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Alberta Association of Architects

What We Heard - Summer 2013 Practice Entities Task Force
Special Consultations

Nov 4, 2013

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BACKGROUND

In February 2013, the AAA's Legislation Committee held consultation sessions where AAA members were invited to provide input in a number of areas being studied by the Committee's Task Forces, one of which is the Practice Entities Task Force. The Practice Entities Task Force presented its central idea at those consultation sessions: that the rule requiring practice entities be at minimum 51% owned by licensed AAA professionals be replaced with a new set of criteria for practice entity ownership where a registered entity must:

- a) Have evidence of a professional directly responsible for and supervising the practice of architecture and interior design for that firm/corporation;
- b) Provide a Professional Practice Management Plan;
- c) Carry Professional Liability Insurance; and
- d) Hold an AAA-issued permit to practice, which would be issued once the other three conditions were met.

This issue, and the Task Force's rationale for the proposed change, is complex, and the Task Force felt that perhaps it wasn't well enough explained and understood at the February consultations. As such the Task Force held a series of special consultation sessions on July 24, 2013 in Edmonton and on July 25, 2013 in Calgary, as well as an online webinar on September 4, 2013 to explain and discuss the 51% rule in more detail.

The sessions began with the Task Force Chair, Tom Sutherland, giving a presentation about the recommendation, followed by a question period and small group discussions. The small group discussions focused on two main questions:

1. Should we move beyond the 51% rule and embrace a new approach?
2. Is the proposed approach the right one?

AAA staff recorded member responses, which are contained below.

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A NOTE FROM TOM SUTHERLAND, CHAIR, PRACTICE ENTITIES TASK FORCE

The Task Force is very appreciative of feedback provided by Members through the special consultation process initiated during the past summer. It did exactly what we had hoped it would do, which was to provide a clear sense as to whether the Membership was ready to embrace a fundamental change to the 51% ownership rule at this time or not. Our commitment was, and remains, to listen to the Members and only pursue change that appears to have significant support from the Members.

The feedback we received confirmed that Members have strong opinions about our initial recommendations with respect to the 51% Rule. Although a wide range of opinions were offered, in summary, support often tended to be qualified whereas opposition tended to be intense. The Task Force is in the process of incorporating the content and intent of what we heard and will be adjusting our proposal accordingly with primary effect being that the 51% will essentially be retained in its current form. The revised proposal will instead work around the edges of the current legislation, providing more clarity around practice entities and improving business flexibility but without eroding or substituting the existing ownership provisions of the 51% Rule.

STRAW POLL AT THE 51% RULE DISCUSSION SESSIONS IN EDMONTON AND CALGARY

At the conclusion of the discussion sessions in Edmonton and Calgary, members were asked to indicate whether, after having considered the issue, they felt that the AAA should move away from the 51% rule, and if the proposed new approach was the right one. The results of this straw poll were:

Question:	Yes	No
Should we move beyond the 51% rule and embrace a new approach?	33*	37
Is the proposed approach the right one?	9 [#]	47

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*Most answers qualified. Many members felt that they needed more data about why the 51% Rule isn't working, and more details about how the new criteria would work.

Most answers qualified. While members did not support the change of the 51% Rule, they see the value added by the new criteria. Some members suggested maintaining the 51% Rule and adding the PMP and PLI would be best if the goal is to increase accountability and improve service to the public.

STRAW POLL AT THE 51% RULE DISCUSSION ONLINE WEBINAR ^

The same straw poll was conducted following the September webinar. The results were:

Question:	Yes	No	Maybe
Should we move beyond the 51% rule and embrace a new approach?	60%*	40%	
Is the proposed approach the right one?	36%#	32%	36%

^Some totals in this section are greater than 100% as members were able to select more than one option. Results were tabulated automatically and given in percentages.

*Most answers were qualified. Many Members felt that they needed more data about why the 51% Rule isn't working, and more details about how the new criteria would work.

Most answers qualified. While Members did not support the change of the 51% Rule, they see the value added by the new criteria. Some Members suggested maintaining the 51% Rule and adding the PMP and PLI would be best if the goal is to increase accountability and improve service to the public. Because Members could not qualify their answers in person, we added the 'Maybe' category and invited comments to be forwarded to research@aaa.ab.ca.

SUMMARY OF 51% RULE DISCUSSION AT CALGARY AND EDMONTON CONSULTATION SESSIONS

The Members expressed opinions that ranged from very supportive, to very opposed to the abolishment of the 51% Rule. However, despite the split between Members on whether or not we should move past the 51% Rule, the new criteria as a replacement had a mostly negative response, and those that did agree with the new criteria wanted to see it added on top of the 51% Rule.

Why Change the Rule?

Many members were interested in more detail being provided for why the 51% Rule should be changed. There were concerns surrounding the apparent lack of reason behind the change and whether there was actually a public safety issue.

