

## Professional Opinion - Independent Opinion - Reviewing a Project Prepared by Another Architect

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### Summary

There are a number of general and legal issues to consider when an architect undertakes to provide a professional opinion – including regulatory and contractual matters, confidentiality, and protecting the public interest - as well as the appropriate procedures to follow. The issues outlined in this document address the most common circumstances where the same client has retained both the architect and the review architect. Not all of these issues will apply where: the client of the review architect is a third party (such as a legal counsel, insurer or an advocate architect retained by a user group); the client has retained the review architect to advise legal counsel; or the review architect 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 an architect of another architect'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 an architect reviews a project prepared by another architect as part of a quality assurance process
- **Expert Opinion** that is part of a formal mediation or judicial process
- **Expert Witness** where an architect provides testimony as part of a judicial process
- **Advocate Architect** where the architect acts as the representative of a client or user group
- **Practice Review** where a consulting architect is retained to review an architectural firm's practices and procedures as part of a risk management strategy
- **Design Critique** where a reviewer offers a reasoned opinion or evaluation of a specific design acting on behalf of a client or as a member of an authority having jurisdiction or ratepayer group
- **Compliance Architect** where an architect 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 in a P3 project

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

## **Legal and Regulatory Issues and Procedures**

The following procedures in whole or part 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.

**Regulatory:** Standards of Practice, Regulation 27 (as amended), under the Architects Act

The standards of practice do not prevent an architect from accepting an engagement or being a member of a committee where the purpose is clearly different, for example, where an architect is engaged to provide testimony as an expert witness, or 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 architect is not being retained for the same purpose.

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

The review architect should not go beyond the mandate of the committee of which he/she is a member or beyond his/her 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 that the review architect not accept an offer to be engaged to succeed the architect whose work is being reviewed. The review architect 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 architect or having intentionally interfered in a contractual relationship.

## **Suggested Procedures**

The following procedures are general and may differ in your specific circumstances. These procedures relate to the scenario where the review architect is retained by the client. Where the review architect 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/architect agreement at the outset of the project as part of a risk management process. Or, the request for the independent opinion could arise from issues or concerns identified during the course of the project. In those cases, the review could result in changes to the work or in legal actions. It is recommended that the purpose of the independent opinion be clearly set out in a written contract between the review architect and the client, and reiterated in any report produced by the review architect.

**Relevant Content/Tone** – The review architect's comments should be limited to purpose of the review, and based on the content of the documents and services reviewed, including whether the architect met the project standards, program and other requirements as identified at the outset of the review, as well as the standards of practice generally expected in the architectural profession. The tone of the opinion should be objective, factual and professional, and not derogatory.

**The review architect should be temperate in his/her judgement and must assume professional responsibility for his/her opinion.**

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

Those 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), 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*, *Construction Lien Act*, OAA documents, local jurisdictional requirements and the 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. That may include some of the following:

- Technical analysis including reviewing drawings, specifications and related documents for compliance with codes, standards and other regulatory requirements
- Technical analysis including reviewing drawings , specifications and related documents for compliance with project specific output performance documents as in a P3.
- Level of completeness of drawings, specifications and related documents for the specific intended purpose e.g. permit application, bid call, construction, etc.
- Identification of co-ordination issues, including co-ordination with other individual disciplines
- Inconsistencies
- 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 drawings and the status of the project
- Site visits to ascertain the status of the work under construction, and a review of general review reports
- Review of documents issued during the contract administration/construction phase
- Potential problems - in particular any life safety issues requiring immediate attention.
- Post construction review

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

The review architect 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 or not information related to those approvals was incorporated into the instruments of service of the architect. For example, 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 architect has been notified, in conformance with the Regulation under the *Architects Act*, that an independent opinion is being sought.
- 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
- Distribution by client of findings and professional opinion
- Identify and address any potential conflicts of interest. Refer to Regulation 27 under the Architects Act. Where disclosure of a conflict does not satisfy the requirements of Regulation 27 the assignment must be declined.
- Confirm whether the client has given the review architect the authority to review all documents related to the project, and to review the project with other parties including sub-consultants, contractors and authorities having jurisdiction, confirm whether the architect has authorized the review of his/her sub-consultant's services. Be aware that the architect may consider that this sort of review or interview process undermines his or her relationship with the sub-consultants and wrongly interferes with contractual arrangements with those parties. Exercise caution before any interviews with sub-consultants are undertaken. Such interviews may expose the review architect and the client to legal action.
- Where the client declines to have the review architect interview other parties, this restriction may limit the ability of the review architect to complete the review fully. This and any other restrictions should be clearly stated in the contract, together with the potential implications for the findings and professional opinion which they create.

## **Review and Findings**

- Review all pertinent documents and if authorized, carry out 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 review architect and the client with references to specific documents reviewed or persons consulted
- In order to clearly identify specific issues, it may be appropriate for the review architect to 'redline' and/or annotate the drawings and other documents. Permission must be obtained from the architect for the review architect to copy any documents prepared by him/her for this purpose
- Include all reference standards used in the evaluation e.g. CSA, LEED, Building Code, OAA documents
- The review architect should be clear that his/her opinion will include the caveat that the opinion was based upon the information (instructions, reports, drawings and data, etc.) provided to him/her. The review architect's opinion should clearly identify the issue dates of all documents reviewed
- If the review architect is of the opinion that changes to the work are necessary due to an immediate public safety issue (e.g. during construction), he/she should inform the client immediately
- The review architect should advise his/her client that their opinion is not binding upon the architect. The client should consider the review architect'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
- The review architect may choose to affix or have affixed to the report and related documents the professional seal of an architect provided that the report was prepared under the personal supervision and direction of an architect.

## **Definitions**

**Review Architect:** Architect retained to prepare an independent opinion of another architect's services

**Architect:** Architect whose services are the subject of the review

## **Reference**

Canadian Handbook of Practice for Architects (CHOP) Section 2.1.10: Appendix "A" – **The Architect as Expert Witness**

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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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