



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

Memorandum

Date: November 14, 2017

To: AIBC Council

From: Bylaw Review Committee (the “BRC”)
Brian Sim Architect AIBC, Chair and Thomas M. Lutes, General Counsel

RE: **Analysis and Recommendations:**
AIBC Bylaws: Chapters, Firms, Membership, Fees, Fines and Levies

1.0 Background

BRC Workplan

- 1.1 After completing a series of subject-specific bylaw review initiatives, such as associates, investigations and discipline and professional liability insurance, the BRC has prepared a suite of ‘housekeeping’ bylaws for council review. This aggregation of AIBC Bylaws 8.1 through 16 and 25 was selected by the BRC as a single suite as part of the evolution of its workplan. Three initiatives remain: the *Code of Ethics and Professional Conduct* (the “*Code of Ethics*”) bylaws and council rulings review; another large housekeeping suite related to institute governance; and a final initiative centred on definitions and bylaw reorganization. The BRC plans to complete its recommendations to council on all of these initiatives by the end of 2018.
- 1.2 The bylaws under current consideration relate to the AIBC Bylaw headings “Chapters”; “Membership and Registration”; “Honorary Members”; “Architectural Firms”; and “Fees, Fines and Levies”. Each of these headings and any bylaw amendments proposed by the BRC are addressed in separate sections below.

Summary of Proposed Amendments

- 1.3 As an overall statement, the proposed amendments are relatively modest in nature. The Chapters bylaw recommendations largely mirror the BRC recommendations from 2012, and would see the ‘administration’ of AIBC chapters moved to council rules for greater flexibility and oversight. Minor wordsmithing to the architect’s declaration or ‘oath’ is proposed, with a suggestion that council consider a fuller review of the currency and content of that declaration. No changes to honorary membership or the architect’s “title” bylaws are proposed. Amendments proposed for firm bylaws relate primarily to simplifying the information requirements for firms while bolstering the importance of such information in the regulation of the profession. A single fees and fines bylaw would be established and updated to ensure the full scope of institute ‘charges’ is given clearer bylaw authority.
- 1.4 The most substantive amendments relate to a proposal to establish two new bylaws under the “Membership and Registration” heading. These bylaws would essentially fill in any transparency gaps created by those provisions in the *Architects Act* (the “*Act*”) (Sections 36 and 37) that establish

qualifications for an architect's registration and council's wide discretion related to registration. The proposed bylaws would require council to formally consolidate, in a set of council rules, such registration criteria found in the *Act* as "good moral character", "good professional conduct" and approving architectural training in other jurisdictions.

2.0 Proposed Amendments by Heading or Subject Area

Chapters (Current AIBC Bylaws 8.1-8.5)

- 2.1 Prior to the 2012 AIBC annual general meeting, the BRC proposed retaining a single chapter creation bylaw and repealing the balance of the chapter bylaws that relate to the administrative aspects of chapters. Council asked the BRC to bring the chapter bylaw issue back on its workplan.
- 2.2 The committee's recommendation remains the same: Adopt a simple, single bylaw that allows council to establish AIBC chapters in accordance with council rules. The BRC's rationale from the 2012 annual meeting (at which these bylaw proposals, among many others, did not pass) is repeated here:

While the creation of chapters should have some bylaw authority, so that 'rogue' organizations are less likely to purport to represent the profession or confuse the public, the administrative details of such chapters are better left to Council's rule-making power. Removing 8.2 through 8.5 allows great flexibility in chapter administration and Council oversight. To the extent that 'regulation' of chapters is a matter of institute regulation or touches on public interest protection, it can be adequately addressed by way of a single bylaw (8.1) and council's rule-making authority.¹

- 2.3 At the October council planning session, there was some discussion whether to use the phrase "shall encourage" or "may allow" the formation of chapters in the bylaw. The BRC strongly recommends the permissive phrasing so council retains the widest flexibility and authority in relation to chapters. See Appendix "A", page 7 of this memorandum for the specific chapters bylaws amendment language proposed.

