

When a Client Changes Their OAA Practice

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Regulatory Framework

There are a number of issues to consider when the services of an OAA memberⁱ and associated certificate of practice (CoP)ⁱⁱ are terminated and another practice has been engaged to complete the project. The issues include regulatory and contractual matters, as well as legal, professional, and ethical considerations. The specific regulatory obligations of members are enumerated in the [Architects Act](#) (the Act) and the [Ontario Regulation 27](#) (the regulations) including, but not limited to, the following:

42. For the purpose of the Act, “professional misconduct” means,

9. Failing to maintain the standards of practice of the profession.

34. Copying the design or work of another person without the consent or agreement of the other person.

47. Soliciting or accepting any work when the member or holder knows or has reason to believe that another member or holder has been engaged or employed for the same purpose by the same client except as permitted by the standards of practice set out in this Regulation.

52. Providing architectural services without an express written or oral contract.

49. The following are prescribed as standards of practice:

1. No holder or officer, director, employee, or partner of a holder shall solicit or accept any work in respect of a building project knowing or having reason to believe that another holder has been engaged on the same building project for the same purpose by the same client.

2. Paragraph 1 does not apply to prevent a holder from,

i. advising or reporting on any aspect of the practice of architecture if an independent opinion is being sought and the other holder has been so informed in writing by the client, or

ii. undertaking the work after,

A. the client has given notice in writing to the holder that the engagement or employment of the other holder has been terminated, and

B. the holder has given notice in writing, by registered mail, to the other holder that he, she or it has been engaged or employed for the same purpose by the same client.

OAA practices must not supplant or attempt to supplant another OAA practice after the preceding practice has been retained or definite steps have been taken toward the other practice’s retention. Subject to the terms of the Contract for Services, a client is free at any time to terminate the business engagement with an OAA practice. The point is not to require mismatched clients and OAA practices to continue working together. For the benefit of the client and the project or commission, the point is to protect the relationship between a client and OAA practice from unlawful and/or unethical interruption by another OAA practice.

Competent professional practice rests in part on the strength of the relationship between client and OAA practice. Hence, when the client has made a choice, other practices must cease their overtures. This restriction does not prevent practices from approaching a potential client who has a broader program of prospective work for another practice has not been engaged.

For the purposes of this commentary, “supplanting” means taking (or attempting to take) the place of another OAA practice in a manner that is unlawful and/or unethical. Such behaviour would include interfering in a way that prevents a

client from establishing a commercial relationship with another practice or causes the client to breach or terminate its contract with another practice.

Considerations

Except in an approved competition, OAA practices must not provide any architectural service to a client until retained under contract and in receipt of the client's instructions. Public expressions, submission, or dialogues with respect to architectural issues, undertaken without compensation in the community interest and without having or seeking or anticipating a client, are permitted.

Speculative services to lure or entice a client, or "loss leaders," are not permitted. This means that prior to being retained, OAA practices are not permitted to provide solutions, suggestions, ideas, or evidence of same (in any format) that have value to the client or upon which the client might be expected to rely. The foregoing applies not only to design, costing, and technical matters, but also to considerations of management, methodology, and project organization (e.g. scheduling information) beyond that which is required for OAA practices to determine and submit a credible proposal for services and fees. In making an expression of interest or proposal to a prospective client, an OAA practice may promote the practice's experience, capabilities, resources, and capacity to demonstrate the practice's suitability, including an understanding of that client's needs and the project's relevant issues.

An OAA practice may only accept a commission for a project when the services of any OAA practice previously retained for the same project have been terminated, and such termination has been confirmed in writing in accordance with the Act and the regulations.

An OAA practice contacted by a potential client in circumstances where the practice knows or can ascertain by reasonable inquiry that another OAA practice (the "predecessor practice") is or has been engaged, must:

- a) receive written confirmation from the client that the engagement of the predecessor practice has been terminated; and
- b) advise the potential client that, if requested to provide a proposal for services, the member has a duty to notify the predecessor practice of the request by the potential client; and in the event the potential client requests a proposal for services from the member, that member must promptly notify the predecessor practice in writing of the request.

"Prompt" notification means without delay—generally, on the same or next business day. The professional responsibility for notifying the other predecessor practice lies with the new practice and cannot be delegated to the potential client or any other person. The notification obligation exists whether or not the other predecessor practice is understood or suspected to still be under contract with their client (or former client).

This commentary addresses the importance of contract termination and related requirements for a successor OAA practice making a proposal for and/or starting services. The regulations under the Act require the termination, but not necessarily the financial resolution, of the predecessor practice's services prior to a successor practice providing services.

