



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

Memorandum

Date: April 30, 2019 Amended June 25, 2019. Amendments noted in red text on page 2 of this document, as well as page 5 of the Proposed Bylaws Amendments document.

To: AIBC Council A second amendment occurred on July 9, 2019. Amendments are noted in blue text on page 3 of this document and blue highlight on page 3 of the Proposed Bylaws Amendments document.

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

RE: **Analysis and Recommendations:**
1) **2019 Administrative Bylaw Amendments; and**
2) **Code of Ethics and Professional Conduct (“Code of Ethics”) First Amendments**

1.0 Background and Executive Summary

- 1.1 This bylaw amendment initiative consists of two parts: (1) Routine administrative bylaw amendments to update the existing complaint and investigation bylaws and the honorary membership voting process; and (2) A first series of modest amendments to certain bylaws in the AIBC’s Code of Ethics.

Administrative Amendments: Investigations and Discipline and Honorary Member Voting

- 1.2 We have identified minor improvements and clarifications to the bylaws passed in 2013 regarding the AIBC’s consensual resolution process, and to certain bylaws passed in 2016 related to investigation and discipline processes. Only five bylaws are affected, as explained in more detail below. The BRC is also recommending that future honorary membership votes be conducted electronically, rather than at the annual meeting. This process will enfranchise more voters and allow the annual meeting agenda to focus on the Institute’s statutory and reporting obligations.

Code of Ethics First Amendments

- 1.3 The BRC has conducted a review and comparative analysis of the AIBC Code of Ethics and similar standards from other architectural regulators. Given the size of the task, a staged approach to amending the many bylaws and council rulings at issue has been proposed. This first set of amendments is intended to clarify and correct client-architect contract requirements; update competitions bylaw language; and to modernize and reinforce reporting or ‘professional disclosure’ obligations to the AIBC, such as bankruptcy events and certain legal proceedings.
- 1.4 As noted below in relation to client-architect agreement requirements, the BRC intends to supplement the updated contract requirements in the next Code of Ethics initiative to include a ‘basic services-partial services’ bylaw(s).

2.0 Proposed Amendments: Analysis and Recommendations

Investigation and Discipline (Bylaws 36.3, 36.21, 36.22, 37.2, and 37.31)

- 2.1 In May 2013, members approved 23 bylaws that established the procedures for consensual resolution within the AIBC's disciplinary process. These bylaws were authorized by amendments made to the *Architects Act* in 2012 to provide formal authority for consensual resolution.
- 2.2 In August 2016, a substantial set of bylaws related to the institute's professional conduct process came into effect. These 43 new bylaws – the largest single grouping of bylaws advanced for vote to date – were designed to address two issues: (1) The absence of any 'investigation/complaint'-related authority in the *Architects Act*; and (2) The need to replace the longstanding 'Rules for the Professional Conduct Process' dating from 2001 to provide more solid authority for one of the AIBC's core regulatory functions.
- 2.3 While these two sets of bylaws have served the AIBC well, minor amendments to five bylaws are proposed to improve the investigations and discipline process. One area of amendments would clarify the authority and publication requirements for "costs" of the consensual resolution process. The second substantive amendment would confirm the AIBC's discretion whether to pursue 'potential complaints' that may be unfounded or otherwise not credible. A final amendment would remove the current requirement that disciplinary hearings be held only at the AIBC's offices. Other venues for hearings may be more appropriate, including the possibility of holding a hearing outside of Vancouver where, for example, the project may be located and/or witnesses reside. For specific amendment language, see Schedule B, pages 3-4. An additional amendment has been included to correct a typographical error in Investigations and Discipline Bylaw 37.16.

Honorary Member Conferral Process (Bylaw 12.1)

- 2.4 Under section 39 of the *Architects Act*, AIBC Council nominates an individual for honorary membership, which may then be formally conferred by "The Institute". This conferral process is determined by Bylaw 12.1, which requires approval by a four/fifths majority of "members present at the Annual Meeting". Based on staff and council input, the BRC is recommending a process change so that the conferral vote takes place electronically, similar to the now standard e-votes for bylaw amendment and council election. No other changes are proposed.

Code of Ethics (Bylaws 28.0-28.1, 28.3, 32.5, 34.11, and 34.12)

- 2.5 The BRC is conducting an ongoing review of the 115-odd bylaws and council rulings in the Code of Ethics. The BRC recommends a staggered consultation and voting process, subject to council's direction.¹ The BRC proposes, as an initial stage, that the bylaws discussed below be considered for consultation and possible amendment by membership vote in or about summer 2019.

Professional Engagement (Bylaws 28.0 - 28.1)

- 2.6 The BRC recommends that these bylaws, which establish the requirement for architects to provide services consistent with standard agreements, be updated. Further, that the amended bylaws incorporate, in bylaw language, three council rulings currently found in Bylaw 34.10. These rulings

¹ See the [Bylaw Review Committee Workplan 2019-2020](#) for general outline of Code of Ethics review sequencing.

require an executed contract be in place before providing services, and PLI and bylaw compliance notification. (If the proposed amendment comes into effect, council would be required to pass a motion to delete these rulings from Bylaw 34.10.)² Bylaw 28.1 requires updating to syntax and to address the fact that it refers to a document (“Canadian Standard Form of Agreement Between Client and Architect”), that has been re-titled. Given the rather cumbersome mechanism to amend Institute bylaws, the BRC recommends that AIBC bylaws not refer to specific third-party document titles in bylaws unless absolutely necessary.

