Ontario Professional Planners Institute | Institut des planificateurs professionnels de l'Ontario

Self-Regulation and OPPI

FREQUENTLY ASKED QUESTIONS/COMMENTS

Are professional planners in other provinces self-regulated?

Mostly not. Here's a summary of what we believe to be the situation:

PROVINCE	PROTECTED TITLE? (other than MCIP)	DEFINED SCOPE OF PRACTICE? (beyond the CIP definition of planning)	RESTRICTED ACTS? (or equivalent)
British Columbia	"Registered Planner," under Part 10, s.89(1) of the *Society Act*	No	No ***see below***
Alberta	Registered Professional Planner, s.23 of the *Professional Planner Regulation* under the *Professional and Occupational Associations Registration Act*	No	No
Saskatchewan	"Professional community planner", s.41 of the *Community Planning Profession Act*	*see below*	*see below*
Manitoba	No	No	No – but note: *Planning Act* s.44(1)(b) – board or council in preparing a development plan must consult with a "qualified planner" – which is not defined!
Quebec	Urbaniste (s.36(h) of the *Professional Code*)	"May engage in the following professional activities…s.37(h) the Ordre professional des	No: s.37.1 "…professional activities, which are reserved to such members within the scope of the

		Urbanistes de Quebec: provide the public with professional services involving the application of the principles and methods of development and use of urban land or land to be developed."	activities they may engage under s.37" – nothing listed for OUQ; i.e., there's nothing that they can do that a non-member cannot also do
Nova Scotia	LPP (Licensed professional planner) under s.14(1) of the *Professional Planners Act*	Yes **see below**	No – and therefore, the word "licensed" is actually inaccurate
Newfoundland	No	No	No
New Brunswick	RPP under *Registered Professional Planners Act* (or UPC, urbaniste professional certifie	No	No
Prince Edward Island	No	No	No

The provinces shaded above, along with Ontario, are recognized by the government of Quebec as bestowing status on their members equal to that of members of OUQ, for the purposes of labour mobility legislation etc.

* The Saskatchewan *Planning and Development Act, 2007*, references "professional community planners" as defined under the *Community Planning Profession Act*. To be recognized as an "approving authority" under the *Planning and Development Act*, a municipal council must (s.13(4)) "employ or retain a professional community planner" and (s.29(3)) "the official community plan [prepared by a council] shall be prepared in consultation with a professional community planner."

Section 2 of Saskatchewan's *Community Planning Profession Act* also defines a "community planning office" in a way that seems to potentially include both government departments and private businesses – if they employ on a full-time basis an individual with a degree or diploma in community planning from a university or equivalent. However, the phrase "community planning office" is not used again in the legislation, nor does the legislation explicitly say that only a "community planning office" can do certain things, or that certain entities (other than as noted above regarding "approving authorities") must employ community planners. Perhaps the legislation previously contained some further reference to the mysterious "community planning office," but it was subsequently repealed, leaving this definition as an "orphan."

(An MCIP in Saskatchewan attempted to explain to us the complicated arrangement whereby only land surveyors can prepare a plan of survey under s.2 of the *Land Surveys Act*, or a "type one descriptive plan" under s. 26(1) of the *Land Surveys Regulations*, but a professional planner can prepare a "type two descriptive plan," any of which is required for plans of proposed subdivisions, under s.121(1)(5) of the *Planning and Development Act*. It's not clear how this matters as a "power" or "restricted act" of professional planners, though, since it seems that ANYONE can prepare a "type two descriptive plan"…)

** section 3(j) of the Nova Scotia *Professional Planners Act*:

"practice of professional planning" means any act of planning including, without restricting the generality of the foregoing,

> *(i) investigating, designing, commissioning, composing, evaluating, advising, reporting, directing or supervising, or managing any of the foregoing, that requires or involves the application of principles of planning and that concerns the safeguarding of life, health, property, economic interests, public welfare or the environment,*
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> *(ii) the preparation and implementation of plans, studies or strategies involving the application of the principles of planning including, without restricting the generality of the foregoing, regional or municipal plans or strategies, urban or rural plans, land development plans or strategies, land-use by-laws, site plans, subdivision plans, economic plans, environmental plans or studies, social plans, recreation plans, conservation plans, organizational plans, heritage plans, lifestyle plans, conceptual plans and strategic plans,*
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> *(iii) the application of skills or techniques for the purpose of planning including, without restricting the generality of the foregoing, computer analysis and data queries, environmental analysis, geological studies, morphology studies, air-photo analysis, cartography or mapping, cost-benefit analysis, physical sciences, social sciences, statistical analysis, demographic research, environmental design and planning, project planning and implementation, research and communication,*
>
> *(iv) any tasks necessary to implement the planning legislation of the Province involving the use or application of the principles of planning,*
>
> *(v) project management where the principles of planning are involved, and*
>
> *(vi) any other tasks that involve the principles of planning;*

*** It should be noted that PIBC has also established a working group to consider the possibility of self-regulation – please see http://www.pibc.bc.ca/content/professional-legislation-certification-task-force for more information).

