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Code of Ethics and Professional Conduct

October 2011 Edition

Background

The AIBC's *Code of Ethics and Professional Conduct* (the "Code" or "Code of Ethics") is a compilation of three components. First, AIBC Bylaws that establish, with statutory authority, the underlying principles, values, standards and rules of behaviour for AIBC members, firms, associates and licensees.

Second, the Bylaws have been supplemented by Council rulings, which are binding 'rules' that identify and elaborate on the Bylaws' fundamental statements. Third, advisory commentary is included throughout the Code in an effort to provide practical, updated advice to readers.

This Code's content is coordinated with the sequence of those Bylaws in bold, Council rulings (identified by lettered paragraphs); and commentary (in italics) following the individual Bylaw. Please note that any given ruling or commentary typically appears only once, after the Bylaw with which it is most directly related, but applies generally.

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This is the current edition of the Code of Ethics. It replaces the December 2002 Edition, as last updated in February 2004. **The primary amendments are the addition of recent Council rulings to Bylaws 32.2 (“project attribution”), 34.5 (“responding to AIBC communication”) and 34.16 (“pro bono services”), with updated commentary throughout. Substantive new commentary has been added to Bylaw 34.8 (project takeover bylaw).** Revisions of significance are indicated with the sidebar symbol “■”.

Members, associates and licensees are encouraged to review this edition in its entirety to ensure that they have a current understanding of their ethical and professional conduct expectations.

Application of the Code of Ethics

It is important to note that while the word “architect” is used throughout the Bylaws and this Code for ease of reference, the Bylaws and this Code also apply to architectural firms, licensees and associates of the Institute. The only exceptions occur where the nature of the Bylaw, Council ruling and commentary – or the type of conduct at issue – may be specific to one or more type of AIBC registration category. For example, while all architects, associates, firms and licensees are expected to comply with the requirement that written contracts are executed prior to providing services (see Bylaw 34.10, Council ruling (d)), an associate should not be signing an agreement entitled “client-architect” for obvious reasons. Similarly, professional conduct and practice expectations as to the use of an architect’s seal apply only to architects as the only registrant category permitted to use a seal. Should any doubt arise as to the applicability of any Bylaw or Council ruling to an associate category, consult the AIBC.

The rulings and commentary in this Code in no way limit the general application of the Bylaws themselves, which govern. It is the responsibility of an architect to exercise professional judgement in all instances; decisions on any particular matter will be determined by its specific facts.

The AIBC from time to time also publishes a Tariff of Fees for Architectural Services; Bulletins; Practice Notes; and reasons for judgement or admissions in disciplinary cases, containing further interpretations, guidance and commentary. Such guidance, along with this Code, is subject to change. Architects and other registrants should ensure that they stay current by reading AIBC communications and contacting the Institute for clarification and guidance.

Bylaw 3.8 The Institute shall establish, maintain and publish a Code of Conduct for Council including Conflict of Interest Guidelines.

Refer to the document entitled, “Code of Conduct Including Conflict of Interest Guidelines For AIBC Council, Boards, Committees, Task Forces and Representatives”, adopted on March 15, 2001, by Council.

Bylaw 4.1 **The Institute shall establish, maintain and publish a Code of Conduct for Boards, Committees and Task Forces including Conflict of Interest Guidelines.**

Same note as for Bylaw 3.8, above.

Bylaw 9.0 **Each member upon notice of registration shall make and subscribe to the following declaration:**

“Solemnly do I declare that having read and understood the *Act* of the Architectural Institute of British Columbia, its Bylaws and Code of Conduct, and having passed the examinations, I am eligible for membership. Further do I announce that I will uphold professional aims, and the art, and the science, of architecture and thereby improve the environment. I also accept with obligation the need to further my education as an architect. I promise now that my professional conduct as it concerns the community, my work, and my fellow architects will be governed by the ethics and the tradition of this honourable and learned profession.”

This “oath” underpins and informs the profession’s fundamental obligations and expectations of its members.

28.0 Professional Engagement

Bylaw 28.0 **The architect’s professional services shall be engaged subject to the following conditions:**

Bylaw 28.1 **Services, responsibilities and General Conditions shall be based upon and generally consistent with those described in the most recent edition of the “Canadian Standard Form of Agreement Between Client and Architect”, or such other form of agreement as Council may approve.**

Refer also to Bylaw 34.10; rulings, especially (d) and (f), and commentary thereunder in this Code of Ethics and Bulletins 66 & 67.

Bylaw 28.2 **Certification as to construction performance and as to payment therefor requires such general review of the work as the architect deems necessary.**

An architect’s unfettered capacity to exercise his or her professional discretion as to the extent, depth, timing, nature and frequency of field reviews is fundamental to an architect’s professional ability to responsibly certify or provide assurance, under terms of accepted client/architect agreements, construction contracts, building code schedules and lien legislation.

Bylaw 28.3 All drawings, specifications, models and documents prepared by the architect as instruments of service shall remain the architect's property, the copyright in the same being reserved to the architect in the first instance. As a precondition of their use, all fees and reimbursable expenses due the architect are to be paid.

This is consistent with copyright law and the standard form of client/architect agreement.

