

Code of Ethics & Administrative Bylaws

- > Bylaw Review Consultation and
Information Session

Welcome! Please ...

- > Turn off your phones;
- > Raise your hand and wait to be called upon;
- > Comment or ask a question, one at a time;
- > Give others their opportunity to reply; and
- > Wait until others have replied before asking another question.

Thanks!

Overview

- > Since 2011, the AIBC has been engaged in a comprehensive process to review and amend AIBC bylaws for the self-governance of the profession in the public interest.

Overview

- > The latest bylaw amendments are:
 - Amendments to several bylaws and rulings in the AIBC Code of Ethics and Professional Conduct (“Code of Ethics”), and
 - Amendments to some administrative bylaws about investigation and discipline and how we vote for honorary members.

Code of Ethics – Part 1

- > The AIBC Code of Ethics has many bylaws and council rulings. Accordingly, the BRC is phasing amendments to them in several Parts.
- > The first set of amendments is Code of Ethics - Part 1.

AIBC Bylaw Review Committee 2019 - 2020 Work Plan

[illegible]

Code of Ethics – Part 1

- > Amendments for discussion today are to:
 - Professional engagement (Bylaws 28.0, 28.1 & 28.3);
 - Reporting and disclosure (Bylaw 32.5); and
 - Architectural competitions (Bylaws 34.11 & 34.12).

Code of Ethics – Part 1

> Professional Engagement:

- Bylaws 28.0-28.1 were adopted in May 1988. They require the engagement of an architect's services to be based upon and generally consistent with the services, responsibilities and general conditions of the current RAIC Document Six or other council-approved client/architect contracts.

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> Current Bylaw 28.0 and 28.1

28.0 The architect's professional services shall be engaged subject to the following conditions:

28.1 Services, responsibilities and General Conditions shall be based upon and generally consistent with those described in the most recent edition of the "Canadian Standard Form of Agreement Between Client and Architect", or such other form of agreement as Council may approve.

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> Bylaw 28.0

- The BRC recommends that Bylaw 28.0 be amended and include the following three requirements currently located in council ruling 34.10. This will consolidate client-architect contract requirements in one bylaw. The three requirements are...

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1. A written client/architect contract is executed before the architect provides services;
2. The architect notifies the client in writing of his/her professional liability insurance and that the policy is available for review; and
3. The architect advises the client in writing that the client/architect contract complies with AIBC Bylaws including the Code of Ethics.

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> Bylaw 28.0

- If architects approve these proposed amendments, the BRC recommends that council repeal the three rulings attached to current Bylaw 34.10 because they will be redundant.

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> Bylaw 28.1

- Amendments proposed for Bylaw 28.1 include updating and modernizing syntax, as well as removing reference to the “Canadian Standard Form of Agreement Between Client and Architect”, because, among other things, it has been re-titled.

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> Proposed amendment to Bylaw 28.0:

28.0 An architect is not permitted to provide architectural services to a client until the following conditions are satisfied:

- (a) All terms and conditions of engagement have been confirmed in a written architectural services contract with the client, executed by the parties; and

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- (b) The Client has been advised in writing:
 - (i) whether professional liability insurance is in place in relation to the architectural services to be provided for the commission;
 - (ii) that the professional liability insurance policy in (i) is available for review by the client upon request; and

Code of Ethics – Part 1

(iii) that the contract “is in compliance with AIBC Bylaws, including the Code of Ethics and Professional Conduct.”

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> Proposed amendment to Bylaw 28.1:

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

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- > “standard form contract approved by council”...
 - **RAIC Document Six** - Canadian Standard Form of Contract for Architectural Services
 - **AIBC 6C** - AIBC Standard Form of contract 6C Between Client and Consultant (and 6C-H Supplementary Conditions to AIBC 6C for BC healthcare projects)
 - **AIBC 8C** - AIBC Standard Short Form Contract Between Client & Consultant

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- > “based upon and substantially conforming in all material respects”...
 - Similar to Letters of Assurance's ‘substantially comply in all material respects’.
 - Means ‘any differences are only immaterial differences to the ‘services, responsibilities and general conditions’ of a council-approved contract.

