



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

Memorandum

Date: January 20, 2020

To: AIBC Council

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

RE: Analysis and Recommendations:
Proposed Code of Ethics & Professional Conduct (“Code of Ethics”) Bylaw Amendments - Part 2

1.0 BACKGROUND

- 1.1 This memo synthesizes the BRC’s work on the second suite of Code of Ethics bylaws for council consideration.
- 1.2 At the October 2019 planning session, the BRC and staff received direction from council to continue bylaw development in relation to the following subject areas: basic/partial services; advertising/marketing; harassment/discrimination; supervision of interns; and client confidentiality. These topic areas have been previously reviewed by council at 2019 planning sessions.
- 1.3 One unusual aspect of this round of bylaw amendment proposals is that work has been underway by another AIBC group, the Tariff of Fees Working Group, on two bylaw subject areas – architectural services (including basic and partial services issues) and the Tariff of Fees for Architectural Services generally.
- 1.4 As discussed with council in October, the BRC is recommending that any amendment to Bylaw 34.16 be delayed until completion, reporting, and coordination of that group’s work with bylaw aspects. As a reminder, the BRC has recommended two approaches to date: (1) a simple amendment to Bylaw 34.16 so that it clarifies that fees are “suggested”, rather than allowing any interpretation of mandatory fee arrangements in the profession; or (2) repeal of Bylaw 34.16 as no longer being necessary in light of the AIBC’s necessary and modern use of the tariff as a recommended fees and services guide.

2.0 PROPOSED AMENDMENTS BY HEADING OR SUBJECT AREA

A. Basic / Partial Services Bylaw (28.2)

- 2.1 The BRC has spent considerable time over the past six months developing a bylaw that would establish a clear standard for the provision of basic architectural services, or more precisely, a standard for when

less than basic services – partial services – are permissible. This work is complementary to the amendments made to bylaws 28.0 and 28.1 during the first round of Code of Ethics amendments.

- 2.2 The BRC's position is that the public, including clients, is best served when clarity of the scope of an architect's services is mandated. Client expectations, communication, and education in relation to an architect's services are important elements of the client-architect relationship. Experience in professional conduct files has demonstrated that incomplete client understanding of the nature and scope of an architect's services has contributed to misunderstandings, conflict, complaints, and discipline of registrants. The BRC is also concerned about architects' under-performance on commissions, including relinquishing responsibilities and accountabilities to others, or the failure to provide certain basic services at all despite their necessity.
- 2.3 One goal of this proposed bylaw is to act as an anchor for an updated Bulletin 90, which is currently titled "Minimum Scope of Architectural Services". The BRC's position is that this excellent bulletin requires updating. The combination of the evolution of the practice of architecture, and the expectation on the part of the public and profession for clearer language as to what are "standards" of practice, as opposed to guidelines, have led the BRC to recommend that Bulletin 90 be modernized.

Comparable Standards

- 2.4 None of the other jurisdictions considered in the Code of Ethics Jurisdictional Comparison matrix (the "Comparison Matrix") appears to have a bylaw, standard or regulation on point. As a reminder to council, the chosen jurisdictions were the AIA, AAA, MAA, OAA, and EGBC. However, Manitoba does publish a Practice Bulletin titled "Minimum Level of Professional Practice – A.2" (the "MAA Bulletin").
- 2.5 The MAA Bulletin is clear it "is intended to provide guidance and advice to Architects practicing in ... Manitoba, and to clarify for Clients [and others] ...the profession's expectations related to Minimum Level of Professional Practice to be provided by architects under contract." Elsewhere, the text notes that architect must adhere to standards of practice "deemed by the Architect's peers to be a reasonable level of minimum practice", and that a "prescriptive approach to defining Minimum Professional Practice ... cannot be applied" given the diversity of architectural practice. In other words, the document is guidance, not a prescriptive standard of the kind the BRC has tasked itself to develop.
- 2.6 The MAA Bulletin then adopts a "performance based model" using 10 performance components "that the Architect must provide as a Minimum Level of Professional Practice". They range from "Responsible Control" and "Program/Project Definition" to "Budget Planning and Control and "Quality and Risk Management". The document concludes by noting that if an architect "is satisfied that the requirements of these ten performance components (as applicable) have been met ... then the Architect has satisfied his or her obligations to meet or exceed the Minimum Level of Professional Practice." [emphasis added].

Standards vs. Guidelines

- 2.7 AIBC Bulletin 90: Minimum Scope of Architectural Services, while more prescriptive, is somewhat ambivalent about its status as a professional standard of practice. It includes this statement: "Notwithstanding the purpose and scope of the standards ... [herein] ... the decision by an architect not to adhere to one or more of these standards does not necessarily mean that the architect is either negligent or unprofessional in the performance of professional services".

