

# CAA President's Message

## A REGULATORY FRAMEWORK FOR AVALANCHE PROFESSIONALS PART THREE: THE LEGAL COMPONENTS

This is the third in a three-part series.

Aaron Beardmore, CAA President  
Assisted by George Bryce, legal counsel



**Aaron Beardmore**  
CAA President

### INTRODUCTION

This is the final part of a three-part article describing the framework the CAA is developing to regulate the profession in the public interest. The first part described the foundation components and the second part discussed the practice components of this framework. This third part discusses the final two components, the legal components, being government regulation and bylaws. It also describes in more detail how all nine components relate to and support each other.

### BYLAWS (COMPONENT 8)

A new Part 10 for the CAA Bylaws was approved at the 2014 AGM. This new part sets out:

- the rules governing the receipt and investigation of complaints,
- the process to resolve *bona fide* complaints, and
- the option to proceed to a formal disciplinary hearing should mediation fail to resolve a complaint.

As noted in the second part of this article in the previous issue, the bylaws are the legal component of the regulatory framework through which the practice standards (component 5) and the code of ethics (component 6) can be enforced. Without these legal enforcement tools, the standards and rules would have little meaning and could simply be ignored by the membership. That would not be in the public interest and could increase the risks of harm (component 2). This relationship is shown the diagram.

The CAA's bylaws are also where other components of the regulatory framework will be expressed. For example, the Association's entry-to-practice requirements for professional members (component 4) are currently set out in bylaw 13, and the continuing education program (continuing competency, component 7) is described under bylaw 15.

In the months to come, the CAA Board will be developing a strategy to revise our bylaws so that they will provide a more comprehensive and transparent governance structure. Eventually, the bylaw component of our regulatory framework will be substantially similar to that of other professions.

### GOVERNMENT REGULATION ON SELF-REGULATION (COMPONENT 9)

Government regulation of a profession comes into play when the services provided by the profession involve a risk of harm. Identifying the risk and assessing whether it is sufficient to justify action by government is why there is a direct link between the risk-of-harm analysis (component 2) and this final component of the regulatory framework, as illustrated in the diagram.

Regulation will only proceed if government concludes that it should establish a "social contract" with the profession according these essential terms:

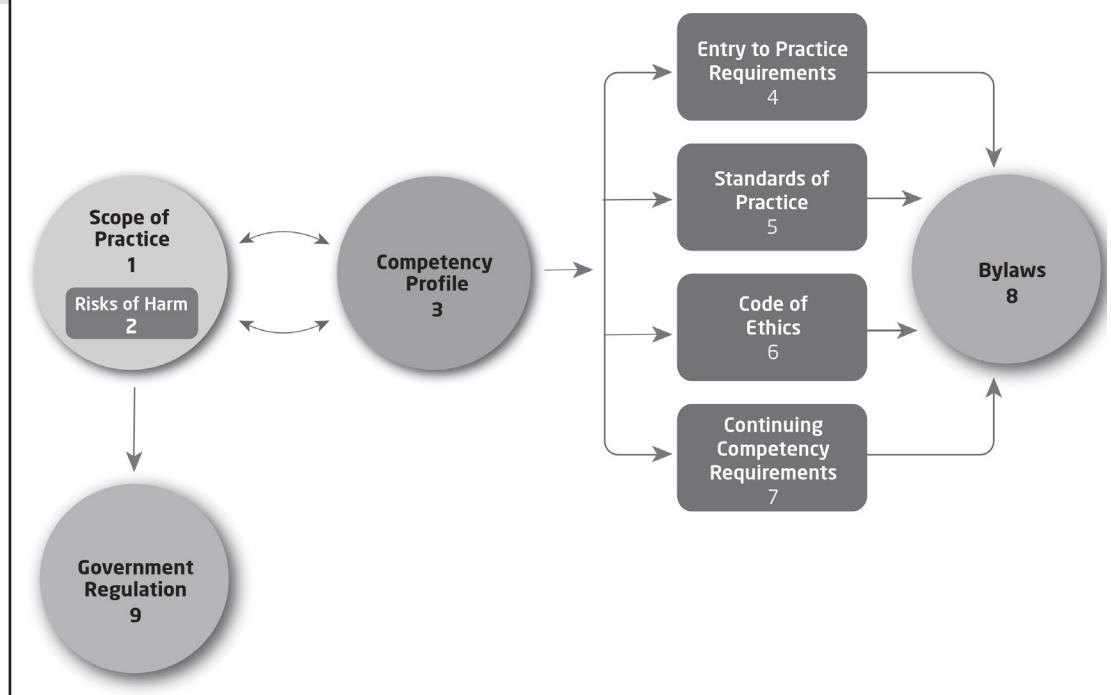
- a) in exchange for
  - i. control over an occupational title protection, or
  - ii. the right to perform restricted professional activities,
  - iii. (or both),
- b) the profession agrees to regulate its members
  - i. in the public interest, and
  - ii. through a regulatory body funded by the membership.