“If it’s not broken, why fix it.”

The current issues with the 51% Rule could be resolved by solutions other than moving completely away from it.

Members indicated that they would like to see more background research and the statistics used to reach the recommendation. Many are on the fence, but are open to considering other options.

Issues with the New Criteria

There is less accountability with the new criteria business structure. Business decisions in the new model could be made by non-members who do not have a concern for public safety. They do not have an obligation to the public that is the same as the one RAs and LIDs have. We need more ownership and control in order to protect the public, not less.

Some members maintain that they are highly concerned about corporate coercion in an in-house setting. Young architects would be particularly pressured to stamp things that they do not want to in order to keep their job.

The change would benefit big firms, not smaller ones. There are a number of small firms in the industry now that might be negatively affected by the change. The Practice Management Plan (PMP) might be too onerous for small firms.

There is not enough information about the new criteria for members to make an informed decision about whether or not the 51% Rule should be replaced with it. We should keep the rule until we know what the PMP will look like.

The PMP is too strict and onerous on firms.

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The new criteria involves too much control and regulation compared to the 51% rule. The new criteria puts regulation above providing service to people.

There are concerns about extra costs/administration fees for members if the new criteria is adopted.

The PMP might water down the value of the seal and limit the potential of professionals.

The new criteria might create too much competition in the market for architects from small firms to compete. Technologists may open architecture or interior design firms.

Many concerns around flexibility, potential practice issues, business structuring, issuing criteria, etc.

Haven't there been problems caused by non-member ownership of engineering firms?

Management plans should not be used.

Removing ownership entirely is very concerning. There is a difference in responsibility between those who practice in a firm and those who own.

Why should we disseminate a currently healthy industry? Business would get fragmented into many professionals. Dilution of existing architecture firms into other professions.

In-house architects would be pushed to their limit before the company went to look for services outside the company.

The focus should be on the professionals, not the corporations.

The 51% Rule is not perfect, but there will be countless problems caused by the new criteria.

Reservations about using a pro forma (checklist for the PMP) approach.

Support for the New Criteria

New criteria may create more responsibility towards the project, rather than the entity. This could positively affect how architects are viewed by the public.

The new criteria could create shared responsibility between the RA/LID and the large company that hires them. The large company would be more invested in projects because their reputation would be involved, and they may be vicariously liable if something in the project goes wrong.

There are very business savvy individuals that are not able to participate in ownership to the extent they would like because they are not registered or licensed professionals. They should be able to own controlling shares in a firm, it would improve the industry.

There is question as to whether the responsibility and accountability issues surrounding coercion do in fact arise at all. Members who stamp drawings are still personally liable, even if coerced into

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stamping something. This is a good enough incentive to withhold a stamp despite the fact that they might lose their job.

Professionals trust each other to maintain a reputable practice and not to sell their stamp. 51% ownership might not mean ACTUAL control. Coercion can take place with or without the ownership share.

The 51% rule promotes unnecessary protectionism.

The 51% rule says nothing about the quality of one's practice.

The new model could foster innovation.

Some members in support, but would like to see a more detailed plan for a large company, and a smaller one required from a smaller company.

Other Options:

Some members showed support for a hybrid approach. Maybe only new firms would need a practice management plan.

There was also some support shown for keeping the 51% Rule and adding the new criteria on top. If the goal is to improve architects practice than this would be the best solution. 51% Rule doesn't need to be abolished for the new criteria to add value, they can exist simultaneously.

In Montana, a registered architect does not have to practice through an entity; a registered architect can practice anywhere. The new criteria approach is taking the opposite route and recommending that any practice entity can practice architecture. Wouldn't it be simpler to have practice and title rolled into one act?

One member supported dropping the restriction on "trading in the building industry."

The AAA should address the "shell corporation issue" through the legislation rather than by changing the 51% Rule.

Keep the 51%Rule but add an exception. The exception would be for PMP's that came in and were satisfactory to the AAA would be approved to practice.

Questions:

The PMP needs more details. How is it managed? How is it verified? Would there need to be a full time staff member hired for this?

Can a vote go out to the membership?

Is there pressure to change the 51% rule coming from the government?

Will this create more demand for architects?

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Would a PMP that looks like the 51% Rule be approved?

Does the change mean ownership/practice is more controlled or there is more business flexibility?

What is the long term implication of the change to the new criteria?

Is there a list of the types on who could own firms in the new criteria?