The fees and reimbursable expenses to be paid are those corresponding to the generation of the instruments of service. The "use" referred to in the Bylaw (unless contracted differently) is by the same client; for purpose(s) intended; one time only; on the intended property. The Bylaw does not create a requirement or expectation that the first architect issue a 'release' or permission slip for the use of that first architect's design and/or drawings if the services that generated the instruments of service have been paid for (see also Bylaw 34.8).

Payment means that monies are no longer outstanding. Holding monies in trust pending resolution of a dispute does not constitute payment.

Refer also to "Guidelines on Intellectual Property" published jointly by the AIBC, Consulting Engineers of British Columbia (CEBC); and Association of Professional Engineers and Geoscientists of BC (APEGBC).

30.0 Competence

Bylaw 30.1 In practising architecture, an architect shall act with reasonable care and competence, and shall apply the knowledge, skill and judgement which are ordinarily applied by architects currently practising in the province of British Columbia.

- (a) An architect shall remain informed with respect to the practice of architecture in British Columbia.

This Bylaw approximates the "reasonable architect" test for negligence.

It is an architect's responsibility to recognize personal impairment to the ability to function competently and, when so impaired, to withdraw from practising architecture until competence is restored. This includes impairment arising from physical or mental health issues, financial difficulties and personal or family matters serious enough to cause an architect to be unable to satisfy competency standards.

Bylaw 30.2 In order to better serve the public, and in keeping with the architect's declaration set out in Bylaw 9.0 and the obligation of the architect set out in Bylaw 30.1, an architect shall undertake continuing education and shall report on that continuing education to the Institute, in accordance with the rules for mandatory continuing education established by Council.

Refer to Bulletin 80 for Council rules relating to compliance.

Bylaw 30.3 An architect shall undertake to perform professional services only when qualified, together with those whom the architect may engage as consultants, by education, training and experience in the specific areas involved.

- (a) An architect shall limit professional practice to areas of personal competence or shall engage others (including staff) who are competent in supplementary areas.
- (b) Where so governed under provincial statute, other professionals must be engaged to practise their professions.

An architect is authorized to undertake architectural services for any project, but must recognize personal and professional limitations and must refrain from rendering service in those areas until such limitations are overcome.

An architect must be able to manage and coordinate the provision of other design professionals' services competently, whether the other professionals are engaged by the architect or the client.

31.0 Conflict of Interest

- (a) Except as permitted hereunder and with full disclosure under Bylaw 32.0, an architect shall avoid actions and situations where the architect's personal interests conflict or appear to conflict with professional obligations to the public, the client and to other architects.

With reference to Advisory Design Panels, see Bylaw 32.1(b) and Bulletin 65, part B.

Refer also to Bylaws 3.8 and 4.1 and commentary thereunder in this Code of Ethics regarding an architect's conduct in the service of the Institute.

Bylaw 31.1 An architect shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be in writing) by all interested parties.

- (a) All parties compensating an architect must so agree prior to the architect's rendering services to the second and subsequent parties.

This Bylaw permits multiple loyalties only when all parties agree.

Bylaw 31.2 An architect having a personal association or interest, which relates to a project, shall fully disclose in writing the nature of the association or interest to the architect's client or employer. If the client or employer objects, then the architect will either terminate such association or interest or offer to give up the commission or employment.

- (a) Personal association includes (but is not limited to) friendship or family relationship; personal interest includes (but is not limited to) direct or indirect potential for financial or material gain.
- (b) An architect is required to make disclosure as soon as there is a personal association or interest, or an awareness of a potential or perceived conflict of interest, to which a client or employer might object.

The architect should also make disclosure to subconsultants and other project team members.

The architect should also request the architect's staff and subconsultants to make similar disclosures to the architect.

Bylaw 31.3 Except as permitted under Bylaw 32.7, an architect shall not solicit or accept compensation or benefit from material or equipment suppliers in return for specifying or endorsing their products.

- (a) Under this Bylaw, "endorsing," means "accepting" or "approving" for use on a project.
- (b) Pursuing or receiving a "kickback" is disallowed.
- (c) An architect must make recommendations based on independent professional judgement and uncompromised evaluation.
- (d) Neither agreement between the parties nor disclosure (in whole or in part) of the receipt of benefits in exchange for recommending products will eliminate or waive the architect's conflict of interest under this Bylaw.

Refer to Bylaw 32.7 for other conditions.

The overtures of suppliers should be evaluated with caution. It is acceptable to become educated about a product by attending gratuitous seminars and participating in promotional trips for familiarization. It is not acceptable to receive inducements (financial or otherwise) which may be seen as impairments to one's professional judgement.

Bylaw 31.4 An architect acting as the interpreter of construction contract documents and reviewing construction for conformance with the contract documents shall render decisions impartially.

- (a) Regardless of which party in a project's administrative structure has engaged and pays the architect, the architect shall interpret construction contract documents impartially, as if disinterested.

Impartial decisions may reflect adversely on perceptions of the quality of the design or documents produced by the architect. This cannot deter impartiality. The architect should seek advice from legal counsel or direction from professional liability insurers when situations arise where impartial decisions may imply, or cause others to infer, an acknowledgement of responsibility or potential liability by the architect.