Membership and Registration: Declaration

- 2.4 As a formatting issue not requiring member vote, the BRC recommends modifying the current bylaw heading "Membership and Registration" to "Admission and Registration" to reflect the language used in Section 24(2)(c) of the *Architects Act*. This section provides specific authority for the making of bylaws related to the "admission to the practice of the profession of architecture". The Ministry of Advanced Education has recommended during the bylaw review process that the institute adopt the legislation's wording, wherever possible and appropriate, in its bylaw work for consistency.
- 2.5 The BRC recommends that the architect's declaration or 'oath' bylaw, found at 9.0, be amended for clarity. The declaration is made as part of an architect's application process, and not, as the bylaw is currently written, "upon notice of registration". The bylaw requires additional correction as it refers to the *Code of Conduct*, when the intended document is the *Code of Ethics and Professional Conduct*.
- 2.6 Some additional syntax changes are suggested for clarity, and reference to the "public interest" is added. While the BRC spent a fair amount of time considering this declaration, committee members were of the view that the importance of the 'oath' as a statement of professional commitment suggests

¹ AIBC 2012 Annual Meeting Booklet – May 12, 2012, at page 60.

it be addressed as a separate project unrelated to bylaw work. See Appendix “A”, pages 7-8 of this memorandum for the proposed amendments.

Membership and Registration: Admission to the Profession

- 2.7 The BRC proposes two new ‘admission’ bylaws tied to Sections 36 and 37 of the *Act*. Currently, the AIBC has no bylaws that relate directly to registration requirements of individuals as architects. As noted in paragraph 2.3 above, section 24 (2) (c) establishes an expectation – though not a requirement – for bylaws related to the admission to the practice of the profession. Most professional regulatory bodies have extensive ‘registration/qualification’ bylaws.
- 2.8 The institute’s outdated legislation, including the highly prescriptive qualifications language in Sections 36 and 37, is the likely cause of this bylaw vacuum. However, these sections establish a wide degree of latitude for AIBC Council to exercise discretion in relation to qualifications for registration. Section 36 (in general, the internship pathway to registration) gives council authority to determine the “evidence” of identification, good moral character, qualifications and good professional conduct that are foundational to registration. The section goes on to give council or the institute authority to determine what examinations are required for registration, as well as what architectural training in another jurisdiction the council approves, among other important discretionary elements.
- 2.9 While council has historically exercised this discretion in various well-established ways, including establishing the internship program, the BRC sees value in having a consolidated set of council rules that identifies how architect applicants can find and satisfy registration requirements. It is notable that the words “intern” and “internship” do not appear in the *Architects Act*, despite that registration pathway’s vital importance to the profession.
- 2.10 Similarly, Section 37 of the *Act*, titled “Alternative Qualifications”, provides council with wide discretion in relation to such matters as examinations and who is a “qualified and capable” architect outside of BC for the purposes of non-BC work experience. Bylaws 9.1 and 9.2 would require a consolidated set of rules related to such AIBC alternative qualifications initiatives as the Broadly Experienced Applicant (“BEA”) Program and the Broadly Experienced Foreign Architect (“BEFA”) Program. See Appendix “A”, page 8 for the proposed new bylaw language.

Membership and Registration: Title and Seal

- 2.11 No amendment is proposed to Bylaw 10.0, which established the title “Architect AIBC” and was passed by members in 2012. Minor, practical amendments are proposed to current Bylaws 11.1 and 11.2, which related to application and procurement of architects’ seals. For example, current Bylaw 11.1 uses phrasing (“shall make application”) that purports to make it mandatory for every architect, upon registration, to apply for a seal. The institute does not enforce such a requirement – nor is it deemed necessary given the other regulations and standards related to ‘use of seal’ found in the *Architects Act*, AIBC Bylaws in the *Code of Ethics* and in Bulletins 60 and 61. See Appendix “A”, page 9 for the proposed amendments.

Honorary Members

- 2.12 No amendment is proposed to Bylaw 12.1, which was last amended in 2012.

Architectural Firms

- 2.13 This grouping of bylaws – 15.1 through 16.4 – covers a spectrum of architectural firm and certificate of practice (“CoP”) matters. The BRC’s proposed amendments are found at Appendix “A”, pages 9-12, and can be summarized as follows:

Bylaw 15.1:

The current bylaw prohibits the use of misleading or unprofessional names for architectural firms, and requires all firm names to be approved by council. The proposed amendment would require council rules for firm name requirements and name approvals. This should provide more transparency and greater flexibility for the institute in addressing firm name issues.

