

# Project Takeover

## Registrant Consultation and Information Session



**ARCHITECTURAL INSTITUTE  
OF BRITISH COLUMBIA**

December 5, 2023

# Land Gratitude

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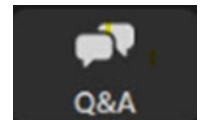
From coast to coast to coast, the Architectural Institute of British Columbia is grateful to live, learn, and work on the traditional and ancestral territories of the Indigenous peoples who have been, and continue to be, the stewards of the land.

The AIBC head office is located on x<sup>w</sup>məθk<sup>w</sup>əy'əm (Musqueam), Sk<sub>w</sub>x<sub>w</sub>ú7mesh (Squamish), and səlilwətaʔ (Tsleil-Waututh) nations lands, in Coast Salish Territory.

# Welcome

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- > We appreciate your patience – this is a live broadcast, and there may be some slight delays throughout the session.
- > **Housekeeping Notes**
  - There will be dedicated time at the end of the presentation for questions regarding the proposed amendments to the project takeover professional standards. Instructions about how to ask a question will be provided later.
  - For those online, technical questions can be asked through the **Q&A feature** found along the bottom of the screen. We will do our best to provide technical support.



# Recording and Privacy

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- > This presentation is being recorded and will be posted on the AIBC website for consultation purposes for up to six months.
- > Note that only the presenters will be visible on screen
- > The microphone and camera features have been turned off for all attendees.

# Recording and Privacy

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- > By signing up for and joining this presentation you are consenting to information that may be identified to you to be included in the recording.

# Background

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- > Foundation for AIBC and Professional Standards generally:

*“to serve and protect the public interest with respect to the exercise of a profession ... and the conduct of registrants in the registrants’ regulated practice”*

*Professional Governance Act Section 22*

# Background

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- > Since 2011, the Bylaw Review Committee (now the Professional Standards Advisory Group) has been engaged in a comprehensive review of both the AIBC Bylaws and Code of Ethics and Professional Conduct.

# Background

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- > With the *PGA* transition completed and new bylaws in place, the Professional Standards Advisory Group is focusing its review on the Professional Standards that make up the Code of Ethics and Professional Conduct (Code of Ethics).

# Background

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- > As part of the *PGA* transition, the standards in the Code of Ethics were renamed from Bylaws and Council Rulings to Professional Standards.
- > Professional Standards are defined in the AIBC Bylaws as “the standards of competence and professional and ethical conduct for Registrants established and published by the AIBC, in the Code of Ethics and Professional Conduct under these Bylaws.”

# Background

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- > Under the *PGA*, the Board is authorized to amend the AIBC Bylaws and the Code of Ethics, with final approval required from the Superintendent of Professional Governance.



# PROJECT TAKEOVER



# Project Takeover

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- > One of the primary sources of practice inquiries and complaints from Architects and Clients is the professional standards related to “project takeover”
- > There are normally two stages to a project takeover: (1) notice/communication between architects of possible transition; and (2) the actual continuation of architectural services if transition occurs

# Project Takeover Background

- > In 2007, at the request of the Investigations Committee, the AIBC Professional Conduct Board (PCB) reviewed the project takeover bylaws and council rulings and proposed several changes.



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

## MEMORANDUM

**Date:** September 19, 2007

**To:** AIBC Practice Board (PB)  
Karl Gustavson MAIBC, Chair  
Michael Ernest MAIBC, Director of Professional Practice

**From:** AIBC Professional Conduct Board (PCB)  
Selwyn Dodd MAIBC, Chair  
Thomas Lutes, Director of Professional Conduct

**RE:** **Bylaw 34.8** – Proposed Council Ruling Amendment and Bulletin  
Interim Recommendations

### 1.0 Background

- 1.1 Throughout 2007, at the request of the Investigations Committee (IC), the PCB has been reviewing several of the AIBC Bylaws and Council rulings in the Code of Ethics and Professional Conduct that attract an inordinate volume of complaints and inquiries or otherwise appear in need of review. To date, the PCB has recommended three new Council rulings to Bylaw 34.5 that relate to members' responsibilities to respond to AIBC communication, cooperate with professional conduct investigations/inquiries and to provide updated contact information to the Institute. These rulings have been approved by Council, to come into effect once other Bylaws/rulings have been reviewed and recommendations advanced.
- 1.2 As a reminder, Council ruling amendments, Bulletins and commentary do not require a member vote or provincial government approval. At this point, the PCB is not proposing any additions or amendments to the AIBC Bylaws proper.
- 1.3 This memo is intended to promote further discussion arising out of the AIBC Investigations Committee's request of the PCB that Bylaw 34.8 and Council Rulings be reviewed. The PCB has now completed its review and has made interim recommendations, pending review and comment by the PB, staff and AIBC members. Members will be notified by e-news and 'By the Book' of the proposed changes described below and asked to provide comments.

