

ARCHITECTS' ASSOCIATION OF NEW BRUNSWICK ASSOCIATION DES ARCHITECTES DU NOUVEAU-BRUNSWICK

GUIDELINE TO AANB GENERAL BY-LAW NO.14 CODE OF ETHICS AND PROFESSIONAL CONDUCT

PREAMBLE

The Council of the Architects' Association of New Brunswick (AANB) considers it advisable to pass By-Laws for the regulation of the Association and its affairs.

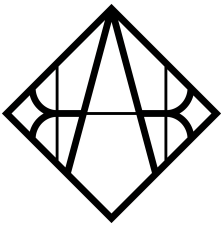
This is a Users' Guideline to the AANB General By-Law No.14, further to AANB General Memberships' approval under the Architects Act.

This Users Guide's content is coordinated with the sequence of those By-laws (refer to Table of Contents) providing rulings (identified by lettered paragraphs); some comments (in italics); and advice (commonly in parentheses – typically following the individual By-law). Please note that any given ruling or comment or advice typically appears only once (after the By-law with which it is most directly related) but applies generally.

The ruling, comments, and advice in the Users Guide in no way limits the general application of the By-laws themselves, which govern. It is the responsibility of an Architect to exercise professional judgement in all instances and the AANB Council's decision on any particular matter will be determined by its specific facts.

This Users Guide content is to be read in conjunction with By-Law 14 of the Architects' Association of New Brunswick's General By-Laws.

The AANB from time to time may also publish an updated Schedule of Recommended Fees for Architectural Services (the Schedule); Bulletins and reasons for judgement in disciplinary cases, containing further rulings, interpretations, and advice. Such documents, along with this Users Guide, are subject to change.

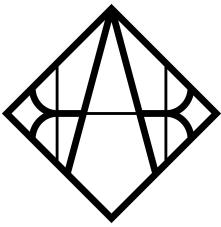


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14.1 PROFESSIONAL ENGAGEMENT

14.1.1 **Certification as to construction payment therefore requires such general review of the work as the Architect deems necessary.**

An Architect's unfettered capacity to exercise the Architect's professional discretion as to the extent, depth, timing, nature, and frequency of field reviews is fundamental to an Architect's professional ability to responsibly certify or provide assurance under terms of accepted client/Architect agreements, construction contracts, building codes, schedules, and the lien legislation.

14.1.2 **All drawings, specifications, models, and documents prepared by the Architect and instruments of service shall remain the Architect's property; the copyright in the same being reserved to the Architect in the first instance. As a precondition of their use, all fees, and reimbursable expenses due the Architect are to be paid.**

This is consistent with copyright law and the standard form of Client/Architect agreement.

The fees and reimbursable expenses to be paid are those which correspond to the generation of the instruments of service. The "use" referenced in the Bylaw (unless contracted differently), is by the same client for purpose(s) intended, on time only, on the intended property.

Payment means that monies are no longer outstanding. Holding money in trust pending resolution of a dispute does not constitute payment.

14.2 COMPETENCE

14.2.1 **In practicing architecture, an Architect shall act with reasonable care and competence, and shall apply the knowledge, skill and judgment which are ordinarily applied by Architects currently practicing in the province of New Brunswick.**

(a) An Architect shall remain informed with respect to the practice of architecture in New Brunswick.

This Bylaw approximates the "reasonable Architect" test for negligence. It is an Architect's responsibility to recognize personal impairment to the ability to function competently and, when so impaired, to withdraw from practicing architecture until competence is restored.

An Architect shall undertake continuing education and shall report on that continuing education to the Association, in accordance with the rules for mandatory continuing education established by Council.

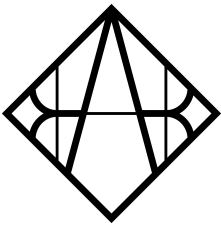
14.2.2 **An Architect shall undertake to perform professional services only when qualified, together with those whom the Architect may engage as consultants, by education, training and experience in the specific area involved.**

(a) An Architect shall limit professional practice to areas of personal competence or shall engage others (including staff) who are competent in supplementary areas.

