>6</sup> Cited in: Casey, James T. *Regulation of Professions in Canada*, supra, p.2-11. *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 6 W.W.R. 289 (S.C.C.).

<sup>7</sup> Casey, James T., supra, p.2-11.

<sup>8</sup> Allred, G. K. (Ken). *The Professional Association – Guardian of the Public Interest*. FIG XXII International Congress, Washington, D.C. USA. (April 19-26, 2002).

*RSWs in Canada are accountable for their practice to the public... It is the role of regulatory bodies to provide consumer protection... Social work regulatory bodies are given a legislated mandate to protect that vulnerable public.”<sup>9</sup>*

Alberta College of Social Workers

*“The primary purpose of professional self-regulation is protection of the public from harm... Advocacy in the public interest is a core professional responsibility... The primary purpose of the establishment of self-governing (regulating) professions is the protection of the public.”<sup>10</sup>*

Saskatchewan Registered Nurses’ Association

*“Professions are regulated to ensure the public is protected... Self-regulation is based on an overarching duty to protecting [sic] the public... Standards are essential for the regulatory bodies to ensure they meet their obligation to protect the public.”<sup>11</sup>*

Agricultural Institute of Canada

Finally, the Law Reform Commission of Saskatchewan has very recently stated that:

*“Self-governance is acceptable only if it serves the public interest.”<sup>12</sup>*

## **Stakeholders**

*“[Professionals are] those who are willing to accept the honour, status and other benefits of the designation [of professional] in exchange for which they agree to place the welfare of those whom they serve foremost and to avoid any conflicting biases of confounding relationships.”<sup>13</sup>*

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<sup>9</sup> MacDonald, Alison and Adachi, Rod. *Regulation of Social Work / Practice in Canada*. <http://www.casw-acts.ca/SW-Forum/CdnSWForum-Regulation.htm>.

<sup>10</sup> SRNA Council. *SRNA Position Statement: Professional Self-Regulation*. (November 2004). <http://www.srna.org>.

<sup>11</sup> Agricultural Institute of Canada. *AIC/OAQ Accreditation Program – Q&As*. (February 2005). <http://www.aic.ca>.

<sup>12</sup> Law Reform Commission of Saskatchewan. *Handbook of Professional Disciplinary Procedure: Draft for Discussion and Consultation*. (August 2004).

<sup>13</sup> Doherty, Michael. *Privacy and Access to Information Issues: Self-Governing Professions*. BC Public Interest Advocacy Centre.

Four groups have an interest in the ability of a self-governing profession to fairly and effectively govern itself: the public, the profession, the profession's members, and the members' clients.

### **The Public**

As noted, the Supreme Court of Canada has concluded that it is difficult to overstate the importance in our society of the proper regulation of our learned professions.<sup>14</sup> Protection of the public interest is ensured through permitting only the qualified and the competent to practise, and that these members conform to appropriate standards of professional conduct. The public needs to feel confident that a profession's practitioners are capable and honest, as well as the ability to express complaints should they experience problems in their interaction with these practitioners. Finally, the public must be able to perceive that a profession is governing its members, including qualifying and disciplining, in a competent and reasoned manner. Saskatchewan Justice recommends that "*professional associations should consider measures that would enhance public access and understanding*" of self-regulating groups.<sup>15</sup>

### **The Profession**

Members of a profession have a vested interest in the proper functioning of their association. A professional group can gain substantial benefits from self-regulation including professional prestige, greater autonomy to set entry requirements and standards of practice, financial benefits, and potentially greater access to government. These benefits must be protected. The inappropriate acts of one member can have significant negative effects on the entire membership and can diminish the image of the profession as a whole. It is in the profession's best interests that the incompetent and unethical are removed. Not only does the profession have a duty to ensure its proper operation in the public interest, it must also ensure that the public perceives this to be the case. If the profession is unable to properly self-govern, its self-regulating status can be removed. It is the responsibility of the profession's regulatory body to seek and make available adequate means and opportunities "*to strengthen the profession and its members to meet emerging challenges,*

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<sup>14</sup> Casey, James T. *Regulation of Professions in Canada*, supra, p.1-3.

<sup>15</sup> Provincial Secretary's Department, supra, p.11.