Bylaw 31.5 An architect may be a project's owner. An architect may be a project's contractor, of the architect's own design and/or construction contract documents. An architect who is a project's owner or contractor shall fully disclose in writing such status to all of the project's authorities having jurisdiction and contracting parties; shall receive their written acknowledgement; and shall provide professional services as if disinterested.

- (a) As a project's owner, only, an architect (who is not providing architectural services on the project) need not make disclosure.
- (b) An architect may be a project's contractor only if the project is also designed by the architect or if the architect also produces the construction contract documents, and makes disclosure.
- (c) An architect's written disclosure shall identify the architect personally by name as the owner or contractor, or both, as the case may be. Such disclosure is required for any amount of ownership.

The project's authorities having jurisdiction include the officials known to the architect to be in charge of the various aspects of the project's review and approval process from the authorizing or rezoning applications through development permit applications, building permit applications, etc.

The project's "contracting parties" include those parties known to the architect to be in contract with the architect, the owner, and construction contractor (or construction manager or project manager).

Disclosure should be made at the earliest opportunity, and also recorded in the architect's construction contract documents and application forms to authorities having jurisdiction.

- (d) An architect who is also a project's owner or contractor must render architectural services as fully and impartially and must be as disinterested as an architect who is solely serving a third-party client. Financial interests must not override professional responsibility and impartiality.

An architect who is also a project's owner or contractor should seek direction with respect to availability of professional liability insurance coverage.

Bylaw 31.6 An architect who is a juror or advisor for an approved competition shall not subsequently provide any services to the winner or, if there is no winner, for any derivative commission.

- (a) This applies equally to an architect who was, or who had agreed to serve as, a juror or advisor but was discharged or withdrew.

32.0 Full Disclosure

Bylaw 32.1 An architect shall disclose if the architect has a related personal or business interest when making a public statement on an architectural issue.

- (a) Personal interest includes (but is not limited to) friendship or family relationship or direct or indirect potential for financial or material gain.
- (b) An architect serving on an advisory design panel or other like committee, reviewing either a proposal's character or a candidate's qualifications, must make known any involvement in an application being reviewed or any other relationship that might constitute a conflict of interest and withdraw from the meeting and any discussion or evaluation of the merits of that matter.

Refer to Bulletin 65, part B.

Bylaw 32.2 An architect shall accurately represent to the public, a prospective or existing client or employer the architect's qualifications and the scope of the architect's responsibility in connection with work for which the architect is claiming credit.

- (a) An architectural firm's representations must accurately reflect current principals and staff capacities.
- (b) An architect or firm claiming credit for a project, or any part of the architectural services on a project, must ensure that credit is given to the project's original firm or firms and that any credit taken is accurate and limited to the extent of services provided.

Refer to Bulletin 44 for in-depth guidance on project attribution.

This Bylaw addresses the general public's, architects' and clients' concerns about the accuracy and credibility of architectural proposals, marketing and other representations and the résumés of architectural job applicants.

Appropriate credit should be given about projects undertaken with or by other firms. In some cases, more than one firm may be given credit, as a result of collaboration on a project, transition between firms during a project's lifespan or other scenario, but not to the exclusion of the original firm(s).

The more peripheral the services provided by a firm, individual architect or associate on a project, the more careful such registrant must be in claiming credit. Members and associates should take particular care to ensure that graphic representations of projects – whether photographs, drawings or other media – relate accurately to the services claimed and do not overreach. The public is entitled to know the firm of record and the level of involvement claimed by any other architect or firm on any project for which credit is claimed.

*In addition, associates claiming credit for work outside the statutory 'exceptions' in the **Architects Act** must be cautious that such depictions do not imply, or lead to an inference, that the associate was an architect or an architectural firm. If the associate provided services for such projects, credit taken should be appropriate and credit must be given to the original architectural firm.*

Bylaw 32.3

An architect who, in the provision of services, becomes aware of an action taken by the architect's employer or client, against the architect's advice, which violates legal requirements, must not condone or be complicit in such a situation. An architect in such a situation must take all reasonable steps to convince such an employer or client to comply with the legal requirements. The architect shall:

- (i) refuse to consent to the action; and, if the action is not rectified in a timely manner, then**
- (ii) report the action to the authority having jurisdiction and, if the authority confirms the violation and the action is not rectified in a timely manner, then**
- (iii) terminate services on the project.**

"Legal requirements" encompass all applicable building laws and regulations that apply to the project. This includes, for example, health, zoning, development permit and building permit requirements.

This pertains to requirements, which have the force of law, as opposed to those which are only guidelines, opinions, or decisions of a subjective or discretionary nature, rendered without legal authority.

Termination is a last resort in the face of an action taken and persisted with by an employer or a client, despite the architect's advice to the contrary and in contravention of a ruling by the authority having jurisdiction, having exhausted available appeals.

Note: Enforcement of the legal requirements with respect to the action is a matter for the authority having jurisdiction, not the architect. Should the authority determine that the reported action does not constitute a violation, or decide not to require its rectification, such conclusions shall be confirmed to the authority in writing by the architect, copied to the client.