(b) Where so governed under Provincial statute, other professionals must be engaged to practice their professions.

An Architect is authorized to undertake Architectural services for any project but must recognize personal and professional limitations and must refrain from rendering service in those areas until limitations are overcome.

An Architect must be able to manage and coordinate the provision of other design professional's services competently, whether the other professionals are engaged by the Architect or the client.



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14.3 CONFLICT OF INTEREST

Except as permitted hereunder, and with full disclosure under Bylaw 14.4, an Architect shall avoid actions and situations where the Architect's personal interests' conflicts or appear to conflict with professional obligations to the public, the client and to other Architects.

14.3.1 An Architect shall not accept compensation for services from more than one party on a project unless the circumstances are fully disclosed to and agreed to (such disclosure and agreement to be in writing) by all interested parties.

- (a) All parties compensating an Architect must so agree prior to the Architect's rendering services to the second and subsequent parties.

This Bylaw permits multiple loyalties only when all parties agree.

14.3.2 An Architect having a personal association or interest, which relates to a project, shall fully disclose in writing the nature of the association or interest to the Architect's client or employer. If the client or employer objects, then the Architect will either terminate such association or interest or offer to give up the commission or employment.

- (a) Personal association includes (but is not limited to) friendship or family relationship; personal interest includes (but is not limited to) direct or indirect potential for financial or material gain.
- (b) An Architect is required to make disclosure as soon as there is a personal association or interest, or an awareness of a potential or perceived conflict of interest, to which a client or employer might object.

The Architect should also make disclosure to sub consultants and other project – team members.

14.3.3 Except as permitted under Bylaw 14.4.7, an Architect shall not solicit or accept compensation or benefit from material or equipment suppliers in return for specifying or endorsing their products.

- (a) Under this Bylaw, "endorsing" means "accepting" or "approving" for use on a project.
- (b) Pursuing or receiving a "kickback" is disallowed.
- (c) An Architect must make recommendations based on independent professional judgment and uncompromised evaluation.
- (d) Neither agreement between the parties nor disclosure (in whole or in part) of the receipt of benefits in exchange for recommending products will eliminate or waive the Architect's conflict of interest under this Bylaw.

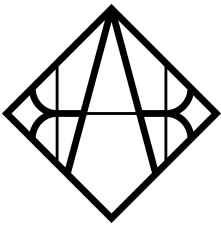
(Refer to Bylaw 14.4.7 for other conditions)

The overtures of suppliers should be evaluated with caution. It is acceptable to become educated about a product by attending gratuitous seminars and participating in promotional trips for familiarization. It is not acceptable to receive inducements (financial or otherwise) which may be seen as impairments to one's professional judgment.

14.3.4 An Architect acting as the interpreter of construction contract documents and reviewing construction for conformance with the contract documents shall render decisions impartially.

- (a) Regardless of which party in a project's administrative structure has engaged and pays the Architect, the Architect shall interpret construction contract documents impartially, as if disinterested.

Impartial decisions may reflect adversely on perceptions of the quality of the design or documents produced by the Architect. This cannot deter impartiality. (The Architect should seek advice from legal counsel or direction from professional liability insurers when situations arise where impartial decisions may imply, or cause others to infer, an acknowledgment of responsibility and potential liability by the Architect).



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14.3.5 An Architect may be a project's owner. An Architect may be a project's contractor, of the Architect's own design and/or construction contract documents. An Architect who is a project's owner or contractor shall fully disclose in writing such status to all of the project's authorities having jurisdiction and contracting parties; shall receive their written acknowledgment; and shall provide professional services as if disinterested.

- (a) As a project's owner, only, an Architect (who is not providing architectural services on the project) need not make disclosure.
- (b) An Architect may be a project's contractor only if the project is also designed by the Architect or if the Architect also produces the construction contract documents and makes disclosure.
- (c) An Architect's written disclosure shall identify the Architect personally by name as the Owner or Contractor, or both, as the case may be. Such disclosure is required for any amount of ownership.

The project's authorities having jurisdiction include the officials known to the Architect to be in charge of the various aspects of the project's review and approval process from the authorizing or rezoning applications through development permit applications, building permit applications, etc.