# Project Takeover Background

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## > Excerpt from the Memorandum

3.3 After several meetings and lengthy discussion, the PCB recommends that the AIBC remove the payment requirement altogether in Bylaw 34.8 (b). The PCB's arguments in favour of making this significant change to Bylaw 34.8 (b) include:

- The AIBC's Code of Ethics is intended primarily to protect the public interest. Bylaw 34.8 (b)'s payment requirement is focused on protecting the first architect's contractual right to be paid, including protection of the member's copyright. The PCB believes such protection is better afforded by proper client-architect agreements and private law rights of contract, copyright and architects' liens.

# Project Takeover Background

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## > Excerpt from the Memorandum

- The PCB canvassed a small sampling of other regulatory bodies. It appears that Bylaw 34.8 (b)'s payment requirement is unusual, if not unique. Other regulatory bodies expect payment disputes to be handled outside the professional conduct process, using private law and alternative dispute resolution.
- The Board believes that the proposed change is consistent with modern commercial practice and moves the AIBC away from acting as a payment enforcer. The AIBC requires all architects to have a written client-architect agreement prior to providing architectural services. In the PCB's view, members should be relying on their agreements and their copyright and lien rights to address payment concerns.

# Project Takeover Background

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## > Excerpt from the Memorandum

- One of the motivators for this Bylaw review has been the IC's experience with potential misuse of the Bylaw by the first architect to enforce payment. Rather than rely upon contract, copyright and lien rights, some members (in the IC's experience) have used the conduct process primarily as a payment enforcement mechanism. Similarly, other complainants appear to be motivated to lay a complaint to up the ante in private contractual disputes with clients. In some cases, the amount claimed as owing by the first architect appears inordinately out of line with the file material, leading to accusations by clients and second architects that the Bylaw ruling is used as a 'loaded gun'. In most cases, it is difficult for the IC to determine whether the complainant's motivation or the amount claimed as owing is captured by Bylaw 34.8 (b)'s proscription against 'unreasonably withholding' consent to a subsequent architect referring to the first architect's work.

# Professional Standard 5.9

# Current Standard 5.9

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5.9    *An Architect may only accept a commission for a Project when the services of any Architect previously retained for the Project have been terminated.*

# Proposed Amendment: PS 5.9

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1. Minor terminology amendment to change the reference from Architect to Registrant.

# Amended Professional Standard PS 5.9

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~~An Architect~~ Registrant may only accept a commission for a Project when the services of any ~~Architect~~ Registrant previously retained for the Project have been terminated.

# Professional Standard 5.10

# Current Standard 5.10

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5.10 An Architect, on being either approached or instructed to proceed with services for which the Architect knows or can ascertain by reasonable inquiry that another Architect is or has been engaged by the same Client, must notify the other Architect in writing of that fact.

*The ethical responsibility for notifying a previously engaged Architect lies with the new Architect and cannot be delegated to the Client. Upon notifying the previous Architect in writing, the new Architect is under no obligation to delay acquiring the commission until the first Architect's fee has been paid.*

*This Professional Standard requires the termination, but not necessarily the financial resolution, of the predecessor Architect's services prior to a successor Architect making a proposal or being interviewed for, or accepting, a Project commission.*

# Proposed Amendments: PS 5.10

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1. Addition of a notification requirement to the Client/Project Owner that should they ask for a proposal for services, Registrant #2 must notify the existing Registrant.

# Proposed Amendments: PS 5.10

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2. Change the timing of when Registrant #2 must provide written notification to Registrant #1. Currently, an 'approach' by the potential client triggers the notice requirement. The new proposed threshold is set at a request to 'provide a proposal for services'.

# New Professional Standard 5.10

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A Registrant contacted by a potential client in circumstances where the Registrant knows or can ascertain by reasonable inquiry that another Registrant (the “predecessor Registrant”) is or has been engaged, must:

# New Professional Standard 5.10

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- (a) advise the potential client in writing that if requested to provide a proposal for services, the Registrant has a duty to notify the predecessor Registrant of the request by the potential client; and
- (b) in the event the potential client requests a proposal for services from the Registrant, that Registrant must promptly notify the predecessor Registrant in writing of the request.

