

## PB #24 C1 & C2 Schedules

### INTRODUCTION

The purpose of this Practice Bulletin is to advise members of their rights and duties related to an appropriate code of conduct with respect to the issuance of, or the with-holding of Schedules C1 and C2, under circumstances where the Architect is at issue with either the Client or the Contractor.

*Schedule C1 and Schedule C2 are required by the Alberta Building Code to be submitted to the authorities having jurisdiction, under seal and signature by the coordinating registered professional who provides assurance that its obligations for coordinating Field Review are met and that compliance with the Building Code and general conformance with plans, specifications and other documents in support of the building permit for the project is also met. Supplementary information from all other registered professionals of record is also required to accompany such assurance.*

The architect is obligated to issue the C1 and C2 Schedules to the authorities having jurisdiction, generally at the occupancy permit stage, after acceptance of the contractor declaration of Substantial Performance.

### ISSUES

There may be circumstances where the architect must evaluate if it should submit these schedules. The two most common circumstances are 1) when fees are withheld by the client for undisclosed or unresolved reasons and /or 2) when the architect is unable to provide the assurances required.

Both issues are addressed below:

(1) With-holding of fees (or services)

In the event that for one reason or another, including an unresolved dispute, a Client elects to with-hold payment of fees, the law holds that the architect has rights to protect his or her interests and such rights include the with-holding of services temporarily or permanently, acting reasonably. This impacts many things, including Schedules C1 and C2.

The Alberta Association of Architects always recommends the use of RAIC Document 6 or 7 as the Standard Form of Agreement that sets out the protection of both Client and

Architect with regard to the provisions of and payment for, professional services. Articles GC8 Suspension and Termination and GC12 Payments to the Architect, are explicit in this regard and give the architect the right to be paid or, to suspend service giving reasonable notice thereto, if not. Furthermore this agreement stipulates that the Client has no right of deduction or set-off from the architect's fee payable, in respect of any matter in dispute – regardless of whether such dispute is related to the architect's (or his or her consultants) design services or even the contractor's services; other than those for which the architect

is proven to be legally responsible or has agreed to pay.

These are basic principles that underpin the protection of the architect in the design and construction industry.

The architect, if unsuccessful after reasonably attempting to resolve an issue surrounding non-payment of fees and, in exercising its rights to withdraw services, nevertheless owes a duty to the Client to provide reasonable notice. In accordance with the provisions of contract this usually means in writing and usually within 7 days.

The architect also owes a fiduciary duty to advise the Client of the risks associated with such actions. Such risks may by definition, include the with-holding of Schedule C1 and C2 where (in the case of suspended service) the execution of same remains pending. The Architect also has a fiduciary duty to inform the authority having jurisdiction that its services are withheld and therefore the timely release of the C1 and C2 Schedules is impacted. This is obviously one of the risks to the Client - as the authority having jurisdiction is under no obligation to issue an occupancy permit without the necessary documentation being provided. (Furthermore, it must be understood that no authority having jurisdiction has the right to force the coordinating registered professional to execute the C1 and C2 Schedules).

Therefore, acting reasonably in 1) attempting to resolve the matter to the satisfaction of both Client and Architect, 2) with sufficient notice and 3) having advised the parties of the risk, there is NO breach of ethics on the part of the Architect for such acts. The architect retains the right to protect his or her interests.

Under no circumstances, is it recommended by the Alberta Association of Architects to *delay seeking a resolution* and to continue work without payment until the project is completed.

(2) Assurances

Having regard for the same agreements referenced above, there may be other reasons whereby the Architect cannot seal, sign and therefore issue the C1 and C2 Schedules, given the assurances that they represent. Some examples are:

- a) Being unable to attend the site, given the withdrawal of service. A basic rule of field review is that one cannot certify what one cannot observe.
- b) Being denied access to the site due to a dispute with the Client or the Contractor.
- c) Unresolved matters related to project deficiencies and/or disputes with the contractor that preclude the acceptance of the declaration of Substantial Performance.
- d) Actions taken by third parties on site (including the Client) that the Architect discovers or is made aware of, that violate the building code or regulations under which the building permit is issued.

- e) Unattended matters related to life or health safety that render the site uninhabitable in the professional opinion of the architect as the coordinating registered professional (such as the discovered presence of toxic materials, mold, etc).
- f) Any other outstanding matters that preclude the provision of an assurance under seal and signature.

In each of these cases, the aforementioned obligations – advising of risk, acting reasonably to resolve matters and communication to fulfil fiduciary obligations still apply.

An architect when faced with such issues on a project - regardless of its rights in law, must nevertheless understand and evaluate the serious and practical implications involved with a decision to either with-hold services or in connection with this, Schedules C1 and C2.

There are always other considerations or mitigating circumstances that could impact such a precipitous, final decision – from Client relations and project economics to possible further issue with the Contractor or the authority having jurisdiction.

As such there may be other viable options to consider, other than a complete withdrawal of service or a complete refusal to issue the Schedules C1 and C2:

- a) Always consult legal counsel prior to initiating any action, to ensure one's contract provides adequate protection and; to explore other options.
- b) Consult one's liability insurer prior to initiating any action.
- c) Initiate discussions with the client to attempt a timely resolution.
  - i. Determine if there are alternate, professional and legal compromise position available, in the absence of complete resolution. This could include using one's lien rights to hold the matter temporarily in abeyance or, issuing Schedules C1 and C2 **suitably qualified**, to reflect the situation. (Most authorities having jurisdiction accept reasonably *qualified* schedules since the form is generic and may not reflect the actual circumstances surrounding a particular project.)
- d) Follow a formal contract process to find resolution (negotiation, mediation, or arbitration);
- e) If a final decision to withdraw from service or from issuing the Schedule C1 and C2 is taken, immediately notify the authority having jurisdiction 1) outlining the reasons and 2) advise if you are continuing to seek a resolution to the matter or alternatively withdrawing service entirely from the project until further notice. (*Note that any withdrawal from service that is permanent requires additional notice to the authority having jurisdiction*).

**Supplementary Practice Tips:**

1. It is strongly encouraged that architects review the contracts they are executing, if not the Standard Form of Agreement RAIC No. 6 or 7 as recommended by the Alberta Association of Architects, to ensure its rights are properly reflected and protected. Always seek legal advice.
2. RAIC Document 6 and Document 7 reference dispute resolution-methodology in relation to CCDC-40. It is recommended that all contracts include a method of dispute resolutions that is equivalent to these documents.
3. Be proactive with respect to account payments. Address any concerns at the first unpaid, partially paid or late paid invoice.

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