Bylaw 15.2:

The current, lengthy bylaw (almost a page in length) itemizes the detailed information necessary to make application for firm registration. The proposed amendment would simplify the bylaw by requiring firms applying for registration to complete the application form required by council for the type of firm at issue. The form itself would include the required information, which could be readily adjusted from time to time, unlike the information enumerated and fixed, except by member vote, in the current bylaw.

Bylaws 15.3 and 15.4:

These bylaws currently require firms to file a “memorandum of practice” when firm changes occur (15.3) and require filing of an “annual information return” with the Registrar (15.4). Neither of these terms is used at the AIBC; the “annual information return”, for example, is known in the profession as the “annual firm update”. The BRC proposes replacing these two bylaws with a single new bylaw that requires architectural firms to complete an annual firm update by the date required by council, and to notify the institute of certain material firm changes in the form required by council.

Bylaw 15.5:

The current bylaw states that firms that are corporations must comply with certain provisions in the *Architects Act* in order to remain “in good standing”. These requirements include the basic majority architect share ownership and director requirements. The phrase “in good standing” is incorrectly used in the bylaws: It is used in the legislation (and operationally at the institute) solely to refer to architects, firms and other registrants who have duly paid their annual fees. Registration & Licensing staff identified practical concerns with this bylaw and the issues it is intended to address, namely ‘mid-stream’ non-compliance by corporations with statutory requirements, such as upon the death or suspension of an architect owner of a corporate firm.

To address these issues, the BRC proposes two bylaws: one to simply state that architectural corporation firms must comply at all times with sections 26(2) and 30 of the *Architects Act*, and one bylaw by which council “may establish rules” to address corporate non-compliance caused by suspension, resignation, death or other removal from the register of architects. These rules would be intended to find an appropriate balance between a firm’s obligation to remain compliant with all statutory obligations and the practical realities of compliance, including such issues as unexpected death and probate and estate administration. These scenarios suggest that some regulatory leniency, leading to compliance, is appropriate.

Bylaws 16.1, 16.1.1, 16.1.2 and 16.1.3:

No amendments are proposed to these bylaws, three of which relate to mandatory PLI and were passed by members in July 2017, to become effective by February 2018.

Bylaw 16.2:

This bylaw is similar to the firm application bylaw at 15.2, above, and lists the information required by applicants when applying for a certificate of practice. The proposed amendment mirrors that of 15.2 by requiring applicants for a CoP, or those renewing a CoP, to complete and submit the form approved by council.

Bylaw 16.3:

No amendment proposed to this bylaw, which establishes the circumstances in which a CoP expires.

Bylaw 16.4:

Minor grammatical amendments are proposed to this bylaw, which authorizes the institute to place CoP holders into classes (member; sole proprietorship; corporation; partnership; or licensee).

Fees, Fines and Levies

- 2.14 The BRC recommends amending the bylaw subheading to simply “Fees and Fines”, as levies no longer appear to be under active consideration. (In 2012, former bylaws 26.0, 26.1, 26.2 and 26.3 were repealed. These bylaws related to the special levy for the 1999 deficit and for research and education functions of the Homeowner Protection Office.) In the event future levies may be necessary, Section 24 of the *Architects Act* (the bylaw authorization section) provides both specific and general bylaw-making authority in relation to “levies”.
- 2.15 The proposed amendments to the two current “Fees, Fines and Levies” bylaws would result in a single bylaw that identifies all of the fees and fines the institute currently establishes, or may reasonably contemplate in the regulation of the institute. Some fees and fines, such as those for consensual resolution or disciplinary matters, are specifically authorized in the *Architects Act* or through other bylaws. The idea behind this bylaw amendment (unusual in this suite for expanding rather than reducing language) is to enhance transparency, in the sense of identifying the fees and fines an applicant or registrant may incur, and to ensure clearer authority to impose these charges. See Appendix “A”, page 12 for this proposed amendment.

