

PH12.1.1



Ontario Association of Architects

January 27, 2020

His Worship John Tory and City Councillors  
100 Queen Street West  
Toronto, Ontario M5H 2N2

[sent via email]

**Re: PH12.1 – Provincial Consultation on Ontario’s Building Code Service Delivery**

Dear Councillors,

The Ontario Association of Architects (OAA) is dedicated to promoting and increasing the knowledge, skill, and proficiency of its members, and to administering the *Architects Act* “in order that the public interest may be served and protected.”

Item PH12.1 that is currently before Council makes a number of recommendations, two of which are of particular interest to the OAA:

- b. Supports the use of a Prime Consultant on complex buildings;
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- d. Does not support the introduction of a Certified Professional Program in Ontario.

As the OAA enjoys a long-standing, collaborative relationship with the City of Toronto, I wanted to share the perspective of the architecture profession’s self-regulating body on both of these important matters.

**Prime Consultants**

The OAA supports the use of Prime Consultants to enhance building safety. The *Architects Act* (and similarly, the *Professional Engineers Act*) already contain provisions to this effect:

- 11. (4) 8. An architect or a professional engineer may act as prime consultant for the construction, enlargement or alteration of a building.

The Elliot Lake Inquiry showed that while this provision exists, it is not mandatory and that a failure to co-ordinate can have tragic—even fatal—results. The OAA has been working with Professional Engineers Ontario (PEO) to develop a shared definition of Prime Consultant so that it is consistent between the *Architects Act* and the *Professional Engineers Act*. The OAA supports, and has always supported, the further entrenchment of requirements for a Prime Consultant. The City of Toronto and OAA are both in complete agreement about “strengthening the co-ordination and oversight of design professionals on complex building construction projects.”

However, it is important to note that the focus of the Elliot Lake Inquiry was not about creating a separate or specialist designation, but rather requiring the owner to appoint a Prime Consultant, who in turn would be responsible for the act of co-ordination. The City of Toronto appears to propose that “it is a necessary condition that the legislation include requirements for appropriate training and understanding of the Code in order to obtain the

designation.” This goes beyond anything recommended by the Elliot Lake Inquiry, by professional regulators, or by the provincial government. The OAA opposes any move to make this a separate or specialist designation.

By virtue of their training and licensing requirements, architects are already qualified to be—and do serve as—Prime Consultants. To borrow an excerpt from our submission to the provincial consultation, architects undergo a minimum of six years of post-secondary education, then formally register with the OAA as an intern architect. They must have an architect personally supervising and directing their work, as well as a professional mentor not affiliated with their employer. Before they are eligible to write a final licensing exam, they must:

- Complete a minimum of 940 hours of experience on projects located in Ontario, covering specified areas of competence;
- Complete the OAA Admission Course with various modules related to regulatory matters, legal issues, and information specific to the practice of architecture in Ontario; and
- Pass the Examination for Architects in Canada (ExAC), which tests the minimum standards of competency acquired by an intern architect during the internship period “to ensure both public safety and the professional and skilled delivery of architectural services.”

The OAA has been a strong supporter and advocate for continuing professional development. Since 1999, the Association has required its members to fulfil its mandatory continuing education (ConEd) program. For architects to maintain a license in good standing, they must undertake 70 hours of continuing education activities in a 24-month cycle, including 25 hours of structured learning.

Failure to comply with these requirements results in an automatic fine followed by an investigation under the OAA’s complaints and discipline process, which can result in the suspension of the member’s license. The OAA continually reviews its continuing education program to ensure that members are receiving adequate and appropriate professional development. Recent examples of courses developed by the OAA to fulfil evolving needs within the profession include the OAA+2030 Professional Education Series and the Fundamentals of Running an Architectural Practice course.

It would be professional misconduct for any architect to serve as a Prime Consultant if they were not qualified and able to do so (more details on this below). The fact that architects are not always appointed as a Prime Consultant is not a result of a lack of training, professionalism, or of professional requirements. Rather, it is a lack of a clearly legislated or regulatory requirement for an owner to identify an architect as a Prime Consultant, and, often, an unwillingness of owners to pay for this service.

## Certified Professionals

The OAA agrees with the City of Toronto's reading of how the Certified Professional Program works in parts of British Columbia, and that the provincial government is considering adopting a similar regime in Ontario. Like the City, the OAA opposes the implementation of a Certified Professional Program—however, it is important to note that we oppose it due to concerns of process and efficiency.

The City of Toronto suggests that “[w]hile these Certified Professionals hold legal and ethical obligations under their professional act, conflict of interest concerns and perceptions are at times expressed by the public and other regulators.” It is important to note Section 42 of the regulations under the *Architects Act* defines more than 50 situations which would constitute professional misconduct. Among them are:

1. Contravention of any provision of the Act, or the regulations.
2. Knowingly contravening any provision of the Building Code Act, 1992 or the building code.
3. Knowingly contravening any federal, provincial, or municipal law, regulation, or by-law relating to the construction, enlargement, or alteration of buildings.
4. Authorizing, permitting, counselling, assisting, aiding, abetting, or acquiescing in any contravention of a federal, provincial, or municipal law, regulation or by-law relating to the construction, enlargement, or alteration of buildings.
5. Permitting, counselling, assisting, aiding, or abetting any person who is not a member or a holder of a certificate of practice, a certificate of practice issued under section 23 of the Act or a temporary licence to engage or hold himself, herself, or itself out as engaging in the practice of architecture.
6. Authorizing, permitting, counselling, assisting, aiding, abetting, or acquiescing in any contravention of the Act or the regulations by any person.
7. Authorizing, permitting, counselling, assisting, aiding, abetting, or acquiescing in any act that constitutes professional misconduct.
8. Failing to abide by the terms and conditions of a licence, certificate of practice, certificate of practice issued under section 23 of the Act, or temporary licence.
9. Failing to maintain the standards of practice of the profession.
10. Failing to maintain the performance standards of the profession.
11. Charging a fee for architectural services not performed.
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15. Signing or issuing a false or misleading certificate, report, or other document.
16. Having a conflict of interest.
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31. Misrepresenting the practice of architecture carried on by the member or holder, or the qualifications, experience, or capabilities of the member or holder or an officer, director, partner, or employee of the member or holder.
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38. Doing or failing to do anything while engaged in the practice of architecture that shows a deliberate or reckless disregard for the rights and safety of others.
39. Failing to perform architectural services with reasonable skill and judgment.
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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.

