



**ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA**

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Irvin H. Kew MAIBC  
Irvin Kew - Architecture Inc.  
2660 Shady Lane  
Oak Bay, Victoria BC V8R 1R6 21

12 August 2010

Dear Irvin:

**RE: IMPARTIALITY OF AIBC LEGAL COUNSEL**

I am writing you apropos three statements you made during the AIBC Annual Meeting on 08 May 2010. During that meeting you were quite forceful in raising concerns regarding the impartiality, or your suggested lack thereof, of those persons whose duties include providing legal advice to AIBC Council and the institute. In the first instance, you stated that "staff counsel is not impartial". You later requested that "an impartial law firm be called upon to rule on this issue in the interests of impartiality". You went on to re-assert that "staff lawyers are not impartial". Your statements were made within the context of questioning the rules of order, related processes and decisions (none of which is the subject of this letter).

For the record, the AIBC has, indeed, a lawyer (Jerome Marburg LL.B.) on full-time staff who serves *inter alia* as the institute's general counsel. He also brings 15 years of related experience with professional associations. The AIBC also engages a second lawyer (Thomas Lutes LL.B.) on a part-time consulting basis for a variety of key functions including legal counsel as needed. His relationship with the institute is now approaching a decade. It is their professionalism and reputations you maligned at the referenced annual meeting, at which they both had specific roles.

From my operational perspective as Executive Director, I can tell you without fear of contradiction that the only legal advice and opinions I would ever accept would necessarily be independent in nature, specific to the issues and context at hand, and formulated from the basis of experience and knowledge of pertinent law as well as of the AIBC. Impartiality is critical to the AIBC's well-being. I have no interest in having someone tell me what they think I might wish to hear or what might constitute a so-called party line.

I can also say without hesitation that Messrs. Marburg and Lutes have always demonstrated only the highest standards of impartiality and professionalism in service to the institute.

The fact that a lawyer might be on the AIBC payroll or under a consulting contract to the institute is irrelevant. There is, of course, an obvious parallel within our mutual experience as architects who, in service to clients (who pay our fees) are called upon time and again to provide impartial, professional judgment and advice ... as (e.g.) interpreters of our own architectural designs and documents; assurances of code compliance; evaluation of construction progress; and certification of payment as well as completion ... at times with statutory and regulatory import beyond any contract. There also exists AIBC Bylaw (31.4) and related Code of Ethics rule and commentary which underpin the need and expectation for an architect's impartiality.

I have little doubt that should any AIBC member be accused of not being impartial by a contractor or other project participant - especially if so stated in an open forum - that accusation would be considered imprudent at best, and possibly actionable.

On a personal level, I have always enjoyed our ability to be candid with each other. I prefer to believe that the statements you made at the annual meeting arose from the heat of the moment and your disagreement with some of what was transpiring. Otherwise, your strong public statements challenging the professional integrity of these two people would attract a different type of response. In any event, in my view, a public retraction and apology are in order. Rest assured that while the AIBC welcomes constructive and respectful, non-adversarial dialogue, I will not tolerate any such impugning of AIBC staff and consultants.

Sincerely,

A handwritten signature in black ink that reads "Michael A. Ernest" followed by a horizontal line.

Michael A. Ernest MAIBC  
Executive Director

PS: Given that your submissions were made in a public forum attended by a large number of people, this reply will be posted on the AIBC web site and referenced in eNews.