3.0 Recommendations

- 3.1 A number of the proposed bylaw changes, including those related to chapters and the new ‘admissions’ bylaws, contemplate council rule development. These rules are still under development. It has been the institute’s approach over the past few years to develop and share draft rules, or rules principles, as part of the consultation process for any bylaws where council rules are proposed.
- 3.2 The BRC recommends that council consider approval of this suite of bylaw amendments for future consultation with members. As with all previous bylaw proposals, the feedback received during consultation will be considered by the BRC as part of its final recommendations to council on these bylaws, and all consultation feedback will be provided to council.

4.0 Appendices

Appendix “A” – *Draft Bylaws for Council Consideration: Chapters, Firms, Membership, Fees, Fines and Levies*

Appendix “A”

Draft Bylaws for Council Consideration: Chapters, Firms, Membership, Fees, Fines and Levies

Note: New or amended language is found in yellow highlighting; strikethrough indicates wording proposed for removal from existing bylaws.

Chapters
8.1 The Institute shall encourage the formation of local associations, to be known as chapters of the Architectural Institute of British Columbia.
Proposed Bylaw Amendment:
8.1 The Institute council shall encourage may allow the formation of local associations, to be known as chapters of the Architectural Institute of British Columbia in accordance with the rules for such chapters established by council.
8.2 (a) Any five Members of the Institute may apply to the Council for permission to form a Chapter, with headquarters in any city or town which they may select, and such permission shall be granted by the Council if it is found that the Territory proposed to be covered by the new Chapter does not encroach upon that of any existing Chapter.
—(b) If any question of encroachment shall arise, it shall be determined by the Council at their discretion.
8.3 Members of the Chapters must be Members, Honorary Members or Associates of the Institute, but no obligation shall rest upon any Member, Honorary Member, or Associate of the Institute to become a member of a Chapter.
8.4 Each Chapter shall have the power to fix its own dues and make such Bylaws as it may think necessary and desirable so long as they do not conflict with the Act and Bylaws of the Institute of which matters the Council shall be the judge, and for this purpose the Bylaws proposed to be adopted by any Chapter must first be submitted to the Council for approval.
8.5 Each Chapter shall report to the Institute the number of members on its roll, and if at any time the number shall fall below five, the Council of the Institute may declare such Chapter no longer in existence.
8.6 Associates shall have equal rights within the Chapter with other members except the right to vote and hold office.
Membership Admission and Registration <i>[Note: Change to subheading only; does not require vote]</i>
9.0 Each member upon notice of registration shall make and subscribe to the following declaration: “Solemnly do I declare that having read and understood the <i>Act</i> of the Architectural Institute of British Columbia, its Bylaws and Code of Conduct, and having passed the examinations, I am eligible for membership. Further do I announce that I will uphold professional aims, and the art, and the science, of

architecture and thereby improve the environment. I also accept with obligation the need to further my education as an architect. I promise now that my professional conduct as it concerns the community, my work, and my fellow architects will be governed by the ethics and the tradition of this honourable and learned profession.”

Proposed Bylaw Amendments:

9.0 ~~Each member upon notice of registration~~ Each applicant for registration as an architect shall make and subscribe to the following declaration:

“Solemnly do I declare that having read and understood the *Architects Act* ~~its~~ and the Bylaws and Code of ~~Conduct~~ **Ethics and Professional Conduct** of the Architectural Institute of British Columbia, and having passed the examinations, I am eligible for membership. Further do I announce that I will uphold professional aims, ~~and~~ **uphold** the art, and the science of architecture, and **I will** thereby improve the environment. I also accept with obligation the need to further my education as an architect. I promise now that my professional conduct as it concerns the community, my work, and my fellow architects will be governed by the ethics and the tradition of this honourable and learned profession, **in the public interest.**”

Proposed New Bylaw Related to Section 36 (Internship Path):

9.1 Council may establish rules in relation to and consistent with the qualifications for registration in Section 36 of the *Architects Act*, including:

- (a) the evidence, qualifications and further information described or permitted in Section 36 (1);
- (b) the examinations required for registration in Section 36 (1);
- (c) the criteria or process for approving the architectural training required for admission as an architect in another jurisdiction as permitted in Section 36 (1)(a);
- (d) the criteria or process for approving the course and employment requirements in Section 36 (1)(b); and
- (e) the criteria or process for accepting related experience to reduce the internship period from three to two years as permitted by Section 36 (2).