The project's 'contracting parties include those parties known to the Architect to be in contract with the Architect, the owner, and construction contractor (or construction manager or project manager).

Disclosure should be made at the earliest opportunity, and also recorded in the Architect's construction documents and application forms to authorities having jurisdiction.

- (d) An architect who is also a project's owner or contractor must render architectural services as fully and impartially and must be as disinterested as an architect who is solely serving a third-party client. Financial interests must not override professional responsibility and impartiality.

(An architect who is also a project's owner or contractor should seek direction with respect to availability of professional liability insurance coverage).

14.3.6 An architect who is a juror or advisor for an approved competition shall not subsequently provide any services to the winner or, if there is no winner, for any derivative commission.

- (a) This applies equally to an architect who was, or who had agreed to serve as, a juror or advisor but was discharged or withdrew.

14.4 FULL DISCLOSURE

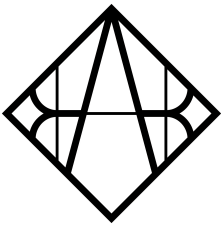
14.4.1 An architect shall disclose if the architect has a related personal or business intent when making a public statement on an architectural issue.

- (a) Personal interest includes (but is not limited to) friendship or family relationship or direct or indirect potential for financial or material gain.
- (b) An Architect serving on an advisory design panel or other like committee, reviewing either a proposal's character or a candidate's qualifications must make known any involvement in an application being reviewed or any other relationship that might constitute a conflict of interest and withdraw from the meeting and any discussion or evaluation of the merits of that matter.

14.4.2 An Architect shall accurately represent to the public, a prospective or existing client or employer the Architect's qualifications and the scope of the Architect's responsibility in connection with work for which the Architect is claiming credit.

This By-Law addresses Architects' and clients' concerns about the accuracy and credibility of architectural proposals and the résumés of architectural job applicants.

Appropriate credit should be given about projects undertaken with other firms.



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- (a) An Architect firm's representations must accurately reflect current principals and staff capabilities.

14.4.3 An Architect who, in the provision of services, becomes aware of an action taken by the Architect's employer or client, against the Architect's advice, which violates legal requirements, must not condone or be complicit in such a situation. An Architect in such a situation must take all reasonable steps to convince such an employer or client to comply with the legal requirements. The Architect shall:

- (i) refuse to consent to the actions; and, if the action is not rectified in a timely manner, then
- (ii) report the action to the authority having jurisdiction and, if the authority confirms the violation and the action is not rectified in a timely manner, then
- (iii) terminate services on the project.

"Legal requirements" encompass all applicable building laws and regulations that apply to the project. This includes, for example, health, zoning, development permit and building permit requirements.

This pertains to requirements, which have the force of law, as opposed to those which are only guidelines, which have the force of law, as opposed to those which are only guidelines, opinions, or decisions of a subjective or discretionary nature, rendered without legal authority.

14.4.4 An Architect shall not knowingly make or assist others to make, either a false or misleading statement or an omission of material fact about education, training, experience, or character when applying for or renewing registration as an Architect.

An Architect also must not intentionally make or cause to be made any false representation for the Architect or another person with respect to obtaining a certificate of practice, license, or admission as an associate of the AANB.

14.4.5 An Architect who knows of an apparent violation of the Architects Act, By-Laws or Council rulings shall report such knowledge to the Association.

- (a) An Architect must not withhold information from the AANB about an apparent infraction regardless of who might ask the Architect or require the Architect under an agreement, to do so.

It is every Architect's ethical duty to act first and foremost in the public interest. There is an overriding professional obligation for an Architect to report apparent infractions of the Architects Act and its By-Laws to the AANB. The Association on behalf of the public cannot receive such information "in confidence" and may be obliged to investigate apparent infractions.

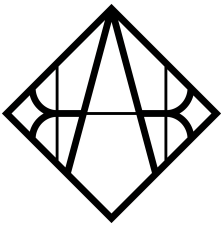
An Architect cannot generally avoid such ethical obligation by seeking an exemption, or by making a private agreement of confidentiality. That would be contrary to public policy. An Architect is, nonetheless, able to communicate with the Association about the nature of a situation, or on a hypothetical basis, and receive relevant information or advice.