Currently, government grants occupational title protection through regulations that give the profession the exclusive right to use a particular title (such as "physiotherapist" or "veterinarian" often combined with an adjective like "certified"). Persons who are not registered members of the profession's governing body are legally prohibited from using that title.

Many but not all professions are also granted some form of restricted activity, so that only members of the profession (or other professionals with the same competencies) can perform services or functions that fall within those restricted activities (e.g., dispensing pharmaceuticals or performing injections). In effect, government regulation can grant a substantial monopoly over certain aspects of a profession's scope of practice. Defining those practice monopolies (restricted activities) will be informed by the risk-of-harm analysis (component 2), which is why government regulation flows from this component, as shown in the diagram.

British Columbia is unique in Canada because, under Part 10 of our Society Act, a professional association with defined entry-to-practice requirements (component 4), standards of

### DIAGRAM 3 Addition of the Legal Components - The Complete Framework



practice (component 5) and a code of ethics (component 6), as well as legal mechanisms within its bylaws to investigate and resolve public complaints (component 8), can be granted legal control over occupational titles unique to that profession. A title thus granted to and controlled by the profession identifies that the person who uses the title has met minimum registration requirements and is required to follow standards of practice and a code of ethics, all enforced by legal powers under applicable bylaws. Occupational title protection helps the public to make informed choices as to who they should hire to provide the required service. And title protection under BC's Society Act can be an important step toward dedicated government legislation to regulate the profession.

In the coming years, the CAA will be considering filing an application to seek an occupational title for the exclusive use of Association members in good standing. Once all the rest of the regulatory framework components are in place, the membership will be asked to approve a resolution directing that the Association apply under Part 10 of the Society Act for a unique occupational title. That would initiate the ninth and final component of the framework.

The next step along the path of government regulation could be the creation of a regulatory body (commonly called a college) under provincial legislation. That body could grant to the profession an occupational title, if not also one or more restricted activities. Again, the grant of restricted activities would be possible only if the risk-of-harm analysis (component 2) supports granting such a monopoly to the profession.

The CAA is not likely to take this final step for several years. It will be critical to involve the membership in the discussions to ensure there is broad support for this final step on our path toward full regulation through government legislation.

#### CLOSING COMMENTS

As can be seen in the diagram, the nine components of the regulatory framework are interrelated and work together. While the major directions of influence flow with one-way arrows in this diagram, it should be understood that any one component could also influence another in the reverse direction. So, for example, as the details of the practice standards (component 5) are worked out, it may be necessary to go back and amend the competency profile (component 3). In turn, it may be necessary to go back further and revise the profession's scope-of-practice statement (component 1).

In the months to come, the CAA will begin work on those components of the regulatory framework that remain to be completed. The last component, some form of government regulation, will be initiated only after the first eight components have been more fully developed and there is broad membership support for that final step.

**Aaron Beardmore, CAA President**

We trust this three-part article and the accompanying diagrams clarify the regulatory framework that the Association elected to pursue following the 2013 AGM. Members with any questions about this initiative or the framework should direct them to [president@avalancheassociation.ca](mailto:president@avalancheassociation.ca).