What is the attitude of the Canadian Institute of Planners towards self-regulation?

CIP does not have an official position with respect to self-regulation of the planning profession in Canada. Of course, professional regulation is a matter of provincial jurisdiction, not federal jurisdiction. Indeed, as noted above, many provinces do not yet even grant title protection to their professional planners.

A joint CIP-affiliates "Legislative Task Force" has been established as the last part of the "Planning for the Future" project that recently saw the revision of nationwide membership and accreditation standards. The Legislative Task Force will consider opportunities to bring all provinces' legislation into alignment, and establish and protect the title "Registered Professional Planner" as the preferred protected title across the country.

Some may be of the opinion that no single affiliate should consider pursuing self-regulation until all affiliates at least enjoy "title protection." However, we believe that each affiliate should start from wherever its provincial legislation already is, and attempt to improve awareness of the value of planning, and promote the status of the planning profession.

Are professional planners in jurisdictions outside Canada self-regulated?

No. The closest thing we have been able to find to "self-regulation" is the situation in New Jersey, where planners are regulated under State Board laws, as are many other professions, and regulations passed under those laws. They state at Chapter 41, State Board of Professional Planners, s.13.41-3.3, "An employee of the State government or any of its subdivisions holding the civil service title of Director of Planning, Assistant Director of Planning or Supervising Planner, or in subdivisions which are not subject to the *Civil Service Act*, the equivalent of these titles, shall be deemed to be a Professional Planner in responsible charge of planning work. The employee shall hold a Professional Planners license issued by the State Board of Professional Planners."

Isn't self-regulation only for professionals dealing in life & death issues and safety? (like physicians and engineers)

Evidently not; note that the following are also self-regulated professions in Ontario: teachers, accountants, foresters, funeral directors, lawyers, geoscientists, insurance brokers, land surveyors. Some of these professions are clearly regulated because their practice effects not physical health or safety, but rather the financial well-being of clients or society as a whole. In light of that, the self-regulation of professional planners makes even more sense.

Isn't self-regulation only for professionals who are professionally liable for their work?

This query seems based on several misconceptions. First of all, MCIPs in Canada DO carry professional liability insurance, much like physicians and engineers. (Granted, there is not

much case law involving professional planners being sued for negligence in their work or opinions.) Secondly, legal and financial liability would actually tend to weigh *against* the need for a profession to be regulated or self-regulated: if a physician knows he or she can be sued for negligence, isn't that enough incentive to practice competently? And yet despite this fact, the government of Ontario feels that physicians (and funeral directors, etc.) should be further explicitly regulated by the state and self-regulated.

What are some typical (mandatory) annual fees for self-regulated professions – and their (voluntary) professional associations?

Below is a table regarding 2009 annual fees (not including liability insurance). Some professions were chosen which are related to planning (architects, engineers), or are recently-regulated professions (forestry, geoscientists), or are similar in size to OPPI (architects). You will appreciate that since there are over 71,000 engineers, the body that regulates engineers enjoys significant economies of scale that other regulators do not.

Profession	Regulatory Body Annual Fee MANDATORY	Professional Association (if separate) Annual Fee VOLUNTARY	National Professional Regulator/ Association Annual Fee VOLUNTARY	Total	Number of Members (approx.)
Architects	$823	N/A	$332	$1,155	2,700
Engineers	$231	$147	Included in cost of provincial regulator	$378	71,500
Paralegals	$900	$250	N/A	$1,150	2,500
Lawyers	$1788	$666	Included in cost of provincial association	$2,454	39,800
Land Surveyors	$210	N/A	N/A	$210	700
Foresters	$450	N/A	$178	$628	900
Geoscientists	$420	N/A	$175 typical	$595	1,500
Pharmacists	$564	$525	Included in cost of provincial regulator	$989	11,000
Certified General Accountants	$775	N/A	Included in cost of provincial regulator	$775	19,000
Chartered Accountants	$500	N/A	$460	$960	33,000

Professional Planners	N/A	$294	$178	$472	2,300

Isn't it true that only RPPs can be "qualified" as expert witnesses at hearings of the Ontario Municipal Board? If not, then OPPI should try to get the OMB to change its rules so that it is true.