Notwithstanding the generality of the foregoing, information received by an Architect acting in certain official or other capacities (e.g. as an elected official) may be protected by statutory confidentiality requirements, or by 'solicitor-client' privilege (when acting, e.g., as a lawyer, or as an expert prior to taking the stand) with respect to ongoing or anticipated litigation, and is not obliged to report information so received to the Association.

- (b) An Architect acting in the capacity of a mediator or arbitrator, under an agreement that includes a confidentiality provision, is not obliged to report information so received to the Association.

14.4.6 Except as prohibited by Bylaw 14.3.3 an Architect, whether compensated or not, may permit the Architect's name, portrait or reputation to be attached to an endorsement of other's services or products.

This permits an Architect to commercialize the Architect's name.



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Under this By-Law, "endorsement" is acceptable for personal benefit; however, personal benefit must not influence professional judgment. The endorsement could be in the form of a letter of reference, announcement or advertisement. (See By-Laws 14.3.2 and 14.3.3 for other conditions).

- 14.4.7 An Architect having a financial interest in any building material or device which the Architect proposes to specify for a project shall disclose this interest to the client and shall request and receive written approval for such specification from the client and shall include a copy of this approval in the construction contract documents.**

- (a) This permits an Architect to have prior ongoing proprietary interest. The Architect should also request the Architect's staff and sub consultants to make similar disclosures to the Architect.

(Bylaw 14.3.3 prohibits an Architect from receiving benefit in return for merely specifying or "endorsing" (i.e. accepting or approving) others' products for use on a project).

14.5 COMPLIANCE WITH LAWS

- 14.5.1 In practicing Architecture, an Architect shall not knowingly violate any law or regulation.**

- (a) An Architect must not counsel the Architect's employees, consultants or associates knowingly to disregard, violate, or otherwise abuse any bylaw, regulation or code affecting the practice of architecture.

The public has the expectation that Architects respect and substantially comply with laws and regulations that apply to the practice of architecture, excluding those concerning construction safety (the field of construction safety being outside the practice of architecture). This includes federal, provincial, and municipal laws as well as the regulations of statutory bodies.

Architects must keep themselves apprised of current applicable laws and regulations that relate to the practice of architecture in New Brunswick. An Architect is not expected to be familiar with the details of all laws and regulations in every jurisdiction but is expected to have general knowledge of specific laws and regulations in the jurisdictions in which the Architects working, and also which authorities have jurisdiction over particular aspects relating to the practice of architecture (Refer also to By-Law 14.5.3).

(An Architect seeking to promote or to provide architectural services outside New Brunswick, or to a client or on a project located outside New Brunswick, should check in advance, and comply with the requirement of the applicable architectural licensing authority).

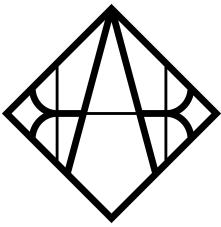
- 14.5.2 An Architect shall comply with the Architects Act of New Brunswick, the By-Laws under the Architects Act, and Council rulings.**

Council of the Association keeps members informed of all changes to the Act and By-Laws and regularly publishes rulings and advice to assist members in their understanding of interpretations and policy. It is incumbent on members to read such material and to keep it on hand for reference when needed.

- (a) An Architect must not directly or indirectly condone or encourage contravention of the Architects Act, By-Laws and Council rulings by others.

- 14.5.3 In practicing architecture, an Architect shall take into account all applicable federal, provincial and municipal building laws and regulations and an Architect may rely on the advice of other professionals and other qualified persons as to the intent and meaning of such regulations.**

This By-Law recognizes the increasing complexity of laws and regulations applicable to the practice of architecture. This By-Law is complementary to 14.5.1 in that compliance is mandatory but permits the Architect to rely on the advice of others qualified by education, experience or training to provide interpretation.



