About this presentation

Last week – history

• In 2007 the Legislature repealed the 1947 Agrologists Act and replaced it with the Agrology Profession Act.
• The Institute must regulate the practice of agrology by its members in a manner that protects and serves the public interest.
• The council is the Institute’s governing body.
• The council operates in accordance with the Act, Regulation, and council-made Bylaws on subjects listed in the Act.
• The Act excludes networking and promotional activities and express member control over the Institute, the council, and the bylaws.

This week – mystery

• What is self-regulation?
• Who is the public?
• If regulated members elect other regulated members to the council, why don’t they represent the members who elected them?
• What do public members do?
• What do members get for fees?
• And more.
What is self-regulation?
A revocable privilege, not a right.

A privilege
because practitioners can join the governing board overseeing the profession.

Revocable
because there are other ways to regulate professions.

Society grants a social contract to select professions.
A subset of members of the profession volunteers to sit on the governing board.
They set aside member interests and regulate the profession as the government would:
administer the law to prevent harm to consumers or society and hold accountable those who cause harm.
“Self-regulation” means a subset of practitioners regulates the whole profession in the public interest.
What’s in it for regulated members?

When on the governing body, members

- develop their own standards of practice,
- decide what is required for continuing competence,
- establish a code of ethics,
- are involved in discipline for unprofessional conduct,
- set the direction for the profession and the Institute,
- and more.
How does self-regulation of agrology work? Through a Professional Regulatory Organization (PRO).

LEGISLATURE - Agrology Profession Act

Minister of Labour and Immigration

Alberta Institute of Agrologists.
The regulatory body.
Accountable to Minister, Legislature, and public.

AIA council.
The Institute’s governing body.
Ensures that the Institute fulfills its role.

Registrar
(The council appoints)

Hearings Director and Complaints Director.
Registration Committee and Competence Committee
(The council appoints)

Part 4 Hearing Tribunals and Complaint Review Committee
(The council appoints regulated members, Lt.Gov.in Council appoints public members)
Illustrating self-regulation by a PRO

1. Legislature
   - Power to regulate professions
   - Duty to regulate professions in the public interest

2. Practitioners
   - Law

3a. Regulatory Body
3b. Governing Body

4. Registrar/CEO

5. Minister
1. The Legislature

Legislative assemblies have the power to pass laws.

But they have a democratic duty to pass laws for the public good.

Therefore, they have the power to regulate professions, but the duty to do it in the public interest.
When it comes to regulated professions, the public is the consumer and broader society. These groups may be harmed by substandard practice by the regulated group.
“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.”

(Hon. B. Hohol, Minister of Labour, 1979)
How does self-regulation serve members by serving the public?

Members benefit from being part of a profession with high standards the public can trust.
2. The Agrology Profession Act

Some of the Legislature’s power and duty flows into the Agrology Profession Act.

Written laws are called “acts” because lawmakers perform only one act – the act of passing written laws that serve a public-interest objective.
Statutory Delegates

For simplicity, this illustration includes four major statutory delegates.

It does not include statutory delegates that enter the picture after the Registrar has received an application for registration:

The *Registration Committee, Competence Committee, Hearings Director, Complaints Director, and Part 4 Complaint Review Committee and Hearing Tribunals.*
Statutory Mandates

The Act gives each statutory delegate a role: a “statutory mandate”.

The only reason a statutory delegate exists is to fulfill its statutory mandate.

A statutory mandate consists of fairly straightforward rules for the delegate to follow.

Fulfilling a statutory mandate means doing what the law tells you to do.

It’s statute-focused.
3a. The Regulatory Body

The Institute is the regulatory body for the self-regulation of agrology.

But the Act states that the Institute is a corporation.

This can be a bit mystifying.
A corporation consists of a group of people. The members of the group change over time.

The Act states that the Institute consists of its regulated members and “other” members.

(“Other” members are non-regulated Institute members on the “other” register, such as *student* or *retired*. They can publicly associate themselves with the Institute.)
But although the corporation consists of members, it does not give members control of the Institute.

A corporation is a separate person, created by the state to continue to exist and act independently of the people who make it up.

A corporation has “natural-person” powers to sue or be sued in its own name, hold property, and form contracts. But a corporation’s distinguishing feature is the special authority it gets from the legal documents that create it.

A corporation exists to exercise its authority in its own right.