No, it is not true that only RPPs can be qualified as expert witnesses before the OMB, and it is very unlikely that the OMB would agree to change this. Court and tribunal rules do not generally define or restrict ahead of time who can be an expert witness. ("Expert witnesses" are allowed to give "opinion" evidence that most witnesses are not allowed to give.) Under the common law, the proposed expert witness is simply questioned as to their education and experience, and if the court or tribunal decides that it would benefit from hearing the witness' opinion evidence, then the individual is "qualified" (accepted) as an expert witness. A different tribunal or a different panel of the same tribunal might decide not to qualify the witness as an expert. (See, for instance, OMB application PL091021, February 24, 2010 – the non-OPPI member is rejected as an expert witness, but not solely because he is not a member of OPPI.)

What this means, for instance, is that courts and tribunals do not have rules stating that only a member in good standing of the College of Physicians and Surgeons of Ontario is allowed to give medical expert evidence. Given that, it would be very difficult to justify imposing a rule that only OPPI members be allowed to give expert evidence concerning planning matters.

Despite the lack of such rules, it is probably very rare that expert medical evidence is accepted from anyone other than a licensed physician. It would be the role of the lawyer opposing the acceptance of such evidence to explain to the court or tribunal why it was not reliable or helpful. That explanation is obviously fairly easy to make regarding a medical practitioner. The argument that a non-RPP should not be eligible to act as an expert witnesses might be stronger if professional planning was a fully self-regulated profession with a recognized scope of practice and (at least some) restricted act protection.

Is the move towards self-regulation motivated by the problems professional planners had with the Law Society of Upper Canada under the new paralegal licensing scheme?

No, OPPI's consideration of possible self-regulation of the planning profession pre-dates this issue. Indeed, it is not clear that self-regulation would have altered that situation. You will recall that in 2006 Ontario passed the *Access to Justice Act*. This act was introduced in order to protect the public by requiring that "paralegals" who offer legal services be licensed by the Law Society of Upper Canada. The legislation allowed the Law Society to define "legal services" in such a way that some services provided by professional planners were "legal services."

The legislation also stated that members of regulated professions (such as architects, engineers) would not be deemed not to be practicing law or providing legal services, and were not required to obtain paralegal licenses. The Law Society did not recognize the OPPI's "private act" legislation as qualifying them for this exemption. The Law Society, however, by

means of its own by-law and subject to its own monitoring and review, did grant a temporary exemption to OPPI members. That exemption was removed in September 2010, after and despite extensive correspondence and meetings between the Law Society and OPPI staff, volunteers, and legal counsel.

There was some thought that if professional planners were self-regulated like architects, they would not need to rely on the exemption given (and removed) by the Law Society. However, the Law Society pointed out that the exemption in the legislation referred to professionals "acting in the normal course of carrying out…" their profession. So an architect representing somebody in traffic court would not be protected by the exemption, and would have to become a licensed paralegal (or lawyer). Similarly, the Law Society argued that even if professional planning was a self-regulated profession, a professional planner would not be allowed (without becoming a licensed paralegal or a lawyer) to represent a client in an OMB hearing – unless such representation was very specifically authorized by the legislation regulating professional planners.

Is the move towards self-regulation motivated by attempts by the engineering profession to encroach on work that is properly that of professional planners?

No. But it is true that in the spring of 2010, the Professional Engineers of Ontario (PEO) proposed to amend the definition of the "practice of professional engineering" to include the word "planning." The word was used in a generic sense, and it was suggested that it did not have the affect of encroaching on the RPP's "scope of practice" or require professional planners to become licensed by PEO. (This change was only one of hundreds of amendments proposed to dozens of pieces of legislation as part of a 150+ page bill.)

However, because professional planning is not a fully self-regulated profession, and the planning scope of practice is not protected by law, OPPI could not take such assurances for granted. Thus, OPPI had to analyze the proposed change and its rationale, and make a formal presentation to the Standing Committee of the legislature that was considering the proposal.

In the planning profession, wouldn't self-regulation only really affect traditional "regional" or "land use" planners?

PPAG and OPPI value the many members who are "heritage planners" and "environmental planners" and all the other innovative specialties that have developed. We believe that those members are well-covered by the broad definition of "planning" and by any reasonable, comprehensive "scope of practice" that might be defined for professional planning.

However, it is true that when it comes to proposing "restricted acts" or new "protected titles" for professional planners, we have focused on the more traditional core of the planning profession. Our belief is that overly-broad claims would not be justifiable, and would simply invite vigorous opposition from other professions with overlapping and intersecting practices, such as engineers and architects.

We would note that some lawyers in Ontario do not "practice law," i.e., carry out the "restricted act" of the self-regulated legal profession. Such individuals therefore do not have to belong to the Law Society of Upper Canada, their regulator – but many do belong nevertheless, out of pride at that connection, and in order to maintain their association with a profession officially recognized and granted self-regulation by the Ontario government. PPAG believes that OPPI members would likewise value belonging to a self-regulated planning profession, even if that was not absolutely required directly for their practice.