

The Professional Association – Guardian of the Public Interest

G. K. (Ken) ALLRED, Canada

Key words: Professional association, ethics, discipline, registration, licensing, exclusive area of practice, right to title.

ABSTRACT

Professional survey associations have existed in different forms and with different responsibilities in countries around the world for many years. By and large they form an essential service to the public in regulating professional activities and ensuring that competent professionals are available to practice in the public domain.

In many countries however no formal organization is available to establish standards of practice and ensure that qualified persons are available to deliver surveying services to the public. In 1998 FIG adopted the report of a Task Force on Constituting Professional Associations and published its findings as Publication No. 16.

This paper will discuss the necessary attributes and responsibilities of a professional association specifically in the context of the professional survey association in Canada. It will also give examples of different structures of professional associations in other jurisdictions. In summary it will build on the work of the Task Force on Constituting Professional Associations and set the stage for an in depth comparison of professional survey associations within FIG.

CONTACT

G. K. (Ken) Allred, A.L.S., C.L.S.
President, Alberta Land Surveyors' Association
#2501 - 10004 - 104 Avenue,
Edmonton, Alberta
T5J 0K1 CANADA
Tel. + 1 780 429 8805 ; + 1 800 665 2572
Fax + 1 780 429 3374
E-mail: info@alsa.ab.ca also gkallred@telusplanet.net
Web site: <http://www.alsa.ab.ca>

The Professional Association – Guardian of the Public Interest

G. K. (Ken) ALLRED, Canada

1. INTRODUCTION

Professional associations are a frequently discussed topic but very seldom is there anything written on the principles and philosophies upon which professional bodies are constituted and thence derive their authority. Professional organizations are not an old boys club where learned members get together to tell stories but rather are important institutions with an important role to play in guiding the practice of a professional calling ensuring the provision of maximum benefit of learning and the application of skills for the public benefit.

“Professional activity is a service activity whose object is man and his milieu”
(Québec, 1970).

The concept of professional activity implies that:

“the technical nature of the services performed by the members of such bodies (professional associations) makes it very difficult for the layman to assess the competence of the practitioner and gauge the value of the services he has received.”
(Ontario, 1968)

Government has the sovereign authority to pass laws regarding the practice of any vocational endeavor and to regulate the licensing and qualifications of those it feels are qualified to practice in that field. As a general rule governments are torn between the often conflicting philosophies of:

- The need to provide a competitive marketplace vs. the establishment of professional monopolies.
- Whether government should bear the cost of regulation vs. letting practitioners pick up the cost of self-regulation.
- Whether there is a manifest need by the public for protection from the improper performance of a service.

Governments apparently do not feel that certain occupations need to be licensed at all, while some are licensed annually by government bodies and others are given limited or expanded roles over the jurisdiction of their occupational endeavors. With the diverse political philosophies of national governments it is not surprising that there are many different models for the regulation of professions and occupations.

With this in mind, it is my intention to set out the model of professional organization common in Canada with particular emphasis on the profession of land surveying and with specific references to the practice in Alberta.

2. BACKGROUND

Alberta is one of 10 provinces and 3 territories within the Dominion of Canada. Canada is the third largest country in the world but is fairly sparsely populated except for a several hundred kilometre strip along the border with the United States. The total population is just over 30 million.

Under the Canadian constitution the authority for *Property and Civil Rights* is delegated to the provinces. Hence each Canadian province has legislative jurisdiction over property law as well as control over professions and occupations. In addition, the three territories and what are known as federal lands (lands within National Parks and Indian Reserves) are subject to the jurisdiction of the federal government. So it is easy to see that in Canada, there are 11 different approaches to the regulation of the surveying profession, real property and boundary law. Fortunately, there is some common thread within Canada in these important fields of legislation, and I am sure many of our practices are not unique to Canada but are similar to practices in other countries. Hopefully the next step in this study, is to do a comparison between FIG member associations to compare regulatory regimes in the land surveying profession.

3. PRINCIPLES OF SELF GOVERNMENT

“Self-government is a privilege delegated to a professional group by the Legislature only when it is clear the public can best be served by delegating this authority.” (Hohol, 1979) In general, this privilege includes the authority and responsibility for administering its own affairs and regulating and controlling the practice of members of the profession. Self government is only granted to an occupational group when it can be clearly demonstrated that in the performance of duties, judgments are required which may affect the health, safety or property of individuals.

