

## Legislative Overview – What Every Architectural Practice Needs to Know About Government Legislation

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### Summary

Architectural practices should be aware of, and become familiar with, the many pieces of legislation affecting their business and related businesses. Members should review the applicable legislation and implement measures in their practices to ensure compliance. This document is not legal advice and is not intended to be exhaustive. Members are encouraged to obtain legal and financial advice where appropriate.

Ontario legislation is available online at [www.ontario.ca/laws](http://www.ontario.ca/laws).

Federal legislation is available online at [www.laws-lois.justice.gc.ca](http://www.laws-lois.justice.gc.ca).

### Background

The following non-exhaustive list of legislation applicable to the practice of architecture is discussed in this bulletin:

1. The Personal Information Protection and Electronic Documents Act (PIPEDA);
2. The Freedom of Information and Protection of Privacy Act (FIPPA) and the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA);
3. The Employment Standards Act, 2000 (ESA);
4. The Workplace Safety and Insurance Act, 1997 (WSIA)
5. The Occupational Health and Safety Act (OHSA);
6. The Human Rights Code;
7. Construction Act (CA); and
8. Emergency Orders.

### Review of Applicable Legislation

1. **PIPEDA** is federal legislation that applies across Canada. PIPEDA relates to the collection, use, disclosure and retention of personal information for commercial activities. Architectural practices should review PIPEDA and the OAA's Privacy Policy to ensure that their current practices with respect to collecting, using, disclosing and retaining personal information are compliant. Additional information, including a summary of the requirements under PIPEDA, can be obtained from the Office of the [Privacy Commissioner of Canada's Web site](#) or by calling the Office of the Privacy Commissioner at (819) 994-5444 or toll free at (800) 282-1376.

Organizations are generally required to obtain an individual's consent to collect, use, disclose or retain the individual's personal information, and gives individuals the right to access and correct their information. Under PIPEDA, personal information can only be used for the purpose for which it was collected. PIPEDA would also prohibit a member from selling their client list or information about their clients without the explicit consent of the client.

2. **FIPPA** and **MFIPPA** are provincial statutes that apply in Ontario. FIPPA applies to the provincial government of Ontario, universities, colleges, hospitals and designated agencies. MFIPPA is the local government equivalent of FIPPA and covers municipal institutions such as municipalities, cities, towns, school boards, police services and many other local government entities. Both pieces of legislation relate to personal information held by these institutions and provide individuals with a right of access. The Ontario government's [Directory of Institutions](#) can be accessed online, and provides contact information for Freedom of Information Coordinators at provincial and municipal.

Members should be aware that under FIPPA and MFIPPA, proprietary information included in design briefs, proposals, and reports, etc. that are provided to a provincial or municipal client as part of a submission could be released by the client to others in response to a freedom of information request.

3. The **ESA** is legislation that applies to provincially-regulated non-unionized employees in Ontario. The ESA sets the minimum standards that apply in the employment context.

Certain provisions under the ESA do not apply to architects and students of architecture, including intern architects. These exemptions include the provisions regarding hours of work, minimum wage, overtime pay, public holidays and vacation with pay. Managers are also exempt from certain provisions of the ESA, although other employees including technologists and administrative staff are generally not exempt.

The OAA encourages employers to apply the ESA standards equitably to all employees regardless of their professional or student status.

Contact the Ministry of Labour, Employment Standards Branch, for clarifications. Note also that the ESA merely sets out the minimum entitlements owed to employees. Legal advice should also be sought in considering issues related to employee rights.

The ESA is available online at the [Ontario e-laws web site](#). Additional information can be obtained in the Ministry of Labour, [Your Guide to the Employment Standards Act](#).

True independent contractors are not covered by the ESA, but employers must exercise caution when determining which individuals are employees and which individuals are independent contractors (which includes consultants). This categorization has implications not only under the ESA but also for tax purposes, since organizations do not typically deduct payroll taxes for independent contractors. A failure to remit Employment Insurance and/or Canadian Pension Plan premiums on behalf of an individual who is treated as an independent contractor but later determined to be an employee may result in the employer having to pay retroactive premiums. Penalties and interest can also be charged. It is therefore very important to correctly determine the type of employment relationship at the outset. The Canada Revenue Agency (CRA) publication, [Employee or Self-Employed \(RC4110\)](#) explains how CRA views the distinction.

