

PB-18

MANAGEMENT OF PRACTICE: UNAUTHORIZED PRACTICE

INTRODUCTION

The purpose of this Practice Bulletin is to advise members of their rights, duties and roles within a self-governing profession under the Architects Act, 2010, Part 1, Section 2. There has been an increase in the number of queries to the Alberta Association of Architects from members and authorities having jurisdiction as to whether or not an individual is entitled to undertake certain types of projects in Alberta. These inquiries have led to the discovery of a variety of forms of unauthorized practice, each requiring action on the part of the Association.

UNAUTHORIZED PRACTICE DEFINED

The Alberta Association of Architects is empowered by legislation known as the Architects Act to regulate and monitor the practice of architecture and interior design in Alberta and to enforce compliance with this Act.

The Architects Act defines a specific scope of practice under which it clearly states that only an authorized entity is entitled to engage in the practice of architecture. An authorized entity is defined as a registered architect, architects' corporation, architects' and engineers' firm, visiting project architect, restricted practitioner, licensed interior designer, interior design corporation, and/or visiting project interior designer. No other designation is recognized under the Architects Act or entitled to claim title to the name 'architect' or 'licensed interior designer' in Alberta. As such, Section 48, Article 12(1) in the Architects Act General Regulation - the Code of Ethics - specifically prohibits anyone except an authorized entity registered with the Association from using the name 'architect' or 'licensed interior designer' or any title, description, abbreviation, letter or symbol representing that title in a manner that represents expressly or implies that the person is a registered architect or licensed interior designer, or that the business is an architect's or licensed interior designer business, corporation or firm.

Finally, only licensed members of the Alberta Association of Architects are entitled to practice architecture or interior design and to seal / stamp documents as a certification of their professional work.

The practice of architecture is defined under the Architects Act as:

- ▶ planning, designing or giving advice on the design of or on the erection, construction or alteration of, or addition to, a building;
- ▶ preparing plans, drawings, detail drawings, specifications or graphic representations for the design of, or for the erection, construction or alteration of, or addition to, a building; or
- ▶ inspecting work, and assessing the performance of work, under a contract for the erection, construction or alteration of or addition to a building

The practice of interior design (i.e. that portion of the practice of architecture) is defined and limited under the Architects Act General Regulation to:

- ▶ planning, designing or giving advice on the design of, or on the erection, construction or alteration of, or addition to, the interior of a building;

- ▶ preparing plans, drawings, detail drawings, specifications or graphic representations for the design of, or for the erection, construction or alteration of or addition to, the interior of a building;
- ▶ reviewing work and assessing the performance of work under a contract for the erection, construction or alteration of, or addition to, the interior of a building; and
- ▶ engaging or coordinating architectural and engineering work within the interior of a building

In enunciating the purview of interior design practice, the General Regulation specifically excludes engineering work or any work on the exterior shell of a building, environmental separations or exits. Additionally, Section 2.4 of the 2006 Alberta Building Code (ABC) regulates the maximum size and the building types that can be designed without engaging the services of what is referred to in the code as a 'registered professional', that is, an authorized entity under the Architects Act. This identifies the scope of services provided by non-professionals (specifically non-architects and unlicensed interior designers) that may be accepted for a building permit application by the authority having jurisdiction in Alberta, without the requirement for a seal/stamp.

Activities by persons or companies that do not fit the definition of authorized entities as defined under the Architects Act or activities conducted by members of the Alberta Association of Architects that do not fall into compliance with the above definitions, restrictions, or scope of work with respect to the practice of architecture or interior design represents unauthorized practice, unskilled practice and /or unprofessional conduct as defined under Part 5 of the Architects Act.

Members are required to be thoroughly familiar with the definitions, restrictions and permitted activities under the Architects Act, and the General Regulation and Bylaws, at all times.

EXAMPLES OF UNAUTHORIZED PRACTICE

The following is a sample list of unauthorized practice activity:

- ▶ Use of the name, promotion of the name, implication of the name 'architect' or 'licensed interior designer' in the advertising of services, buildings, literature and websites when the user is not an architect or licensed interior designer;
- ▶ Offering, accepting or providing architectural or interior design services and practicing architecture or interior design as defined in the Architects Act while not being registered with the Alberta Association of Architects and thus without entitlement to call oneself an architect or licensed interior designer;
- ▶ Offering, accepting, or providing architectural or interior design services, and practicing architecture or interior design as defined in the Architects Act beyond the scope of practice permitted under the Act or by one's Certificate of Authorization.
- ▶ Offering, accepting, or providing architectural or interior design services, and practicing architecture or interior design as a member of the Alberta Association of Architects, when not a member.
- ▶ Sealing and/or stamping of drawings and specifications prepared by others (e.g. selling a stamp) without meeting the requirements of personal supervision, direction and control as described under the Architects Act;
- ▶ Sealing and/or stamping of building code schedules as required by the authority having jurisdiction, when not an authorized entity under the Architects Act.