QUESTIONS RECEIVED DURING PRACTICE ENTITIES TASK FORCE WEBINAR

1. Which 3 Jurisdictions do not have the 51% rule in Canada?
2. What would prevent a furniture dealership/large manufacturer from opening their own Licensed Interior Design department and providing discounted Architectural/Licensed Interior Design services?
3. What are the implications of phasing out the 51% rule on small businesses/entrepreneurs? A lot of small business owners rely on work from design-builders, government agencies and/or developers pertaining to small additions, renovations, etc.
4. How are you going to monitor who needs a permit to practice? If the Walmarts of the world are doing it now, what makes us think we will be able to track all these entities that will now be multiplied?
5. My concern is how the ability of a corporation to 'own' a practice, and having the work 'overseen' by an architect that is not an owner, this is open to coercion by the ownership organization. Requiring ownership by an architect or LID better keeps that coercion in check.
6. With regards to "trading in the building industry," large companies are often intentionally diverse and may include ownership of building material manufacturers or construction companies. Is it realistic to think that it will be easy to enforce the "trading in the industry" restriction?
7. This seems to be a huge increase in administration to keep everyone in line. how much will our fees be going up?
8. How do you plan on keeping track of the back room architects - i.e. Walmart, Burger King?
9. This 'flexibility' benefits larger firms but I don't see the benefit to single architect or LID firms
10. I understand the "permit to practice" concept is based on the APEGA model - how do they handle the audit/review/update process? It seems to me that this could become quite cumbersome and bureaucratic.
11. What are the cost implications - to the AAA and to the RA/LID/business owner - of this new system?

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12. As we already have business/practice plans in place is the assumption that the AAA template would not be mandatory but more of an assistance tool for those who need it?
13. What are the relevant legislations in the US and Australia (UK?) with regard to this issue?
14. Accuracy of straw poll:

More than 50% are against it in Edmonton and Calgary live sessions.
In this web session only: 60% agree in which 50% agree the new proposal and 50% seeking adjustment and 40% against = 30% approve as is, 40% against, 30% agree with adjustment

The web poll is managed by AAA. I have to suggest that is a conflict of interest . The poll should be done by a 3rd party to be creditable.

In Calgary live session I remember to be like 75% against it.

Based on the February 2013 survey summary this subject matter is a dead issue and why are we still talking about it?

15. Practice Management Plan concerns

It suggests that all practices have to do one, so all practice firms are treated the same. (Everyone means me been a member for more than 30 years? AAA wants to manage my business? Are you creating a police force?? There is such a system in Quebec. I do not want it?)

It also suggest PMP needs to be amended when a practice changes.

The example of change is when a firm used to do a lot of commercial projects and now starts to do hospital project than PMP must be amended. (So I will have to re-file PMP when I am doing any new type of project that I have not done it before.) When we first started a firm we have done nothing under the firm name before so every new project I get I have to re-file PMP?)

Are you controlling who can do what type of project and why?? Are you starting a quota system so older firm can be sold to new and avoid PMP issue??

This suggests a RA must an expert on a specific type of work and cannot be a generalist anymore. Are you creating a different class of RA and why? In law a RA = another RA and we are all created equal?? or not?

The 2nd example was when you increase your employee you have to report to Rev Canada than you should have to report it to AAA also.

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That is a false statement. Employer has to deduct tax, CPP and UI monthly and submit the deducted fund to the government. This has nothing to do with having a new employee.

This is about employer's obligation to collect income tax in an advance, submit a summary statement and issue a T4 slip on behalf of the government.

The PMP contain professional liability insurance. (What happen if the PLI gets voted down by membership?) An assumption has been made that PLI will get passed before the membership vote.

There is some brief talk about work done in Canada. There are major issue with out sourcing our work to India and China presently I believe that is a major issue for discussion. This is going on in all professions now, and time for clarity and discussion about it future in our profession.

16. AAA administration of the Practice Management Plan

It suggests there will not be fee increase to administration of this PMP because saving from administration required for name, corporate structure, letterhead etc. (You can have any name you want? Architects R us LLP; 50% Discount Architects Inc.; Cheap Service Architects LLP; Free Service Architect Ltd; \$10/hr Architect Inc.; Flight by Night Architectural Inc. are all fine to AAA?)

How could this be possible?? The audit will only be based on the budget available for the year. The audit will be done randomly based on budget available and complaints from public.

I am concerded that audits will be conducted using a proactive approach by the AAA (The above is audit based on budget and complaints (rumors) than it is a reactive approach NOT pro-active approach.)

(AAA can trigger an audit without any reason? Again there is no discussion on an Audit Procedure and Audit instrument. This will result in witch-hunts and legal court challenges.)

I remember been on the Continue Education Committee there was never an audit done in 5 years.

There is no Audit Procedure and Instrument to date on Continuing Education.

17. Question of whether free trade is good is a matter of opinion

Whether free trade is good is a matter of opinion. All free trade has done for the profession was to create mega firms and destroy local small firms. It is good for a large firm such as (company name removed).

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This is not the forum to discuss this matter nor within the jurisdiction of AAA.

Some of the reply and examples are bizarre and suggest there are hidden agenda and more to come yet on this subject.

Some of the reason for this changes can be easily questioned and assumptions were made that are incorrect.

It has confused this issue even more from all Q&A.