Bylaw 32.4 An architect shall not knowingly make or assist others to make, either a false or misleading statement or an omission of material fact about education, training, experience or character when applying for or renewing registration as an architect.

*Under section 64 of the **Architects Act**, an architect also must not intentionally make or cause to be made any false representation for the architect or another person with respect to obtaining a certificate of practice, licence, or admission as an associate of the AIBC.*

Bylaw 32.5 An architect who knows of an apparent violation of the *Architects Act*, Bylaws or Council rulings shall report such knowledge to the Institute.

- (a) An architect must not withhold information from the AIBC about an apparent infraction regardless of who might ask the architect or require the architect under an agreement, to do so.

Refer also to Bulletins 62 and 65, part B.

*It is every architect's ethical duty to act in the public interest. There is an overriding professional obligation for an architect to report apparent infractions of the **Architects Act** and its Bylaws to the AIBC. The Institute, on behalf of the public, cannot receive such information "in confidence" and may be obliged to investigate apparent infractions.*

An architect cannot generally avoid such ethical obligation by seeking an exemption, or by making a private agreement of confidentiality. That would be contrary to public policy. An architect is, nonetheless, able to communicate with the Institute about the nature of a situation, or on a hypothetical basis, and receive relevant information or advice, recognizing the inherent limitations of such advice.

Notwithstanding the generality of the foregoing, information received by an architect acting in certain official or other capacities (e.g., as an elected official) may be protected by statutory confidentiality requirements, or by "solicitor-client" privilege (when acting, e.g., as a lawyer, or as an expert prior to taking the stand)

with respect to ongoing or anticipated litigation, and is not obliged to report information so received to the Institute.

- (b) An architect acting in the capacity of a mediator or arbitrator, under an agreement that includes a confidentiality provision, is not obliged to report information so received to the Institute.

Bylaw 32.6 Except as prohibited by Bylaw 31.3, an architect, whether compensated or not, may permit the architect’s name, portrait or reputation to be attached to an endorsement of other’s services or products.

This permits an architect to commercialize the architect’s name.

Under this Bylaw, “endorsement” is acceptable for personal benefit; however, personal benefit must not influence professional judgement. The endorsement could be in the form of a letter of reference, announcement or advertisement. Refer to Bylaws 31.2 and 31.3 for other conditions.

Bylaw 32.7 An architect having a financial interest in any building material or device which the architect proposes to specify for a project shall disclose this interest to the client and shall request and receive written approval for such specification from the client and shall include a copy of this approval in the construction contract documents.

- (a) This permits an architect to have prior or ongoing proprietary interest. The architect should also request the architect’s staff and subconsultants to make similar disclosures to the architect.

Bylaw 31.3 prohibits an architect from receiving benefit in return for merely specifying or “endorsing” (i.e., accepting or approving) others’ products for use on a project.

33.0 Compliance with Laws

Bylaw 33.1 In practising architecture, an architect shall not knowingly violate any law or regulation.

- (a) An architect must not counsel the architect’s employees, consultants or associates knowingly to disregard, violate or otherwise abuse any bylaw, regulation or code affecting the practice of architecture.

The public has the expectation that architects respect and substantially comply with laws and regulations that apply to the practice of architecture, excluding those concerning construction safety (the field of construction safety being outside the practice of architecture). This includes federal, provincial and municipal laws as well as the regulations of statutory bodies.

Architects must keep themselves apprised of current applicable laws and regulations that relate to the practice of architecture in British Columbia. An architect is not expected to be familiar with the details of all laws and regulations in every jurisdiction but is expected to have general knowledge of specific laws and regulations in the jurisdictions in which the architect is working, and also which authorities have jurisdiction over particular aspects relating to the practice of architecture. (Refer also to Bylaw 33.4)

An architect seeking to promote or to provide architectural services outside British Columbia, or to a client or on a project located outside British Columbia, should check in advance and comply with the requirements of the applicable architectural licensing authority.

Bylaw 33.2 An architect shall neither offer nor make any payment or gift to a public official (whether elected or appointed) with the intent of influencing the official’s judgement in connection with a prospective or existing project.

- (a) An architect must not offer or provide a bribe or “kickback” to any person.
- (b) Nominal entertainment and hospitality expenditures by an architect hosting a public official are permitted.

An architect must recognize, however, the importance of perception in dealings with public officials. While there may be no intent to directly or indirectly influence an official’s judgement, it is incumbent on the architect to examine how any favour given to public officials might be reasonably perceived by others, and act accordingly.

Bylaw 33.3 An architect shall comply with the *Architects Act* of British Columbia, the *Bylaws under the Architects Act*, and Council rulings.

Council of the Institute keeps members informed of all changes to the Act and Bylaws and regularly publishes rulings and advice to assist members in their understanding of interpretations and policy. It is incumbent on members to read such material and to keep it on hand for reference when needed.

- (a) An architect must not directly or indirectly condone or encourage contravention of the *Architects Act*, Bylaws and Council rulings by others.

Refer to Bulletin 65, part B.

