



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 all businesses. Members should review legislation, usually available on government Web sites and implement measures in their practice to comply with the legislation, obtaining appropriate legal and financial assistance where necessary.

BACKGROUND

Following is a partial list of legislation discussed in this bulletin:

- The Government of Canada *Personal Information Protection and Electronic Documents Act* (PIPEDA);
- The Provincial *Freedom of Information and Protection of Privacy Act* (FIPPA) and the Municipal *Freedom of Information and Protection of Privacy Act* (MFIPPA);
- The Province of Ontario *Workplace Employment Standards Act* (ESA);
- The Province of Ontario *Workplace Safety and Insurance Act* (WSIA) – Workplace Safety and Insurance Board (WSIB);
- The Province of Ontario Human Rights Code,
- *The Construction Lien Act* (CLA), and
- *The Construction Act* (CA).

1. PIPEDA relates to the collection, use of, and disclosure of personal information. Architectural practices should review their current practices with respect to collecting, using and disclosing personal information. Additional information, including the PIPEDA, can be obtained from the Privacy Commissioner of Canada's Web site at <http://https://www.priv.gc.ca/en/> or by calling the Office of the Privacy Commissioner at (613) 995-8210 or toll free at 1-800-282-1376.

Under PIPEDA, personal information, including salary, cannot be disclosed without the individual's consent. Fee information containing hourly rates and payroll multipliers may allow others to determine actual individual salaries. The Consulting Engineers of Ontario (CEO) has distributed an [advisory and a legal opinion](#) on this subject, both dated November 14, 2005.

More information may be obtained from *What Every Architectural Practice Needs to Know About Privacy Legislation* by Richard Steinecke, of Steinecke, Maclure, LeBlanc.

2. Under the FIPPA and the MFIPPA, proprietary information that may be included in design briefs, proposals, and reports, etc. that are provided as part of a submission to a client, could be released by the client to others in response to a freedom of information request to the client. See [CEO advisory and a legal opinion](#), dated February 27, 2006 and February 23, 2006, respectively.
3. The ESA establishes the fundamental business relationships between employee and employer, and sets the minimum standards of employment.

Certain provisions under the ESA do not apply to architects and students of architecture, including intern architects. These exemptions include hours of work, minimum wage, overtime pay, public holidays and vacation with pay. Managers and independent contractors 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. Legal counsel should also be sought in establishing detail of rights and responsibilities under the ESA.

The ESA is available online at <http://www.e-laws.gov.on.ca> and via on-line ordering at <http://www.serviceontario.ca/publications>. Additional information can be obtained in the Ministry of Labour, [Your Guide to the Employment Standards Act, 2000](#).

4. The Province of Ontario WSIB 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 the Board to assign it to a class and determine the appropriate assessment rate.

Consult the WSIB office in your area for further information, or telephone 1-800-387-0050 or on-line at <http://www.wsib.on.ca>.

5. The Ontario Human Rights Code establishes that every person has a right to equal treatment with respect to employment without discrimination, and freedom from harassment, with respect to race, ancestry, place of origin, colour, ethnic origin, citizenship, creed (religion), sex (including pregnancy), sexual orientation, disability, age, marital status (including same sex partners), family status and record of offences.

Additional information can be obtained from the following:

[The Ontario Human Rights Commission](#)
[Supporting Safe Work Places: A Guide for Members of the Ontario Association of Architects](#)

6. The *Construction Act* is a major revision and update to the *Construction Lien Act*. Various provisions will be phased in over time. These include updates to dollar values and time frames, as well as new prompt payment provisions and adjudication processes. There will be a transition period starting July 01, 2018 during which both the CA and CLA will be in force. Practices should consult the regulations under the CA to determine which Act applies to a specific project.

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

It is recommended that practices consult their own solicitors as to interpretation of the CA and the CLA, or in specific cases, recommend to clients that they obtain clarification from their own solicitors. The CA and the CLA are available on-line at www.e-laws.gov.on.ca.

PROCEDURES

- Practices should be aware that legislation affects their businesses and they need to become familiar with and obtain legal or other professional advice, to assist them with legislation affecting the operation of a practice.
- With reference to WSIB and Canada Revenue Agency matters, practices should be careful in determining the status of consultants.
- Determining if a worker is an employee, whether permanent, temporary or part time, or an independent, self-employed contractor is very important to WSIB and to the Canada Revenue Agency (CRA). Failure to remit EI and/or CPP premiums on behalf of an independent contractor who is later found by CRA/WSIB to be a worker (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.

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.

The CRA publication, [Employee or Self-Employed \(RC4110\)](#) explains how CRA views the determination.

- Practices should be familiar with the requirements of the *Construction Act* both as it applies to the architect in the context of construction contract administrator and in the context of a payer/payee under the client/architect agreement. The *Construction Act* is available at <https://www.ontario.ca/laws>.

REFERENCES

Canadian Handbook of Practice for Architects (CHOP), Chapter 2.1
Regulation 27 under the *Architects Act*