# How to comply...

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- > **Prompt notification:** without delay, on the same or next business day;
- > **Notification requirement:** responsibility of the Registrant; cannot be delegated to the Client;
- > **Notification requirement:** exists even if the predecessor Registrant is no longer under contract;

# How to comply...

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- > **Termination:** this standard requires termination of services, not necessarily financial resolution of predecessor's services.

# Professional Standard 5.11

# Current Standard 5.11

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5.11 An Architect taking over a Project must not provide architectural services that are based upon, and which continue and complete, those initiated by the predecessor Architect unless:

- (a) there has been no supplanting of the predecessor Architect by the successor;
- (b) the resignation or termination of the predecessor Architect must have occurred in accordance with the terms of the relevant Client-Architect Contract;
- (c) the original Client must have paid for the services of the predecessor Architect; and
- (d) in the case of property transfer to a new owner, there must have been legal acquisition by the new owner of the original Architect's copyright and instruments of service, either directly from the predecessor Architect or from the original owner, if that owner was legally entitled to sell them.

# Proposed Amendments: PS 5.11

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1. Removal of the payment requirement, paragraph (c).
2. Retain the requirement that there is no supplanting of Registrant #1;

# Proposed Amendments: PS 5.11

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3. Modernize the requirement regarding the termination of Registrant #1 services by requiring that Registrant #2 must receive confirmation of Registrant #1's termination of services, with a time limit for Registrant #1 to respond.

# Proposed Amendments: PS 5.11

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4. Remove the requirement that any new owner of the project must have acquired Registrant #1's copyright.

# Payment Requirement

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- > Professional Standards are intended to promote ethical, competent practice and to protect the public interest.
- > This standard has been criticized for protecting Registrant # 1's contractual right to be paid, and Registrant # 1's copyright.

# Payment Requirement

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## > When it becomes a problematic...

Architect #1 asserts that the firm has not been paid by the Client for the services performed, and therefore Architect #2 would be in breach of the standard by proceeding with work using Architect #1's services.

The standard effectively becomes a “stop work order” while the parties settle their payment dispute.

# Payment Requirement

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- > The proposed amendment is consistent with professional practices and moves the AIBC away from payment enforcer.
- > a review of other professional bodies – payment requirement is unusual.

# New Professional Standard 5.11

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A Registrant taking over a Project (“successor Registrant”) is only permitted to provide a proposal for services, enter into a contract for services, or provide services that are based upon, and which continue and complete those initiated by the predecessor Registrant, if:

- (a) there has been no supplanting of the predecessor Registrant by the successor; and
- (b) the successor Registrant has received written confirmation from the predecessor Registrant of the termination of the predecessor’s services or has received no reply from the predecessor Registrant within 10 days of making a request for confirmation of termination.

# New Professional Standard 5.11

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- > *This Professional Standard requires a Registrant taking over a Project to have not supplanted the first Registrant, and to have received confirmation of termination of the predecessor's services from such Registrant or no response within 10 days of requesting termination confirmation. ("Business days" means a day other than a Saturday, Sunday, or a provincial or federal holiday.)*
- > *Previously, this Professional Standard prohibited the successor Registrant from using the predecessor's services if there was a fee dispute about such services. The modern, updated standard does not diminish copyright or fee payment rights of Registrants, but it does reinforce the obligation on Registrants to assert such private law and statutory rights rather than have them become the focus of a professional conduct complaint.*

# New Professional Standard 5.11

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- > *The balance of this commentary refers to Architects and Client-Architect Contracts given the prevalence of application of this scenario to Architects' projects. The Professional Standard and commentary apply equally, however, to situations in which non-Architect Registrants may be providing services in the Regulated Practice, or where either the predecessor and successors may be from different registration categories (e.g., an Architect taking over a single-family home renovation Project (outside of the Reserved Practice) from an Intern Architect).*
- > *Architects who have been terminated by the Client or who terminate services are entitled to be paid for their services and disbursements in accordance with the Client-Architect Contract. Such contracts generally include dispute resolution clauses.*

# New Professional Standard 5.11

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- > *In addition to contractual rights to payment, Architects retain copyright in their design (unless sold or licensed) under federal law. Architects have been successful in lawsuits in asserting copyright in relation to fee disputes and ownership of design. Even when project takeovers occur cooperatively, uncertainty may persist about copyright and liability issues. The AIBC recommends that wherever possible, the predecessor and successor Architects consider entering into a simple agreement or 'memorandum of understanding' confirming such issues as copyright, liability, and project attribution obligations. Both Registrants should seek legal and insurance advice prior to confirming these important aspects of a change of Architect on a Project.*