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This By-Law recognizes the increasing complexity of laws and regulations applicable to the practice of architecture. This By-Law is complementary to 14.5.1 in that compliance is mandatory but permits the Architect to rely on the advice of others qualified by education, experience or training to provide interpretation.

14.6 CONDUCT

14.6.1 **Each office maintained for offering architectural service to the public shall have an Architect who has direct knowledge and supervisory control of the services.**

- (a) Each office maintained for offering architectural service to the public shall have an Architect who has direct knowledge and supervisory control of the services.

The public is entitled to expect that the services offered and provided by an Architect's office, including a branch or secondary office, are supervised, and controlled by an Architect.

Should there be fewer Architects in an architectural firm than it has offices, resulting in a branch office without a full-time Architect, particular care and diligence must be exercised to ensure compliance with this By-Law and the AANB may require that to be demonstrated.

- (b) Proposals of service; agreements; assurances; certifications; official submissions to authorities having jurisdiction; and other representations on behalf of an architectural firm or certificate of practice holder must be made by an Architect.
- (c) When authority having jurisdiction receives a formal presentation (e.g., to a design panel, public hearing, advisory commission or elected body) on an architectural matter, the presentation shall be made by (or under the attending, personal supervision of) an Architect.

The public is entitled to expect that formal representations on architectural matters be made by an Architect.

14.6.2 **An Architect shall seal the Architect's work in accordance with the requirements of the Architects Act of New Brunswick and the By-Laws and Council rulings.**

- (a) An Architect's professional seal is to be applied only by the Architect and is to be used only on documents prepared by the Architect personally or by other persons under the Architect's supervision, direction, and control.

Only a practicing Architect may apply that Architect's professional seal and must do so, with signature and date, to letters of assurance, certificates, drawings, and specifications.

14.6.3 **An Architect shall neither offer nor make any gifts, other than of nominal value (including, for example, reasonable entertainment and hospitality), with the intent of influencing the judgment of a prospective client in connection with a project in which the Architect is interested.**

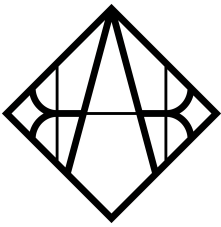
- (a) An Architect must not offer or provide a bribe or "kickback" to any person.

While the By-Law refers specifically to prospective clients, the Architect is advised to exercise similar judgment with respect to existing clients or former clients as such action might be deemed to influence these persons for future project.

14.6.4 **An Architect shall not engage in conduct involving fraud or wanton disregard of the rights of others.**

14.6.5 **An Architect shall conduct the Architect's affairs in a professional manner and refrain from any act which would reflect unfavourably on the profession as a whole.**

- (a) An Architect's conduct towards other Architects shall be characterized by courtesy and good faith.
- (b) An Architect shall give due regard to the professional obligations of those from whom the Architect receives or to whom the Architect gives authority, responsibility, or employment, or of those with whom the Architect is professionally associated.



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- (c) An Architect shall give due regard for the interests of both those who commission and those who may be expected to use of be exposed to the product of the Architect's services.
- (d) An Architect who engages in any profession, business, or occupation concurrent with the practice of architecture must not allow such outside interests to jeopardize or come into conflict with the Architect's professional integrity or obligations.
- (e) Dishonourable conduct in the professional or private life of an Architect, which reflects adversely on the integrity of the profession, must be avoided.

14.6.6 An Architect shall not falsely or maliciously injure the professional reputation or business prospects of another Architect.

This By-Law does not prohibit Architects from making fair and honest comments on the work of other Architects. Such comment must be based on considered knowledge of the project or subject in question, representing and informed, legitimate point of view.

A listener is entitled to expect that an Architect providing comment must withstand scrutiny in order to be regarded as credible.

This By-Law does not prevent unsolicited statements or architectural criticism. This By-Law applies also to the provision of advice or services for which an architect is paid including those as an arbitrator or as a provider of "second" or "expert" opinion with respect to another architect's project(s), documents, or services.

An architect should avoid imprudent gossip or generalized comments about another architect, another architect's work or reputation, or type of project.