3.1 The Surveying Profession

The land surveyor is a unique breed of professional. Every boundary line determined for a client is, in fact, also a boundary line for at least one of the client’s neighbours. The surveyor is a public officer. The integrity of the survey fabric must be maintained whether it supports or contradicts a client’s interest. The surveyor must use judgment and render a decision based solely on research and findings. A judicial mind and the impartial attitude of an arbiter must be preserved in all actions. Society is in fact, the real client of the land surveyor even more so than for most other professionals.

This latter statement is substantiated by the Registrar General of New Zealand when he pointed out that:

“What is happening now in many of the professions where emphasis is shifting from the needs of individual clients to the wider welfare of the community, has always existed in surveying.”
(Hayes, 1986)

3.2 Shared and Delegated Responsibilities – Administration of the Regime

Through the power of democratic government, legislative bodies use a number of means to share certain aspects of their authority while delegating other aspects to the professional body. For instance the Legislature may:

- grant an exclusive scope of practice,
- grant protection of the right to title,
- regulate specific activities under a controlled acts system,

while at the same time requiring accountability to the public through the legislative body. This accountability is accomplished by means of:

- public members on the Council of Management of the professional organization who report back to the government.
- public members on disciplinary tribunals and practice review boards who represent the public viewpoint to these bodies.
- provisions for government ratification of regulations prior to them becoming operative.
- regular reporting mechanisms through annual reports.
- periodic review of legislative mandates.

In Canada there has been a move to both expand the number of professional bodies but at the same time to examine very carefully the need to grant exclusive fields of practice to any one occupational group, only where it is clearly in the public interest to do so. This has resulted in many groups being granted the right to use a specific designation, or title, and a restricted number of bodies given an exclusive scope of practice.

3.2.1 Exclusive Scope of Practice

Governments will often grant a fairly narrow exclusive field of practice, in an area that requires public protection with a broader general field of practice that may not be exclusive or that is shared with other professional groups. For instance in the Province of Alberta, the field of cadastral surveying is an exclusive field of practice restricted to members of the Alberta Land Surveyors' Association, but the broader field of surveying is a general field of practice that is not restricted to members. (*Land Surveyors Act - SA1981*) The general field of practice is however regulated by the Alberta Land Surveyors' Association to ensure that its members practice in accordance with acceptable standards of competence even though the field of practice is not exclusive to them. This may appear at first glance, to place members of the professional body at an unfair disadvantage with non-members, however members have the advantage of being recognized as having both expertise in the general field of practice as well as a professional body that regulates their conduct and acts as a consumer watchdog.

Granting an exclusive field of practice is sometimes referred to as a “licensing” regime. (*Manitoba, 1994*)

“Broadly speaking, the power of self-government may be subdivided under two headings:

(a) the power to license; and

(b) the power to regulate the conduct of the licensee, which includes the power to withdraw the license.”
(Ontario, 1968)

3.2.2 Right to Title

With the proliferation of occupational groups demanding professional status, governments will often only grant protection of right to title, thereby allowing the group to establish and enforce standards that are applicable to all persons using that restricted name. In Alberta the *Alberta Association of the Canadian Institute of Planners* has the exclusive right to use the title “*Alberta Community Planner*,” yet engineers, land surveyors and others are not restricted from practicing in the field of town and community planning. (*Alberta, 2000, AR 240/89*) Right to title is sometimes referred to as a “certification” regime. (*Manitoba, 1994*)

3.2.3 Controlled Acts

Under a controlled acts model only specific tasks or activities are regulated. Legislation provides that certain activities can only be performed by members of a specific profession. Relatively new on the scene in Canada is the concept of grouping similar professions together under one piece of legislation. (*Casey, 2001*) The *Alberta Health Professions Act* (*Alberta, RSA2000, c.H-7*) groups 28 different medical practitioners including physicians, registered nurses, chiropractors, dentists, acupuncturists, pharmacists, social workers, etc. under one statute, delegating different powers to different bodies with administration by a Health Professions Advisory Board. Under this legislation some activities may be performed by any medical practitioner, however certain specific activities can only be performed by a physician or members of other specifically authorized professions. Similarly chartered accountants, management accountants and general accountants have been grouped together under one statute. (*Alberta, RSA2000,c.R12*)

4. SPECIFIC ATTRIBUTES OF PROFESSIONAL ASSOCIATIONS

The actual functions of professional associations often stray beyond the simple confines of licensing and regulation of the conduct of the license. Many Canadian associations (particularly the smaller ones) still act in a dual capacity both as an intermediary body and as a public service.