- 2.8 From a standards and compliance point of view, both the MAA Bulletin and Bulletin 90 are both guiding documents that would inform a standard that would require expert and other supporting evidence to clarify. A key goal of the basic/partial services bylaw review has been to articulate a more prescriptive standard.
- 2.9 Of some interest, the Law Society of BC allows lawyers to provide a limited scope of services, as long as the extent of the services to be provided is confirmed in writing with the client. The relevant rule and commentary from the Code of Professional Conduct for BC is reproduced below:

Limited scope retainers

3.2-1.1 Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.

Commentary

[1] Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer.

[2] A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting in a way that suggests that the lawyer is providing full services to the client.

[3] Where the limited services being provided include an appearance before a tribunal a lawyer must be careful not to mislead the tribunal as to the scope of the retainer and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

[4] A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed (see rule 7.2-6.1).

[5] This rule does not apply to situations in which a lawyer is providing summary advice, for example over a telephone hotline or as duty counsel, or to initial consultations that may result in the client retaining the lawyer.

- 2.10 There is increased support for, and very recent government expectation of, clarity of standards in professions (e.g., May 2018 “Professional Reliance Review Report” and its Appendix 9.4, and December 2018 “Inquiry into ...the College of Dental Surgeons of BC ...”) The latter report is very critical of mixing and matching true standards of practice (mandatory) with practice guidelines (recommended):

4.3.9 The evidence demonstrating that the College meets this [Standard of Good Regulation] is mixed. There is significant lack of clarity about what is a standard and what is guidance, and this makes it difficult to understand what is mandated and what is optional good practice.

...

4.50 It is not clear why some topics are policies, some are information sheets, some are guidance and virtually nothing is clearly and unequivocally s Standard.

- 2.11 On balance, the BRC is recommending that a services bylaw be advanced to the membership for consultation and feedback, then brought back to council. While numerous options were drafted and considered, the committee suggests proceeding with a single bylaw for consultation purposes rather than complicate this issue with several draft bylaw options. The committee believes the bylaw proposed is the best of the several options considered.
- 2.12 The proposed bylaw, found at Appendix “A” and numbered 28.1.1, was drafted to be consistent with the historic and recent ‘public and client notification’ standards for architects. The profession has long been required under the Code of Ethics, for example, to notify clients whether professional liability insurance is held. More recently, AIBC associates have been required to notify clients and AHJs of their associate status, and just this autumn, voting registrants approved amended Bylaw 28.0 that clarified PLI and contract compliance notices to clients. The approach taken is also consistent with the ‘limited scope retainer’ notification model mentioned above as required by the Law Society of BC.
- 2.13 The BRC is recommending a relatively straightforward bylaw for consultation purposes. It would require architects providing partial services to accurately describe the reduced scope of services and to further notify clients specifically which basic services found in AIBC 6C will not be provided. This bylaw could be drafted in other ways, including not referring to AIBC 6C but instead specifically identifying in the bylaw, or council rules, which services must be identified under a partial services commissions. Consideration was given to creating simple definitions for basic services, partial services, and other services.

B. Advertising (‘Promotional Activities’) Bylaw (32.2.1)

- 2.14 The BRC’s review of other architectural and broader professional regulators confirmed that most professions have some form of ‘advertising and promotions’ standards. The AIBC has generally relied upon existing Bylaw 32.2 and its council rulings. That bylaw requires accurate representations to the public, clients and employers in relation to qualifications and scope of responsibility and credit for work.
- 2.15 While Bylaw 32.2 is still considered valuable and necessary, notably in relation to the taking and giving of project credit, it does not specifically address promotional issues. Over the past 10 years, the AIBC has investigated several matters or managed potential complaints related to the accuracy of promotional statements. A simple bylaw that squarely requires registrants to be “accurate, factual and not misleading” in relation to advertising and promotions is recommended (see Appendix “A”, proposed new bylaw 32.2.1).

C. Harassment / Discrimination Bylaw (34.5 and 34.5.1)

- 2.16 The BRC has considered the impact of the #metoo movement and heightened expectations across society in relation to harassment and discrimination. Council has also specifically raised this issue with the BRC and asked that it be considered during the Code of Ethics review.