14.6.7 An Architect shall not supplant or attempt to supplant another Architect after the other Architect has been retained or definite steps have been taken toward the other Architect's retention.

Subject to the terms of the Client/Architect Agreement (contract), a client is free at any time to dismiss the Architect, and this By-Law does not protect either mismatched clients or Architects. It protects the relationship between a client and an Architect from interruption by another Architect.

The Client/Architect relationship, particularly in its early stages, is delicate because mutual trust and understanding are formative and easily undermined. The profession values a good relationship between client and Architect because it is invariably cited as the basis of good architecture. Hence, when the client has made a choice, other Architects must cease their overtures.

(Note: This does not prevent an Architect from approaching a potential client who has a broader program of prospective work which is not yet allocated to another Architect).

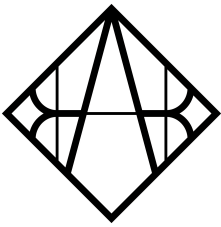
14.6.8 An Architect may only accept a commission for a project when the services of any Architect previously retained for the project have been terminated.

An Architect, on being either approached or instructed to proceed with services for which the Architect knows or can ascertain by reasonable inquiry that another Architect is or has been engaged by the same client, shall notify the other Architect in writing of that fact.

This By-Law requires the termination but not necessarily the financial resolution of the predecessor Architect's services prior to a successor Architect's making a proposal or being interviewed for or accepting a commission.

The term "commission" refers to a scope of architectural services for a client with regard to a set of project parameters or building program.

- (a) The foregoing notwithstanding, there are several necessary pre-conditions to a "successor" firm's providing services which are based upon, and which continue and complete those initiated by its predecessor:



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- (i) there must have been no supplanting of the original firm by a successor firm;
- (ii) the resignation or termination of the original firm must have been done in accordance with the terms of its Client-Architect agreement;
- (iii) the original client must have paid for the services of the original firm;
- (iv) in the case of property transfer to a new owner, there must have been legal acquisition by the new owner of the original architectural firm's copyright and drawings (either directly from the original firm or from the original owner, that owner was legally entitled to sell them).

An Architect who has been replaced partway through a commission should not unreasonably withhold consent to a subsequent Architect's referring to the replaced Architect's work, or using the Architect's design or instruments of service, in order to complete a commission.

The responsibility for notifying a previously engaged Architect lies with the new Architect and cannot be delegated to the client. Upon notifying the previous Architect in writing, the new Architect is under no obligation to delay acquiring the commission until the first Architect's fee has been paid.

14.6.9 An Architect may only provide the same service for the same client on the same project as another Architect through the medium of an approved competition.

- (a) The "same client" includes technically different clients, authorities or departments connected to or part of a broader client.
- (b) Any attempt to circumvent the By-Laws by sequential engagement and disengagement of a series of Architects is considered a non-approved form of competition.

This By-Law prohibits unsanctioned competition but does permit fair review, analysis, or expert opinion services by a "second" Architect because either the client or the services will be different for each Architect.

14.6.10 This By-Law prohibits unsanctioned competition but does permit fair review, analysis, or expert opinion services by a "second" Architect because either the client or the services will be different for each Architect.

Public expressions, submission, or dialogue with respect to architectural issues, undertaken without compensation in the community interest and without having or seeking or anticipating a client, are permissible.

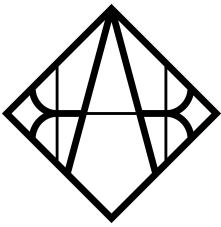
- (a) Speculative services to lure or entice a client, or "loss leaders", are not permitted.
- (b) Prior to being retained, an Architect is not permitted to provide solutions, suggestions, ideas or evidence of same (in any format) which have value to the client or upon which the client might be expected to rely.

The foregoing applies not only to design, costing and technical matters but also to considerations of management, methodology and scheduling information beyond that which is required for the Architect to determent and submit a credible proposal for services and fees.

In making an expression of interest or proposal to a prospective client, an Architect may promote the Architect's experience, capabilities, resources, and capacity to demonstrate to advantage the Architect's suitability, including an understanding of that client's needs and the project's relevant issues.