*and to promote understanding and respect from government, business and the public at large.”<sup>16</sup>*

## **Members of a Profession**

Members of a profession may be subject to disciplinary actions for incompetent and unethical behaviour. This can lead to the loss of one’s profession, employment and means of financial support, as well as one’s contributory role in society, sense of identity and emotional well-being. For these reasons and more, the proper functioning of the self-governing process is of crucial interest to a profession’s individual members. In order to ensure the continued viability of the profession and themselves, individual members “*have a responsibility to participate in the maintenance and development of the profession to keep it strong and healthy for the future.*”<sup>17</sup>

## **Clients**

Professionals provide services to clients. It is the professional’s duty to protect the interests of his/her clients. The best way to do this is to strictly adhere to the standards of professional practice and ethical conduct established by one’s self-regulating profession. The client has the right to expect that the professional will:

- provide comprehensive advice with respect to all of the options and strategies available to the client; and
- follow the client’s instructions once the client has made a decision based on the professional’s advice.<sup>18</sup>

In addition, it is the professional’s duty to follow the client’s instructions providing they do not conflict with the professional’s overriding responsibility to protect the public interest.

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<sup>16</sup> Wacker, Garry. *The Engineering Profession in Canada: Challenge, Renewal and Opportunity*. Keynote Address, Canadian Conference on Engineering Education. (June 1996). p.6.

<sup>17</sup> Wacker, Garry, supra, p.6-7.

<sup>18</sup> Reader, Roberta, supra, p.16.

## Essential Aspects of a Regulated Profession

There are two essential aspects granted to self-governing organizations: the authority to license and the ability to discipline licensees. As noted by Casey:

*“The licensing power is essentially the authority to decide who shall be permitted to earn their living by the pursuit of a particular calling. This means that professional organizations act as gatekeepers to the professions in their assessment of the qualifications of prospective members. Once an individual becomes a member of a profession, the professional organization has the power to regulate the conduct of the licensee by establishing rules of practice and standards of conduct enforceable through the discipline process.”<sup>19</sup>*

The self-governing profession is charged with deciding who is qualified to practise and in what areas. The profession also sets the standards of technical competence and ethical and professional conduct that is to be followed by its members. The McRuer Report<sup>20</sup> noted the public’s “very real interest” concerning the admission of candidates into a profession:

*“Those professions or occupations which have been granted self-governing status are charged with a responsibility not only to see that persons licensed are qualified, but that all qualified applicants are licensed. The public has a genuine and very real interest in knowing that the members of the self-governing bodies are properly trained and have good ethical standards... That being so, the responsible and experienced members of a profession or occupation on whom the power of self-government is conferred should be in the best position to set the standards to be met and the qualifications of anyone who aspires to enter the profession or occupation.”<sup>21</sup>*

Taking the public’s interest to heart, and considering that the paramount duty of a self-governing profession is to protect the public interest, it is essential to ensure that admittance into a profession is guarded by strict standards and, once admitted, members are governed by high standards of competence and conduct. A profession should set these standards at a sufficiently high level to ensure good service to the public and a broad range of technical and professional qualifications. These standards should also be periodically

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<sup>19</sup> Casey, James T. *Regulation of Professions in Canada*, supra, p.1-1.

<sup>20</sup> McRuer, James Chalmer, Commissioner. *Ontario Royal Commission Inquiry into Civil Rights McRuer Report* (Report No.1, Vol.3). (Toronto: Queens’ Printer, 1968-1971) 1163.

<sup>21</sup> Casey, James T. *Regulation of Professions in Canada*, supra, p.16-1.

reviewed to ensure the public interest is properly served with current skills, knowledge and conduct.

Finally, the profession is charged with the responsibility of monitoring its members' adherence to these standards and to discipline those who demonstrate technical incompetence or exhibit unprofessional conduct.

In summary, a self-governing profession established by the Legislature is fully empowered to:

- act in the public interest;
- exercise delegated law-making powers (rules or bylaws enacted by the profession's governing body have similar status as public laws); and
- exercise "public law" powers of enforcement over its members.<sup>22</sup>

The specific mandate of a self-governing profession may include one or all of the following roles:

- determining entrance requirements;
- providing a system of registration to determine required applicant qualifications;
- licensing professional practitioners;
- establishing and maintaining levels of competency;
- establishing and maintaining codes of conduct (ethics and standards);
- receiving, investigating and adjudicating complaints; and
- administering a disciplinary process to sanction members who fail to maintain established standards and practices.<sup>23</sup>

## **Common Terms**

Professional regulation uses the common terms of registration, accreditation, certification and licensure. It is important to understand the definitions of these terms and the importance of their meaning and usage in regulatory documents.