“As an intermediary body, its role is to promote and defend the socio-economic and professional interests of its members; representation in social bodies and representation in various political instances (government, legislative, administrative and jurisdictional).

As a public service, it assumes a public role in the functioning of the state:

- 1) a governmental role when it is empowered to control admission to the practice of a profession in lieu of a diploma awarded by the public education system;*
- 2) a legislative role when it sets certain norms (regulations, codes of ethics and of deontology) relating to conditions of practice of the profession;*
- 3) an administrative role when it is charged with the inspection and examination of professional acts;*

4) a jurisdictional role when it is judging and, as required, sanctioning acts or failings against existing norms. (Québec, 1970)

Given these parameters it is obvious that the primary role of a professional body is to regulate the practice of the profession as a public service. This intermediary role is sometimes confused by some members of professional bodies who believe the professional association is established solely for the benefit and service of its members. The professional association must be very careful to ensure that the public interest always remains paramount. By providing an adequate service to its membership the profession may be assisting the member to serve the public better.

These membership services often take the form of newsletters, practice bulletins, continuing education seminars, investigation into and preparation of new legislation required by society, and generally keeping the membership up to date on current practices. Bargaining functions however, clearly have no place as a service to be offered by a professional association for its membership. An association may in certain instances advocate improvements in conditions of employment but certainly not to the extent of acting as a bargaining agent. That would clearly be in conflict with the role of guarantor of the public interest.

The specific mandate of self regulation may include one or all of the following roles:

- determination of entrance requirements
- provision of a system of registration to determine the qualifications of applicants
- licensure of professional practitioners
- maintenance of competency
- establishing and maintaining a code of ethics
- establishment of standards of practice
- receipt of and adjudication of complaints
- administration of a disciplinary process to sanction members who fail to maintain established standards and practices

4.1 Entrance Standards

In establishing entrance requirements a professional body must be very careful not to set those standards so high that persons who would be adequately qualified to practice the profession are barred from that practice. (Chichak, 1973) A professional association should not appear to be a closed shop but should set standards at a sufficiently high level to ensure that the public receives an adequate service and that the membership is broadly enough qualified to meet the challenges of technological and societal changes. Educators, active field practitioners and public representatives should be involved jointly, through a formal structure, in the development of educational and experiential standards and programs that are a prerequisite for registration. These standards should be reviewed periodically to ensure that they continue to meet societies needs.

Entrance requirements in Canada have varied considerably over the years. The Canadian Council of Land Surveyors has facilitated discussions with provincial associations to develop a standard set of educational prerequisites and experiential standards amongst the eleven

jurisdictions. At the time of writing there is a strong mandate from most associations to form a National Board of Examiners with a mandate to establish a common syllabus of academic requirements for all entrants into any of the eleven jurisdictions.

4.2 Registration

Upon satisfactory completion of the standard academic prerequisite which is a degree in Survey Science or Survey Engineering or the equivalent thereof, a candidate is normally required to serve a term of two years of articles or similar practical experience and then complete a set of professional examinations. Once a candidate has satisfied these formal requirements and satisfied the Registration Committee that they are of good character and sworn the necessary oath of office they can be registered as full members with the right to practice land surveying in that jurisdiction.

4.3 Licensure

Once registered a member is required to provide a certificate of insurance on an annual basis certifying that they have adequate professional liability insurance protecting the public from any errors that might result from their work. Some provinces also require documentation of a members completion of program of continuing professional development on an annual basis. Other than these requirements a reasonably competent member may continue to expect license renewal subject of course to the requirement to pay annual fees and levies.

4.4 Competency

Additional to its role of establishing entrance standards a self-governing profession has a much larger role to play in maintaining professional standards. The issue of competency is important for professionals and professional associations from three perspectives. Firstly the association has an obligation to the public to ensure that the members whom it licenses are competent to practice. Secondly with increasing issues of legal liability it is important for professionals to maintain a high degree of competence in order to avoid the costs associated with being found liable for ones errors or omissions. And lastly the profession needs to continually maintain public confidence by ensuring that a high degree of professional service is available.

In order to ensure that members once registered provide the service to the public for which they have been trained the association must maintain a continuous vigil on the practice of the membership. General and specific standards or codes may be established to set rules of integrity for members as well as minimum technical standards for specific services. The association also has a role in ensuring that members maintain a high level of academic competence and professional experience. Moral standards of the profession must be monitored to maintain the dignity and public confidence in the profession.