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- > “services, responsibilities and general conditions”...
 - These were subtitles in early editions of RAIC Six.
 - Bylaw 28.1 refers to them because collectively they comprise the acceptable scope for an architect's services under contract.

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> Bylaw 28.2

- No amendments are proposed now for Bylaw 28.2.
- However, later this year, the BRC will recommend a “basic services and partial services” bylaw to update our professional standards about the scopes and standard of an architect’s services, including during construction.

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> For information, Bylaw 28.2 states:

28.2 Certification as to construction performance and as to payment therefor requires such general review of the work as the architect deems necessary.

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> Bylaw 28.3

- The BRC recommends the repeal of Bylaw 28.3 as this bylaw does not establish a professional standard but rather re-states the law of copyright in relation to an architect's drawings.
- **NOTE: This repeal does not reduce or affect an architect's copyright protection**

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> For information, Bylaw 28.3 states:

28.3 All drawings, specifications, models and documents prepared by the architect as instruments of service shall remain the architect's property, the copyright in the same being reserved to the architect in the first instance. As a precondition of their use, all fees and reimbursable expenses due the architect are to be paid.

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- > AIBC Bylaw 34.8 (b) provides copyright protection and has been the basis for discipline of architects
- > This 'project takeover bylaw' and its rulings require, among other preconditions, that:
 - When property is transferred to a new owner, “there must have been legal acquisition by the new owner of the original architectural firm’s copyright and drawings....”

Code of Ethics – Part 1

> Reporting and Disclosure

- Bylaw 32.5 currently requires members to report apparent violations of the *Architects Act*, AIBC Bylaws and Council Rulings to the AIBC.
- The BRC recommends that this bylaw clarifies that the obligation to report includes oneself as well as others.

Code of Ethics – Part 1

> Bylaw 32.5

- An apparent violation might not be a disciplinary violation. It might only be a misunderstanding about a requirement.
- An apparent violation that is a minor violation not leading to discipline might only trigger an AIBC-imposed requirement to promptly comply.
- It is always better to report or self-report than face a charge of failing to report. An apparent disciplinary violation that is self-reported has a lesser AIBC-imposed consequence than when it is not self-reported.

Code of Ethics – Part 1

> Bylaw 32.5

And, the BRC recommends that this bylaw includes the obligation to self-report about:

1. Bankruptcy/insolvency;
2. Findings or admissions of unprofessional conduct in other jurisdictions;
3. Being charged under the Criminal Code; and
4. Defending legal proceedings related to competency and ethics, e.g., a claim alleging negligence.

Code of Ethics – Part 1

> Bylaw 32.5

- All of this information is, and always has been, available to everyone in public records in BC and other provinces and territories. For example:
 1. all civil law suits and criminal charges are in court registries, which are open to the public; and
 2. admissions to, and findings of, professional misconduct in other architectural jurisdictions are available to the public.

Code of Ethics – Part 1

> Proposed amendment to Bylaw 32.5:

32.5 An architect is required to notify the AIBC in writing and without delay in any of the following circumstances:

- (a) Becoming aware of an apparent violation of the *Architects Act*, AIBC Bylaws or council rulings by any party, including oneself;

Code of Ethics – Part 1

- (b) Upon filing for assignment or upon being petitioned into bankruptcy or receivership;
- (c) In the event of a finding or admission of professional misconduct, unprofessional conduct, incompetency, conduct unbecoming or other disciplinary breach in another jurisdiction in which the architect is registered;

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- (d) Upon being charged with an offence under the *Criminal Code*; and
- (e) Upon receipt or service of a notice of civil claim or other legal proceeding in which allegations are made of professional negligence, fraud, or other cause of action, claim, or offence that may be determined by council rules.

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> Bylaw 32.5

- The basis for the proposed self-reporting obligation is for the AIBC to be able to identify the primary types of legal and liability issues facing the profession, their prevalence and to provide an appropriate regulatory response.

Code of Ethics – Part 1

> Bylaw 32.5

- The self-reporting of certain legal actions is not an automatic trigger for a professional conduct investigation, but as a regulator we need to be more aware of public proceedings involving architects and other registrants.
- Some legal actions may require follow-up monitoring or investigation by the AIBC
- We are a public protection body under BC law

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> 1998 Barrett Commission Report:

“...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.”