# New Professional Standard 5.11

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- > *Architects also have lien rights under the BC Builders Lien Act. Registrants asserting copyright and/or lien rights should seek legal advice and recognize limitation periods may apply.*
- > *In circumstances where fees are disputed and/or where a property has been purchased by a new owner, successor Architects should proceed with due diligence and caution. Where unpaid fees are claimed for instruments of services attached to the predecessor Architect's copyright (e.g., drawings), the successor Architect's use of such documentation may constitute copyright infringement on the part of the successor Architect and Client. Relying solely on the Client's information or assurances about fee payment may not provide adequate risk management.*

# How to comply...

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- > **Do not supplant**
- > **Use a Client-Architect Contract:** Review the clauses about termination of services, payment and copyright.
- > **Confirmation of termination:** Registrant #2 receives written confirmation of termination of services from Registrant #1 OR receives no response within 10 business days of requesting termination confirmation.

# Copyright

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- > Architects retain copyright in their design (unless sold or licensed) under federal law.
- > Successor Architects should proceed with due diligence where fees are disputed/or where property has been purchased by a new owner.

# Professional Standard 2.2

# Current Standard 2.2

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- 2.2 Registrants must not supplant or attempt to supplant another Registrant after the preceding Registrant has been retained or definite steps have been taken toward the other Registrant's retention.

*Subject to the terms of the Client-Architect Contract, a Client is free at any time to terminate the business engagement with a Registrant. This standard does not protect mismatched Clients and Registrants. For the benefit of the Client and the Project or commission, it is intended to protect the relationship between a Client and Registrant from unethical interruption by another Registrant.*

*The basis of competent professional practice on behalf of the public rests in part on the strength of the relationship between Client and Registrant. Hence, when the Client has made a choice, other Registrants must cease their overtures.*

*This restriction does not prevent Registrants from approaching a potential Client who has a broader program of prospective work which is not yet allocated to another Registrant.*

# Proposed Amendments: PS 2.2

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- > Only one minor amendment proposed to commentary to include a clear definition of supplanting.

# Amended Professional Standard PS 2.2

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Registrants must not supplant or attempt to supplant another Registrant after the preceding Registrant has been retained or definite steps have been taken toward the other Registrant's retention.

# Amended Professional Standard PS 2.2

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- > *Subject to the terms of the Client- Architect Contract, a Client is free at any time to terminate the business engagement with a Registrant. This standard does not protect mismatched Clients and Registrants. For the benefit of the Client and the Project or commission, it is intended to protect the relationship between a Client and Registrant from unethical interruption by another Registrant.*
- > *The basis of competent professional practice on behalf of the public rests in part on the strength of the relationship between Client and Registrant. Hence, when the Client has made a choice, other Registrants must cease their overtures.*
- > *This restriction does not prevent Registrants from approaching a potential client who has a broader program of prospective work which is not yet allocated to another Registrant.*
- > *For the purposes of this Professional Standard, “supplanting” means taking (or attempting to take) the place of another Registrant in a manner that is unethical. Such behaviour would include interfering in a way that prevents a Client from establishing a commercial relationship with another Registrant or causes the Client to breach or terminate its contract with another Registrant.*

# Questions

MAIN STREET – SCIENCE WORLD SKYTRAIN STATION, VIA ARCHITECTURE INC.  
PHOTO: ED WHITE



# Questions?

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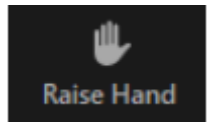
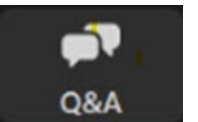
- > Questions should be concise and on topic
- > Thank you for your patience as we balance in-person and online questions
- > In-Person Attendees:
  - Raise your hand to be called upon
  - Speak loudly so those online can also hear the question

# Questions?

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## > Online Attendees:

- Type your question into the Q&A feature, found along the bottom of your screen.
- Questions typed into this feature will be read aloud by the moderator, along with your name, and will also appear in this area for all attendees to see after it is read aloud.
- Alternatively, use the raise a hand feature and we will unmute you so that you can ask your question.



# Consultation

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- > Proposed amendments and supporting rationales are on the AIBC website.
- > Share feedback by:
  - Emailing [bylawfeedback@aibc.ca](mailto:bylawfeedback@aibc.ca)
  - Completing the online feedback form

# Thank you

[bylawfeedback@aibc.ca](mailto:bylawfeedback@aibc.ca)



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