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OPERATIONS BRIEFING NOTE – INFORMATION

PREPARED AS INFORMATION FOR:

Ministry of Advanced Education

TITLE: Request for amendments to the *Architects Act* RSBC 1996, c. 17
(via miscellaneous statute amendment process) with respect to:

1. Limited liability partnerships;
2. Mandatory continuing education administration; and
3. Duties and objects of the AIBC.

BACKGROUND:

1. This Briefing Note is intended to provide analysis and recommendations for a future miscellaneous statute amendment of the *Architects Act*. These three subject areas for proposed amendment follow on a January 21, 2014 Briefing Note to the Ministry on proposed registration and interjurisdictional cooperation amendments also appropriate for the miscellaneous amendment process.

Limited Liability Partnerships (“LLPs”)

2. The BC *Partnership Act* RSBC 1998, c. 348 allows limited liability “professional partnerships” to be established if explicitly authorized by the statute governing the particular profession:

Professional partnerships

97 If a partnership that wishes to register as a limited liability partnership is a professional partnership, that partnership must not register as a limited liability partnership unless

(a) members of that profession are expressly authorized under the Act by which that profession is governed to carry on the practice of the profession through a limited liability partnership, and

(b) any prerequisites to that authorization that have been established under that Act have been met by the partnership.

3. Lawyers, notaries and accountants are permitted to establish LLPs under their statutes. The *Architects Act* allows the creation of architectural partnerships, but there is no explicit authorization for LLPs. The authorizing language in the *Legal Profession Act* SBC 1998, c.9 is as follows:

Limited liability partnerships

83.1 The benchers may make rules

- (a) authorizing lawyers and law corporations to carry on the practice of law through limited liability partnerships, and
- (b) establishing prerequisites, conditions, limitations and requirements for lawyers and law corporations to carry on the practice of law through limited liability partnerships.

Mandatory Continuing Education Administration

4. The AIBC was an early adopter and leader in requiring its members to comply with professional continuing education requirements. Since 2002, BC architects have been required to earn and report a specific number of core and non-core “learning units”.
5. Unfortunately, given statutory limits, non-compliance with continuing education has had to have been treated as a professional conduct matter since the system was established by member bylaw vote. Triggered by a complaint, the full investigation and discipline process is invoked for each non-compliance file – up to and including a disciplinary inquiry to address the failure of a member to obtain sufficient learning units and/or pay a council-mandated fine.
6. Given the very strict requirements currently found in the *Architects Act* for removal of an individual or firm from the register, there appears to be no other operational or bylaw avenue for sensibly addressing continuing education non-compliance except by *Act* change. Various options for a legislative fix are available, such as bylaw authorization or providing council with authority to establish rules for continuing education to and including removal from the register for non-compliance.

Duties and Objects

7. The *Architects Act* is extremely rare among self-governing legislation in not having a duties, object or purposes section(s). All of the other major professions in British Columbia (engineers, lawyers, accountants, physicians, dentists, etc.) have some form of duties and/or objects sections in their governing acts.
8. There is clear consistency across the professions in terms of the concepts and language used. Importantly, other self-governing professions have duties/objects language that touches on both the public interest and supporting the profession. Examples from a few relevant regulators’ legislation are cited below:

Legal Profession Act

Object and duty of society

3 It is the object and duty of the society to uphold and protect the public interest in the administration of justice by

- (a) preserving and protecting the rights and freedoms of all persons,
- (b) ensuring the independence, integrity, honour and competence of lawyers,
- (c) establishing standards and programs for the education, professional responsibility and competence of lawyers and of applicants for call and admission,
- (d) regulating the practice of law, and
- (e) supporting and assisting lawyers, articled students and lawyers of other jurisdictions who are permitted to practise law in British Columbia in fulfilling their duties in the practice of law.

Engineers and Geoscientists Act RSBC 1996, c.116.

Duties and objects of the association

4.1 (1) It is the duty of the association

- (a) to uphold and protect the public interest respecting the practice of professional engineering and the practice of professional geoscience,
- (b) to exercise its powers and functions, and perform its duties, under this Act, and
- (c) to enforce this Act.

(2) The association has the following objects:

- (a) subject to subsection (1), to uphold and protect the interests of its members and licensees;
- (b) to establish, maintain and enforce standards for the qualifications and practice of its members and licensees;
- (c) to promote the professions of professional engineering and professional geoscience.