- 2.17 As discussed briefly with council at the April planning session, the BRC has carefully considered whether a specific standard is necessary, and if so, how best to draft it within the Code of Ethics model. The BRC notes that existing Bylaw 34.5 and its council rulings establish the overarching standard to ‘act professionally’ and to avoid acts that “reflect unfavourably on the profession...” Council ruling (e) to Bylaw 34.5 tightens this standard further by stating that “Dishonourable conduct in the professional or private life of an architect, which reflects adversely on the integrity of the profession, must be avoided.”
- 2.18 While these existing standards would apply to harassment and discrimination complaints, the BRC is recommending amendments to Bylaw 34.5, and a new Bylaw 34.5.1. The amended Bylaw 34.5 would consolidate the first five council rulings under the current bylaw. It also adds a new paragraph specifically prohibiting harassment and discrimination and violations of human rights laws. The language for the latter standard is derived in part from precedents in the legal profession. The new proposed bylaw 34.5.1 simply consolidates the remaining three council rulings under current Bylaw 34.5 that relate to registrants’ obligations to the AIBC as regulator, namely to respond promptly, cooperate with investigations, and promptly advise of changes in contact information. The language for these proposed amendments is found in Appendix “A”.
- 2.19 As a reminder, one ongoing theme in the BRC’s updating of the Code of Ethics is to address uncertainty about council rulings attached to bylaws by either elevating them into the bylaw language itself, or eliminating them where necessary and appropriate. This is intended to alleviate any confusion about the status of council rulings as competency and ethical standards for the profession. Assuming ongoing council support, member approval and non-disallowance, the Code of Ethics will eventually consist of bylaws only, with supporting commentary and explanation.

D. Supervision of Intern Bylaw (34.1.1)

- 2.20 During its review of standards related to management of firms and employee behaviour, the BRC identified creation of an intern supervision standard as an issue for council consideration. Concerns have arisen from time to time within the AIBC about the degree and quality of intern supervision and training.
- 2.21 After due consideration, including review of other regulators’ standards in this area, the BRC is recommending an approach similar to the Law Society of BC’s requirement that supervising architects agree to sign and comply with a ‘supervision undertaking’ established by council. The BRC has prepared a simple draft supervision undertaking, attached as Appendix “B” to this memorandum. It is drafted to be consistent with the existing Internship in Architecture Program/Supervising Architect and Mentor Guidelines.
- 2.22 The committee acknowledges the possibility that this new requirement might act as a disincentive for some architects to act as supervisors for interns. However, the committee recommends that this bylaw, found as new bylaw 34.1.1 in Appendix “A”, proceed to registrant consultation for fuller feedback. (Current Bylaw 34.1 establishes the standard for architectural offices to have an architect with “direct knowledge and supervisory control” of services provided, and will be reviewed as part of the next suite of Code of Ethics amendments.)

E. Client Confidentiality Bylaw (34.4.1)

- 2.23 As discussed with council in April and October, the BRC is recommending for consultation a bylaw that reinforces the expectation that registrants maintain client confidentiality. While standard client-architect agreements contain confidentiality provisions, these are enforceable through private lawsuits and do not necessarily represent a regulatory standard. The BRC suggests that maintaining client confidentiality should reside in the Code of Ethics as a fundamental ethical expectation.
- 2.24 The proposed bylaw, found in Appendix “A” as new bylaw 34.4.1, is relatively straightforward and generally consistent with professional standards in the architectural and other professions. It would require maintenance of client confidentiality except in circumstances of consent, legal or regulatory requirements or if imminent public harm is possible. The BRC understands that concern may arise among registrants about the scope and meaning of confidential client information, and proposes that the commentary in the Code of Ethics clarify this interpretive aspect.

3.0 RECOMMENDATION SUMMARY

- 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 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 recommendation on these bylaws. Council determines which bylaws, if any, to advance for vote by architects and honorary members.
- 3.2 The BRC further recommends that a courtesy copy of the proposed bylaws and this memorandum be sent to the Ministry of Advanced Education, Skills and Training. 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 practices, this memorandum and any addenda to it should be publicly posted on the AIBC website, and public input invited.

4.0 ATTACHMENTS

- 4.1 Appendix “A” – Draft Bylaws for Council Consideration Table
- 4.2 Appendix “B” – Draft Intern Architect Supervision Undertaking

Appendix “A”

Draft Bylaws for Council Consideration: Basic/Partial Services, Discrimination/Harassment, Confidentiality, Supervision of Intern, and Advertising

Note: New or amended language is found in yellow highlighting; strikethrough indicates wording proposed for removal from existing bylaws. A substantive edit or re-write is shown by the entire proposed amendment in yellow highlighting.

Basic/Partial Service

28.1 The architectural services contract required under Bylaw 28.0 must be a standard form contract approved by council, or be based upon an substantially conforming in all material respects to such standard contract in relation to services, responsibilities and general conditions.

Proposed Bylaw Amendment:

28.1.1 An architect providing only partial services on any architectural commission must:

(a) accurately describe the reduced scope of services in the architectural services contract required under Bylaw 28.0; and

(b) either in the scope of services description in (a) above, or otherwise in writing; specifically notify the client which services found in the Schedule of Consultant's Services in AIBC Standard Form of Contract 6C will not be provided during the commission.

Advertising Bylaw

32.2 An architect shall accurately represent to the public, a prospective or existing client or employer the architect's qualifications and the scope of the architect's responsibility in connection with work for which the architect is claiming credit.