Competence was defined at the 1988 Conference on Maintaining Professional Competence as:

“. . . a combination of skill, knowledge and performance. Its attainment is evidenced by an individual's ability to apply the necessary knowledge, skills, and judgment in his or her practice.” (Sanford, 1989)

Charles Hollenberg, MD, Vice-Provost of Health Science at the University of Toronto went further stating that:

“competent professional practice is as dependent on communication skills, organizing ability and practice settings as on professional knowledge.” (Sanford, 1989)

4.5 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. This can be accomplished by subscribing to professional and technical journals, conducting independent research studies, attending conventions and conferences, or by home study programs, seminars and periodic refresher courses.

The matter of mandatory continuing professional development has been highly debated in professional circles. Some jurisdictions require mandatory continuing education programs whereby the membership of the profession are required to accumulate a certain number of points every year. The other approach is to make seminars conveniently available to all members in an effort to encourage voluntary upgrading of qualifications.

Canadian survey associations appear to be split on the debate of mandatory vs. voluntary CPD. We are fortunate that there are a number of programs available ranging from loss prevention seminars sponsored in conjunction with professional liability insurance programs, seminars sponsored by individual associations, national conferences and programs put on by the educational community, as well as some excellent journals and websites.

The real monitor of a professional's continuing competence is by means of a competence review process which has the effect of reviewing all practices on a regular basis to ensure that the competence of practitioners generally and specifically is being maintained to an acceptable standard to ensure that a satisfactory service is being provided to the public. This *survey of the surveyor* can provide a beneficial advisory service to the practitioner with coaching in a constructive and objective manner on how a practice measures up to what should be expected by the public. On the other hand, where skills are lacking or variances from standard practice are obvious, practice review boards have wide remedial powers to recommend that a practitioner take remedial training, practice under supervision, or limit the scope of practice. Unfortunately these programs are very costly and are difficult for a small association to finance.

4.6 Standards of Practice

Many fields of professional practice are conducive to the establishment of minimum standards or standard procedures. Minimum standards adopted by an association are usually established based on the practices of specialists in the field and may often involve consultation with a knowledgeable clientele. These standards however, must not be overly rigid but must allow for flexibility in unique circumstances or with changing conditions. They should be treated as reasonable guidelines but should neither restrict the judgment of a practitioner nor become the basis of inflexible administrative rules. A professional association must be cautious in adopting standards to ensure firstly that they are well researched and secondly that they are qualified with reasonable restrictions to their use. Once adopted they may be accepted by disciplinary tribunals to determine standards of professional conduct or by the courts to determine negligence or malpractice.

4.7 Code of Ethics

“Professional ethics are that branch of moral science which treats of the duties which a member of a profession owes to the public, to his professional brethren and to his client.” (Brown, 1960) In order to ensure that the members of the association provide a high level of service to the public and maintain the dignity of the profession, professional bodies often set codes of ethics and codes of professional conduct. The judicious enforcement of these codes is a hallmark of a true professional body. The codes must be more than mere motherhood statements but must contain reasonable policies to ensure that the practice of the profession is provided adequately to the public and not merely to enforce a monopoly situation or to restrict competition amongst practitioners. Codes of ethics often establish rules of honesty, integrity and character which are considerably more restrictive than codes that would normally be applied to the general public. These strict rules are necessary to ensure that the professional person holds himself out as a reasonable, dependable and upstanding member of society.

A professional association can establish a code of ethics, publicize and lecture on it but it remains largely up to each individual practitioner to interpret and apply it as personal circumstances and professional outlook dictate. Even though a code of ethics is largely unenforceable the observance of a broad strong code will set the tone for the professionalism of the entire membership.

Canadian legislatures insist that professional bodies adopt codes of ethics and make them available to the public. The focus on such codes shall be to protect the public interest.

4.8 Complaints and Discipline

A primary role of a professional association is to establish and monitor standards and to bring to discipline those members who appear to be unprofessional in their conduct or who demonstrate a lack of skill in their practices. The quasi-judicial power of discipline is given to the professional association based on the premise that a person can be better judged by his

own peers. Disciplinary matters are serious and must be handled with the utmost care by the association. Members subjected to disciplinary procedures are given the full right to a proper hearing and all of the rules of natural justice.

On the other hand all complaints made by the public or other members of the profession must be completely investigated and persons who have done wrong must be brought to justice and their actions corrected. Complaints are normally separated from the discipline process, or are preliminary to a formal complaint being lodged. Many minor complaints are really just enquiries and result from a lack of communication between client and practitioner. More serious complaints may be dealt with by mediation or perhaps could result in disciplinary review.