Proposed New Bylaw Related to Section 37 (Foreign-trained or Alternative Qualifications Paths):

9.2 Council may establish rules in relation to and consistent with the alternative qualifications for registration in Section 37 of the *Architects Act*, including:

- (a) the examination that may be required by council in Section 37;
- (b) the employment requirements in Sections 37 (a) and (b); and
- (c) the architectural practice requirements in Section 37 (c).

10.0 A registered member shall use the title “Architect AIBC” after the member’s name. No associate or other registrant is entitled to use the title “Architect AIBC” or any variation thereof that implies registration as an architect with the AIBC.

11.1 Each Member upon registration shall make application for the member's seal to the CEO stating the name and address of the applicant, and depositing with the CEO a payment to cover the cost of same, with postage, if any.

Proposed Bylaw Amendment:

11.1 Each Member upon registration ~~shall~~ **may** make application for the member's seal to the CEO **by completing the application form required by council and paying the requisite fee.** ~~stating the name and address of the applicant, and depositing with the CEO a payment to cover the cost of same, with postage, if any.~~

11.2 The CEO shall procure all seals, have charge of their distribution, and will be held responsible for their issue.

Proposed Bylaw Amendment:

11.2 The CEO shall procure, **distribute, and be responsible for the issuance and return of architects' seals.** ~~all seals, have charge of their distribution, and will be held responsible for their issue.~~

Honorary Members

12.1 Honorary Members shall be nominated by the Council and conferred by a four-fifths vote of members present at the Annual Meeting.

Architectural Firms

15.1 No architectural firm shall use a name, which is misleading or unprofessional, and all architectural firm names shall be subject to approval by Council.

Proposed Bylaw Amendment:

15.1 Council shall establish rules in relation to firm name requirements, including restrictions on firm names and name approvals required prior to firm registration.

15.2 An architectural firm applying for registration shall complete and submit an application form signed by all architects and engineers having a principal or shareholding interest setting forth:

- (a) the names and professional qualifications of the architects and engineers having a principal or shareholding interest;
- (b) the name and addresses and telephone numbers of the office of the architectural firm;
- (c) where the architectural firm is a corporation
 - (i) the directors of the corporation
 - (ii) the officers of the corporation
 - (iii) the total number of each class of shares authorized and issued by the corporation
 - (iv) a list of all shareholders with the number and class of shares held
 - (v) the address of the registered office of the corporation in British Columbia
 - (vi) the date of incorporation of the firm under the *Company Act* of British Columbia and that the corporation is in good standing under the *Act*, and
 - (vii) the names of the architects who will be practising architecture on behalf of the corporation and the names of the persons who will be practising architecture under the direct supervision of a named architect who is a continuing employee or shareholder of the corporation.
- (viii) A certificate of incorporation and a certificate of good standing issued by the Registrar of Companies must be filed before the registration will be approved.

Proposed Bylaw Amendment:

15.2 An architectural firm applying for registration must complete and submit the application form required by council for the type of firm registration sought.

~~15.3 Every architectural firm shall, whenever there is a change from a memorandum of practice previously filed by that architectural firm file with the Registrar a new memorandum of practice prior to the effective date of such change.~~

15.4 Every architectural firm shall complete and file with the Registrar an annual information return if so requested by the date specified.

Proposed Bylaw Amendment (now numbered 15.3):

15.3 Every architectural firm shall:

- (a) complete and submit an annual firm update in the form and by the date required by council; and
- (b) notify the institute of any firm ownership, name and other changes identified in the form and by the date required by council.

~~15.5 To remain in good standing, an architectural firm that is a corporation shall comply with the requirements of sections 26(2) and 30(1) of the *Act* at all times.~~

Proposed Amendment and New Bylaw Related to Firm Share Disposition, Change of Directors/CEO affecting status as a (corporate) firm

15.4 Architectural corporations must comply with the qualifications for registration in Sections 26(2) and (3) and 30(1) and (2) of the *Architects Act* at all times.