(a) An architectural firm's representations must accurately reflect current principals and staff capacities.

(b) An architect or firm claiming credit for a project, or any part of the architectural services on a project, must ensure that credit is given to the project's original firm or firms and that any credit taken is accurate and limited to the extent of services provided.

Proposed New Bylaw

32.2.1 An architect must ensure that all advertising, marketing, and other promotional information is accurate, factual, and not misleading.

Harassment /Discrimination

- 34.5 An architect shall conduct the architect's affairs in a professional manner and refrain from any act which would reflect unfavourably on the profession as a whole.
- (a) An architect's conduct towards other architects shall be characterized by courtesy and good faith.
 - (b) An architect shall give due regard to the professional obligations of those from whom the architect receives or to whom the architect gives authority, responsibility or employment, or of those with whom the architect is professionally associated.
 - (c) An architect shall give due regard for the interests of both those who commission and those who may be expected to use or be exposed to the product of the architect's services.
 - (d) An architect who engages in any profession, business or occupation concurrent with the practice of architecture must not allow such outside interests to jeopardize or come into conflict with the architect's professional integrity or obligations.
 - (e) Dishonourable conduct in the professional or private life of an architect, which reflects adversely on the integrity of the profession, must be avoided.
 - (f) An architect shall respond promptly to all AIBC communication requiring a response.
 - (g) An architect shall co-operate fully with the AIBC in any professional conduct matter at whatever stage, including attending in person upon request, summons or notification by any professional conduct committee, board or panel.
 - (h) An architect shall promptly notify the AIBC of any change in contact information, including address, phone and fax number(s), e-mail address and any other contact information that the AIBC may from time to time require.

Proposed Bylaw Amendment:

- 34.5 ~~An architect shall~~ Architects must conduct ~~their~~ the architect's affairs in a professional manner ~~and refrain from any act which would reflect unfavourably on the profession as a whole,~~ including but not limited to refraining from:
- (a) dishonourable or discourteous conduct towards the public, other registrants or any other party, or conduct unbecoming in the professional or personal life of an architect;
 - (b) harassment, discrimination or other failure to comply with human rights laws in force in Canada, its provinces and territories; and
 - (c) behaviour that would reflect unfavourably on the profession.

Proposed New Bylaw:

34.5.1 An architect must:

- (a) respond promptly to any AIBC communication requiring a response;
- (b) promptly notify the AIBC of any change in contact information that the AIBC may from time to time request, and
- (c) cooperate fully with the AIBC in a professional conduct matter at whatever stage, including attending in person upon request, summons or notification by the investigations committee, consensual resolution review panel, or disciplinary committee.

Supervision of an Intern

Proposed New Bylaw

34.1.1 An architect supervising an intern architect must sign and comply with the supervision undertaking established by council.

Client Confidentiality

Proposed New Bylaw

34.4.1 An architect must maintain the confidentiality of confidential client information and not disclose such information except:

- (a) with client consent;
- (b) where required to deliver such information to the AIBC;
- (c) as may be required by law; or
- (d) in the event the architect believes on reasonable grounds that there is an imminent risk of serious public harm.

Appendix “B”

Draft Intern Architect Supervision Undertaking

For Discussion only in relation to proposed new intern supervision bylaw 34.1.1

AIBC Internship in Architecture Program: Supervising Architect Undertaking

WHEREAS:

- A. The AIBC has established an Internship in Architecture Program (“IAP”) as a pathway for intern architects to become registered as Architects AIBC;
- B. The guidance and support of a supervising Architect AIBC are vital aspects of a successful internship; and
- C. AIBC Bylaw 34.1.1 requires a supervising architect to sign and comply with this undertaking as a professional responsibility.

NOW THEREFORE:

I, *[name of Architect AIBC]* undertake to assume the role of supervising architect under the IAP for *[name of Intern Architect AIBC]* (the “Intern”), and specifically undertake that:

- 1. I am familiar with the requirements and objectives of the IAP;
- 2. I have the time and ability to assess the quality of work of the Intern;
- 3. I will meet as necessary with the Intern, and in any event no less than twice per year, to specifically review logbooks, assess and monitor work and strategize on future projects;
- 4. I will provide reasonable assistance to the Intern in preparation for written and oral examinations;
- 5. I will provide such personal supervision of and guidance to the Intern as appropriate, including assisting the Intern to obtain the necessary range of practical architectural experience for registration; and
- 6. I will support the Intern’s efforts in relation to continuing education to the extent reasonably possible within my firm’s capacity.

Dated at _____ *[city]* _____, *[province]*, this ____ day of _____, 20__.

(NAME of ARCHITECT AIBC):

Signature

Signature of Witness to Signature of
(NAME)

Printed Name & Address of Witness