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BULLETIN 30: THE ARCHITECTS ACT OF BRITISH COLUMBIA ENFORCEMENT PROCEDURES

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THE NATURE AND HANDLING OF ALLEGED CONTRAVENTIONS

The Architectural Institute of British Columbia (AIBC) is directed by the Government of B.C., under Provincial statute (the *Architects Act*), to regulate the profession of architecture in the province, with a mandate to protect the public. The AIBC has the sole official responsibility to ensure that the provisions of the *Architects Act* are upheld and to enforce that legislation.

While the Courts may ultimately be asked to rule on disputed interpretations of the *Architects Act*, the general day-to-day operational interpretation of matters under the *legislation* falls to the AIBC alone. Alleged contraventions of the *Architects Act* (as distinct from matters of alleged unprofessional conduct) are handled in the first instance by the Registrar and Deputy Registrar of the Institute, with assistance from the Act Enforcement Committee.

PART I – STATUTORY PROVISIONS

Because the *Architects Act* confers on architects the exclusive rights to both “title” and “practice”, apparent or alleged contravention by a non-architect of the *Architects Act* falls generally into one (or both) of the following two categories; both of which are further detailed below:

- (A) Misrepresentation
- (B) Illegal Practice

(A) MISREPRESENTATION

The *Architects Act* belongs to a class of statutes called “right-to title” legislation. Only a person who is a licensed member of the AIBC (and who has so become by virtue of education, experience and examination) is entitled, by provincial law, to be referred to as an “architect” or to use derivative forms of that word.

The authority to prohibit inappropriate terminology flows from Section 63 of the *Architects Act*:

63 Further prohibitions

- (1) Subject to this Act, a person not registered as a member or as an architectural firm must not use or be held out under the title “architect” or any similar title or description or use, and must not advertise or be held out under any name, title, addition or description implying, or likely to lead the public to infer, that a registration under this Act applies.
- (2) A person or architectural firm that does not hold a certificate of practice must not be held out or implied to hold a certificate of practice.
- (3) A person not licensed under this Act must not be held out or implied to be licensed under this Act.

Further to Section 63 and Council’s powers (under Section 5) to make rules necessary to govern the institute’s affairs, Bulletin 32 provides further clarification as to the acceptability (or otherwise) of certain derivative phrases.

(B) ILLEGAL PRACTICE

The *Architects Act* also belongs to another class of statutes called “right-to-practice” legislation. Only a person who is registered as an architect (MAIBC) is entitled, by provincial law, to practise “architecture” as defined under the statute.

The authority to prohibit inappropriate practice of architecture flows from Section 27 of the *Architects Act*:

27 Certificate of practice

- (2) A person must not practise or offer to practise the profession of architecture unless the person
 - (a) is a holder of a current certificate of practice, or
 - (b) practises as authorized by this Act through an architectural firm that is a holder of a current certificate of practice.

What constitutes practising architecture is defined in Section 59:

59 Practice of architecture

A person is deemed to practise the profession of architecture within the meaning of this Act if the person

- (a) is engaged in the planning or supervision of the erection or alteration of buildings for the use or occupancy of persons other than himself or herself, or
- (b) by advertisement, sign or statement of any kind, written or oral, alleges or implies that the person is an architect or that the person is, or holds himself or herself out as being, qualified, able or willing to do any act set out in this section.

The permission for non-architects to practise on certain types and sizes of buildings is defined in Section 60. That section is summarized in Bulletin 31.

The contravention of Section 27(2) (above) is declared to be an “offence” under Section 61 of the *Architects Act*:

61 Offence

A person must not erect, alter or repair a building, or cause a building to be erected, altered or repaired under plans and specifications prepared or approved by a person in contravention of Section 27(2).

Note that (under 61) it is an offence not only to “plan and supervise” but also to build, repair or so cause, from documents inappropriately prepared.

As well, it is a contravention of the Act (Section 83) for an owner or client to engage a non-architect for services which are prohibited under the Act:

83 Employment, retention or engagement

A person must not employ, retain or engage the services of a person to practise the profession of architecture if that person is not authorized under this Act to practise.

As a matter of related interest, under Section 84, earnings for services which contravene the *Architects Act* are not legally collectable:

84 No recovery of fees for work done contrary to Act

A person is not entitled to recover in a court a fee or remuneration for services rendered or work done contrary to this Act.

In short, where illegal practice occurs, the designer, owner and builder are each at risk.

(C) PENALTIES

The AIBC has the powers, under Sections 66 and 68 of the *Architects Act*, to sue an individual for alleged contravention for exemplary damages and/or to seek an injunction against that person:

66 Exemplary damages

- (1) An act prohibited in Section 27 (2), 28, 63, 64 or 65 (1) is a tort actionable by the institute without proof of damage.
- (2) A person who contravenes any prohibition contained in Section 27 (2), 28, 63, 64 or 65 (1) is liable to pay exemplary damages not greater than \$25,000 to the institute whether or not the person has been convicted of an offence related to the contravention.
- (3) In an action under subsection (1), it is sufficient proof of the contravention if it is proved that the defendant has committed a single act of the kind prohibited.

68 Injunction

- (1) In the event of a violation or threatened violation by a person of a provision in Sections 27 (2), 28, 61, 63 and 83, the institute is entitled to apply by action for an injunction to restrain the person from continuing or committing the violation.
- (2) Until the adjudication of an action on application to the court showing the violation or threatened violation and on the court being satisfied that there is reason to believe that the person committed or is likely to commit the violation, the institute is entitled to an interim injunction.

“Exemplary” damages are an unusually severe form of damages meant to punish a wrongdoer for certain conduct and to act as a deterrent against contravention, rather than to compensate a party for harm done by the wrongdoer.

An injunction is a powerful court-ordered remedy that forces a person contravening the Act to cease the activity complained against under threat of being held in contempt of court.

(D) ALLEGED CONTRAVENTIONS

A person who has allegedly contravened the Act by holding him/herself out as an “architect” or who is practicing architecture without being an MAIBC, usually has no affiliation with the AIBC. Occasionally, he/she may be an associate of the AIBC (eg. student, intern, former architect). The contravention is no more or less acceptable, regardless of affiliation (past or present).

As mentioned previously, these individuals may also be clients or builders, hiring or constructing from the drawings of non-architects.

(E) PROFESSIONAL CONDUCT

There is a linkage between act enforcement — which relates to non-MAIBCs — and professional conduct of architects in the examples described below.

An architect who practises architecture in partnership with a non-architect, or who aids or abets illegal practice is in contravention of Section 65 (1) of the *Architects Act*.

65 Partnership with non-architect

A member, architectural firm or licensee must not practise architecture in partnership with a person not entitled to practise architecture, or make an agreement or arrangement or do an act that will enable the person to practise architecture contrary to this Act.

Both Registered Members and Associates of the AIBC who contravene the Act are subject to the AIBC’s disciplinary powers, under Section 58 of the Act:

58 Inquiry into the conduct of associates

- (1) A disciplinary committee may inquire into the conduct of an associate and, based on the inquiry, it may cancel the associate's admission as an associate if it considers the associate's conduct detrimental to the interests of the institute or contrary to this Act or the bylaws.
- (2) The provisions of this Act respecting an inquiry commenced under section 46 apply to an inquiry under this section.

Matters dealing with unprofessional conduct are handled in the first instance through the AIBC's professional conduct process (cf. Bulletin 41).