

PB-32 FEES AND THE AAA

REFERENCE

Architects Act General Regulation, Section 41 Agreements

Code of Ethics, Section 7

Practice Bulletin PB-27 Providing Design Services During Project Procurement

BACKGROUND

The Alberta Association of Architects (AAA) has received concerns that its architect members and licensed interior designer members are being asked to provide or are providing professional work without compensation or for extremely low fee arrangements, including, but not limited to, responses to a request for proposal (RFP).

More specifically, there is concern that by providing professional work without compensation or for an extremely low fee, the authorized entity places itself at risk of being unable to meet its professional obligations and unable to ensure public safety.

This practice bulletin is intended to clarify the role of the AAA in respect to its authority to regulate fee arrangements and to emphasize the professional and ethical obligations of authorized entities.

THE AAA DOES NOT HAVE THE AUTHORITY TO REGULATE PROFESSIONAL FEES

As the self-regulatory body designated to oversee the practice of architecture in the province of Alberta, the AAA is obligated to govern its membership in a manner that is in the public interest. This includes ensuring that authorized entities meet legislated requirements and uphold the standards of practice and ethical conduct expected of members of the profession. This is an obligation that coincides with the privilege of belonging to a self-regulated profession in Alberta.

Without specific enabling legislation¹ that permits the AAA to establish a fee schedule or play a role in the setting of fees, **the AAA does not have the legal authority to negotiate or set professional fees.** This includes the allowance or prohibition of pro bono work or the setting of a range of fees or setting minimum fees.

While this fact may be concerning to some members, the reality is that the AAA is unable to use its legislated authority to regulate fees charged by its members without risking criminal prosecution by the Competition Bureau.

Prosecution by the Competition Bureau can result in significant sanctions both for the AAA and for individual members of Council or officers of the AAA personally. The philosophical underpinning of the Competition Bureau and the Federal Competition Act is that fee regulation inherently reduces price competition and reducing price competition is not in the public interest.

WHAT CAN THE AAA DO?

The AAA has clear authority to discipline unethical conduct and unskilled practice by its members. More specifically, Section 41(1) of the *Architects Act General Regulation* and Section 7 of the Code of Ethics provide a strong foundation for the AAA to take disciplinary action when an authorized entity has:

- ▶ Failed to set out an agreement in writing for the provision of professional services that includes both the method of determining the fee and a description of the professional services to be provided.
- ▶ Failed to disclose the fees to the client.
- ▶ Misled the client with respect to the agreement or the fee or both.
- ▶ Misrepresented the scope, complexity or extent of the professional services to be provided.
- ▶ Failed to do necessary work because the work was not economic given the low fee or pro bono work agreed to.
- ▶ Entered into an unethical fee arrangement that takes advantage of the information asymmetry between regulated members and members of the public.
- ▶ Withdrawn professional services for financial reasons when the authorized entity knew or ought to have known that the fee arrangement was untenable or unrealistic, or
- ▶ Charged a fee that is not “fair and reasonable” in all of the circumstances.

It is important to note that what is “fair and reasonable” in the context of Section 7 of the Code of Ethics means what is “fair and reasonable” to the client. Section 7 does not confer authority to negotiate or set fees or prohibit low fees or pro bono work.

WHAT DOES THIS MEAN?

Regardless of the fee charged, professional services must be provided in a manner that meets professional and ethical standards established by the profession. These standards cannot be reduced or modified based on the fees that are charged.

In other words, once an authorized entity enters into a written agreement to provide professional services (as it is required to do by section 41(1) of the *Architects Act General Regulation*)², it cannot avoid or reduce its professional obligations because the written agreement has established that the authorized entity will receive a low fee or no fee in exchange for its professional services.

CONCLUSION

The AAA cannot negotiate or set fees or prohibit low fees or pro bono work.

If an authorized entity engages in professional services without meeting the legislated requirements, professional standards or ethical conduct expected and required of it, the authorized entity may be subject to discipline by the AAA. An authorized entity cannot reduce its professional obligations and duty to protect the public because it chooses to charge a low fee or provide pro bono work.

Accordingly, members are strongly reminded of their responsibility to fulfill their professional obligations when establishing contractual agreements and fees with a client. Members must be

clear that if they set a very low fee or do pro bono work, they must still provide all professional services in accordance with the written agreement entered into between the authorized entity and client to the appropriate professional standards, whether or not the fee will cover the cost of the work provided.

NOTES

1. For example, the *Architects Act* of British Columbia obligates a tariff of fees be established. There is no such provision in the *Architects Act* of Alberta.
2. Section 41(1) of the *Architects Act General Regulation* reads:
Agreements
41 (1) *Subject to subsection (2), an authorized entity may provide professional services to a client only if the authorized entity and client have executed a written agreement that*
(a) provides for a method of determining the fee or other consideration to be charged, and
(b) describes the professional services to be provided.
(2) *Subsection (1) does not apply if an authorized entity is providing professional services*
(a) in an architectural competition conducted in accordance with the standards referred to in section 37, or
(b) in accordance with a direction by the Council.

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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 *Architects Act General Regulation* and the Bylaws. Bulletins should be read in conjunction with the Act, Regulation and Bylaws and in no way supersede these documents. Bulletins are not intended to be and are not legal advice to the members of the AAA 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 Act and Regulation in specific circumstances.