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<sup>22</sup> Reader, Roberta, supra, p.12.

<sup>23</sup> Allred, G. K. (Ken), supra, p.6.

## Registration

Registration refers to the issuance of a certificate of registration by a public or private governing body.<sup>24</sup> Its purpose is simply to provide a list of people meeting a specified set of objective criteria or qualifications and to identify for the public those who are qualified. It can be as simple as ensuring that members' names are recorded on a list.

## Accreditation

Accreditation is the process of determining and certifying the achievement and maintenance of reasonable and appropriate standards of education for professionals.<sup>25</sup> Accreditation establishes the educational standard that must be met by the educational program. Contrary to common usage, accreditation refers to the evaluation of educational programs, not individuals or institutes.

## Certification

Certification refers to the issuance of a certificate of certification by a public or private governing body attesting to a person's attainment of specific knowledge and skill.<sup>26</sup> Its purpose is to provide a finite judgement of individual competency and is designed to protect the profession and establish public respect for it. The focus of certification is on a person's credentials and one's eligibility to practise a profession.

## Licensure

Licensure refers to the issuance of a licence by a publicly mandated governing body granting the right to engage in the activities of a given occupation. It attests to a person's attainment of a degree of competency required to ensure protection of the public's health, welfare and safety.<sup>27</sup> Licensure moves past the attainment of qualifications or eligibility

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<sup>24</sup> MacDoanld, Alison and Adachi, Rod, supra, p.1.

<sup>25</sup> Agricultural Institute of Canada, supra, p.2.

<sup>26</sup> MacDoanld, Alison and Adachi, Rod, supra, p.2.

<sup>27</sup> MacDoanld, Alison and Adachi, Rod, supra, p.2.

into the realm of accountability. Whereas certification is designed to protect the profession, licensure is designed to protect the public. A proper licensure system should be transparent and available to the public.

Licensure is the critical difference between the operations of a private non-legislated professional body and the responsibilities of a legislated, self-governing professional body. First, a private body cannot license an individual; only a public body can. Second, licensure's primary purpose is to protect the public through regulation of a professional's activities. Third, licensure essentially amounts to the granting of a monopoly to practise to a select group of individuals, which confers valuable rights to these individuals. The Supreme Court of Canada noted the importance of the licensing process:

*“The regulation of professional practice through the creation and the operation of a licensing system, then, is a matter of public policy; it emanates from the legislature; it involves the creation of valuable rights; and it is directed towards the protection of vulnerable interests.”*<sup>28</sup>

Please refer to page 21 for a tabular summary of these common terms.

## **Professionalism**<sup>29</sup>

*“A key expectation of members of self-governing professions is that we accept legal and ethical responsibility for our work and hold the interest of the public and society as paramount.”*<sup>30</sup>

*“Implicit in the concept of profession is the existence of standards which are benchmarks for the practice of a profession.”*<sup>31</sup>

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<sup>28</sup> Casey, James T. *Regulation of Professions in Canada*, supra, p.2-12..

<sup>29</sup> The Association of Professional Engineers, Geologists and Geophysicists of Alberta (APEGGA) provides several excellent documents on the topic of professionalism. For further detail and discussion please see APEGGA's "Concepts of Professionalism, v.1.0, September 2004"; "Guideline for Ethical Practice, v.2.1, June 2005"; and "Guideline for Professional Practice, v.1.1, January 2006."

<sup>30</sup> APEGGA. *Concepts of Professionalism*. v.1.0. (September 2004). p.3.

<sup>31</sup> Cited in: Casey, James T., supra, p.13-3. *Morton v. Registered Nurses Assn. (Nova Scotia)* (1989), 92 N.S.R. (2d) 154 at 166 (N.S.T.D.).

A profession is a learned calling requiring specialised knowledge and skills applied with acquired experience and judgement. The concept of profession carries with it the recognition and understanding of certain fundamental principles and responsibilities:

- a profession's knowledge, skill and judgement is accepted by the public on trust;
- a profession has an obligation to the public to render services in the public interest;
- a profession is bound by a code of ethics that governs its relationships with the public, its clients and its colleagues;
- a profession is entrusted with the responsibility to regulate its own members and the services they provide;
- a profession and its members agree to abide by minimum standards of ethical conduct and standards of practice; and
- professionals are accountable for their own actions, the actions of those they supervise and the practice of the profession in general.

