

Professional Opinion - Independent Opinion - Reviewing a Project Prepared by Another CoP Holder

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Summary

There are both general and legal issues to consider when a certificate of practice (CoP) holder undertakes to provide a professional opinion. This includes regulatory and contractual matters, confidentiality, protecting the public interest, and following the appropriate procedures. The issues outlined in this document address the most common circumstance—that is, where the same client has retained both the CoP holder being reviewed and the reviewing holder.

Not all of these issues will apply where the client of the reviewing holder is a third party (e.g. legal counsel, insurer, or an advocate holder retained by a user group) or has retained the reviewing holder to advise legal counsel. They also will not all apply when the reviewing holder is a member of a committee acting on behalf of an authority having jurisdiction.

Background

This document addresses the various circumstances and related issues where a professional opinion, by a reviewing holder of another CoP holder's work, may be sought. These circumstances might include a client, an authority having jurisdiction, or a third party such as an insurer or legal counsel requesting the opinion.

Examples are:

- **independent opinion** where a reviewing holder reviews a project prepared by another CoP holder as part of a quality assurance process;
- **expert opinion** that is part of a formal mediation or judicial process;
- **expert witness** where a holder provides testimony as part of a judicial process;
- **advocate holder** where the CoP holder acts as the representative of a client or user group;
- **practice review** where a consulting holder is retained to review an architectural firm's practices and procedures as part of a risk management strategy;
- **design critique** where a reviewing holder offers a reasoned opinion or evaluation of a specific design, acting on behalf of either a client, a ratepayer group, or as a member of an authority having jurisdiction; and
- **compliance holder** where a CoP holder is retained as part of a planning, design, and compliance (PDC) team to prepare project specific performance documents with the client's input, and to evaluate compliance of a proponent's design with the client's guidelines and performance requirements as is common in a Public Private Partnership (P3) project.

The focus of the opinion must be a factual and objective assessment of the relevant documents based on a set of clear objectives and stated criteria.

Legal and Regulatory Issues and Procedures

In whole or in part, the standards of practice and Regulation 27 (as amended) under the *Architects Act* are generally applicable to most situations but may differ in specific circumstances. Review the references identified in this document and, if appropriate, discuss with legal counsel.

The standards of practice do not prevent a reviewing holder from accepting an engagement or being a member of a committee where the purpose is clearly different from that of the CoP holder being reviewed. For example, where engaged to either provide testimony as an expert witness, to advise legal counsel as part of a judicial process, or where related to a review process. The requirement for notification by the client does not apply in these situations, as the reviewing holder is not being retained for the same purpose as the CoP holder being reviewed.

Where the reviewing holder is contracted by the client, the intent of the Regulation is to permit the reviewing holder to provide a professional opinion on the work of another CoP holder **provided that the CoP holder whose work is being reviewed is notified in advance by the client**. Where the client cannot confirm in writing that the CoP holder has been notified that an independent opinion is being sought, the reviewing holder should decline the appointment. Where the client provides confirmation in writing, the reviewing holder should confirm the scope of the review with the CoP holder.

The reviewing holder should not go beyond the mandate of the committee of which the reviewing holder is a member, or beyond the reviewing holder's contracted mandate with the client. A change in the mandate should be made only with the express written authority of the client.

It is strongly recommended the reviewing holder not accept an offer to be engaged to succeed the CoP holder whose work is being reviewed. The reviewing holder could be seen as having solicited the work from the client contrary to the Regulation, having induced a breach of the contract between the client and the CoP holder being reviewed, or having intentionally interfered in a contractual relationship.

Suggested Procedures

The following procedures are general and may differ in specific circumstances. These procedures relate to the scenario where the reviewing holder is retained by the client. Where the reviewing holder is a member of a committee or retained to advise legal counsel in a legal matter, parts of these procedures still apply.

Intent of the Review – Confirm and document in writing, the purpose for which the independent opinion is being sought. For example, the nature of the review may be identified in the original client/CoP holder agreement at the outset of the project as part of a risk management process. As another example, the request for the independent opinion could arise from issues or concerns identified during the project. In those cases, the review could result in changes to the work or in legal actions. It is recommended the purpose of the independent opinion be clearly set out in a written contract between the reviewing holder and the client and reiterated in any report produced by the reviewing holder.

Relevant Content/Tone – The reviewing holder's comments should be limited to the purpose of the review and based on the content of the documents and services reviewed, include whether the reviewed CoP holder met the project standards, program, and other requirements as identified at the outset of the review. Additionally, comments should make a comparison with the standards of practice expected in the architectural profession, with citations of any documents referenced in coming to the opinion. The tone of the opinion should be objective, factual, and professional; it should not be derogatory.

The reviewing holder should be temperate in judgment and must assume professional responsibility for the opinions expressed.

Project and Professional Standards – The standards on which the opinion is based should be consistent with the standards and other factors that may have influenced the CoP holder's work. The work of the CoP holder should not be judged according to the personal standards and methods of the reviewing holder. The issue is whether, in the opinion of the reviewing holder, the work of the CoP holder meets the client's needs, relevant regulatory requirements, and other stated criteria.

Those other factors could include the project budget (or lack of one), functional program, geographic location, special requirements, type of construction contract (e.g. design-build versus stipulated sum, etc.), and the role of the client and other consultants in the development of the work. Specific references to standards and legislation such as the Building Code, *Architects Act* and Regulation thereunder, *Construction Act*, OAA documents, local jurisdictional requirements, and Canadian Handbook of Practice for Architects (CHOP) are advisable, wherever possible.