MEMBER COMMENTS RECEIVED VIA EMAIL FOLLOWING PRACTICE ENTITIES TASK FORCE CONSULTATION SESSION AND WEBINAR

1. The task force has identified a number of loose 'failures' in the 51% rule, but this rule has been in place for a very long time, and there must be some very 'foundational' notions in support the long term 51% as a basic advantage to our industry.

The presentations thus far (though very well done) really glazed over the main benefits of the rule that may exist. These should be presented in a more balanced manor. *It would be easier for many to understand whether the 51% rule is appropriate by analyzing the existing rule in greater detail (looking for the greatest benefits of it) rather than just saying that it is flawed and useless and proposing an alternative.*

It is a positive thing if we in have in fact identified that there are some 'holes' in the 51% rule. The greatest example that the taskforce has talked about, is opening up the profession a little, and becoming more involved in the '**practice**' rather than the '**business**' of the firms in the province - termed as a more '*flexible business model*'.

From a 'business' perspective - a good question is:

"The removal of the 51% rule would benefit non-architects by allowing non-architects to be owners' – how does this benefit architects?"

or

"Opening up the profession to have firm names that don't contain the word 'architect' in it - how does this benefit architects?"

It is possible to change the way the AAA enforces or is involved in the 'business' aspect of the profession by simply minimizing their involvement. The 51% rule could be the ONLY thing enforced on a basic structural level of business.

But the holes that are identified that allow corps to get around the rules must still be addressed. The 'new plan' offers 4 points that address the 'practice' portion of the industry and helps to fill those holes.

My suggestion is the following:

Why don't we amend the 51% rule to be more effective by adding to it components that offer a better opportunity to ensure good practice?

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Metaphor: The 51% Rule is the 'cathedral', and the 4 points of the 'New Plan' are the buttresses that support or enable it while filling the weaknesses that have been identified in the existing rule.

There must be ways to support the 'effectiveness' of practicing architects and firms while maintaining the 51% rule so that at a minimum there are majority AAA members as shareholders of all firms in the province that are doing work – while holding them more accountable.

A 51% rule **WITH** a 'management plan' & 'permit to practice' behind it - seems like a very positive move towards a better profession in general by allowing the AAA to be more involved in both fronts of 'practice' and 'business'.

Alberta is about to explode again with its oil industry to potentially the long term benefit of the building industry following. Much of the world wants to be a part of this 'energy'. With the 51% rule in place - Why wouldn't the AAA want their members to be front and center as majority owners of ALL firms in the province that are doing this work?

2. Dear Mr. Sutherland,

I have read your power point presentation, and I have read the "what we heard" synopsis/surveys that were conducted prior to your presentation RE: removal of the 51% rule, and have some thoughts to share.

- 1) An Architectural Firm, or Practice should be controlled by licensed professionals.
- 2) There should be a designated professional in responsible control, and have oversight in the conduct of the business.
- 3) Insurance needs to be carried by the "Practice" and / or the Professional / licensed individual.
- 4) Use of the "term" Architect, and variations thereof should be protected.
- 5) The "health, safety, and welfare" of the general public should be a Licensed individual (s) main concern in the design and construction of buildings or other structures used for habitation or use by the general public.

The reasoning for these 5 points are somewhat simple and direct. We as Architects, whom have endured years of school, training, testing, and finally licensure have a moral and fiduciary responsibility to protect the safety, health, and welfare of the public. We design and cause to construct structures that may stand for hundreds of years, and be habituated by people, and as such these structures need to be regulated, reviewed, and documented by professionals. We are, in a sense like a doctor of medicine, or an attorney (also both regulated and licensed), and to allow the "Rule" to be removed without safeguards would not be wise. I am a resident of the United States, and practice in Alberta, and Ontario, as

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well as most of the U.S., and every municipality / state / territory has a statute, or law, or guideline that stipulates that the licensed individual is the responsible party, in responsible control, and shall have the authority, and oversight in the conduct of the business entity, and its' employees, and that a non-licensed individual shall not use the term "architect" or any variation thereof, or be subject to penalties, fines, and even be found guilty of a criminal offense. In a majority of States, the "corporation" or "business conducting the Practice of Architecture" must register with the Secretary's Office of that State, as a business that practices "Architecture", and include in their application the persons' in responsible charge. We, as members of the AAA, OAA, and AIA should protect our profession, regulate our profession, and set the standards for our profession.

I thank you for taking the time to read my opinions.

