



Member Advisory: Infrastructure Canada Documents Regarding Construction Schedule and Substantial Completion

January 26, 2011

The AIBC has become aware of numerous requests being made of B.C. architectural firms that they sign Infrastructure Canada's "Statement Concerning the Construction Schedule" and "Solemn Declaration of Substantial Completion" as well as similar documents. **Note: both of these documents require architectural firms to provide services that are well beyond standard practice, and to make assurances outside of those which architects normally provide. Such assurances are inappropriate and potentially uninsurable.**

It is our understanding that these documents have been appearing and proving problematic in other parts of the country as well. The institute has been in contact with professional liability insurers in B.C., and they share our concern that firms would be placing themselves at great business peril if they were to complete these documents. Clients may be effectively voiding their own insurance protection by requiring architects to make commitments on matters outside of the architect's knowledge, experience and control. Specifically:

A) The "Statement Concerning the Construction Schedule" requires the architect to make a statement and certify results regarding a future event (i.e. the construction schedule) that is beyond the architect's control and, in most cases, beyond the architect's training and expertise. Making such a promise or statement is inadvisable as it exposes an architect to the risk of being held responsible for construction delays and consequential damages, which can be very costly. **The AIBC strongly recommends against signing any statement or certification with respect to a construction schedule as currently proposed by Infrastructure Canada.** If an architect was to provide services with respect to a construction schedule, it is strongly recommended that:

- Any wording that implies promises, such as "certify", not be used;
- Architects seek assistance from qualified parties possessing expertise in construction scheduling, such as experienced construction managers or quantity surveyors

appropriately expert in construction scheduling on the project type and scale at hand, and specific to the applicable market and time;

- The service provided, not anticipated by any standard client architect agreement, is carried out under contract and in exchange for appropriate fees in accordance with *AIBC Bylaw 28.1* and *AIBC Bulletin 67: Terms of Engagement*.
- The contract include a clause excluding liability and indemnifying the architect respecting delays in the construction schedule; and
- Architects seek the advice of their insurers and legal advisors before rendering any such service.

B) The “Solemn Declaration of Substantial Completion” should not be confused with the “Certificate of Completion” that forms part of the *BC Builders Lien Act*. Infrastructure Canada’s Solemn Declaration document requires that architects make declarations on matters that are indisputably and perilously outside of an architect’s expertise and industry standard scopes of practice, and well beyond an architect’s control. It is strongly recommended that architects:

- Do not make statements on “substantial completion” using language other than that contained within the *BC Builders Lien Act* without legal and insurance advice;
- Do not make “solemn declarations” regarding any matter that is not under their absolute and direct control, as well as within their expertise;
- Do not make any statement regarding the supervision, inspection or qualification of staff of other parties;
- Do not make any statement regarding conformity of plans, specifications and documents unless that statement is appropriately qualified in such a way that absolute conformity is not promised (e.g. “ ... **substantially** conforms ...”);
- Do not make any statement regarding conformity of plans, specifications and documents prepared by others, such as sub-consultants, even if the architect coordinated the services of those sub-consultants; and
- Do not make any statement whatsoever on environmental legislation and mitigation measures unless possessing special expertise in this field and appropriate, specific insurance for the provision of such services.

An architect cannot comment reliably on staff other than his or her own. Architects review construction in the normal course of providing architectural services; they do not supervise nor inspect it. Such activities are within the domain of contractors, inspectors and building officials. Architects can provide appropriate assurances regarding their own services, such as those required by the *BC Building Code* and within industry standard client-architect agreements. However, architects should not make commitments regarding documents prepared by others, even if they form part of a construction contract administered by the architect.

Environmental legislation and mitigation are matters for which an architect does not normally have the requisite knowledge, training or experience. For such matters, architects should direct their clients to seek technical assistance from appropriately qualified parties, and make clear to clients that architects are not responsible for, nor are they insured for advice regarding, environmental legislation and mitigation.

The AIBC is in discussions with Infrastructure Canada regarding these concerns, and is hopeful of developing a constructive solution, in the interest of the public, clients, and the architectural profession, that addresses:

- Responsible control over public funds through engagement under suitable terms and conditions of qualified consultants with appropriate and insurable scopes of work;
- The provision of insurable and professionally supportable architectural services; and
- Appropriate allocation of risk and liability for responsibly delivered services by architects for matters within their expertise, care and control.

Appreciation goes to the many firms who took the time to contact the institute and bring these matters to our attention.

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