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Lillian Mah MAIBC
Mnemosyne Architecture
7688 Ontario Street
Vancouver, British Columbia
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Dear Ms. Mah:

On behalf of AIBC Council, thank you for your letter of December 1, 2009, and its attached opinion from the law firm of Lesperance Mendes. We are pleased to provide this response.

It is clear to all of us on Council that you and other members are passionate about the issues of legislative renewal. We are encouraged when members care enough about the profession and its future to communicate in depth with Council. We hope this dialogue continues, and will be providing many opportunities to share concerns, facts and informed opinion in the coming months.

Council would like to note that, although your letter was addressed to the "lay" members "in the Interest of the Public", every member of AIBC Council is a representative of the public interest. Once elected by the members or appointed by the provincial government, our foremost duty is not to enhance the personal or commercial interests of architects, but rather to protect the public interest in the regulation of the profession of architecture. This is a considerable challenge but one that all Council members are committed to fulfilling.

Architects Act and Bylaws Concerns

Attached is a summary of AIBC Council's legal view of the three matters raised in the Lesperance Mendes opinion (ratification request; new classes of associate; Bill 10). Given your wider circulation of that opinion, the AIBC will be posting the attached response to ensure that we are all operating on as informed a basis as possible.

AIBC Council has been advised by senior staff within the Ministry of Advanced Education that they, too, have received and reviewed your material; determined there is "no foundation" for aspects of the Lesperance Mendes opinion; and communicated that to a member of your group in March 2009.

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In addition, your letter raises some more specific concerns beyond those in the Lesperance Mendes opinion. We have addressed them below in the order presented by you:

1) *“Creation and use of titles not sanctioned by the Act or Bylaws”:*

Section 40 of the *Architects Act* states that AIBC council may “admit any person as an associate of the institute, may divide associates into different classes and set the qualifications for each class.” Dividing associates into different classes – including the creation of Intern Architect, Retired Architect and Architectural Technologist categories – necessitates providing a designation of some kind.

There is nothing in the *Act* or bylaws restricting the designation and titling of associate categories, except using the term “architect” in a way that would imply that the individual is registered as an architect (see Section 63). None of the new associate categories uses “architect” or derivative. In fact, the three primary associate categories noted above, created long before Building Designers and Residential Designers were contemplated, all include the term “architect”. No one has taken the position that these categories mislead the public or are contrary to the public interest.

However, Council is well aware of concerns about the use of “.AIBC” in titles of all kinds, including its use by IAs, ATs and architects themselves. As part of Council’s engagement strategy on legislative renewal, we will be asking members and stakeholders about title use, and we hope that you will take part in the dialogue.

2) *“Creation of the term ‘registrant’”:*

The *Architects Act*, amended many times since 1920 but never overhauled to ensure internal consistency, contains several contradictory and confusing phrases. In addition, the term “member” – reserved strictly for architects – has been used inconsistently within and outside the profession to include associates such as intern architects and architectural technologists.

The decision to use the umbrella term “registrant” to refer to all individuals and firms who are *registered* with the AIBC was made in order to provide a consistent understanding: architects, associates, honorary members and firms are all “registered” by the AIBC and are found on the AIBC’s “register”. You will find this authority in Section 33 of the *Architects Act*, which states that the registrar must keep the register and enter the name, residence and other information “of each person registered under section 36, 37, 39 or 40”, as well as architectural firms and holders of a current certificate of practice. In other words, architects, associates (Section 40) and honorary members are all “registered” with the AIBC – and are thus “registrants”.

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Again, Council hopes that the discussion about legislative renewal will generate sensible solutions regarding titles and the categorization of architects and associates. For now, the current *Architects Act*, with all of its frailties, is the document within which Council must administer professional regulation. The use of terminology such as “registrant” is not intended to diminish architects’ status in any way.

- 3) *And (4): “Many newly created associates are practising on their own without direction of an architect as required by the Act, contrary to Section 41.”*

This concern goes to the heart of the AIBC’s legislative renewal concerns. The *Architects Act* defines architecture very broadly (effectively stating that architecture ‘happens’ when someone is engaged in the planning or supervision of the erection or alteration of buildings of any kind for the use of others). The *Act* then sets out the ‘exceptions’ – not as exceptions to what is “architecture”, but rather exceptions to the need for holding a certificate of practice in order to legally provide architectural services.

The creation of associate categories does not amend the *Architects Act* or provide a scope of practice to associates or any other authorization to practise architecture except as permitted under the exceptions. If you or other members are aware of a breach by an associate (or architect) of this critical legal and professional conduct expectation, you are reminded that you have an ethical obligation to report the matter to the institute.

Sections 27, 41, 59 and 60 must be read together as part of the statutory scheme to regulate architecture and define its exceptions. As a matter of basic statutory interpretation, it is not unlawful for associates to “practise architecture” in the exceptions (including the many intern architects who supplement their income and gain experience by doing so). An associate may only practise architecture on buildings requiring an architect under the supervision of an architect, but may certainly ‘practise’ in the exceptions, along with anyone else.

Part of AIBC Council’s legislative renewal process remains a commitment to reviewing the types of buildings included within the exceptions from a public interest point of view to determine whether the lack of professional regulation in that broad area is appropriate in the 21st Century.

It is certainly true that the manner in which the *Act* is organized, the definition of the practice of architecture, the incorporation of certificate of practice and the concept of ‘exceptions’ makes the legislation unusually and unnecessarily complicated to navigate. The current legislative renewal initiative is about much more than whether to broaden the current regulation of architecture to include the exceptions, and if so, how to regulate that portion of the built environment. It was in fact prompted by repeated criticisms from past councils, registrars, staff and our own members about the anachronisms and limitations of our founding legislation, now 90 years old.

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- 4) “Associates are being admitted without qualifications in the Architects Act and Bylaws, and the public is not protected”:

As noted earlier, the *Architects Act* allows Council to create associate categories and set qualifications for each class. One of the AIBC’s primary initiatives over the past year has been to develop, through broad consultation, an ‘Outcomes-Based Competency Standards’ matrix for the evaluation of qualifications for newly-registered architects. This process is attracting positive national attention, and the AIBC expects that it will become the norm for competency assessment of architects across the country.

Establishing qualifications for associate categories would be necessary in any discussion about possible future scopes of practice. Architects must prove their competence – through education, experience and evaluation – to the AIBC’s satisfaction prior to being granted a scope of practice to the exclusion of all others. The public interest would require no less for the granting of any scope of practice to any associate category.

As of now, the AIBC has no authority whatsoever under the *Act* to grant scopes of practice to associates, who may only practise architecture within the limitations of the *Act*.

Conclusion

I trust the explanations provided above, as well as the AIBC’s legal response to the Lesperence Mendes opinion (attached) help to clarify – if not allay – the concerns you have raised.

AIBC Council is well aware of the complexity and issues that surround legislative renewal, and the passion with which some views are held, with every good intention. Council is continuing to engage members in discussing these matters, sharing concerns and offering suggestions to guide the future direction of the institute. I encourage you to continue to be part of that discussion. Please feel both free and welcome to contact me in these regards.

Best wishes in this new year,



Pierre E. Gallant MAIBC MRAIC
President – AIBC Council

Att.