
The "Delegated Administrative Organization" in Alberta

by Sue Olsen, MLA

To understand the rationale behind the introduction of delegated legislation and regulation in Alberta, it is important to understand how the government established priorities within the climate of fiscal crisis that existed in 1993.

According to a former Alberta Provincial treasurer, Lou Hyndman, cost-cutting and elimination of the deficit is one specific objective of the Alberta Government but the long-term vision is wider. "It is to permanently change the relationship between Albertans and their government and to fundamentally restructure the traditional activities of government".

Fundamental to reducing the size and presence of government was a re-evaluation of government involvement in business. "Is the program or service a core requirement? Does the service provide a common/public good? Should the province be responsible for the service? Should the service be the responsibility of the private sector, municipalities, the federal government or a not-for-profit organization"?¹

As a result of answering these questions, some programs and activities were terminated while others are being contracted out or privatized. The "Third Option", as it is called, is the creation of *Delegated Administrative Organizations*, or DAOs.

A Delegated Administrative Organization is an arms-length, self-funded, legal entity established for the purpose of administering a comprehensive management/regulatory/enforcement program for the delivery of a service or set of programs traditionally delivered by government.

The DAO is administered by representatives of stakeholders within an activity or program area and usually



also has representatives from government and the public. While the DAO is responsible for the delivery of the program, the government theoretically retains control over standards, legislation, regulations and policy and how they are enforced.

According to the government, the advantages of a DAO are:

- to ensure that those individuals most directly receiving benefits assume the cost for regulation.
- to empower groups or industry sectors to regulate themselves and resolve their own problems.
- to reduce the cost to government of enforcing current legislation.

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Over the past three years, the following major DAOs have been established:

- the Petroleum Tank Management Association of Alberta (PTMAA) to regulate petroleum storage tanks to prevent leakage and promote public safety.
- the Alberta Boiler Safety Association (ABSA) to regulate the manufacture and use of pressure boilers and pressure vessels.
- the Alberta Elevating Devices and Amusement Rides Safety Association to regulate the installation and use of amusement rides, elevators, escalators, dumb waiters, lifts and hoists.
- the Tire Recycling Management Association to regulate the recycling of used tires.
- the Alberta Conservation Association to manage the funds for the enhancement of fish and wildlife habitat and operates the "Report a Poacher" Program.
- the Safety Codes Council and the Occupational Health and Safety Council also operate as DAOs.

There are also plans to establish DAOs to manage the Forest Resource Improvement Program and employment pension units.

Some of the DAOs were welcomed by the stakeholders. Certainly the Alberta Fish and Game Association was pleased that the Alberta Conservation Association enables them to allocate funds, and the Alberta Forest Products Association looks forward to managing the Forest Resource Improvement Program. However, not everyone is happy with these or other DAOs that have been set up.

Potential Pitfalls

The establishment of the DAO not only marks a fundamental change in the delivery of government programs, but it changes the traditional accountability model that has existed between government and the people in our province. As the Auditor General of Alberta said: "Accountability is an obligation to answer for the execution of one's responsibilities".² By their very nature, delegated authorities are not directly accountable to the electorate. Yet, as the Auditor General has pointed out "Accountability is necessary when responsibility is assigned or delegated ... an effective accountability framework is required when central control is reduced or eliminated".³

The *Government Organization Act* of 1994 is the enabling legislation that permits the delegation of authority in Alberta. Section 9 states "... a Minister may in writing delegate any power, duty, or function, conferred or imposed on him by this Act or any other Act or regulation to any person".

Strong legislation and regulations could provide for this accountability but they are not evident in the DAO model being adopted in Alberta.

The Labour Statutes Delegation, prescribes the terms and conditions of delegation of ministerial responsibilities by the Ministry of Labour, the most prominent ministry in which responsibilities have been delegated to DAOs. However, it is a companion piece of proposed legislation, the *Delegated Administration Act* of 1994, never passed into law, but living on in practice, that set out the detailed framework for the establishment of the DAO.