Bylaw 33.4 In practising architecture, an architect shall take into account all applicable federal, provincial and municipal building laws and regulations and an architect may rely on the advice of other professionals and other qualified persons as to the intent and meaning of such regulations.

This Bylaw recognizes the increasing complexity of laws and regulations applicable to the practice of architecture. This Bylaw is complementary to 33.1 in that compliance is mandatory but permits the architect to rely on the advice of others qualified by education, experience or training to provide interpretation.

In relying on the advice of others, it is incumbent on the architect to determine that such persons have the requisite credentials and responsibilities for providing that advice; to brief such persons properly relating to issues on which advice is sought; and to confirm such advice in writing.

34.0 Conduct

Bylaw 34.1 Each office maintained for offering architectural service to the public shall have an architect who has direct knowledge and supervisory control of the services.

- (a) An architect's site or auxiliary office for a specific project is a convenient extension of the base office for a single project and is not itself permitted to offer or to provide independent architectural services to the public.

The public is entitled to expect that the services offered and provided by an architect's office, including a branch or secondary office, are supervised and controlled by an architect.

Should there be fewer architects in an architectural firm than it has offices, resulting in a branch office without a full-time architect, particular care and diligence must be exercised to ensure compliance with this Bylaw and the AIBC may require that to be demonstrated. In branch offices as much as elsewhere, it is important to be cautious to ensure that the public, including clients, are not misled by any misrepresentations as to staff qualifications and professional status.

- (b) Proposals of service; agreements; assurances; certifications; official submissions to authorities having jurisdiction; and other representations on behalf of an architectural firm or certificate of practice holder must be made by an architect.
- (c) When an authority having jurisdiction receives a formal presentation (e.g., to a design panel, public hearing, advisory commission or elected body) on an architectural matter, the presentation shall be made by (or under the attending, personal supervision of) an architect.

The public is entitled to expect that formal representations on architectural matters be made by an architect.

Bylaw 34.2 An architect shall seal the architect's work in accordance with the requirements of the *Architects Act* of British Columbia and the Bylaws and Council rulings.

- (a) An architect's professional seal is to be applied only by that architect and is to be used only on documents prepared by the architect personally or by other persons under the architect's supervision, direction and control.

This applies to architects providing services to clients of varying characteristics, including building owners, design/build entities and other architects ... and in roles which include, for example, those of prime consultant, coordinating registered professional, payment certifier and in such specialized capacities as code consultant (including that of a Certified Professional under that program) and Building Envelope Professional under Bulletin 34.

*Under sections 77 and 78 of the **Architects Act**, effective June 1994, only a practising architect may apply that architect's professional seal and must do so, with signature and date, to letters of assurance, certificates, drawings and specifications. See also Bulletin 60 and Bulletin 61.*

Bylaw 34.3 An architect shall neither offer nor make any gifts, other than of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgement of a prospective client in connection with a project in which the architect is interested.

- (a) An architect must not offer or provide a bribe or "kickback" to any person.

While the Bylaw refers specifically to prospective clients, the architect is advised to exercise similar judgement with respect to existing clients or former clients as such action might be deemed to influence these persons for future projects.

Bylaw 34.4 An architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.

*Under section 44 of the **Architects Act**, a person convicted of certain offences is subject to removal from the register.*

Bylaw 34.5 An architect shall conduct the architect's affairs in a professional manner and refrain from any act which would reflect unfavourably on the profession as a whole.

- (a) An architect's conduct towards other architects shall be characterized by courtesy and good faith.
- (b) An architect shall give due regard to the professional obligations of those from whom the architect receives or to whom the architect gives authority, responsibility or employment, or of those with whom the architect is professionally associated.

- (c) An architect shall give due regard for the interests of both those who commission and those who may be expected to use or be exposed to the product of the architect's services.
- (d) An architect who engages in any profession, business or occupation concurrent with the practice of architecture must not allow such outside interests to jeopardize or come into conflict with the architect's professional integrity or obligations.
- (e) Dishonourable conduct in the professional or private life of an architect, which reflects adversely on the integrity of the profession, must be avoided.
- (f) An architect shall respond promptly to all AIBC communication requiring a response.
- (g) An architect shall co-operate fully with the AIBC in any professional conduct matter at whatever stage, including attending in person upon request, summons or notification by any professional conduct committee, board or panel.
- (h) An architect shall promptly notify the AIBC of any change in contact information, including address, phone and fax number(s), e-mail address and any other contact information that the AIBC may from time to time require.

This Bylaw and its many rulings provide essential ethical underpinning for an architect's conduct, whether acting in a professional capacity or otherwise.

Architects and associates are reminded that certain 'off the job' or private behavior that may be seen as damaging the integrity of the profession, often known as 'conduct unbecoming' can become a matter for professional discipline. Council rulings (f) through (h) reinforce the expectation that members and associates will assist the institute in its various regulatory roles by responding to communication of any kind, cooperating in disciplinary matters and providing updated contact information.

Bylaw 34.6 An architect shall not falsely or maliciously injure the professional reputation or business prospects of another architect.

This Bylaw does not prohibit architects from making fair and honest comments on the work of other architects. Such comment must be based on considered knowledge of the project or subject in question, representing an informed, legitimate point of view.

