



Allowing for a Custodian of a Practice

Improved Public Interest

To better protect the public, APEGA should have the ability, in certain cases, to apply to the court for an order appointing a Professional Member to act as the custodian of another Member's engineering or geoscience practice.

Background

- This topic is an extension of the *Capacity to Practice* recommendations that were presented in the fall 2015 consultations.
- There are no provisions in the current *Engineering and Geoscience Professions Act* allowing for the appointment of a custodian to manage a Member's practice.
- Other professions allow for a custodian of a practice to be appointed when it is necessary in the public interest.

Why is this important?

- APEGA should be able to apply to the court for an order to facilitate a respectful temporary continuation or wind up of a Member's engineering or geoscience practice in the interest of the public, the Member, and the health of the profession, as the circumstances require.
- For example, if a Member is incapacitated and unable to carry on his or her practice, the Member's clients may be negatively affected if there is no one to take over the practice in the interim.
- A custodian ensures that professional services can be continued for those relying on them and allows for other arrangements to be made, if necessary, in a safe and responsible manner.
- A custodian would apply to sole practitioners but would not be necessary for larger Permit Holders as it is expected that the firm would make arrangements to ensure the incapacitated Member's clients would not be negatively affected.

- The application to court could be made either proactively by APEGA or in response to a request from a Member or a Member's family to APEGA to assist them.

Proposed legislative change

It is recommended that the legislation be amended to allow APEGA to apply to the Court of Queen's Bench for an order appointing a person as a custodian of a Professional Member's practice in the event that a Member's incapacity, illness, death, or suspension of registration, so that it may be temporarily managed or, if necessary, dissolved.

The custodian of a practice will be a qualified Professional Member.

Effects of the proposed change

- Council will develop policies to guide custodians on how to manage the continuation or termination of a Member's practice.
- This is new for the engineering and geoscience professions in Canada because none of the other associations has incapacity provisions.

Examples of relevant existing legislation

Below are examples of similar provisions describing the concepts of capacity to practice and custodians as found in other Alberta legislation:

Chartered Professional Accountants Act, Alberta
Sections 142

Custodian of a practice

142(1) The CPAA may apply to the Court of Queen's Bench for an order appointing a person as custodian of the property or practice of a registrant or former registrant for the purpose of providing for the temporary management, winding-up or sale of that practice under the circumstances referred to in subsection (2).

(2) The Court may appoint a person as custodian of the property or practice of a registrant or former registrant for the purpose of providing for the temporary management, winding-up or sale of that practice if
(a) the registrant's registration is suspended or has been cancelled,
(b) a restriction has been imposed on the registrant that requires the appointment of a custodian,

- (c) the registrant dies,
- (d) the registrant becomes mentally or physically incapacitated or a direction has been made in accordance with section 110,
- (e) the registrant becomes ill or for some other reason is unable to engage in practice,
- (f) the registrant absconds or is otherwise improperly absent from the practice or has neglected the practice, or
- (g) sufficient other grounds exist.

(3) An application for a custodial order may be made without notice to the registrant or former registrant or on the notice the Court directs.

- (4) The Court may appoint as a custodian
- (a) the CPAA,
 - (b) a person nominated by the CPAA, or
 - (c) any other suitable person.

Legal Profession Act, Alberta
Sections 95

Custodian

95(1) In any of the following cases:

- (a) when the name of a member has been struck off the roll;
 - (b) when the membership of a member has been suspended;
 - (c) when a member's conduct is the subject of any proceedings under Part 3 and there is reason to believe that the conduct involves the misappropriation or wrongful conversion of property;
 - (d) when a member has died or become mentally incapacitated;
 - (e) when by reason of illness or for any other reason a member is unable to practise as a barrister and solicitor;
 - (f) when a member has absconded or is otherwise improperly absent from the member's place of business or has neglected the member's practice for an unduly extended period;
 - (g) when there is reason to believe that the trust money held by a member is not sufficient to meet the member's trust liabilities;
 - (h) when other sufficient grounds exist,
- the Court of Queen's Bench, on application by the Society either *ex parte* or on such notice as the Court may require, may by order appoint a person as custodian to have custody of the property of the member and to manage or wind up the legal business of the member.