Where an individual is retained as an independent contractor, that individual is considered to be self-employed and should enter into a written agreement with the employer, who in these situations would be considered to be the client. Where the independent contractor is an architect or Licensed Technologist OAA, they are required by OAA Regulation to hold a certificate of practice and have professional liability insurance.

4. The **WSIA** is provincial legislation that applies in Ontario. The Workplace Safety and Insurance Board (WSIB) is the provincial agency that administers the WSIA.

Architectural practices with one or more employees must register with the WSIB within ten days after becoming an employer, and provide sufficient information to allow WSIB to assign it to a class and determine the appropriate assessment rate.

Consult the WSIB via telephone at (800) 387-0750 or online at the [WSIB web site](#).

Architectural practices with one or more employees must register with the WSIB within ten days after becoming an employer, and provide sufficient information to allow the Board to assign it to a class and determine the appropriate assessment rate.

5. **OHSA** is provincial legislation that applies to almost every worker, supervisor, employer and workplace in Ontario, including architectural practices. OHSA sets out the rights and duties of all parties in a workplace, establishes procedures for dealing with workplace hazards, and sets out enforcement procedures.

Workplaces that are covered by OHSA have several legal duties ranging from informing workers about health and safety practices to providing proper equipment. Under OSHA, architectural practices where more than five workers are regularly employed must prepare a written occupational health and safety policy, review that policy annually, and maintain a program to implement the policy. Architectural practices with 20 or more workers must also have a joint health and safety committee. Generally, the larger the workplace, the more duties there are under OSHA.

Members should review the Ontario government's [Guide to the Occupational Health and Safety Act](#), which provides a thorough overview of employer and worker responsibilities under OSHA.

6. The **Human Rights Code** is provincial legislation that applies in Ontario. The Human Rights Code establishes that every person has a right to equal treatment in several areas including employment and services without discrimination on the basis of several protected grounds, including race, place of origin, citizenship, creed (religion), sex (including pregnancy and breastfeeding), sexual orientation, disability, age, marital status (including single status), and family status.

Members should also review the OAA's policy [Supporting Safe Work Places: A Guide for Members of the Ontario Association of Architects](#), which provides guidance to members about their legal rights and responsibilities in maintaining a safe workplace free from harassment and violence.

Additional information can be obtained from the [Ontario Human Rights Commission](#)

7. The **Construction Act** is provincial legislation that applies in Ontario. In 2018 and 2019, the Construction Act underwent a major revision (and ultimately replaced the former Construction Lien Act (CLA)). Effective October 1, 2019, all pending provisions of the Construction Act have been implemented. These include updates to dollar values and timeframes, as well as new prompt payment provisions and adjudication processes. Until projects under the CLA are completed, both the CA and CLA will be in force. Practices should consult the regulations under the CA to determine which version of the act applies to a specific project. Where Practices have not been involved since the very beginning of a project, they should ask the client to have their lawyer determine which version of the act applies based on the start of procurement.

Under the CA and the CLA, architects have lien rights and responsibilities similar to those of contractors. The rules that apply to contractors, subcontractors and others for a services contract with a building owner apply to architects.

Practices should be familiar with the requirements under the Construction Act as it applies to the architect, both in the context of construction contract administrator and in the context of a payer/payee under the client/architect agreement.

It is recommended that practices obtain legal advice regarding the interpretation and application of the CA and the CLA or, in specific cases, recommend that clients obtain independent legal advice. The CA is available online at the [Ontario e-laws web site](#). The most recent [historical version of the CLA](#) is also available online.

## 8. Emergency Orders

When necessary, local, provincial, territorial and federal governments or ministries may issue emergency orders that impact the practice of architecture. It is not possible to predict when, but, as with the COVID-19 pandemic, the emergency orders must be followed.

Architects and certificates of practice are required to know the orders and seek independent legal advice on what they mean for, or require of, their certificate of practice and the architectural services they provide.

In accordance with section 42(3) and (4) of the Regulations under the *Architects Act*, it is professional misconduct for any architect to contravene law related to the construction, alteration and design of buildings.

## **References**

Canadian Handbook of Practice for Architects (CHOP), Chapter 2.1

Regulation 27 under the *Architects Act*

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*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.*

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