A listener is entitled to expect that an architect providing comment does so knowledgeably. The architect's comment must withstand scrutiny in order to be regarded as credible.

This Bylaw does not prevent unsolicited public statements or architectural criticism. This Bylaw applies also to the provision of advice or services for which

an architect is paid, including those as an arbitrator or as a provider of “second” or “expert” opinion with respect to another architect’s project(s), documents or services.

An architect should avoid imprudent gossip or generalized comments about another architect, another architect’s work or reputation, or type of project.

Bylaw 34.7 An architect shall not supplant or attempt to supplant another architect after the other architect has been retained or definite steps have been taken toward the other architect’s retention.

Subject to the terms of the client/architect agreement (contract), a client is free at any time to dismiss the architect, and this Bylaw does not protect either mismatched clients or architects. It protects the relationship between a client and an architect from interruption by another architect.

The client/architect relationship, particularly in its early stages, is delicate because mutual trust and understanding are formative and easily undermined. The profession values a good relationship between client and architect because it is invariably cited as the basis of good architecture. Hence, when the client has made a choice, other architects must cease their overtures.

Note: This restriction does not prevent an architect from approaching a potential client who has a broader program of prospective work which is not yet allocated to another architect.

Bylaw 34.8 An architect may only accept a commission for a project when the services of any architect previously retained for the project have been terminated.

- (a) An architect, on being either approached or instructed to proceed with services for which the architect knows or can ascertain by reasonable inquiry that another architect is or has been engaged by the same client, shall notify the other architect in writing of that fact.

The ethical responsibility for notifying a previously engaged architect lies with the new architect and cannot be delegated to the client. Upon notifying the previous architect in writing, the new architect is under no obligation to delay acquiring the commission until the first architect’s fee has been paid.

This Bylaw requires the termination, but not necessarily the financial resolution, of the predecessor architect’s services prior to a successor architect making a proposal or being interviewed for, or accepting, a commission.

The term “commission” refers to a scope of architectural services for a client with regard to a set of project parameters or building program.

- (b) The foregoing notwithstanding, there are several necessary pre-conditions to a “successor” firm’s providing services which are based upon and which continue and complete those initiated by its predecessor:
- (i) there must have been no supplanting of the original firm by a successor firm;
 - (ii) the resignation or termination of the original firm must have been done in accordance with the terms of its client-architect agreement;
 - (iii) the original client must have paid for the services of the original firm;

Refer also to Bylaw 28.3; the services needing to be paid for are those which generated the design, drawings and/or other instruments of service which are to be used by that client and successor firm.

In some situations, the first architect will have been duly paid for services up to a certain point in the project (e.g., for development permit drawings and related work) but not other services (e.g., building permit or construction drawings). In such cases, this Bylaw does not prevent the successor architect from providing services based upon the ‘paid up’ services, as long as the other requirements are met.

- (iv) in the case of property transfer to a new owner, there must have been legal acquisition by the new owner of the original architectural firm’s copyright and drawings (either directly from the original firm or from the original owner, if that owner was legally entitled to sell them).

The minimum obligation arising under this Bylaw for a second architect is to give proper and prompt notification to the first architect on a project, even if the second architect has merely been approached to provide services. The next obligation – to satisfy him/herself that the first architect was terminated – arises if the second architect intends to make a proposal, attend an interview or accept a commission for the project. The final tier of obligations is triggered by the second architect actually providing services based on those of the first architect. In that case, the second architect will want to conduct sufficient inquiries so as to be satisfied that the requirements in subsection (b) (i) – (iv), above, have been met.

An architect who has been replaced partway through a commission should not unreasonably withhold consent to a subsequent architect’s referring to the replaced architect’s work, or using the architect’s design or instruments of service, in order to complete a commission.

This aspect of the Council ruling related to the first architect ‘not unreasonably withholding consent’ is intended, in part, to discourage the first architect from making unreasonable or false assertions as to the first architect’s entitlement to fee payments, thereby preventing or delaying a successor architect from

continuing a commission. The Bylaw and Council ruling are not intended to be used improperly by the first architect to 'enforce' inappropriate or dubious payment expectations.

Bylaw 34.9 An architect may only provide the same service for the same client on the same project as another architect through the medium of an approved competition.

Refer to Bulletins 63 and 64.

- (a) The “same client” includes technically different clients, authorities or departments connected to or part of a broader client.
- (b) Any attempt to circumvent the Bylaws by sequential engagement and disengagement of a series of architects is considered a non-approved form of competition.

This Bylaw prohibits unsanctioned competitions but does permit fair review, analysis or expert opinion services by a “second” architect because either the client or the services will be different for each architect.

Bylaw 34.10 Except in an approved competition, an architect shall provide no form of service until retained and in receipt of the client’s instructions.

Public expressions, submission or dialogues with respect to architectural issues, undertaken without compensation in the community interest and without having or seeking or anticipating a client, are permissible.

- (a) Speculative services to lure or entice a client, or “loss leaders”, are not permitted.
- (b) Prior to being retained, an architect is not permitted to provide solutions, suggestions, ideas or evidence of same (in any format) which have value to the client or upon which the client might be expected to rely.