- 2.7 **Note that later this year, the BRC intends to recommend to council a ‘basic services-partial services’ bylaw(s) to provide greater clarity on the professional standards related to service scope. This work includes coordinating the AIBC’s standards in relation to the current review of the Tariff of Fees for Architectural Services and reviewing and updating the contents of Bulletin 90: Minimum Scope of Acceptable Scope of Architectural Services.**

Copyright (Bylaw 28.3)

- 2.8 The BRC is recommending repeal of Bylaw 28.3, which does not establish a professional standard but is instead a re-statement of the law of copyright in relation to an architect’s drawings. Bylaw 34.8 (project takeover bylaw), and particularly its council ruling (b) specifically address legal acquisition of copyright in the event of property transfer to a new owner. The BRC suggests additional context and education to the voting membership in relation to copyright during the consultation process.

Reporting and Disclosure (Bylaw 32.5) **After consideration, the BRC felt that better clarification of the threshold for reporting was needed, and that the reporting of illegal practice should be separated from other reporting obligations.**

- 2.9 The BRC is recommending a substantive amendment to this bylaw, which currently requires members to report apparent violations of the *Act*, bylaw or council rulings to the AIBC. The BRC recommends that, in keeping with modern regulation, and as part of its review of other regulatory bodies, the bylaw include self-reporting obligations in relation to bankruptcy/insolvency events; findings or admissions of unprofessional conduct in other jurisdictions; being charged under the *Criminal Code*; and receiving legal proceedings relevant to an architect’s competency and ethics.
- 2.10 In relation to the proposed requirement to report certain legal proceedings, the BRC was also mindful of the admonition in the 1998 ‘Barrett Commission Report’. The report made specific critical reference in 1998 to the “... Institute’s regulatory and discipline role [being] passive in that a formal complaint regarding the architect’s activities must be filed with the Institute.... [T]here is no attempt on the Institute’s part to deal with evidence of ineffective or negligent practices unless a formal complaint is filed. That is, an architect is under no obligation to advise the Institute when a settlement is made regarding quality of design work or professional performance. As a result, it is difficult for the Institute to identify, on a pro-active basis, problems such as design issues related to leaky condos.”³
- 2.11 The BRC’s opinion is that this 20-year old recommendation is more important than ever. The Institute should be in a position to identify the primary types of legal and liability issues facing the profession, their prevalence and any regional and firm-size elements and trends, and to provide an appropriate regulatory response. The BRC recommends that if the bylaw amendment passes, the two current

² Note that the BRC will be making recommendations whether to ‘elevate’ and retain or eliminate each council ruling in the Code of Ethics over the span of the Code of Ethics initiative.

³ See “The Renewal of Trust in Residential Construction: Commission of Inquiry into the Quality of Condominium Construction in British Columbia – June 1998, at Chapter Two - V. Role of the Architect.

council rulings attached to the bylaw be repealed by council and replaced with commentary guidance in the Code of Ethics.

- 2.12 It will be vital during consultation to stress that self-reporting of certain legal actions is not an automatic trigger for a professional conduct investigation. The underpinning for this reporting obligation is to provide the regulator with information relevant to its public protection mandate, particularly since the AIBC does not ‘self-insure’ its registrants in the way that the Law Society of BC and the Ontario Association of Architects do. Those regulators are able to draw on trends and information from their ‘captive’ or related insurance organizations. Note that the BRC inquired during the PLI bylaw development and consultation period whether BC insurers would be willing to share claims information with the AIBC. Insurers were not willing to do so, citing commercial and personal privacy interests.

Architectural Competitions (Bylaws 34.11 and 34.12)

- 2.13 These bylaws, related to architectural competitions, refer to the RAIC “Canadian Rules” for competitions that no longer exist. Simple amendments would replace the reference with rules or arrangements for competitions as approved by AIBC Council. More substantive review of the AIBC’s approach to competitions, including the bylaw standards, is anticipated at a later stage in the Code of Ethics review. Note that the BRC also proposes if the amendment passes, AIBC Council repeal the two council rulings attached to current Bylaw 34.11, as they are no longer seen as necessary. For example, the requirement to ‘report’ an illegal competition to the AIBC is covered in the reporting/disclosure bylaw 32.5, both in its current format and as proposed for amendment.

3.0 Recommendations

- 3.1 The BRC recommends that these proposed amendments be reviewed for approval in principle by council, with direction to undertake consultation. The proposals are directly connected to and consistent with the 2019-2023 AIBC Strategic Plan, namely the goal of “Regulatory Framework Alignment” and “Institutional Excellence”. Consistent with council policy and bylaw review history, all feedback received from the consultation process will be reviewed by the BRC and brought to council, with the committee’s final recommendations on these bylaws.
- 3.2 The BRC further recommends return to the previous practice of delivering a courtesy copy of the proposed bylaws and this memorandum to the Ministry of Advanced Education, Skills and Training. Wherever feasible in relation to any bylaws where council rules are required, draft rules or a rules outline should be included as part of the consultation presentation and discussion. The BRC encourages council members to attend consultation sessions to assist in the promotion of these amendments and to hear members’ perspectives. Finally, consistent with past practice, this memorandum and any addenda to it should be publicly posted on the AIBC website, and public input invited.