- (c) An Architect has a duty to communicate with a client and to keep a client reasonably informed.

An Architect must confirm the terms and conditions of engagement, in a written recommendation agreement with the client, executed prior to the Architect's commencing work on any commission.



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- (d) An Architect who provides personal input to a public organization, occupies political office or is a board or committee member (on either a paid or voluntary basis) must not provide any form of architectural services to that organization in that capacity (but may do so in accordance with By-law 14.6.16).

14.6.11 An approved architectural competition is either a competition conducted according to the current "Canadian Rules for the Conduct of Architectural Competitions" or an alternate arrangement, specifically approved in writing by Council, that assures equitable treatment and equal and adequate remuneration to participating Architects.

- (a) Prior to an Architect's participation, an Architectural competition's "approved" status must be confirmed with the AANB.
- (b) An Architect invited to participate in a non-approval architectural competition must decline the invitation and advise the AANB of the competition.

14.6.12 An Architect's conduct when participating in an approved competition must comply with the "Canadian Rules for the Conduct of Architectural Competitions" or as directed by Council.

14.6.13 An Architect shall not attempt to influence the awards of an approved competition, except as a jury member.

- (a) Any actions which involve bribery, pressure or unusual contact with the competition authorities are prohibited.

Queries, communications, and clarifications of competition conditions may be made only as directed by the rules of the competition.

14.6.14 An Architect shall not attempt to obtain a commission to be awarded by an approved competition, except as an entrant.

An Architect shall not attempt to obtain a commission to be awarded by an approved competition, except as an entrant.

14.6.15 An Architect receiving monies for services provided by others shall not use such monies for the Architect's own purposes and shall distribute them promptly to those so qualified.

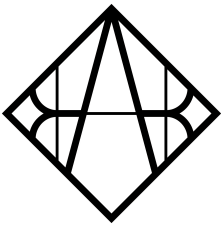
- (a) This By-Law requires an Architect to fulfill the expectation that funds received by an Architect on behalf of others will be properly managed.
- (b) Receiving monies for services provided by others would include fees or disbursements invoiced to a client for project-related services provided under contract to the Architect by sub-consultants and suppliers. This provision does not apply to employees of the Architect.

The monies received should be distributed or paid to others and not diverted for the Architect's own purposes and therefore be inaccessible. Payment may be in full or on a prorata basis on the basis of the monies received. Payment shall be made "promptly as agreed" on the basis of good business practice, e.g., monthly or upon receipt of monies.

14.6.16 Except when providing pro bono services on a contingency basis, or as approved by Council, an Architect shall provide services and receive fees in substantial accord with the most current Schedule(s) of Fees for Professional Services.

Under this By-Law, except as otherwise approved by Council, there are three fundamental ways of determining professional fees for service, without diminishing the scope and standards of agreed services on a project:

- (i) The RAIC's "Guide to Determining Appropriate Fees for the Services of an Architect" and Schedule of Suggested Hourly Rates.
- (ii) Pro Bono



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(iii) Contingency

In all cases, architectural services may only be provided by Architects or architectural firms (or approved combination(s) thereof) which are the holders of Certificates of Practice.

- (a) "Pro bono" or contingency-based architectural services may not be offered or provided for any project that is subject to the rules of an approved competition; for which an Architect already has been retained; or for which definite steps have been taken to retain an Architect.
- (b) Services provided on "pro bono" or contingency basis shall be no less than if provided for the applicable fee in the Schedule, thereby ensuring that an appropriate level of professional service is received by the client.
- (c) An Architect providing "pro bono" or contingency-based services must enter into a client/Architect agreement that clearly states the services and nature of compensation.

(i) **The RAIC's "Guide to Determining Appropriate Fees for the Services of an Architect" and Schedule of Suggested Hourly Rates for Professional Services.**

The AANB may publish and/or adopt and maintain a Schedule of Recommended Fees for Architectural Services, under separate cover. Architectural practice in New Brunswick is founded upon the requirement that an Architect must be retained and in receipt of the client's instruction before providing service. It has been the profession's long-standing policy that the minimum compensation for services should be as outlined in its published Fee Schedules. These fees have a long and tested tradition and have proven to be an equitable minimum that enables a proper level of basic services. Proper service is the critical issue. Inadequate fees are not an acceptable excuse for inadequate services.