(NAME REMOVED) – Architect, AAA

3. I believe the 51% rule should stay in place.

Good day,

(NAME REMOVED)

Intern Architect, AAA

M.ARCH, B.G.S. (ARCH)

4. Hello,

I have just reviewed the 51% rule presentation and have a couple of comments:

- While I do support the idea of more flexibility in ownership of a firm, I would question the removal of the 51% rule entirely. It seems that through the removal of this rule, we are bringing in the practice management plan to compensate. I would propose that this step be used for those firms who choose not to use the 51% rule as they represent a significant minority. This is due to the fact that Architects are bound by oath and law already and I do not see the point of asking architects to tell the AAA how they propose to uphold everything they are already bound to. The regularly updated plan would increase administration both for the firms and the AAA, unnecessarily.
- Insurance: If mandatory insurance - especially if it comes with a high limit - is required for every practice, I would propose that the AAA pursue a joint insurance plan as done

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in other jurisdictions. I carry insurance but it is only at the level I require but it would stand to reason that there will be pressure to have the limits at a much higher level.

Thanks,

(NAME REMOVED), Architect, AAA

5. To whom it may concern,

I thank you for the insightful research and thank the AAA for having the fortitude to address this important question. My comments are limited to incorporated companies, a model which is widely held by architectural practices in Alberta and other provinces.

Our practice is based in Ottawa and jurisdictionally under the OAA although I do hold a seal in Alberta. We have struggled for years with the same question about ownership versus the 51% rule in Ontario. The current Ontario model specifies that all classes of shares be voted by members (51%) in good standing. With regards to your research, I would posit that not all classes of shares in a capital structure are there to provide decision making ability over the operations of the company and that therefore the important question is who controls the architectural acts as well as how is the business financed.

My point with regards to your research is therefore to highlight that in any business model, share capital is made up of a variety of arrangements, some of which are more about the financing and business than about the daily control of the operating company. In this way, if my company for example was successful enough to be able to guarantee a 7% return on investment year to year, why would I not be able to sell a non-voting, preferred type share to an investor who is just looking for a better return than what he is currently getting elsewhere. This sort of capitalization, which can exceed the worth of the company at times, is what allows businesses in other segments to have the resources to expand, re-tool and sustain growth. Why would this not be available to architectural firms as well? Isn't the current model a brake on the ability of architectural companies to take on new challenges and to become bigger and healthier businesses. The same concept applies to a partner leaving a company as he retires. Not all new partners have access to capital to finance the takeover of retiring ones and are often reluctant to use personal assets to do so. Why would a retiring partner not be able to convert his ownership into non-voting, preferred shares and receive an on-going benefit (dividend) regardless of whether he remains a member in good standing of the profession (this would allow ownership to be passed onto estates for example). If this is just a business deal which does not affect responsible control, why is it so heavily dependent on the regulations? I would say that the

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Associations have inadvertently been for years, a brake on the growth and sustainability of firms by tying up their ability to seek open market capitalization. This fundamental premise is inherent to all other business models on the planet but is excluded for professionals such as Architects.

The new proposed model may or may not become legislation depending on the ability for it to be steered through the political process. However as a minimum position, we would suggest that the AAA ensure that the legislative changes encompass a framework which respects the premise that Architects must continue to hold the responsible control over the operations of the firm but that business decisions should be done on the basis of what suits best the model of the firm. We believe that this could be achieved through the proposed changes but also by allowing the capitalization of companies to be done outside of the rules of responsible control as would be the case if the 51% rule was relaxed on other share classes within a capital structure.

Either way if the AAA is able to get some changes through in terms of this aspect of the legislation, it will be a tremendous step forward which we hope the other Provinces will follow suit.

I trust this feedback is helpful. Should you have any questions or want to discuss further, please do not hesitate to contact me.

Sincerely,

(NAME REMOVED) OAA, MRAIC

6. Hi,

In response to the 51% power point, why can we not adopt the guidelines of the new approach while maintaining the 51% rule? It seems to be becoming too easy to put the Architect at the end of the rope and while they are deemed to be supervising, they inevitably will have to answer to someone else, which leaves more leverage for not "doing the right thing." And while the AAA has the ability to audit and revoke permits to practice, that is not as effective as having the ruling majority in day to day operations with a greater incentive to perform professionally (if only for the risk of losing one's license).

Regards,

(NAME REMOVED), M.Arch, AAA, MRAIC

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7. Tom,

Thank you for providing this further opportunity to respond to the 51% Rule issue. My opinions on the 51% Rule are as follows:

I strongly agree that the control of professional firms and corporations to be held by “professionals” and that the 51% Rule should be retained

I strongly disagree with the following question - Should our legislation be revised to be more conducive to “in-house” professionals?

I strongly disagree with the following question - If our legislation were to be changed to remove the rule requiring practice entities to be at least 51% owned by professionals, would the public interest be sufficiently protected if the changes being recommended by the Practice Entities Task Force were adopted?

I strongly agree with the following question - Is the 51% ownership rule required to adequately protect the public interest in today’s business environment?

I strongly agree with the following question - Should the public have the right to expect that entities using these terms in their business names are at least 51% controlled by Registered Architects or Licensed Interior Designers?