- ▶ Offering, receiving or providing architectural services, while one's registration with the Alberta Association of Architects is retired, suspended, cancelled or falsely obtained;
- ▶ Taking part in an architectural competition that is required to be endorsed by Council of the Alberta Association of Architects, when it is not;
- ▶ Acting as a contractor or supplier to a project when also providing professional services to it, without the prior written approval of the client;
- ▶ Accepting inducements or remuneration, to employ a contractor or utilize a particular system or material in a project;
- ▶ Providing professional services to a client without a written agreement, providing for a method of determining a reasonable fee, or a description of the professional services to be provided.
- ▶ Any other violation of the Architects Act, the Architects Act General Regulation, Bylaws and Code of Ethics.

REPORTING

When a member is made aware of any unauthorized practice, it is that member's duty under the Prohibition of Practice Section 12(2) of the Architects Act General Regulation and under Part 5 of the Architects Act to bring to the attention of the Council.

Complaints are received each year by the Association from members who are reluctant to come forward or to identify individuals or companies that are allegedly conducting unauthorized practice. Without specific written information, the Association is unable to act.

The reporting of any alleged unauthorized or unlawful practice, or complaint about the conduct of an authorized entity, should be forthcoming as soon as possible. The member lodging the complaint must do so directly, and be identified confidentially in writing to the Registrar.

The matter of identity of the complainant being made available to the person subjected to the complaint can in certain instances, with good reason, remain under the protection of anonymity. However, the Association must receive sufficient detailed written information about the name, location, project, and pertinent circumstances to warrant the matter to be referred to either the Complaint Review Chair for a preliminary investigation or alternatively, to the Practice Review Board.

Should it be determined that sufficient evidence exists for further action, and that the Association is able to address the matter directly with the investigated person or firm in question in order to resolve the situation, such anonymity is preserved.

In the event that a formal complaint is lodged initially, or a Complaint Review is triggered by Council as a result of unsuccessful discussions, the member lodging the complaint may be called to provide evidence under the Complaint Review Process. Anonymity in this circumstance would be lost.

It should be noted that many situations related to unauthorized practice are inadvertent, such as advertising by non-members, and triggered by a lack of knowledge about the profession. Such instances are readily resolved through contact, discussion and education by the Association, and in the case of members, without the need for a formal complaint review or legal action.

In the case of unauthorized practice involving non-members, Counsel for the Association may issue a cease and desist order and if needed, seek injunctive relief through the courts, if Council is initially unsuccessful in achieving suitable cooperation using less coercive methods.

In addition, the Practice Review Board has been more active. As such, following the resolution of a file related to a member, a Practice Review may be recommended as an appropriate follow up measure to ensure that the firm establishes a thorough knowledge of the Architects Act and the Architects Act General Regulation, moving forward.

In order to protect the public and the independence and scope of practice to which architects and licensed interior designers are currently entitled, it is of critical importance that each member of the Alberta Association of Architects be proactive in reporting any alleged unauthorized practice so that a file may be opened and a follow-up investigation can be initiated. It is of equal importance for members to re-assert these values during the course of its interaction with the public including government, institutions, private clients and authorities having jurisdiction.

This Practice Bulletin explores examples of unauthorized practice in **Appendix A**.

NOTES

References

The Architects Act, 2010
The Architects Act General Regulation
Bylaws and Code of Ethics
2006 Alberta Code of Ethics
Standata 97-DI-002R2 March 2005

Revised:

March 2012 – Practice Review Committee

Practice Bulletins are issued by The Alberta Association of Architects as a practice resource or as general interpretations of the requirements in the Architects Act, the Regulations under the Act, and the By-laws. Bulletins should be read in conjunction with the Act, Regulations and By-laws and in no way supersede these documents. Bulletins are not intended to be and are not legal advice to the Members of the Association nor to the Public/Client. Members and the Public should consult their own legal, income tax or financial advisors as to the application of the Architects Act and Regulations in specific circumstances.

APPENDIX A

The following are examples of unauthorized practice situations to inform members, and authorities having jurisdiction.