- (d) Fees not in "substantial accord" are those which are less than those recommended in the Guide, except when the services are described there under are correspondingly reduced.
- (e) Proposals which are not in substantial accord with the Schedules contravene this, Clause.

The Fee Schedules are a general guideline of minimums. They are neither a list of medium fees for a price list. The Fee Schedules do not specify what the fee for a specific project must be. Rather, the Fee Schedules are a budgeting check that warns when minimums are breached, and that the real likelihood of inadequate services has been reached. The provision of inadequate services is contrary to the public interest and the fee schedules are one of many preventive measures employed by the profession to guard against inadequate services.

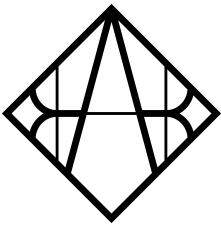
(ii) **Pro Bono**

- (f) "Pro Bono" services are rendered without fee for the public good, intended for an impecunious client who will suffer noticeably if architectural services do not intervene. A client who is a charitable, religious, or non-profit organization does not inherently qualify for the receipt of "Pro Bono" services. "Pro Bono" services are also intended to assist the construction of a meritorious building for the benefit of the general public.
- (g) "Pro Bono" services are services for no fee of any kind at any time. "Pro Bono" services are a gift. Nothing of worth, tangible or not, is to be expected or received in return by the Architect.

Disbursement incurred by such service may be invoiced and reimbursed.

- (h) Architectural services are either "pro bono" or not and cannot be provided on a project on the basis that some are "pro bono" and some are not. Similarly, a single service cannot be appointed as partly "pro bono".

"Pro bono" architectural services may include services from such others as professional engineers, etc. whose services may or may not be "pro bono" as agreed upon with the client.



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(In the hands of the recipient, "pro bono" services might be deemed income, a taxable gift or otherwise taxable by tax authorities. Similarly, in hand of the giver, such services might be taxable. If so, an amount equal to the taxes could be regarded as a reimbursable disbursement. An Architect should obtain legal and accounting opinion in such matters).

Under this By-Law, it is not acceptable to provide service as a donation to be exchanged for a tax deduction. Donations are tax vehicles to implement at social policy wherein monies that would otherwise go to tax receivers are permitted to go to administrators of legally constituted worthy causes. Should an Architect or an architectural firm wish to make a donation, it must not be made as a means of reducing professional fees or obtaining a commission.

Even should the exchange of services for a tax donation be legal, it does not qualify as "pro bono", but rather, is an alternate form of payment, albeit inadequate. Similarly, the fees that would otherwise be due for "pro bono" services are not to be viewed as un-invoiced "bad debts". "Pro bono" services are also not negotiable. They cannot be exchanged for goods or services in the underground economy or for favours in an underworld economy, e.g., bribes or kickbacks.

(iii) Contingency

- (i) Services on a contingency basis may be provided to assist a client in the preliminary phases of project development where the risk of financial failure is high, much greater than that of success.

Bylaw 14.6.16 does not permit the provision of architectural services on a merely speculative basis.

Bylaw 14.6.16 recognizes the entrepreneurial value to society of services on a project which probably will not succeed financially. Contingency-based services are intended to assist a client who, against reasonable odds, proposes and pursues a development that the client believes will be financially successful. In such a project, an Architect's advice must strongly discourage the client, who nonetheless takes the risk.

Success will normally result in increased value of profits for the project, in which the Architect will share as a result of the Architect's efforts. The "contingency" portion of an Architectural service includes only the design phases, which involve a development permit or rezoning application.

- (j) It is recommended that the fees for contingency-based services on projects which succeed financially will be no less than three times the fee as describe in the Guide to Conditions of Engagement and Payment of Fees for Architectural Services.

A contingency agreement shall define success for the project in a manner that readily permits the client and Architect to estimate the dollar amount of the Architect's fees (for both the contingency and in their entirety) before the Architect's services commence.