<p>15.5 Council may establish rules to address non-compliance by architectural corporations with Section 26(2) and (3) caused by the suspension from practice, resignation, death or other removal from the register of an architect in such firm.</p>
<p>16.1 The Council may issue certificates of practice to architectural firms, members and licensees for a period not to exceed twelve consecutive months with an expiry date of February 1.</p>
<p>16.1.1 On or before February 1, 2019, all architectural firms, members and licensees holding a certificate of practice must hold professional liability insurance and comply with the bylaws and council rules related to such insurance.</p>
<p>16.1.2 Council may establish rules relating to the minimum insurance amounts, coverage, evidence of insurance, any exemptions from the insurance requirements, and other terms and conditions of the professional liability insurance required under bylaw 16.1.1.</p>
<p>16.1.3 A certificate of practice holder must advise the institute in writing immediately if the insurance coverage required in bylaw 16.1.1 is cancelled, terminated, or expires.</p>
<p>16.2 An architectural firm, member or licensee applying for a certificate of practice or renewal of a certificate of practice shall complete the required form signed by all architects and professional engineers having a principal or shareholding interest in the firm certifying that the firm, member or licensee:</p> <ul style="list-style-type: none"> (a) is registered with the institute and is in good standing (b) has paid any required annual fee (c) has paid any required fee for the certificate of practice, and (d) has obtained the required professional liability insurance coverage. <p>Proposed Bylaw Amendment:</p> <p>16.2 An architectural firm, member, or licensee applying for a certificate of practice or renewal of a certificate of practice must complete and submit the form required by council.</p>
<p>16.3 A certificate of practice will expire without notice in any of the following circumstances:</p> <ul style="list-style-type: none"> (a) on February 1, unless it has been renewed under subsection (2) (b) on the cancellation for any reason of the registration of the holder of the certificate of practice (c) on the expiration or termination for any reason of the required profession liability insurance coverage.
<p>16.4 Holders of certificates of practice shall be placed into one of the following classes:</p> <ul style="list-style-type: none"> (a) member (b) architectural firm which is a sole proprietorship (c) architectural firm which is a partnership (d) architectural firm which is a corporation (e) licensee <p>Proposed Bylaw Amendment:</p> <p>16.4 Holders of certificates of practice shall be placed into one of the following classes:</p> <ul style="list-style-type: none"> (a) member; (b) architectural firm which is a (sole proprietorship);

- (c) architectural firm which is a (partnership)
- (d) architectural firm which is a (corporation); or
- (e) licensee.

Fees and Fines and Levies

25.0 The Council may:

- (a) fix or establish application fees, registration fees, annual fees, fee for certificates of practice and renewal of certificates of practice, fees or levies for professional liability insurance, reinstatement fee under section 34(3) of the *Act* and fines under section 73(3)(a)(b) of the *Act*
- (b) establish different fees, fines or levies for different classes of members, architectural firms, classes of practice, licensees, associates, students or registrants
- (c) permit the pro-rating of any fees or levies fixed or established under this section under specified circumstances
- (d) In the case of fees or levies for professional liability insurance, exempt a registrant or class of registrant from payment of all or part of the fees or levies.

Proposed Bylaw Amendment:

25.0 The Council may:

- (a) set fees and fines payable to the institute in relation to the regulation of architects, associates, architectural firms, and licensees, including but not limited to:
 - (i) application fees for registration and admission;
 - (ii) registration and reinstatement fees;
 - (iii) annual fees;
 - (iv) fees for obtaining an architect's seal;
 - (v) fees for obtaining and renewal of certificates of practice;
 - (vi) firm change and firm closure fees;
 - (vii) fines for non-compliance with mandatory continuing education requirements;
 - (viii) fines for non-compliance with mandatory professional liability insurance requirements;
 - (ix) course and examination fees and course change/cancellation fees; and
 - (x) administrative fines related to late or insufficient payment of fees and fines and late or incomplete provision of firm update or firm change information.
- (b) Set different fees and fines for different classes of members, architectural firms, associates and licensees; and
- (c) permit the pro-rating of any fees or fines set under this bylaw under specified circumstances.

27.0 The fee for any examination shall be as determined by Council.