Example 1

Innovative Design Architectural publishes a website promoting its work for private residential clients. The website lists two partners with M.Arch degrees from accredited Canadian Schools of Architecture. They have won awards, and describe themselves as designers that 'bring architecture into' their residential work, competing successfully against the traditional house building industry.

While they are not architects, the work they do is permitted under the 2006 ABC Section 2.4 Professional Design and Review and the 2006 ABC schedules are not required for exclusive single family residences. They believe themselves to be providing redeeming value to the profession and a level of professional service to a market where good architecture is lacking.

The firm name and tag lines that use the word 'architecture' or 'architectural' as descriptors and the implied offering of 'architectural design' services could easily lead members of the public to conclude that by contracting with Innovative Design Architectural, they are in fact obtaining architectural services – something protected by legislation that only an architect can provide.

The firm and its partners cannot hold itself out as professionals unless and until they are duly registered as architects, and licensed to practice according to the Architects Act.

As such, they have two choices: to either change their firm's name and advertising to maintain the status quo; or, to do so in any event until such time as the partners take the necessary steps to become authorized entities.

Example 2

An architect registered in good standing in the provinces of Alberta and British Columbia allows his personal and firm registration to lapse in Alberta while he lives and practices in the other province.

In the meantime, the architect's website, and his 411 online business directory listing both continue to list both provincial registrations.

The firm prepares proposals and solicits and receives two commissions in Alberta for a multi-family project that does not require the services of an architect in order to receive development and building permits under Section 2.4 of the 2006 ABC as well as a large high rise condominium project.

The firm and architect are no longer registered or licensed to practice architecture in Alberta. The fact that one project does not require professional services in order to receive a development permit or a building permit, is not relevant in this instance.

Both projects were solicited under the name of a firm and an architect that relinquished its rights under the legislation by allowing its registration to lapse.

In order to avoid unauthorized practice, the architect must engage the services of a duly registered firm of architects in Alberta with whom he is entitled to work, without representing his firm or himself as authorized entities, as long as the duly registered firm is the architect of record.

Alternatively, he may take the necessary steps to have his licence and firm registration reinstated by the Alberta Association of Architects. In this situation, the architect may be subject to the need for a formal Practice Review.

Example 3

An interior designer receives a commission for a space planning project involving several floors of an office building, including offices, board rooms, support services, a complete workstation furnishings package and artwork selection.

In order to obtain development and building permits from the authority having jurisdiction, the work is divided into smaller packages to comply with the 2006 ABC Section 2.4.2.1(2)(d) where a building area is restricted to one storey and 500sm, classified as a business and personal services occupancy, mercantile occupancy or industrial occupancy.

This is unauthorized practice, since the interior designer is not licensed and therefore is not an authorized entity under the Architects Act, and the scope of work clearly exceeds that allowed for non-licensed practitioners.

Both the Architects Act and the building code are misinterpreted here. The interior designer is holding out to be a professional by agreeing to take on a large project when on the other hand, it is necessary to falsely adjust and misrepresent the scope of work which was designed as a whole.

The 2006 ABC clause referred to above is intended to apply to buildings, and not to interiors of buildings. This is the often misinterpreted maximum allowable office space an interior designer can complete without a licence in Alberta, and is usually referred to as the 5000 square feet rule, which in fact does not exist.

Authorities having jurisdiction should be aware that this practice is not sanctioned by the Alberta Association of Architects, and is subject to the possible pursuit of injunctive relief.

Authorities having jurisdiction are also required to reject building permit applications or revoke building permits if the required specific conditions are not met or are awarded based upon incorrect information per the Director's Interpretation Standata 970DI-002R2 March 2005.

Example 4

An architect is successful in promoting the use of a specific proprietary wall system for a project where its unique characteristics provide a preferred design solution for the owner, within its overall budget.

The project is a design build contract, the architect works for the contractor, and the fees are paid by the contractor to the architect.

The wall assembly contractor is a sub-trade to the design build contractor. Since the architect was successful in getting the owners' approval, the sub trade commits to a fixed price in the overall design build contract at an early stage.

The design build contractor is happy as it is closer to being able to guarantee its overall price for the project with this major component already committed. The architect is happy as he is able to charge a finder's fee to the sub trade, who is also happy to oblige since this contract came to him non-competitively through good business promotion.

This represents unauthorized practice per Section 38-40 of the Architects Act General Regulation whereby no authorized entity in advising or advocating a particular system or material shall accept any form of remuneration in connection with the use of that system or material on a project where the authorized entity is providing professional services.