The foregoing applies not only to design, costing and technical matters but also to considerations of management, methodology and scheduling information beyond that which is required for the architect to determine and submit a credible proposal for services and fees.

In making an expression of interest or proposal to a prospective client, an architect may promote the architect’s experience, capabilities, resources and capacity to demonstrate to advantage the architect’s suitability, including an understanding of that client’s needs and the project’s relevant issues.

- (c) An architect has a duty to communicate with a client and to keep a client reasonably informed.

- (d) An architect must confirm the terms and conditions of engagement, in a written agreement with the client, executed prior to the architect's commencing work, on any commission.

Refer to Bylaw 28 and related commentary in this Code of Ethics, and Bulletin 67.

- (e) Before entering into an agreement to provide architectural services, a Certificate of Practice holder must notify the client in writing whether or not professional liability insurance is held and under what terms.

Refer to Bulletin 66.

- (f) Each (i) proposal for architectural services, and (ii) client-architect agreement (contract), must contain the statement that it "is in compliance with the AIBC Bylaws, including especially (but not limited to) Bylaw 28: Professional Engagement and Bylaw 34.16; the Tariff of Fees for Architectural Services; and the Code of Ethics."

Refer to Bulletin 67.

Rules (c) through (f) above reinforce client awareness of an architect's professional obligations along with the need to articulate mutual understandings before commencing services...that being very much a matter of consumer protection as well as being of benefit to the architect.

- (g) An architect who provides personal input to a public organization, occupies political office or is a board or committee member (on either a paid or voluntary basis) must not provide any form of architectural services to that organization in that capacity (but may do so in accordance with Bylaw 34.16).

Bylaw 34.11 An approved architectural competition is either a competition conducted according to the current "Canadian Rules for the Conduct of Architectural Competitions" or an alternate arrangement, specifically approved in writing by Council, that assures equitable treatment and equal and adequate remuneration to participating architects.

Refer to Bulletin 63.

- (a) Prior to an architect's participation, an architectural competition's "approved" status must be confirmed with the AIBC.
- (b) An architect invited to participate in a non-approved architectural competition must decline the invitation and advise the AIBC of the competition.

Bylaw 34.12 An architect's conduct when participating in an approved competition must comply with the "Canadian Rules for the Conduct of Architectural Competitions" or as directed by Council.

Bylaw 34.13 An architect shall not attempt to influence the awards of an approved competition, except as a jury member.

- (a) Any actions which involve bribery, pressure or unusual contact with the competition authorities, are prohibited.

Queries, communications and clarifications of competition conditions may be made only as directed by the rules of the competition.

Bylaw 34.14 An architect shall not attempt to obtain a commission to be awarded by an approved competition, except as an entrant.

Any effort to circumvent the competition process would be considered supplanting and is unprofessional.

Bylaw 34.15 An architect receiving monies for services provided by others shall not use such monies for the architect's own purposes, and shall distribute them promptly to those so entitled.

- (a) This Bylaw requires an architect to fulfil the expectation that funds received by an architect on behalf of others will be properly managed.
- (b) Receiving monies for services provided by others would include fees or disbursements invoiced to a client for project-related services, provided under contract to the architect by subconsultants and suppliers. This provision does not apply to employees of the architect.

The monies received should be distributed or paid to others and not diverted for the architect's own purposes and therefore be inaccessible. Payment may be in full or on a pro-rata basis on the monies received. Payment shall be made "promptly" as agreed on the basis of good business practice, (e.g., monthly or upon receipt of monies).

Bylaw 34.16 Except when providing *pro bono* services or services on a contingency basis, or as approved by Council, an architect shall provide services and receive fees in substantial accord with the Tariff of Fees for Architectural Services.

Note rule (f) under Bylaw 34.10 in this Code of Ethics, as it applies to compliance with Bylaw 34.16 regarding each (i) proposal for architectural services, and (ii) client-architect agreement / contract.

Under this Bylaw, except as otherwise approved by Council, there are three fundamental ways of determining professional fees for service, without diminishing the scope and standards of agreed services on a project:

- (I) Tariff of Fees for Architectural Services
- (II) Pro Bono
- (III) Contingency

In all cases, architectural services may only be provided by architects or architectural firms (or approved combination(s) thereof) which are the holders of certificates of practice.

- (a) “Pro bono” or contingency-based architectural services may not be offered or provided for any project that is subject to the rules of an approved competition; for which an architect already has been retained; or for which definite steps have been taken to retain an architect.
- (b) Services provided on a “pro bono” or contingency basis shall be no less than if provided for the applicable fee in the Tariff, thereby ensuring that an appropriate level of professional service is received by the client.
- (c) An architect providing “pro bono” or contingency-based services must enter into a client/architect agreement that clearly states the services and nature of compensation.

Architects are reminded that the provision of pro bono services does not eliminate or even reduce liability risks from professional conduct or civil liability perspectives. In addition to ensuring that a client-architect agreement is in place in keeping with Bylaws 28.1 and 34.10 (Council ruling (d)), architects are reminded that ‘pro bono’ services for clients must comply with all applicable Bylaws and Council rulings. Firms should consult their insurers and take suitable legal and other professional advice prior to entering into ‘pro bono’ agreements in order to understand and address risk management issues.

