



January 18, 2010

AIBC Response to Legal Opinion

A legal opinion regarding changes to the *Architects Act* and associate categories, dated November 24, 2008, was obtained by a small group of concerned members. It was then provided to AIBC staff which obtained separate legal advice and responded directly and privately at that time to that group of members.

In early December 2009, the November 2008 opinion was circulated among many AIBC members and to AIBC Council without reference to the available positions of the AIBC. In order to ensure that all members and associates interested in the issue of legislative renewal have a complete picture and better understanding of the facts, AIBC Council wishes to once again address the content of the group's opinion, which made conclusions in three key areas. These are paraphrased below, followed by the AIBC's responses:

1. **Ratification Request:**

The opinion concluded that members can call a special general meeting, ask questions and bring motions relating to the notice in such a meeting. Such motions could include a resolution to "censor" [sic] or "ratify" AIBC Council's course of conduct and decisions.

AIBC Position: The AIBC essentially agrees with the conclusions in the opinion. Members can indeed call a special meeting (as was done in November 2008) where advisory motions can be moved and voted upon. While such motions are advisory only and not binding, they are clearly important and must be duly considered by Council. However, they do not serve to mandate any action by Council or the Institute generally. Members elect (and the provincial government appoints) councilors to make decisions on their behalf and on behalf of the institute as a public interest regulator. Members also vote on bylaws and are involved in less formal but no less important capacities, including as volunteer committee and board members. There is nothing in the *Architects Act*, the AIBC Bylaws, Robert's Rules of Order or the common law that would allow the AIBC's members to vote at a general or special meeting to stop Council from carrying out its duties or policy development. Elections to Council, bylaw votes and genuine, informed involvement with the AIBC are the lawful and effective avenues of change in this respect.

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2. **New Classes of Associate**

The opinion concluded that it would be illegal for AIBC Council to create rights for any associate category, including scope of practice rights, beyond those already in the *Architects Act*.

AIBC Position: The AIBC agrees with the conclusion in the opinion: It would indeed be illegal for Council to create rights for any associate category, including practice rights, beyond those permitted in the *Act*. With the mere creation of the Building Designer and Residential Designer categories, council has not done so. There are no scopes of practice for associates – they may "practise" solely in the exceptions provided in the *Act*. They do not have scope of practice nor any other rights that are *ultra vires* the *Act*. Creating broader rights, such as a scope of practice, would require legislative amendment, prior to which a lengthy analysis and member and associate engagement period would take place. Unfortunately, there appears to be confusion on the part of some members as to what "status" the current associates have (title only) within the institute and under the *Act*.

3. **Bill 10**

Background: Bill 10-2008, the *Housing Statutes Amendment Act*, was enacted by the BC government as part of its modernization strategy. The bill amended several pieces of legislation including the *Local Government Act*, *Community and Vancouver Charters*, *Engineers and Geoscientists Act* and the *Architects Act*. The related amendments to the *Architects Act*, now found in Section 24(2) highlighted below, are as follows:

Bylaws

24 (1) The institute may make bylaws considered necessary for the regulation of the institute, its members, architectural firms, licensees and associates.

(2) Without limiting subsection (1), the bylaws may provide for one or more of the following:

(q.1) the designation of specialized areas of architecture;

(q.2) the qualification and certification of members, licensees or architectural firms as specialists in areas of architecture designated under paragraph (q.1);

(q.3) the prohibition of members, licensees or architectural firms from holding themselves out as specialists in a designated area of architecture unless the member, licensee or architectural firm is certified under a bylaw made under paragraph (q.2);

The opinion concluded that in order for Council to introduce new classes of associates, "Bill 10 must be passed in law and in addition, Council must seek an amendment to the Bylaws".

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AIBC Position: The opinion is factually and legally incorrect. In fairness, the firm authoring the opinion indicated that it was preliminary and crafted with limited time to review the issues.

Put most simply, the Bill 10 amendments have nothing to do with associate categories. Bill 10 gave AIBC members, through the bylaw-creating Section 24 which requires a membership vote, the power to pass one or more bylaws establishing "specialist designations" in the practice of architecture. In fact, the amendments triggered by Bill 10 are clear that qualifications and the certification with respect to any specialist designation will relate only to members, firms, licensees and architectural firms. Associates are not mentioned and cannot be given (nor could have been given previously) a specialist designation under the *Architects Act*.

Conclusion

The AIBC believes that it is unfortunate that a preliminary legal opinion sought for private purposes has been distributed without proper context and without inclusion of the response previously provided by AIBC staff. It is hoped the information provided above helps to clarify matters.

Members and associates seeking further information or clarification on legislative renewal, associate categories, Bill 10 or any matter relating to the regulatory function of the AIBC are invited to contact Executive Director Michael Ernest MAIBC (mernest@aibc.ca).