

Fair and Reasonable Fees

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Summary

This Practice Tip (PT) has been issued in response to continuing enquiries and complaints from members who are finding themselves in the position of having to quote low fees in order to be considered for new architectural commissions. Practices which feel it is necessary to quote fees which are unreasonably low and a poor business decision should take a "second look" at the matter of fair and reasonable fees, in relation to the degree of service which will be required to be provided, before completing another proposal for architectural services.

Background

It is in the interest of the public, clients and our profession to provide a full and complete service for a fair and reasonable fee such that architectural practices can be maintained within the economic conditions that can and do affect long term survival. While it is realized the fees guide set out in the Ontario Association of Architects (OAA) endorsed RAIC/Architecture Canada – "A Guide to Determining Appropriate Fees for the Services of an Architect" (RAIC Fee Guide) cannot be used for all projects, the guide should be used as a yardstick in determining the fees for professional services. The use of a current OAA standard contract for architect's services is strongly recommended. Letter type contracts leave much to be desired and verbal agreements are not recommended.

The OAA's "Mastering the Business of Architecture" also contains valuable information related to fair and reasonable fees.

A fair and reasonable fee is necessary to ensure that the public interest is protected, to provide services to the satisfaction of clients, to have harmony with consultants, and to be content in the fact that the practice's business decisions are as sound as those made when performing design and general review services.

R.R.O. 1990 Reg. 27 under the *Architects Act*, Section 42 deals with professional misconduct. It refers to, among other matters:

- "(9) Failing to maintain the standards of practice of the profession.
- (10) Failing to maintain the performance standards of the profession.
- (13) Undertaking to provide architectural services at a fee that is not fully disclosed, fair or reasonable.
- (30) Becoming bankrupt under the *Bankruptcy Act* (Canada) if the professional responsibilities of the member or holder have not been discharged.
- (38) Doing or failing to do anything while engaged in the practice of architecture that shows a deliberate or reckless disregard for the rights and safety of others.
- (39) Failing to perform architectural services with reasonable skill and judgment.
- (50) Taking part in a limited competition for a building project in Ontario in which all holders are not equally remunerated.
- (53) Failing to carry out the terms of a contract to provide architectural services."

Architects must be familiar with the above when considering fees. An unreasonable fee may imperil the ability to perform at the level of professionalism needed, to protect the public interest, to maintain the viability of the practice, and to meet the standard of care at law applicable to architectural services.

Obtaining the work is one thing, but being able to provide the services with an acceptable business plan within the fee available is an entirely different matter. When considering the fee, be prepared to demonstrate the validity of the fee proposal including considering provisions for unknown or unreasonable conditions such as:

- a new client could demand more time because he/she is unsure of the architect and his/her capabilities;
- a new client may insist on additional designs, meetings, reports, or contract administration;
- transfer of risk from client to architect resulting from the client's contract or Supplementary Conditions to standard OAA contracts;
- every client has different ways of working and the architect may find his/her method imposes unrealistic demands on the practice and its staff;
- the project may not proceed as quickly as planned resulting in the fee being deflated by rising interest rates, inflation, or other economic conditions;
- the project may start, staff may be increased and then, for a variety of reasons, it may stop and there is already a commitment to a substantial overhead.

In determining if a fee is fair and reasonable, architects should take into account the following points which are similar to those published in the "Professional Conduct Handbook" of The Law Society of Ontario and might ask if the fee incorporates:

- the time and effort required;
- the difficulty and importance of the work;
- the special skills required to perform the work;
- the value of the commission, whether by project type, dollar value, location, or other special conditions;
- the results expected to be achieved (e.g. early completion of various stages of the work, within the budget, overcoming technical or code complications, obtaining approval in a planning submission, etc.);
- the loss of other commissions unable to be undertaken at the same time;
- the special commitment that may have to be made to staff or consultants under unreasonable conditions to satisfy the client's needs.

It is a known fact that some clients believe that the fees set out in the RAIC Fee Guide are too high. Agreeing to provide services for lower and lower fees continues to undermine high standards for quality of professional service. Architects allowing themselves to be "shopped" find they are working at fees that are unreasonably low by any test that may be given to measure them.

It is in the best interest of the profession and the public that architects ensure that business judgements extend beyond their own practices. Clients need to realize the seriousness and potential downside of accepting or proposing an inappropriate fee for services.

Because of the responsibility to protect the public interest, architects must guard against unacceptable situations which can be a result of "unfair and unreasonable" fees which affect the practitioner and everyone else involved.

These could include:

- inadequate fee to provide reasonable service;
- bankruptcy;
- hardship to clients caused by inadequate service, business failure or loss of incentive;
- unprofessional practice habits;
- failure to carry out proper general review;
- failure to explore alternative design solutions;
- incomplete project administration;
- failure to adequately research codes and by-laws;
- failure to stay current with technological change;
- selection of inexperienced consultants because of low fees.

It is unreasonable to assume that a high level of service and professionalism can be maintained if architects are prepared to sell services on a low bidder basis, especially where the viability of business is subject to so many external factors over which we have no control.

Both architectural practices and clients should:

- encourage fair competition among practices on the basis of skill, qualifications and experience, and the ability to assign appropriate personnel to the project;
- discourage underbidding for the purpose of winning a commission, an activity which undermines professional stature and the ethical principles by which architects must practice;
- ensure that when a commission is awarded, a practice will have reasonable compensation to carry out the full service it is committed to provide - be prepared to renegotiate fees if contractual terms change;
- ensure practices meet all the requirements of the professional responsibilities to the public, the client, authorities having jurisdiction and consultants;
- discourage bidding wars among other consulting groups supplying their services to architects to ensure that they too can sustain their practice and meet their professional obligations;
- ensure that practices have financial resources to sustain the practice during recessions in our economy;
- enable time for professionals to carry out research, develop innovative technology, attend professional development seminars and be familiar with the best work being done in the profession;
- ensure that practices can adequately compensate staff, include employment benefits, reward merit and ability, and provide job satisfaction.

Each practice, and each individual architect, will have different criteria for establishing fees, but historically the survivors in a profession are those who have made the right decision in regard to the fairness and reasonableness of their fee and do not give way to lower and lower fees. Like banks or successful corporations, architects should be recognized for having good business sense. Success indicates to a client that architects are capable of looking after the client's interests in the same way they look after their own.

Evaluate fee proposals carefully. Using the criteria noted, test the fees against historical costs, and a calculation of required hours of service with allowances for the unexpected, but be satisfied that they are fair and reasonable for the work which will be commissioned and sufficient so that professional services will be adequate to protect the public interest.

References

[RAIC/Architecture Canada - A Guide to Determining Appropriate Fees for the Services of an Architect](#)

OAA Mastering the Business of Architecture, Volume 2B, Section 1

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.
