

Bankruptcy and Insolvency

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Background

Professions, such as architecture, provide an important societal role. They facilitate the provision of complex services that demand high levels of skill and expertise. The exercise of professional functions requires responsible, informed judgment. Individual members benefit from their professional status through the monopoly granted under legislation to practise in their field. With the privilege of professional status comes obligations attendant upon professionals to uphold standards of ethical conduct and duties to clients, third parties, their regulator, and the public.

OAA members¹ operating a practice have a variety of business obligations. Some of these are established by federal or provincial statutes, including the [Architects Act](#) (the Act) and Ontario [Regulation 27](#) (the regulations), some by contracts, and others by the common law and good business practice. Among other things, members should refer to the Regulations under the Act, including Sections 47, 49, and 50 prescribing standards of practice and Section 42 defining professional misconduct.

Bankruptcy & Insolvency

By virtue of the *Architects Act*, the regulations, and the OAA Bylaws, the OAA's regulatory mandate to protect the public interest extends to matters involving a member's personal or firm bankruptcy. The OAA recognizes that bankruptcies happen in every business and walk of life, can be triggered by events beyond an OAA member's control, and do not necessarily require proceedings pertaining to the member's professional conduct. However, the OAA must make reasonable inquiries to ensure the public interest is protected, and that the regulations have been upheld.

The OAA does not seek to penalize members or certificate of practice (CoP) holders who face financial challenges, provided that they meet their professional obligations. Additionally, the OAA does not serve as a mechanism for creditors to seek recovery or retribution outside of bankruptcy and insolvency laws. The OAA's primary concern is ensuring that an insolvency event does not compromise a member/holder's professional responsibilities.

The Regulations under the Act establish the following:

42. *For the purpose of the Act, "professional misconduct" means,*

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

29. Failure of a member or holder to notify the Registrar of the receipt of a petition to declare the member or holder bankrupt or the making of a general assignment for the benefit of creditors and of the manner in which the professional responsibilities of the member or holder will be discharged.

30. Becoming bankrupt under the Bankruptcy and Insolvency Act (Canada) if the professional responsibilities of the member or holder have not been discharged.

54. Conduct or an act relevant to the practice of architecture that, having regard to all of the circumstances, would reasonably be regarded by members of the Association as disgraceful, dishonourable or unprofessional.

49. *The following are prescribed as standards of practice:*

5. Every member of the Association or holder must meet his, her or its financial obligations to the Association and to his, her or its employees, including the prompt payment of premiums, levies, and deductible amounts.

The fact that a member/holder's assets are insufficient to pay the full debt to all creditors is generally not, by itself, professional misconduct.

The OAA has a responsibility to ensure that an insolvency event does not affect the validity of a CoP. Depending on the circumstances, the entity may no longer meet the ownership and financial requirements for an OAA certificate of practice. In that case, either new directorship and ownership arrangements must be made, or the CoP will have to be surrendered.

Members/holders must also ensure they pay all required fees pertaining to their professional practice and maintain required professional liability insurance.

A member is not necessarily prevented from practising the profession even though they are insolvent. It depends on the circumstances (e.g. as noted above, the member may not be able to continue practising under a certificate of practice if it is no longer valid).

Members should consult their own legal counsel and/or accountant when facing a bankruptcy/insolvency event.

General professional expectations include that:

- the member/holder complies with the requirements of the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act*, and/or business organization legislation such as the *Business Corporations Act* or *Partnerships Act* where applicable;
- payments received "in trust" (e.g. subconsultants' fees received from clients) are passed on to the subconsultants;
- clients have been contacted and assisted with arrangements for the continuation of ongoing projects;
- contracts are properly assigned to the new holder, whether or not it is the same member who is continuing to practise under a new certificate of practice;
- the member/holder pays all required fees under the *Architects Act* and Regulations and maintains professional liability insurance in order to continue practising; and
- the member/holder complies with the relevant tax and employment legislation for employment, remuneration, and other matters.

Notification Procedure

Notifying the OAA of bankruptcy or insolvency involves several steps to ensure the process is transparent, efficient, and maintains the integrity of the profession. Any OAA member/holder that has filed for assignment or been petitioned into bankruptcy or insolvency must notify the OAA's Registrar of the filing or petition and provide information and relevant documents regarding circumstances leading to the assignment or petition.

Upon receipt of this notification, the Office of the Registrar will create a case file and deliver an information request to the member/holder. The information request will ask the member/holder to provide relevant information regarding how their professional responsibilities have and will be discharged as well as the following:

- a description of practice;
- list of staff/contract staff and monies owed to them;
- list and description of current commissions/projects;
- statement of intention whether architectural services will continue to be provided or how transition of services to another practice will take place;
- list of all subconsultants engaged, including amounts owed and amounts received for payment to subconsultants;
- statement of amounts owed to third-party service providers or suppliers;
- statement of amounts held in trust and of any retainer amounts received for services not yet rendered;
- description of how the member intends to maintain the standards of practice of the profession and comply with obligations under the *Architects Act* and regulations; and
- other relevant information related to protecting the public interest and helping assess compliance with the regulations under the *Architects Act*.

Upon receipt, the member/holder will receive an acknowledgment, outlining the next steps in the review process. If the initial assessment suggests there are no significant impact on the member/holder's professional duties, no further action will be required.

If the initial assessment suggests regulatory concerns, the Registrar may initiate a Registrar's Investigation pursuant to Section 38 of the *Architects Act*:

38 (1) *Where the Registrar believes on reasonable and probable grounds that a member of the Association or a holder of a certificate of practice or temporary licence has committed an act of professional misconduct or incompetence, the Registrar by order may appoint one or more persons to investigate whether such act has occurred, and the person appointed shall report the result of his or her investigation to the Registrar.*

In accordance with Section 42 of the regulations, failure to respond promptly to an information request from the Registrar relating to the member/holder's professional conduct or competence may constitute professional misconduct.

The result of a Registrar's Investigation could be:

- **Referral to the Complaints Committee:** If the Registrar's Investigation indicates significant regulatory concerns, the case will typically be referred to the Complaints Committee to be addressed in accordance with that Committee's statutory mandate, including potential referral to the Discipline Committee; or
- **Minor Concerns:** If the concerns are minor, the member/holder may be asked to provide additional information to the Registrar to ensure that any issues are addressed appropriately.

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.

¹ **OAA member:** Every person issued a licence or limited licence 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.