Some of the drawbacks to delegated authorities are:

- A Minister can enter into a contract or administrative agreement to delegate a particular responsibility to a private sector corporation through a simple order-in-council, without requiring debate or the consent of the Legislative Assembly.
- There is no specification of the programs and services that could be delegated to private sector corporations. For example, a recent piece of legislation allows the Minister of Environmental Protection to delegate "any of the Minister's duties or functions ... other than a power to make regulations and a power to delegate".⁴
- There is no appeal mechanism for a person affected by a DAO decision or action. Any review is at the sole discretion of the Minister.
- The government is not liable for any action taken by a DAO that causes injury or loss.
- DAOs raise revenues to fund their operations through fees and assessment levies, approved by the Minister, without any approval or accountability to the Legislative Assembly. There may be no incentive for stringent efficiency and management.
- DAOs do not fall under the scope of the *Financial Administration Act*, therefore they are not directly accountable to the Legislative Assembly or the Auditor General for their activities. This means that the Auditor General cannot initiate an investigation of the financial affairs of a DAO on his own accord.
- Although a DAO must submit an annual report and audited financial statement to the Minister, there is no requirement for timely tabling in the Legislative Assembly.
- The government could find it increasingly difficult to monitor the DAOs effectively, particularly as it relates to appeals and audits, when it no longer has the expertise in that area within the government.
- Establishment of a DAO stakeholder group could limit competition and lead to a private sector

monopoly that lacks incentives to control costs and maintain standards.

- There is a potential to build up bureaucracies within the private sector through excessive use of delegated legislation. This could result in the transfer of red tape, regulation and delay to the private sector, rather than leading to the streamlining of administration that the government desires.

These fears are not without basis. The proliferation of quasi-autonomous non-governmental organizations or QUANGOs in Britain is particularly instructive in this regard. A May 1994 study by the British research organization, Charter 88, found 5,521 QUANGOs in Britain, spending \$46.6 billion in taxpayer dollars on an annual basis, with only 2% of these QUANGOs subject to the *British Open Code of Practice*.

A Framework for the Use of Delegated Legislation

I believe wholeheartedly that citizens do not want their government to become a business. We still need a government that sets priorities for the province in health care, education, social services, protection of our children and protection of our environment. These are the fundamental duties of government in a parliamentary system.

If delegation of government programs occurs, we need a process or framework to address the potential pitfalls of Delegated Legislation, to ensure that an effective legislative oversight function is established and maintained. The Institute of Chartered Accountants of Alberta had the following to say in this regard: "Privatization of non-essential services has begun. This process must be methodical and well planned. Orderly approaches are required to achieve effective results".⁵

I would envision the following elements as part of an effective accountability framework to guide the use of delegated legislation and regulation in Alberta:

- Preparation of a delegated administration profile to assess whether a particular program, service or activity is a candidate for delegation to an NGO or private sector corporation. The profile would examine such issues as market strength, political resistance, cost efficiency, quality of service, impact on employees, legal barriers, risk, resources, and monitoring and control.
- A detailed cost-benefit analysis outlining the cost savings and benefits that could be achieved by delegating the program or activity to the private sector, and providing a clear rationale as to how delivery could be improved through the delegation.
- In many cases, we should have a full public tender process, for programs that are to be delegated, to encourage competition and prevent the creation of centres of private sector monopoly. A request for

proposal (RFP), circulated to prospective bidders would set out clearly stated performance standards and allow for effective follow-up monitoring by the government and the legislature.

- Once a successful bidder had been selected from the competitive bid process, the subsequent administrative agreement between the government and the delegated authority would establish the terms and conditions for the delegation, the financial and performance requirements, and follow-up monitoring procedures. Annual reports, business plans and regular audits of DAOs would be reviewed by the Standing Committee on Law and Regulations, and representatives from the Board of Directors of the DAO would be able to appear before the Committee to account for the organization's activities in meeting the requirements of the Administrative Agreement.

How we respond to the challenges of delegated legislation and regulation and how we preserve an effective accountability framework within our parliamentary system, is critical to the course of democratic government in the future. Former Premier of Alberta, Peter Lougheed, once said that the parliamentary system "is the most effective system of democratic action that we know today in the modern world".⁶ We must work hard to ensure that delegated legislation and regulation does not undermine that system.

Notes

1. Ronald D. Kneebone and Kenneth J. McKenzie, "The Process of Institutional Reform in Alberta", in Christopher J. Bruce, Ronald D. Kneebone and Kenneth J. McKenzie, *A Government Reinvented: A Study of Alberta's Deficit Elimination Program*, (Oxford University Press: Toronto, 1997), p. 205.
2. Auditor General of Alberta, *Annual Report of the Auditor General 1993-94*. October 14, 1994, p. 3
3. *Ibid.*, p. 10.
4. Legislative Assembly of Alberta, Bill 22: *Environmental Protection and Enhancement Amendment Act*, May 1997.
5. Chartered Accountants of Alberta, "Staying the Fiscal Course: A Submission to the Provincial Treasurer," February 1994, p. 10.
6. *Alberta Hansard*, March 27, 1972, pp. 18-20.