My opinion is also represented and reflected in the following statement - I feel that removing the 51% rule would lead to a situation where Architects feel like they have to stamp a project if their boss wants them to even if it isn’t in the public interest to do so. It could create a dangerous scenario. Removing the 51% rule would lead to the erosion of architecture firms, as big clients would just hire their own in-house Architects rather than firms. In-house Architects would not have enough leverage within their employers’ organizations to assert their independence.

(NAME REMOVED)

8. My answers to your questions are:

1. Yes we should embrace a new approach.
2. The proposed approach appears to be a good one. In particular I find the idea of a Permit to Practice to be held by the professional taking responsibility a good one. It seems to me that more discussion is required as to how the professional will deal with that responsibility in light of further developments such as large multi-disciplinary

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firms/teams; further computerization (e.g. BIM), etc. And it makes a lot of sense to separate the issues of business and ownership from issues of practice.

I commend the AAA and your Legislation Committee for looking into this more practical approach to practice.

(NAME REMOVED)

9. It's exactly what we need to do.

(NAME REMOVED), Architect/Planner, AAA, AIBC, FRAIC, AIA, RPP, MCIP

Senior Principal, (COMPANY NAME REMOVED)

10. Comments re the Proposed Departure from the 51% Rule

Professionalism is being replaced by Regulation

Professional Associations were accorded self-governing/self-regulating status and privileges some 30 years ago through the current Architects Act. Since then, the various means through which the AAA has self-governed and self-regulated its members seem to have been generally successful. Notwithstanding this, and likely as a result of pressure from multi-discipline consulting firms and other corporations involved in building, the AAA, through the Practice Entities Committee, is proposing to shift the basis for self regulation from **professionalism** (embodied by architects practicing in accordance with professional ethics and standards) to a **practice management plan** (essentially a prescription for how to practice) in order to facilitate **regulation** of the practice of Architecture so that non-architects / non-professionals can monitor the practices of the professionals. (refer to slide: 2. Practice Management Plan under New Criteria).

This shift is proposed in order to allow for a change in the 51% ownership rule, while still in theory having an architect in control of the practice of architecture. Such a change, however, is anticipated by most architects in Alberta to allow for, if not outright invite, excessive business pressure to be brought to bear on the Architect responsible for the practice of architecture in a firm that is not 51% owned by architects. Maintaining or increasing the daily price of publicly traded shares of a corporation, could result in a driving force that is at odds with the professional standards and ethics of the profession, notwithstanding that operations are considered to be generally in accordance with regulations.

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Sufficient Research/Documentation not presented at July 25 Meeting:

One of the reasons put forward for pursuing this course of action is that the public would be better protected by changing the 51% ownership rule and setting new criteria as to who can practice architecture. But I would ask - Is the public actually asking for better protection from architects and architectural practices as they exist? How many requests have there been in recent years on an annual basis? Or how has this sense of lacking protection otherwise been measured?

Also, what is the demand for this change from within the profession and from corporations? i.e. how many corporations in Alberta, multi-disciplinary consulting firms or otherwise, presently have "subsidiary" architectural firms in which the architects own 51% or more of the shares, and want to change this so that architects no longer have to own the 51% of the shares of the subsidiary? More than 5?

While it is indicated in the slide presentation that 51% ownership is uncommon in other architectural jurisdictions in the USA and Australia, the reasons for this are not provided. It is also stated that APEGA does not have a 51% rule regarding ownership – again without reasons stated. Just because different ownership rules apply in those instances, does not mean that our system is necessarily worse in terms of providing protection for the public. For example, we have a banking system in Canada that is not the same as that in the USA, but would anyone deny that the Canadian system does not offer better protection for the public? I would also ask –are doctors , lawyers and accountants in Alberta pursuing this type of change in ownership restrictions? Not according to the discussions that I have had with members of these professions.

In summary, the case for doing away with the 51% requirement has not been sufficiently justified:

- No documentation or evidence has been presented demonstrating that the public needs or wants more or better protection
- No information has been presented demonstrating that the change away from 51% ownership would foster better protection for the public
- No documentation has been presented indicating that problems exist with the current form of ownership of architectural entities as "independent subsidiaries" of corporations – independent relative to the standard of the practice of architecture – presumably through the control of voting shares, yet subsidiaries in terms of total share ownership.

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- The majority of Alberta Architects agree that the 51% ownership rule is required to adequately protect the public, and they strongly agree that the public has a right to expect that entities practicing architecture and using the terms architect etc. in their firm names, are at least 51% controlled by Registered Architects (from Legislation Review - What We Heard, May 1, 2013)

The Proposed New Approach to Ownership is Avoiding the Real Issue

For years architects in Alberta have complained about the erosion of the scope of architectural services to “designers”, technologists, project managers, design-builders, engineers, building envelope consultants and others. Given the survey results regarding Allied Professions, I am not sure how much of an issue this is at present amongst architects in Alberta, but, I don’t think we should be facilitating any further erosion of our scope through changing the 51% Ownership Rule.