In order to effectively carry out these responsibilities, professionals depend on two critical confidences:

- the personal confidence of the client or employer in the professional's technical competence; and
- the confidence of the public at large in the professional's integrity in serving society as a whole.<sup>32</sup>

Professionalism comprises two principle indivisible components: a code of ethical conduct and standards of professional practice.

### **Code of Ethical Conduct**

From the perspective of an individual, ethics connote:

- standards of right and wrong;
- moral conduct, duty and judgement; and

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<sup>32</sup> APEGGA. *Guideline for Ethical Practice*. v.2.1. (June 2005). p.2.

- voluntary action (personal behaviour).

From the perspective of a profession, ethics connote:

- a common set of values;
- reliable professional product; and
- a societal relationship of trust.

The purpose of a code of ethics is to establish and promote rules of honesty, integrity and character. Self-governing regulated professions are mandated by legislation to establish such codes and to discipline members who fail to adhere to ethical standards. As noted earlier, Saskatchewan Justice's policy for granting self-governing status to a profession contains a list of primary criteria that must be met in order to obtain self-governing status. Criterion #11 states:

11. Whether the group has an ability to set acceptable standards of ethical and professional practice and conduct, and in particular, has devised its own regulations and code of ethics.

The International Association of Assessing Officers (IAAO) prefaces their Ethics Rule with the following:

To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics. This ETHICS RULE is divided into four sections: Conduct, Management, Confidentiality, and Record Keeping.

...

This Rule specifies the personal obligations and responsibilities of the individual appraiser. However, it should also be noted that groups and organizations engaged in appraisal practice share the same ethical obligations.

Likewise, the Appraisal Institute of Canada (AIC) introduces their Ethics Standard as follows:

Members of the Institute pledge to conduct themselves in a manner that is not detrimental to the public, the Institute, or the real property appraisal profession. Members' relationships with other members of the Institute shall portray courtesy and good faith and show respect for the Institute and its procedures.

The AIC states that it is unethical for a member to, among other things, engage in conduct that will prejudice his/her professional status or that of the Institute or other members, to act in a manner that is misleading or fraudulent, to claim qualifications not possessed, or to fail to reveal a conflict of interest.

### **Standards of Professional Practice<sup>33</sup>**

Ethical and professional standards are, in practice, intertwined and difficult to distinguish where one ends and the other begins. However, in general, ethical standards concern moral conduct, honesty and intent whereas professional standards concern ability, questions of competence and standards of business practice. Professional standards of practice are those that a reasonable professional peer would be expected to follow in the proper provision of his/her professional duties.

An example of a professional standard of practice is IAAO's Competence Rule that states, in part:

Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently.

The AIC's Appraisal Standard Rule has the following preamble:

This Standard deals with the procedures for the development and communication of a formal opinion of value, and incorporates the minimum content necessary to produce a credible report that will not be misleading.

Questions of ethical conduct and professional practice also involve issues such as public conduct versus private conduct of an individual, failing to cooperate with committees and tribunals, and improper advertising.

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<sup>33</sup> The Saskatchewan Institute of Agrologists provides an excellent document discussing its Code of Practice in terms of professional obligations to its stakeholders (public, client or employer, profession and fellow Agrologists), available on its website at <http://www.sia.sk.ca/ethical.html>.

## Continuing Professional Development

*“In this day of expanding technology no professional can expect to be licensed for life. In order to be able to continue to offer a high level of service to the public every practitioner must devote a considerable portion of his time to updating his knowledge and skills.”<sup>34</sup>*

The self-governing profession is responsible for setting the standards of competence and conduct that govern its members and are considered necessary to protect the public interest. No profession is static: technology affecting the work place advances almost daily; standards of ethics and professional conduct are challenged by public and professional complainants and professions are urged to respond by courts and other tribunals; work place methodologies are revisited, analysed and updated as the industry advances; and professional members can fall into comfortable and possibly error-prone routines. Continuing professional development is designed to address these issues. It is the self-governing profession’s responsibility to establish a program of continuing professional development to ensure that its members maintain a high level of technical competence and professional conduct.