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- > The government's expectations and oversight of the professions has grown considerably in 2018-2019:
 - May 2018: *Professional Reliance Review Report* (professional engineers, foresters, biologists, agrologists, ASTTBC)
 - 32 core recommendations, including greatly-enhanced reporting and accountability measures

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- > The province moved quickly in the summer of 2018 to respond, and enacted the *Professional Governance Act (PGA)* in November 2018
- > The result: The five professions will lose their individual acts and be housed under the Ministry of Attorney General. A superintendent will be appointed to oversee their regulation.

Code of Ethics – Part 1

- > The *PGA* imposes a different governance, standards and disciplinary approach, including higher level of reporting to the government and to the regulators

Code of Ethics – Part 1

- > The PGA has a Duty to Report section in the legislation itself:

Section 58(2) states that a registrant must report to the Superintendent if the person has grounds to believe that a registrant is practicing in a manner harmful to the environment or people, or is engaged in conduct “prescribed by the Lieutenant Governor in Council”

The tens of thousands of medical professionals regulated by the 27 BC health colleges have a similar and even broader set of reporting obligations under the *Health Professions Act*.

Code of Ethics – Part 1

- > 2019 saw publication of “An Inquiry into the performance of the College of Dental Surgeons of BC and the *Health Professions Act*”
- > Broad changes to the regulation of the health professions are expected: enhanced government oversight and heightened expectations of public protection

Code of Ethics – Part 1

- > EGBC (APEGBC) Code of Ethics also has the following reporting requirement. Engineers must:
 - 9) Report to their association or other appropriate agencies any hazardous, illegal or unethical professional decisions or practices by members, licensees or others;

Code of Ethics – Part 1

- > There are many other examples of reporting/self-reporting obligations across the professions.
- > Some require filing of a formal complaint where concerns are identified
- > We are trying to strike a balance. The goal is to enhance the AIBC's knowledge of 'what is out there' in order to better assess how to protect the public interest.

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> Architectural Competitions:

- Proposed amendments to Bylaws 34.11 and 34.12 will replace reference to the RAIC “Canadian Rules” for competitions document, which no longer exists under that name, with architectural competition rules or another arrangement approved by AIBC Council.

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> Architectural Competitions:

- Current RAIC “rules” are found on a web page.
- Both Alberta and Ontario have adapted the RAIC rules to fit their own purposes. We are proposing to do the same.

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> Proposed amendment to Bylaw 34.11:

34.11 An approved architectural competition is either a competition conducted according to **architectural competition rules approved by council**, ~~the current “Canadian Rules for the Conduct of Architectural Competitions”~~ or an alternate arrangement, specifically approved in writing by ~~C~~council., ~~that assures equitable treatment and equal and adequate remuneration to participating architect.~~

Code of Ethics – Part 1

> Proposed amendment to Bylaw 34.12:

34.12 An architect's conduct when participating in an approved competition must comply with the ~~"Canadian Rules for the Conduct of Architectural Competitions"~~ architectural competition rules or alternative arrangement approved by council in Bylaw 34.11 ~~or as directed by Council.~~

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> Bylaw 34.11

- If the proposed amendments pass bylaw vote, the BRC recommends that AIBC council repeal the two council rulings attached to current Bylaw 34.11, as they are no longer necessary.

Code of Ethics – Part 1

> Bylaw 34.11

- The two council rulings are:
 - a) Prior to an architect's participation, an architectural competition's "approved" status must be confirmed by the AIBC; and
 - b) An architect invited to participate in a non-approved architectural competition must decline the invitation and advise the AIBC of the competition.

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> Bylaws 34.11 and 34.12

- The AIBC's architectural competition bylaws will be comprehensively reviewed during a later phase of the BRC's Code of Ethics review.

Investigation & Discipline Bylaws

- > Minor improvements and clarifications are recommended for three 2013 bylaws about the AIBC's consensual resolution process, and for three 2016 bylaws about the investigation and discipline process.

Investigation & Discipline Bylaws

> Bylaw 36.3

- This proposed amendment ensures that if a disciplinary matter proceeds to inquiry that the inquiry will proceed in conformance with the inquiry provisions of the *Architects Act* and the AIBC Bylaws.