Scope of Review – State the scope of the review in writing at the outset. The scope may include some of the following:

- technical analysis including reviewing instruments of service (i.e. drawings, specifications, and related documents) for compliance with codes, standards, applicable law, other regulatory requirements, and the client's functional program requirements;
- technical analysis including reviewing instruments of service for compliance with project-specific output performance documents, as in a P3;
- level of completeness of the instruments of service for the specific intended purpose (e.g. permit application, tendering, construction, etc.);
- identification of coordination issues, including co-ordination with other individual disciplines;
- inconsistencies (e.g. large-scale drawing vs. details, specifications vs. drawings, typical vs. unique, etc.);
- coordination with respect to installation of pre-manufactured products (e.g. warranty issues);
- issues related to the issuance of the building permit and municipal inspections, including contacting municipal officials and other authorities having jurisdiction;
- meetings with the client, and other consultants, that discuss issues related to the content of the instruments of service and the status of the project;
- site visits to ascertain the status of the work under construction, and a review of general review or other site visit reports;
- review of documents issued during the contract administration/construction phase;
- potential problems, particularly any life safety issues requiring immediate attention; and
- post construction review.

The reviewing holder's scope of work should not include any service that the CoP holder being reviewed provided under the CoP holder's contract with the client. The reviewing holder should be familiar with the Regulation under the *Architects Act*, which prohibits soliciting or accepting work for the same project, the same client, and for the same purpose, where another CoP holder is already engaged.

The reviewing holder may offer an opinion on the project regarding compliance with approvals required by authorities having jurisdiction. It may be appropriate to identify the status of the work with respect to required approvals and whether information related to those approvals was incorporated into the instruments of service of the holder. Examples include any planning approvals or requirements of authorities having jurisdiction (such as conservation authorities or utilities) that may be required at different stages of a project's development.

Procedure Checklist – The following checklist outlines the steps that should be taken in preparing an independent opinion:

Pre-service Preparation

- Confirm with the client that the CoP holder has been notified, in conformance with the Regulation under the *Architects Act*, that an independent opinion is being sought.
- Confirm with the CoP holder that their understanding of the scope of the review is consistent with that of the reviewing holder.

- Prepare a written contract that includes:
 - purpose of the review, scope of the review, purpose that the findings and professional opinion will be used for, and any specific exclusions from the review;
 - deliverables to be provided;
 - criteria and standards to be applied to the review;
 - if known, a detailed list of documents to be reviewed, with the dates of issue and revision numbers;
 - schedule of review;
 - professional fees; and
 - distribution by client of findings and professional opinion.
- Identify and address any potential conflicts of interest. Refer to Regulation 27, Section 43 under the *Architects Act*. Where disclosure in writing of a conflict does not satisfy the requirements of Regulation 27, the assignment must be declined.
- Confirm whether the client has given the reviewing holder the authority to review all documents related to the project, and to review the project with other parties including subconsultants, contractors, and authorities having jurisdiction.
- Confirm whether the CoP holder has authorized the review of the CoP holder's subconsultant's services. Be aware that the holder may consider that this sort of review or interview process undermines the CoP holder's relationship with the subconsultants and wrongly interferes with contractual arrangements with those parties. Exercise caution before any interviews with subconsultants are undertaken. Such interviews may expose the reviewing holder and the client to legal action.
- Where the client declines to have the reviewing holder interview other parties, this restriction may limit the ability of the reviewing holder to fully complete the review. This, and any other restrictions, should be clearly stated in the contract and any report, together with the potential implications for the findings and professional opinion, which the restrictions create.

Review and Findings

- Review all pertinent documents and, if authorized, conduct meetings with other parties connected with the project.
- Assemble the review findings in the form of a written report, or as set out in the contract between the reviewing holder and the client, with references to the specific documents reviewed or persons consulted.
- To clearly identify specific issues, it may be appropriate for the reviewing holder to annotate (i.e. redline) the drawings and other documents. Permission must be obtained from the CoP holder being reviewed for the reviewing holder to copy any documents for this purpose.
- Include details of all reference documents used in the evaluation (e.g. CSA standards, LEED, Building Code, OAA documents, applicable law, etc.).
- The reviewing holder's caveat should include that the opinion was based upon the information (e.g. instructions, reports, drawings, and data) provided to the reviewing holder.
- The reviewing holder's opinion should clearly identify the issue dates of all documents reviewed.
- If the reviewing holder is of the opinion that changes to the work are necessary due to an immediate public safety issue (e.g. during construction), the reviewing holder should inform the client immediately.
- The reviewing holder should advise the client that their opinion is not binding upon the CoP holder being reviewed. The client should consider the reviewing holder's findings, and any recommended changes or alternatives, in the context of public safety considerations to ensure that any recommendations are not in conflict with applicable codes and standards, do not risk damage or personal injury, or result in unworkable installations.

- If the reviewing holder is requested to affix their professional seal to the report and related documents, refer to [Regulatory Notice RN.01 OAA Professional Seal](#).

Definitions

Reviewing Holder: a certificate of practice holder retained to prepare an independent opinion of another holder's services.

CoP Holder: a certificate of practice holder whose services are the subject of the review.

References

Regulatory Notice RN.01 OAA Professional Seal

Regulatory Notice RN.10 Professional Opinion & Independent Opinion

Canadian Handbook of Practice for Architects (CHOP) Chapter 3.10: Appendix "A" – **The Architect as Witness** and Appendix D – The Architect as Advocate Architect/ Compliance Architect/ Design Manager/ Researcher.

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