The professional association has a responsibility to publicize complaint procedures including making consumer bodies aware of its complaint mechanisms. This is necessary to ensure that consumers know of the existence of the association and its concerns for the public. It also avoids adverse publicity by allowing the association or a practitioner to rectify a problem before it gets blown out of proportion.

5. CONCLUSION

In this paper I have attempted to outline in some depth the specific roles of a professional association with particular emphasis on the Canadian land surveying profession. My purpose has been to establish that in all its various roles the professional association has one overriding objective - the public good. Even though the association speaks as the collective voice of its members, its advocacy is for the public. The preliminary sections of the Ontario Land Surveyors Act states that:

“The principal object of the Association is to regulate the practice of professional land surveying and to govern its members . . . in order that the public interest may be served and protected.” (Ontario, RSO 1990, c.S-29)

There are several areas of potential conflict between the primary role of a professional association to protect the public interest and the secondary role of serving its members. Self-governing professions were not created for the welfare of their membership. They serve their members by serving the public and the interests of the public are always paramount.

In closing I would like to capsulize the responsibility of a self-governing profession with a quotation by Everett Hughes:

“In place of the cautionary admonition of the market place - caveat emptor (let the buyer beware!) professional practice should substitute the encouraging injunction - credat emptor, (let the buyer trust!)” (Davies, 1980)

REFERENCES

Alberta, Government of, (2000), Revised Statutes of Alberta (RSA 2000) are available on line at http://www.qp.gov.ab.ca/display_acts.cfm; Regulations (A/R) at http://www.qp.gov.ab.ca/display_regs.cfm

- Alberta, Government of, (1981), Land Surveyors Act, (SA 1981,cL-4.1, Part 1)
- Allred, G. K., (1983), The Professional Association - Protector of the Public Interest, Terravue, p12-24, Canadian Council of Land Surveyors
- Allred, G.K., (1988), The Professional Association and its Role in Protecting the Public Interest of a Nation, Paper presented at the Centenary Conference of the Institute of Surveyors of New Zealand, Wellington.
- Allred, G. K., (1989), The Surveying Profession, Survey Law in Canada, Carswell, Scarborough, Ontario.
- Brown, C.M., (1960), Land Surveyors Ethics, Surveying and Mapping, (June, 1960)
- Casey, J.T., (1994), The Regulation of Professions in Canada, Carswell, Scarborough, Ontario.
- Casey, J.T. and Picherack, F., (2001), VI. The Regulation of Complementary and Alternative Health Care Practitioners: Policy Considerations, <www>
- Chichak, C., (1973), Report on Professions and Occupations, Government of Alberta Select Committee of the Legislative Assembly
- Davies, B.T., (1980), Moonlighting, Annual Report of the Association of Ontario Land Surveyors, Toronto, Canada
- Hayes, B., (1986), Is Nothing Sacred - A Legal Perspective on Cadastral Surveying in New Zealand, The New Zealand Surveyor, Vol. XXXI, p.320-330
- Hohol, A.E., (1978), Policy Governing Future Legislation for the Professions and Occupations, Government of Alberta.
- International Federation of Surveyors, (1998), Constituting Professional Associations, Publication No. 16, London, UK.
- Manitoba Law Reform Commission, (1994), Regulating Professions and Occupations
- Ontario, (1968), Government of Ontario, Royal Commission on the Inquiry into Civil Rights (McRuer Report) No. 1. Vol.3:p.1165-1195
- Ontario, Government of , (1990), Land Surveyors Act, <http://www.gov.on.ca/MBS/english/publications/statregs/index.html>
- Québec, (1970), Government of Québec, The Professions and Society, Report of the Commission of Inquiry on Health and Welfare: Part 5, p.15-17
- Sanford, B., (1989), Strategies for Maintaining Professional Competence - A Manual for Professional Associations and Faculties, Canadian Scholars' Press Inc., Toronto
- Trebilcock, M.J., Tuoky, C.J. and Wolfson, A.D., (1979), Professional Regulation, Ministry of the Attorney General, Ontario, Canada.

BIOGRAPHICAL NOTES

Ken Allred is President of the Alberta Land Surveyors' Association in Alberta, Canada. He is a past chair (1994-98) of FIG Commission 1, is/was a member of FIG Task Forces on Constituting Professional Associations, Cultures and Languages in FIG, Mutual Recognition of Qualifications, and Exchange of Surveying Personnel. He has also served as President of the Canadian Council of Land Surveyors and was Executive Director of the Alberta Land Surveyors' Association for 14 years.