The International Association of Assessing Officers (IAAO) adheres to the Uniform Standards of Professional Appraisal Practice and Advisory Opinions (USPAP)<sup>35 36</sup>. Standards Rule 6-1 states that an appraiser, in developing a mass appraisal, must “*be aware of, understand, and correctly employ those recognized methods and techniques necessary to produce a credible mass appraisal.*” This Standards Rule also provides guiding explanatory comments, including the following excerpt:

*“...the principle of change continues to affect the manner in which appraisers perform mass appraisals. Changes and developments in the real property and personal property fields have a substantial impact on the appraisal profession.*

*... For this reason it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser*

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<sup>34</sup> Allred, G. K. (Ken), supra, p.8.

<sup>35</sup> USPAP is authored by the Appraisal Standards Board of The Appraisal Foundation, which is authorised by the United States Congress as the “Source of Appraisal Standards and Appraiser Qualifications” in the United States.

<sup>36</sup> The Saskatchewan Assessment Appraisers’ Association is an Affiliate Member of the IAAO and is bound to adhere to IAAO’s Code of Ethics and Professional Conduct, including Ethical Rule 5-1 which mandates the adherence of IAAO members to follow USPAP.

*must continuously improve his or her skills to remain proficient in mass appraisal.”*

## **Discipline**

*“...the members of established professions have an interest in the proper functioning of their organization. The downfall of one individual is said to diminish all members of the profession. Clearly, there is an interest in ridding the profession of the incompetent and the unethical.”<sup>37</sup>*

As noted, a self-governing profession is empowered by legislation to exercise “public law” powers of enforcement over its members. It is clearly in the interest of the public and the client that only the competent and ethical are allowed to practise. It is also in the interest of the members of a profession and the profession itself. How well a profession exercises the power of discipline is a sound test of its effectiveness as a self-governing body and has a direct effect on its reputation.

An effectively and properly applied disciplinary process, however, is of crucial interest to the member who may be subject to the disciplinary process. In reference to the Law Society of British Columbia, the British Columbia Court of Appeal stated:

*“Disciplinary proceedings expose a member of the Society to a range of punishments which include suspension of the right to practise and even disbarment. In addition, irrespective of their outcome, the very nature of the proceedings can have a devastating effect on a member’s reputation, the single most valuable asset which any professional can possess.”<sup>38</sup>*

The McRuer Report concluded the following with respect to the importance of procedural safeguards in the disciplinary process:

*“The most obvious feature of the power of a self-governing body to discipline its members is that it is clearly a judicial power within the meaning we have given to that term, i.e., it consists of the independent and impartial application of predetermined rules and standards; no element of policy should be present in the exercise of this power. It is a power whose exercise may have the most far-*

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<sup>37</sup> Casey, James T. *Regulation of Professions in Canada*, supra, p.1-3

<sup>38</sup> Cited in: Casey, James T. *Regulation of Professions in Canada*, p.1-4. *Cameron v. Law Society (British Columbia)* (1991), 81 D.L.R. (4<sup>th</sup>) 484 at 492 (B.C.C.A.).

*reaching effects upon the individual who is disciplined. The sanction imposed upon one who has been found guilty of professional misconduct may be anything from a reprimand to expulsion from the profession. Where a conviction may result in what has aptly and justifiably been termed 'economic death', it is vital that procedural safeguards to ensure fairness be clearly established and rigorously observed.”<sup>39</sup>*

In 2004, Saskatchewan Justice drafted a Handbook of Professional Disciplinary Procedure intended to provide practical guidance to members of Investigation and Discipline Committees. A standard investigation and discipline model has been adopted by all self-governing professional associations in Saskatchewan.<sup>40</sup> The standard model follows a two-tier system using two separate bodies: one committee for investigation and one for discipline. A complaint received by an association is referred to an investigating committee to determine if incompetence or misconduct has occurred. If the investigation committee determines that the accused member is guilty of incompetence or misconduct, the investigation committee forwards the file to a separate disciplinary committee for a hearing at which the member has the opportunity to be heard in defence.

Self-governing professions should take all complaints very seriously. The rights of the complainant must be balanced against those of the impugned member. A properly conducted investigation should be concluded in a timely manner with due regard for public law principles.