Investigation & Discipline Bylaws

> Proposed amendment to Bylaw 36.3:

36.3 In the event that the respondent declines to enter into consensual resolution, or should a party later withdraw from consensual resolution, the matter shall proceed to resolution in keeping with the inquiry provisions of the *Architects Act* and in accordance with these Bylaws.

Investigation & Discipline Bylaws

> Bylaws 36.21 and 36.22

- Minor amendments to these bylaws clarify the authority and publication requirements for “costs” of the consensual resolution process.

Investigation & Discipline Bylaws

> Proposed amendment to Bylaw 36.21:

36.21 Council may establish ~~fees~~ a schedule of costs payable to the institute by respondents with respect to engaging in consensual resolution, including but not limited to any fees for mediation or other facilitation of consensual resolution.

Investigation & Discipline Bylaws

> Proposed amendment to Bylaw 36.22:

36.22 The institute shall publish any fee **schedule of costs** established by council for consensual resolution.

Investigation & Discipline Bylaws

> Bylaw 37.2

- This amendment confirms the AIBC's discretion to not treat information that is unfounded or incredible as a 'potential complaint'.

Investigation & Discipline Bylaws

> Proposed amendment to Bylaw 37.2:

37.2 Information provided to the CEO from any source that indicates a respondent's conduct or competency may constitute a disciplinary violation ~~must~~ **may** be treated as a potential complaint and processed in accordance with these bylaws.

Investigation & Discipline Bylaws

> Bylaw 36.16

- This proposed amendment corrects a minor typographical error.

36.16 The investigation committee shall have the following functions:

...

- (i) to review decisions from the CEO made under bylaw 37.7 at the written request of a complainant per bylaw ~~39.9~~ 37.9 and, ...

Investigation & Discipline Bylaws

> Bylaw 37.31

- This proposed amendment removes the requirement for disciplinary inquiries to be held only at the AIBC's offices.
- Other venues for inquiries may be appropriate, including beyond Vancouver where the project or witnesses may be.

Investigation & Discipline Bylaws

> Proposed amendment to Bylaw 37.31:

37.31 ~~The disciplinary committee shall conduct its hearings at the offices of the AIBC, unless an alternative venue is required.~~ Hearings **of the disciplinary committee** shall be open to the public except for the disciplinary committee's in camera deliberations and in any circumstance where the disciplinary committee deems it appropriate to exclude some or all non-parties to the proceeding.

Honorary Members

> Bylaw 12.1

- The current conferral process for honorary members requires a vote of approval by 80% of members present at the Annual Meeting.

Honorary Members

> Bylaw 12.1

- This change would enable an electronic conferral vote similar to e-votes for council election.
- An e-conferral vote will enable more architects to vote and provide more time at the annual meeting for reports and member questions.

Honorary Members

> Proposed amendment to Bylaw 12.1

12.0 Honorary **m**embers ~~shall be~~ nominated by the **C**council and **shall be** conferred by a four-fifths **majority** vote of members, **to be conducted by electronic means.**

12.1 **Council shall establish rules for the conduct of the electronic vote established by bylaw 12.0.**

Council Rules

- > Two proposed bylaw amendments envision additional council rules, which will be published for your feedback as soon they are ready.
- > Council policy requires formal member notification and feedback before council votes on any council rules.

Next Steps

- > As with previous bylaw votes, your suggestions during this consultation session will be reviewed by the BRC to fine-tune the proposed bylaws and they will be appended to the BRC's final submission for council's consideration before council votes whether to approve these proposed bylaws for our e-vote.

Next Steps

- > If council approves the BRC's final submission of these proposed bylaws, our e-vote is likely in **July – August, 2019.**

Next Steps

- > Our Fall 2019 'Code of Ethics-Part 2' will include bylaws or amendments to bylaws and rulings about:
 - Basic Services and Partial Services;
 - Tariff of Fees;
 - Confidentiality of client information,
 - Advertising/Marketing and
 - Workplace Harassment/Discrimination (#metoo)

Feedback

- > [Read the proposed bylaws amendments and supporting rationales](#) (PDF).
- > Consultation/Information Session.
- > Email bylawfeedback@aibc.ca.
- > [Online feedback form](#).

Thank you for attending.