Right now in Alberta, notwithstanding the AAA bylaws, Architects Act and General Regulation, anyone can provide architectural design services up to the stage where a building permit is required. The domain of designing buildings is therefore not restricted to architects – anyone and everyone can be an architect up until the point that someone needs to prepare and sign construction documents for buildings.

So, is this whole 51% discussion simply intended to recognize this unfortunate current reality of the profession in Alberta, and to yield further to it? I for one would rather direct the time and efforts of the AAA Council and staff to reinforce what is surely the intent of the Architects’ Act – keeping architectural design and practice, with the exception of the designing of houses, in the hands of and under the control of professional, registered architects. We have been educated and have gained experience in delivering this important art and technical practice.

Hopefully, this effort to expand ownership of architectural firms to other businesses is not an indication of the willingness of Council to give up control of the profession to non-architects – but that is what it appears to be. But all of the effort and time being spent on the development of a new approach to ownership is counterproductive to the objective of retaining and broadening control of architectural design and practice in the hands of architects. It will be a waste of time and energy if more control of the design of buildings is not achieved through the new approach.

(NAME REMOVED), *Architect, MAAA, FRAIC*

BERLIN

11. Hello, thank you giving me for the opportunity to provide comment on your material presenting the progress of your efforts surrounding the future of the 51% Rule in the context of the AAA's Legislation Review. I apologize in advance for the length of this, but I hope my comments are insightful and useful to you.

I participated (ie watched) in the webinar presented by the PETF Chair, Tom Sutherland, on September 4th, and have reviewed the webinar presentation that was made available by the AAA.

I realize that the work you are doing is ongoing, however, it feels as though your momentum is leaning strongly towards recommending the changes that have been described on slide #13.

Based on the material I have seen and the presentation commentary I have heard, I don't feel that the removal of the 51% Rule would actually be in the best interest of AAA members. There were several items that weren't clearly described (in my opinion), and justifications that seem contrived (again, in my opinion) as they are presented as being connected to the 51% rule but actually seem to be independent of it.

I understand the need for flexibility going forward and myself tend to always be on the side of championing change to improve things. The point on slide #4 was that a new approach needs to work for the public AND members. The question that wasn't clear to me through the presentation and still isn't clear on reflection is, is there a problem, or even a perceived problem with how the current 51% Rule works or is anticipated to work in the future? Is this change for the sake of change (and therefore arbitrary), or is it solving a problem/perceived problem? At a basic level, how do the proposed changes enable and benefit membership as a whole? Again, I have attempted to understand these questions myself but unfortunately the answers haven't been obvious to me.

On slide #8, every point listed seems to indicate or allude to a problem/potential problem that exists with the current 51% Rule, however, I'm not sure what the baseline for comparison to these points is? Ie, I'm not completely sure in what ways the 51% Rule is not effective, not relevant, a barrier, etc. Slide #9 suggests that a new framework be 'commercially enabling' – how will that help the profession, particularly if commercial entities are allowed to have < 51% membership ownership? This seems to actually serve to weaken the position members have within the ownership structure of an entity (irrespective of the existence of a Practice Management Plan, which I discuss next).

I understand that my concern above is supposed to be mitigated by the incorporation of the 'New Criteria' listed on slide #13. As items 1 & 4 on this slide are already required prior to practice, I understand that the requirement of a mandatory Practice Management Plan

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(PMP) and Professional Liability Insurance are the two 'new' components. The PMP, however, is an administrative tool that seems like it should be incorporated independently of the 51% rule. PMPs should be in place regardless of ownership structure if 'public protection' is the issue. So, if you strip away the PMP as providing rationale for the changes to the 51% Rule, what benefit does a change in structure have to the public (other than non-architect corporations that stand to financially benefit from the proposed structure)? What benefit do the changes have to membership? (Note, I'm excluding Mandatory Liability Insurance from this discussion, as I understand that parallel efforts are underway to examine this issue independently. The same arguments apply, however.) For example, the rationale presented on slide #20, points 1 & 4, seem independent of the 51% Rule discussion and could be solved by the incorporation of a PMP and Mandatory Liability Insurance under the current 51% Rule structure. My point here is that the justifications presented do not actually provide rationale in my mind as to why the change is required.

In order for me to properly understand why a change is required, I need to have a better understanding of the drivers. What percentage of firms do you anticipate would retain the traditional model/structure (ie > 51% ownership)? More specifically, how many members currently belong to a company described by point 1 on slide #10? What percentage of overall membership is this? What percentage of registered firms does this represent? Where do they fit in (#'s and %'age wise) to the categories listed on slide #12?