(I) Tariff of Fees for Architectural Services

*Under the authority of section 24(2)(e) of the **Architects Act** and Bylaw 29, the AIBC publishes and maintains a Tariff of Fees for Architectural Services, under separate cover.*

Architectural practice in British Columbia is founded upon the requirement that an architect must be retained and in receipt of the client’s instruction before providing service. (cf. Bylaw 34.10) It has been the profession’s long-standing policy that the compensation for services should be as outlined in its published Tariff of Fees for Architectural Services. These fees have a long and tested tradition and have proven to provide an equitable level of compensation that enables a proper level of basic services.

Proper service is the critical issue. Inadequate fees are not an acceptable excuse for inadequate services.

The Tariff is a general guideline of appropriate fees for services. It is neither a list of median (or minimum, or maximum) fees nor a price list. The Tariff does not specify what the fee for a specific project must be. Rather, the Tariff is a budgeting check that warns when appropriate fee levels are breached and that the real likelihood of inadequate services has been reached. The provision of inadequate services is contrary to the public interest and this Tariff is one of many preventative measures employed by the profession to guard against inadequate services.

- (d) Appropriate fees for “partial services” are correspondingly less than those recommended in the Tariff. Proposals which are not in substantial accord with the Tariff, contravene this Bylaw.

(II) Pro Bono

- (e) *Pro bono* architectural services are those rendered without fee as a public service. They are intended for clients and projects that, in the architect’s professional opinion, merit such services. In general, *pro bono* services are intended to assist such deserving clients as non-profits, community groups, charities and international development organizations, but only when funding for an architect’s services is extremely difficult or impossible to obtain. Specific commissions related to public good, such as the conservation of a meritorious building for the benefit of the general public, also qualify. Architects are not permitted to use the provision of *pro bono* services as a loss leader or other enticement leading to fee-for-service work or for any purpose not in keeping with the inherent ‘public good’ motivation.

Pro bono is a common abbreviation of the phrase “pro bono publico”, which literally means “for the public good”. Architects must judge for themselves whether a particular client and project are deserving of the public service commitment inherent in providing pro bono services. The provision or offer of pro bono services by an architect for motivations other than philanthropic, public good or public service should be avoided. Architects should also carefully consider firm capacity and potential liability exposure prior to agreeing to provide pro bono services.

- (f) “Pro Bono” services are services for no fee of any kind at any time. “Pro Bono” services are a gift. Nothing of worth, tangible or not, is to be expected or received in return by the architect.

Disbursements incurred by such services may be invoiced and reimbursed.

- (g) Architectural services are either “pro bono” or not and cannot be provided on a project on the basis that some are “pro bono” and some are not. Similarly, a single service cannot be apportioned as partly “pro bono”.

“Pro bono” architectural services may include services from such others as professional engineers, etc., whose services may or may not be “pro bono” as agreed upon with the client.

In the hands of the recipient, “pro bono” services might be deemed income, a taxable gift or otherwise taxable by tax authorities. Similarly, in the hands of the giver, such services might be taxable. If so, an amount equal to the taxes could be regarded as a reimbursable disbursement. An architect should obtain legal and accounting opinion in such matters.

Under this Bylaw, it is not acceptable to provide service as a donation to be exchanged for a tax deduction. Donations are tax vehicles to implement a social policy wherein monies that would otherwise go to tax receivers are permitted to go to administrators of legally constituted worthy causes. Should an architect or an architectural firm wish to make a donation, it must not be made as a means of reducing professional fees or obtaining a commission.

Even should the exchange of services for a tax deduction be legal, it does not qualify as “pro bono”, but, rather, is an alternate form of payment, albeit inadequate. Similarly, the fees that would otherwise be due for “pro bono” services are not to be viewed as un-invoiced “bad debts”. “Pro bono” services are also not negotiable. They cannot be exchanged for goods or services in the underground economy or for favours in an underworld economy, e.g., bribes or kickbacks.

(III) Contingency

- (h) Services on a **contingency** basis may be provided to assist a client in the preliminary phases of project development where the risk of financial failure is high, much greater than that of success.

Bylaw 34.16 does not permit the provision of architectural services on a merely speculative basis.

Bylaw 34.16 recognizes the entrepreneurial value to society of services on a project which probably will not succeed financially. Contingency-based services are intended to assist a client who, against reasonable odds, proposes and pursues a development that the client believes will be financially successful. In such a project, an architect’s advice must strongly discourage the client, who nonetheless takes the risk.

Success will normally result in increased value of profits for the project, in which the architect will share as a result of the architect's efforts. The "contingency" portion of an architectural service includes only the design phases, which involve a development permit or rezoning application.

- (i) The fees for contingency-based services on projects which succeed financially shall be no less than three times the fees as described in the Tariff of Fees for Architectural Services.

A contingency agreement shall define success for the project in a manner that readily permits the client and architect to estimate the dollar amount of the architect's fees (for both the contingency portion and in their entirety) before the architect's services commence.