## **Advocacy versus Regulation**

*“The issue to be decided is whether an advocacy role is an appropriate role for the governing body of a self-regulating profession. The governance role does not automatically entail an advocacy role – or vice versa. Indeed, there are significant differences between the two roles...”<sup>41</sup>*

Self-governing professions typically have two distinct bodies concerned with their activities: a governance body and an advocacy body. The governance (or regulatory) body is concerned with protecting the public interest through establishing entry qualifications, licensing and certification regimes, and disciplinary functions. The advocacy (or intermediary) body is concerned with promoting the economic and professional interests of

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<sup>39</sup> Casey, James T. *Regulation of Professions in Canada*, supra, p.1-4.

<sup>40</sup> Only those self-governing associations with legislation adopted, or substantially amended, since 1986.

<sup>41</sup> Reader, Roberta, supra, p.21.

the profession's members. Government often requires a separation of these two functions because of the potential of conflict between these two competing interests when a profession makes decisions. It is not unusual, however, that relatively small or newly formed professions operate both regulatory and advocacy functions under one body. It is critical in these situations that the professional body remembers that protection of the public interest is paramount to furthering the interest of the profession.

This is not to say that a self-governing profession should ignore its own interests. Self-governance confers valuable rights to a profession; it would be unreasonable to expect a profession to do nothing to protect these rights.<sup>42</sup> As well, it is important to recognise that the public interest is also served by the protection and promotion of the self-governing profession. However, where these interests compete, professional self-interest must yield to public interest.

A self-governing profession is cautioned to be wary of the danger of confusing the appropriate role of managing the affairs of the profession with the inappropriate act of managing the affairs of others. The profession may be seen as imposing its views on the public, clients or other stakeholders. A professional cannot use the public interest duty for means of controlling or affecting the decisions or actions of a client. A profession's self-governing body should not involve itself in employer-employee relations or criticism of employers' actions: that is the responsibility of the specific intermediary body entrusted with that function. Protecting the public interest means ensuring that members of the profession adhere to standards of conduct and competence appropriate to the purpose for which the self-governing profession was created. It does not mean imposing the profession's perspective on the rest of the world.<sup>43</sup>

### **3. Summary**

Self-governing professions exhibit three essential characteristics: a unique combination of knowledge and skills; a commitment to duty above self-interest or personal gain; and self-governance free from external interference. Self-regulating status is a privilege granted to a profession in order to serve the public interest and comprises two essential aspects: the

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<sup>42</sup> Reader, Roberta, *supra*, p.13.

<sup>43</sup> Reader, Roberta, *supra*, p.15.

authority to license and the ability to discipline licensees. As such, it is the role and responsibility of the self-governing profession to ensure that admittance into the profession is guarded by strict standards of qualification and, once admitted, members are governed by high standards of competence and conduct. It is also the responsibility of the self-governing profession to establish a program of continuing professional development to ensure that its members maintain a high level of technical competence and professional conduct. The responsibility then falls to each member to continuously improve his or her skills to remain proficient in their profession.

A key expectation of members of self-governing professions is that we accept legal and ethical responsibility for our work and hold the interest of the public and society as paramount. As individual members, we also have the responsibility to participate in the maintenance and development of the profession to keep it strong and healthy for the future. In this way, we will ensure the continued viability of the profession and ourselves as professional practitioners.

## Common Terms

Status	What is it?	Purpose	Focus	Key Words
<b>Registered</b>	Issuance of a certificate of registration by a public or private governing body.	List of people meeting a specified set of objective criteria or qualifications.  Purpose is identification of members for public.	Identification of those who are qualified.	Identification
<b>Accredited</b>	Certification of educational programs.	Appropriate standard of education for professionals.  Establishes educational standard.	Educational standards for members.	Educational Standard
<b>Certified</b>	Issuance of certificate of certification by a public or private governing body.	Person's attainment of knowledge and skill.  Designed to protect the profession and establish public respect for it.	Credentials of members.	Credentials and Eligibility to Practise
<b>Licensed</b>	Issuance of a licence by a publicly mandated governing body granting right to engage in activities of a given occupation.  Attests to a person's attainment of a degree of competency required to ensure protection of the public's health/welfare or safety.	Member's competency and accountability.  Protection of public through regulation.  System is available and transparent to the public.	Protection of public interest.	Accountability

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