I do support the need for PMPs, but I do understand that the AAA requires resources to review and enforce the PMPs. As my understanding is that the AAA is already relatively thin on resources, what would the cost be to members, and in particular, to the smaller firms and sole-proprietorships that may not have administrative resources to engage in mandatory PMPs as described on slide #15? How can the AAA be sure that all firms/corporations/companies are following their PMPs, other than through an audit? Does the potential for abuse not increase, depending on the degree to which entities are audited? If so, how does this benefit the public, and how can the AAA provide the public a degree of confidence that abuse will not happen (other than random audits)?

Last, to help me understand the benefits of changing the existing 51% Rule structure, perhaps some examples from the 3 jurisdictions that are described on slide #10, point 2 that would include precedents, the number of firms/corporations/companies with < 51% membership ownership as a percentage of total membership, and an honest pros-cons discussion of what the overall experiences of the public and associations of these jurisdictions would be helpful.

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I am not a person who opposes change in general – in fact, I am often an enabler of change as I mentioned above. The changes suggested have profound impacts to the profession, and as a member, I just want to make sure that we get it right.

Thanks again for the opportunity to submit these comments. Please let me know if you have any questions or require clarification.

Best regards,

(NAME REMOVED), Architect, AAA

12. Please note that I do not support the change to the proposed 51% rule.

Thank you,

(NAME REMOVED)

Principal

Licensed Interior Designer, AAA

13. Hello Practice Entities Task Force,

I participated in one of Legislation Discussions and voiced my concerns about this rule then. To be on the record for this topic, I am sending this email.

I am completely against eliminating this rule. I have not heard a single reasonable argument against it.

"... they already find ways around this rule now." & " the U.S. doesn't have this rule." Is this really the best we have to alter this?

I strongly believe, we will see a huge decline in the small to med size firms if this rule is eliminated. They will not be able to compete for the talent, and too much work will be stripped away.

Every major & semi major contractor out there, most of whom already boast/advertise that they do all the design work, will hire a single architect easily and at 2 or 3 times their current salaries. So will many major companies.

They will not need any design build contracts with private architects anymore.

There is a big trend to more & more design builds, this rule change will see that increase even more.

BERLIN

The majority of private projects will go directly to Contractors, the design build route. There will be very little left on the market for any small to med size firm to compete.

The larger institutional work will still go thru government and APC, and these will increasingly go to the larger firms, based on their scoring experience. And this is very limited work.

There will always be work for the smaller sole practitioners, I don't think this group will be as affected, unless some of these were hoping to grow.

Contractors will quickly reap the benefits of having their own architect, and it will not be to the best interest of the public, the city or the profession. No doubt, they will be safe, and meet all the necessary (MINIMUM) codes and regulations. But the appearance and design will not be all that it could be under the guidance of an independent architect, working to build the vocabulary of architecture, or even his/her own portfolio in prep for their next project.

Most significant design elements in any project is defended and argued its value by the architect, and presented over many meetings with an owner, until it might finally be agreed to enhance the project, and create an architecture for the community and the city, and speak to the higher calling of quality architecture.

Most owners are not interested in advancing their project for the good of the city or for the culture of architecture. And this is definitely even more true for any contractor. The PCLs & Clark Builders of Alberta are not even a little interested in creating anything that will complicate their schedule, or their budget, or impact their bottom line.

I realize this 51% rule seems like just a small gate rule that can be maneuvered to suit some corporations, but the truth is, we have not seen that much of this manipulation, and mostly by engineering corporations, which has not been unreasonable so far.

Please review and try to really anticipate what eliminating this rule will really do to our current practice in Alberta. We are NOT the U.S., owners and developers and the public do not value architecture or architects like they do in the U.S.

Alberta is a global leader in many venues, it time for the Association to be a Leader as well, and forge their own trail. Not follow the U.S. or the other associations. If anything this rule should be redeveloped to be stricter. And new rules to enhance/promote the value of architects.

BERLIN

If we could aspire to the level that most architect's salaries are equivalent to the owners of the Construction companies; as opposed to half that of a site superintendent, we might stand half a chance in a value based argument with or without the 51% rule.

Thank you so much for all the time you are putting in to the task force and reviewing so many opinions. I am sure your task is not easy.

Best Regards,

(NAME REMOVED)

Architect, AAA, MRAIC

14. To Practice Entities Task Force,

Here are the suggestions:

1. The AAA has printed requirements of the Act, Regulations, Bylaws, bulletins, etc. that members have studied, signed and are compulsory to follow. The public is well protected. Members are not required to repeat and outline the above in the Practice Management Plans.
2. Currently, the AAA has both complaint review board and discipline board for concerned members. These boards will deal with compliance audit for the concerned members. The public is well protected. The AAA does not need to apply compliance audit to regulate members.
3. The professional liability insurance companies can check and review the projects and records of the AAA members thoroughly. They can determine whether the members are qualified for insurance coverage. If the members have poor records and standing, the insurance company will not provide insurance policy.

Thank you.

(NAME REMOVED)