The authority the Institute exercises in its own right is to regulate agrologists in the public interest.
(1) The Institute must

(a) carry out its activities and govern its regulated members in a manner that protects and serves the public interest,
(b) provide direction to and regulate the practice of agrology by its regulated members,
(c) establish, maintain and enforce standards of practice, registration and continuing competence for the practice of agrology,
(d) establish, maintain and enforce a code of ethics, and
(e) carry on the activities of the Institute and perform other duties and functions by the exercise of the powers conferred by this Act.
The Institute may approve educational requirements for registration.

The Institute must submit to the Minister an annual report about

- professional conduct complaints and appeals,
- Registration,
- The Institute’s continuing competence program,
- The Act’s statutory committees and tribunals, and finances.
What’s in it for members?

Agrologists receive the benefit of being licenced practitioners in a well-regulated profession. They may also sit on the governing body that oversees the profession – the next statutory delegate.
3b. The council of the Institute

The council is the Institute’s governing body.

The Institute is a legal body that exists only on paper. The council is its head and hands. As the regulated group, regulated members do not directly receive power and duty through the Act. Regulated members have the privilege of sitting on the council.
3b. The council’s statutory mandate

The council’s statutory mandate is to ensure that the Institute fulfills its statutory mandate.

5(1) The governing body of the Institute is the council.

6 The council manages and conducts the activities of the Institute, exercises the rights, powers and privileges and carries out the duties of the Institute in the name of and on behalf of the Institute and carries out the powers and duties of the council under this Act and the bylaws.
Although the Institute is a corporation, the council is not like a corporate board of directors.

For-profit corporate boards are elected by the owners (shareholders) to benefit them.

Non-profit corporate boards are concerned with what purpose their owners (communities) want them to achieve, such as what values to promote and who receives what benefit at what cost.

Example: professional members’ services association.
Governing bodies of PROs are different.

Ideas of corporate governance don’t apply to them. They are statutory delegates charged with regulating a profession. Their values and purpose are in their Act. How to fulfill their purpose is also in their Act. They need to collect enough fees to be able to fulfill their purpose.
A bit about the council

The Act authorizes the council to decide by bylaw

• council size (must at least 25% public members),
• whether more than 25% are public members,
• whether regulated members are elected or appointed,
• who may be Chair, and how that person is selected.

Currently the council consists of 11 members:

• 8 elected regulated members elected for 3-year terms and
• 3 public members appointed by the Lieutenant Governor in council for 3-year terms.
A bit about the council

All council members have equal fiduciary duty to the Institute and the public.

All council members must ensure that the Institute fulfills its statutory mandate in the public interest.
A bit about regulated members on the council

Currently, regulated members on the council are elected.

But they do not represent the electorate. This is confusing.

The council’s statutory mandate is to ensure that the Institute regulates members in the public interest, not to represent members’ interests.

If regulated members petition council members for reasons of self-interest, it could lead to “regulatory capture” – influence on the regulator by the regulated group that interferes with the regulator’s independence to fulfill its statutory mandate.
Can members promote their own interests?

Of course, if they establish a members’ services association.
A bit about public members on the council

Public members are appointed by the Lt. Gov. in Council.
They apply for board positions through a recruitment process.
They are chosen for ability, not political affiliation.
Public members stand in for the Government to “help ensure public agencies are appropriately governed and fulfil their mandate to advance the public interest.” (GoA website)
They contribute skills in professional regulation.
They do not represent the viewpoint of the average Albertan.

“Through the power of democratic government legislative bodies use a number of means to share certain aspects of their authority ... 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....”

(The Hon. K. Allred, 2010)
4. The CEO-Registrar

The council hires a CEO to operate the Institute.

The council sub-delegates authority to the CEO through bylaws but maintains oversight.

The council also appoints the CEO as the Registrar.
The CEO-Registrar is the council’s sole employee.

The council is a statutory body with an employee (the CEO) who is also a public office-holder (the Registrar).

The council is held to high standards of employment law.
5. The Minister of Labour and Immigration

“Alberta and Canada have a system of professional regulation that is unique in the world... that makes professional organizations responsible to the respective provincial governments...to deliver a high quality of professional service to the public at large.” (The Hon. K. Allred, 2010)

The Minister of Labour is the ultimate statutory delegate under the Agrology Profession Act.

The Institute must report annually to the Minister.

The Minister must submit the Institute’s report to the Legislature.
We have circled back to the source of the power and duty.

This ensures that self-regulation continues to protect and serve the public interest.
One final rousing quotation

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

(The Hon. K. Allred, 2010, quoting Everett Hughes)