An OAA practice taking over a project ("successor practice") is only permitted to provide a proposal for services, enter into a contract for services, or provide services that are based upon, and which continue and complete, those initiated by the predecessor practice, if:

- a) there has been no supplanting of the predecessor practice by the successor; and
- b) the successor practice has received written confirmation from of the termination of the predecessor's services.

Questions arise regarding whether the successor practice is prohibited from using the predecessor's services if there was a fee dispute about such services. The successor practice is not expected to be the arbiter between the predecessor practice and the client. However, this does not diminish copyright or fee payment rights of OAA practices. The obligation is on practices to assert such private law and statutory rights, rather than have them become the focus of professional conduct complaints.

This commentary applies equally to situations where either the predecessor or successor may be from different registration categories (e.g. a licence holder taking over a single-family home renovation project from a limited licence holder). OAA members who have been terminated by the client, or who terminate services, are entitled to be paid for their services and disbursements in accordance with the Contract for Services. Such contracts often include dispute resolution clauses.

In addition to contractual rights to payment, OAA members retain copyright in their design (unless sold or licensed). Licence holders have been successful in lawsuits in asserting copyright in relation to fee disputes and ownership of designⁱⁱⁱ. Even when project takeovers occur cooperatively, uncertainty may persist about copyright and liability issues.

The OAA recommends that wherever possible, the predecessor and successor practices consider entering into a simple agreement or memorandum of understanding, confirming issues such as copyright, professional liability, insurance, and project attribution obligations (credit for authorship). Both practices should seek legal and insurance advice prior to confirming these important aspects of a change of OAA practice on a project.

OAA members may also have lien rights under the Ontario *Construction Act*. Practices asserting copyright and/or lien rights should seek legal advice and recognize limitation periods may apply.

In circumstances where fees are disputed and/or where a property has been purchased by a new owner, successor practices should proceed with due diligence and caution. Where unpaid fees are claimed for instruments of services attached to the predecessor practice's copyright (e.g., drawings), the successor practice's use of such documentation may constitute copyright infringement on the part of the successor practice and client. Relying solely on the client's information or assurances about fee payment is generally not advisable and may not provide adequate risk management.

The OAA recommends that practices engaged in projects involving sequential design professionals should review their liability exposure with Pro-Demnity Insurance Co., or their professional liability insurance providers as appropriate.

Attribution

For detail information regarding credit for authorship, refer to *Regulatory Notice Credit for Authorship—Misrepresentation of a Practice*. It is a fundamental professional conduct expectation, a matter of professional courtesy and, most importantly, a matter of public interest to ensure attribution for architectural services is accurate.

Members of the public—including a client/potential client, authorities having jurisdiction, interested community members, and the media—expect OAA members and practices to describe their qualifications, experience, and responsibility fairly, accurately, and transparently when claiming credit for work. Doing otherwise leads to confusion and multiple claims for credit for the same project work, as well as unnecessary professional conduct complaints and lawsuits.

An OAA practice and/or member shall accurately represent to the public, a prospective or existing client, or employer the qualifications and scope of responsibility in connection with work for which the practice and/or member is claiming credit. An OAA practice's representations must accurately reflect current principals and staff capacities. An OAA member or practice claiming credit for a project, or any part of the architectural services on a project, must ensure credit is given to the project's original firm or firms and that any credit taken is accurate and limited to the extent of services provided.

While attribution can appear complex given firm mergers and acquisitions, copyright claims, and the division of work among design professionals in modern architectural practice, a fundamental principle is constant in every scenario: the 'author' practice(s) must be given clear and accurate project credit.

Failing to give and take proper credit amounts to a misrepresentation.

Taking over a project from a predecessor practice also raises issues regarding the use of sealed documents. For further information, refer to Regulatory Notice.RN.01—OAA Professional Seal.

The OAA does not provide legal, insurance, or accounting advice. Readers should consult their own legal, insurance, or accounting advisors to obtain appropriate professional advice. OAA members are responsible for ensuring that they comply with all applicable laws, regulations, policies, and bylaws. Regulatory Notices do not comprehensively address all laws, regulations, policies, and bylaws that may apply in a particular scenario.

ⁱ OAA member: Every person that holds a licence or limited licence issued by the Ontario Association of Architects is a member of the Association, subject to any term, condition, or limitation to which the licence is subject. R.S.O. 1990, c. A.26, s. 5 (1).

ⁱⁱ All OAA members must provide or offer services through an OAA certificate of practice (CoP). For the purposes of this Regulatory Notice, "OAA practice" will be used to indicate the OAA member and holder of certificate of practice.

ⁱⁱⁱ A search of [Canlii](#) will provide many examples of successful lawsuits asserting copyright to the design professional.