Architects Act (Ontario), R.S.O. 1990 c. A.26

Principal object

(2) The principal object of the Association is to regulate the practice of architecture and to govern its members, holders of certificates of practice and holders of temporary licences in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.

Additional objects

- (3) For the purpose of carrying out its principal object, the Association has the following additional objects:
- 1. To establish, maintain and develop standards of knowledge and skill among its members.
 - 2. To establish, maintain and develop standards of qualification and standards of practice for the practice of architecture.
 - 3. To establish, maintain and develop standards of professional ethics among its members.
 - 4. To establish and maintain or to assist in the establishment and maintenance of classes, schools, exhibitions or lectures in, and to promote public appreciation of, architecture and the allied arts and sciences.
 - 5. To perform such other duties and exercise such other powers as are imposed or conferred on the Association by or under any Act.

DISCUSSION:

Limited Liability Partnerships

1. The institute believes the public interest and the profession would be better served by allowing architectural firms, as with legal and accounting firms, a broader spectrum of business structure and planning options.
2. The institute recommends that any legislative authorization allowing for the establishment of rules or bylaws to ensure that public interest expectations such as naming requirements, disclosure of LLP status to the public, etc., are prescribed and enforced by the profession.

Mandatory Professional Continuing Education Administration

3. The AIBC's experience has been that even a relatively small number of non-compliant members can overwhelm the professional conduct process.¹ As importantly, maintaining professional development has become a basic expectation for architects, who were among the first professionals in B.C. to vote to bring in mandatory continuing education. Council, professional services staff and other boards and committees including the Professional Conduct and Illegal Practice Board, the Investigations Committee and the Continuing Education Committee believe that continuing education compliance is better managed as a basic registration expectation akin to the paying of annual fees. In other words, continuing professional education is seen as a fundamental regulatory obligation.
4. The institute recommends that the *Act* be amended to allow for removal from registration of a member (after appropriate notice and time period to become compliant) who refuses to comply with continuing education, with provision for automatic return to the register upon satisfaction of outstanding education requirements.

Duties and Objects

5. Member input through surveys, correspondence and the more formal engagement process underway through 2014 reveal a lack of clarity and overall understanding about the institute's core regulatory role. Reinforcing the institute's statutory identity is one of five goals in the AIBC's 2014-2018 Strategic Plan.

¹ The number of non-compliant members referred to discipline varies from year to year, but has averaged a range of 15-30 members over the past few years. With 1800 registered architects, this represents a compliance rate of 98-99 per cent annually.

STRATEGIC ANALYSIS:

1. As a general statement, these three proposed areas for amendments are consistent with the themes of modernizing professional regulatory statutes and making such legislation more consistent across the professions.

Limited Liability Partnerships

2. The LLP amendment would enable architectural firms, with appropriate legal and accounting advice, to structure businesses in a more modern way consistent with the opportunity provided in the *BC Partnership Act*.

Mandatory Professional Continuing Education Administration

3. The ability to address non-compliance with continuing education as an administrative matter, rather than through discipline, provides the institute with a more efficient and sensible process that is consistent with other regulators' approaches to mandatory education requirements, including the Law Society of BC.

Duties and Objects

4. Finally, a duties and objects section would ground the *Act*, and the regulation of the profession itself, in core concepts rooted in the public interest. Such language would provide clarity within the profession and help dispel notions that the institute or the regulation of the profession is somehow rooted differently than other self-regulating professions.

FINANCIAL IMPLICATIONS:

Limited Liability Partnerships

1. The primary financial implications to the institute for authorizing architectural firms to practise via LLPs would include some policy development on rules to structure the partnership and operation costs to register and ensure compliance. Registration fees are the common approach to revenue neutrality or cost recovery.

Mandatory Professional Continuing Education Administration

2. Simplifying the consequences of non-compliance should have a considerable economic benefit to the institute and profession generally by freeing institute (and member) resources devoted to compliance (namely, investigations and discipline costs).

Duties and Objects

3. It is difficult to assess financial implications of 'duties and objects' addition to the *Act*. However, the value of having a clear statutory statement on the regulatory identity of the AIBC cannot be overstated in terms of member-institute relations and public clarity.

CONCLUSION:

These proposed *Act* changes, as with the previous registration submissions, should be non-controversial housekeeping matters appropriate for the miscellaneous statute amendment process.

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