

When a Client Changes Architects - Different Client or Project

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Summary

In general, the proceeding of work commenced by another architect may on the surface seem like a termination of one architect's services and engagement of another regulated by the Regulation under the Architects Act, but may in fact be different if the client or the project or the purpose is not the same. Rights and obligations of the parties may vary depending on the stages of development of the project and consent (or not) for the continued use of documents or the design.

Background

A number of situations occur where an architect has been engaged to continue the work started by a previous architect. This can occur at virtually any stage in the development of a project, and often arises out of the purchase of a project from a previous client (either through a power of sale or conventional real estate transaction). The vendor in many cases includes in the transaction the work of the architect whose services ceased with the client's halt of the project. The architect is often unaware of the client having "sold" the architect's documents with the project, without the right to do so (without the architect's permission.)

A different architect may be engaged by the new owner to complete the documentation. However, there is no obligation on the architect being engaged by the new client to send a registered letter (as required by the Regulation under the Architects Act) to the previous architect. Although the project is the same, the client is not.

The above is of course a generalization and each specific circumstance needs to be reviewed on its own merits.

At issue are:

1. Is the subsequent architect obliged to contact the previous architect?
2. Can the architect providing services to the new client use the documents of the previous architect?

The architect providing services to the new client is not obliged to contact the previous architect unless there is a question of using any part of the documents prepared by the previous architect. Circumstances specific to the project and etiquette may nonetheless prompt a courtesy call to the previous architect.

The use of the previous architect's documents would require the consent or agreement of the previous architect who, it must be understood, has no contractual obligation to the new client.

If the vendor client "sold" the previous architect's documents/design to the purchaser client without the architect's consent, the matter would rest between the two clients to resolve if the previous architect did not agree to the use.

Also, as a generalization, these principles apply to the stages of development prior to application for building permit.

Municipalities have not been consistent in dealing with architects wishing to withdraw a permit application (either due to termination of services or sale of a project).

Generally speaking, an injunction to halt construction is not likely to be granted once construction has commenced. The legal options to recover compensation once construction has started should be reviewed with legal counsel.

The fundamental principle of the client being entitled to use documents for the purpose for which they were intended or as a reference, provided the service was paid for, would apply. Sometimes a client has a change of mind and, as a consequence, decides to change “the project”. If the engagement of an alternative architect is for this different project, the requirements of the Regulation under the Architects Act do not apply insofar as the registered letter of notification to the previous architect is concerned.

The change in the project must be of significant substance and not simply a change in relatively minor detail.

Suggested Procedure

If you are invited to proceed to completion on a project that was commenced by a previous architect but for a different client, you are not required by the Regulation under the Architects Act to contact the other architect (other than as a courtesy) provided that you do not intend to use any of the other holder’s documents/design.

If your engagement requires you to use any of the other architect’s documents/design for the continuation of the project, you must advise your client that consent is required from the previous architect in order that you may proceed with the project.

If you are engaged to provide services to the same client as a previous architect but for a different project, you are not strictly required by the Regulation under the Architects Act to send a registered letter to the previous architect. However, if there is any doubt as to the extent of difference, or you intend to utilize any of the documents/design prepared the previous architect, you should send the letter.

If in doubt, err on the side of caution.

The OAA does not provide legal, insurance or accounting advice. Readers are advised to consult their own legal, accounting or insurance representatives to obtain suitable professional advice in those regards.
