

## Financial Obligations to Association, Employees, Consultants

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### Summary

It is part of the regulatory standards of practice that OAA Members<sup>1</sup> and holders of Certificate of Practice (holders) must meet their financial obligations to the Ontario Association of Architects (OAA) and their employees. It is also important to be aware of the trust provisions of the [Construction Act](#) that place certain legal obligations for the payment by members to subconsultants and suppliers.

### Background

OAA Members operating a practice have a variety of financial obligations which they are required to fulfil. Some of them are regulated by federal or provincial statutes, some by the [Architects Act](#) and its [Regulation](#), some by contractual agreement, and others by good business practice. Refer to the Regulation under the Act, sections 47, 49, and 50 related to standards of practice and section 42 regarding professional misconduct.

Part II of the CA, Trust Provisions, operates to provide that monies received by an OAA member constitute a trust fund for the benefit of the member's subconsultants and suppliers of services or materials to the improvement who are owed amounts by the member.

The member is the trustee and shall not appropriate or convert any part of the fund to the member's own use or to any use inconsistent with the trust until the subconsultants or other persons who supplied services or materials to the improvement are paid all amounts related to the improvement owed to them by the member.

### Procedure

#### Obligation to OAA:

- ensure that payments in regard to renewals for licence, Certificate of Practice, Pro-Defence Plan premiums, deductible amounts, any fee prescribed by the OAA bylaws, or any fee, levy, or costs imposed under the Act or the Regulation are made in timely fashion to avoid cancellation of licence and/or Certificate of Practice.

#### Obligation to Employees:

- pay all wages or salary, bonuses, benefits, etc., as promised and/or agreed to;
- set out employment agreement between employee and employer in writing (see the [Canadian Handbook of Practice \[CHOP\]](#) for additional information);
- be familiar with the current employment regulations of the Ontario Ministry of Labour;
- organize finances to be in compliance with employment agreements and Ministry of Labour regulations;
- make all statutory remittances in timely fashion (e.g. Revenue Canada, Canada Pension Plan, Employment Insurance [EI], Worker Safety Insurance Board [WSIB]).

Default by a client is not considered a valid reason to withhold payment(s) from an employee.

In addition to lien action or litigation, employees who are not paid by holders have recourse through the OAA complaints process. Holders should be aware that even if their staff work with them as independent contractors invoicing for their services rather than being included on payroll, Canada Revenue Agency has considered such individuals as **employees** if they work for only one employer, in that employer's office, keep regular hours, and work on a variety of projects under the direction of the employer, and other similar tests.

If the alleged independent contractor meets the Canada Revenue Agency, Employment Insurance, and WSIB tests as bona fide “consultant” rather than “employee,” then appropriate consultant agreements are in order and they should be administered accordingly.

#### **Obligation to Consultants:**

- read and familiarize yourself with the Trust Provisions of the *Construction Act*;
- avoid oral agreements when engaging consultants;
- endeavour to obtain written agreements with consultants prior to the commencement of services that:
  - (a) define the scope of services;
  - (b) define the conditions of payment;
  - (c) define conditions for notice to delay payment for lack of adequate or timely services which affect the progress of the project; and
  - (d) define that the consultant will otherwise be paid when the holder receives payment from the client.

Holders have the appropriate obligation to pay the consultants’ invoices under the terms and conditions of the consultant agreement. Failure to do so may lead to allegations of professional misconduct.

If there is a legitimate concern as to the adequacy of the services or the amount of an invoice, then the holder should immediately advise the consultant in writing, recording the relevant facts, rather than bringing these points forward at a later time in defense against a complaint. These matters should be treated in a professional manner.

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<sup>i</sup> **OAA Member:** Every person licensed 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).

#### **References**

*Architects Act* and Regulation 27

*Construction Act*

Revenue Canada “Employee or Self-Employed?”

*Province of Ontario Workplace Employment Standards Act*

OAA 900 Consultant Contract

Royal Architectural Institute of Canada; Document Nine – Architect-Consultant Contract

Canadian Handbook of Practice (CHOP)

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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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