The Regulations go one step further in Section 49 by requiring our members to report any time they believe another member may have failed to uphold their professional obligations:

3. Every member of the Association or holder must promptly bring to the attention of the Registrar any act or omission by another member or holder that may constitute professional misconduct or incompetence.
4. Every member of the Association or holder must promptly bring to the attention of the Registrar any act or omission by any person that may constitute a contravention of the Act or the regulations.

Our members are highly trained professionals bound to an extensive list of professional obligations and requirements around the practice of architecture. We are of the belief that our members could act impartially as Certified Professionals.

While we disagree on the notion of a conflict of interest, we do agree there is a potential conflict of *process*. Currently, a developer is unable to choose their building inspector. You cannot choose someone who works faster or slower, or someone who is more or less thorough. While all would be expected to meet requirements, it is possible that developers could steer away from more thorough Certified Professionals if they identified ones that meet only base requirements. They could also select Certified Professionals not based on critical factors such as experience, but rather based on nebulous principles such as lowest price. This ability to shop around simply does not exist at a building counter where you are assigned to whomever receives your file.

The Elliot Lake Inquiry also exposed another risk in this process: a developer's ability to effectively determine which information is ultimately shared with a municipality. If a developer felt that a Certified Professional was being too critical (or perhaps even too thorough), could they simply fire and replace them? Could a developer buy a dozen reports and then submit only the report that is most favourable to their proposal at hand? To some extent, it was a version of this scenario that helped lead to the Elliott Lake tragedy.

These problems are not insurmountable and could be mitigated through measures around how Certified Professionals are assigned, by requiring Certified Professionals to submit all work directly to municipalities, that municipalities must be notified of any contractual changes, etc. But without strict processes and provisions, the process itself—not the professionals—could theoretically work against the public interest.

With that said, the OAA's biggest opposition goes to the very core of this proposal. The development industry has suggested this is a way to streamline the building approval process—a statement with which the OAA is not inclined to agree. We have asked why this Certified Professional model, if it was the panacea the development industry is holding it up to be, has only been adopted by as few as two municipalities despite being in existence for approximately 40 years? Similarly, why have only 33 members (one of whom works for the provincial regulator) registered with the City of Vancouver to provide this service despite

there being more than 2,100 architects in British Columbia? Surely a silver bullet would have been adopted more widely throughout other municipalities.

Anecdotal feedback the OAA received from British Columbia suggests that this system can, at least in some instances, delay processing and approvals and add cost to the extent that some architectural firms have resorted to hiring "permit expeditors." This proposal appears to fail to meet any red tape objectives at either a municipal or a federal level. The reality is that the OAA sees a probable increase to the cost of obtaining a building permit under the Certified Professional model.

While the work could theoretically be externalized from municipalities following significant legislative and regulatory changes, the cost would simply be transferred instead of eliminated. Similarly, the responsibilities, risks, and liabilities that building officials have related to the issuance of a building permit could theoretically be externalized from municipalities, but they would simply be transferred instead of reduced or eliminated. Other jurisdictions in British Columbia, such as the City of Richmond, considered—and subsequently passed on—implementing a Certified Professional Program. One of the red flags for the City of Richmond was a potential "net increase in direct overall costs for the owner and eventually the consumer through a CP program."

As a regulator, the OAA would need to add additional continuing education requirements and examinations for members—both of which would need to be created. The level of administration and oversight for the regulator would increase, requiring the OAA to hire more staff to administer and enforce the program as well as more provincial appointees to sit on statutory committees such as complaints and discipline.

The OAA argues that the Province would be better served by focusing on better quality submissions, and on the real issues delaying the design and construction of buildings: Site Plan Approval.

On the former topic, the OAA has continually encouraged Building Officials to ensure that they do not approve any permit applications for projects that were designed by someone who was unqualified to do so. The OAA is currently tracking a B.C. Supreme Court case regarding the City of Langford approving a building permit from an unqualified individual in contravention of that province's *Architects Act*. The OAA has made repeated requests to building officials to send any contraventions to the Association so that it can fulfil its regulatory responsibilities to investigate all possible matters of professional misconduct or incompetence. The OAA is here to serve and protect the public interest.

It is also important to acknowledge that better quality submissions are frequently challenged by unrealistic schedules and budgets, resulting in a pressure on the architect to submit work that—while compliant with the Ontario Building Code—may not fully meet their high professional standards. Nothing in the Certified Professional model will stop this from happening. Worse, if the constraints of unrealistic schedules and budgets are also placed onto Certified Professionals, some of the very problems this program purports to solve may be replicated.

On the matter of focusing on the real issues delaying the delivery of buildings, the OAA has submitted to the City, other municipalities, and the provincial government that focusing on

anything other than fixing the broken Site Plan Approval process is a red herring. The city's report wrote "it is important to rely on design professionals to streamline the process." The OAA appreciates this acknowledgement. As professionals on the front line, we are in agreement that architects are uniquely positioned to make such recommendations.

In that vein, the OAA has repeatedly stressed that fixing Site Plan Approval—not building permits—would have the greatest impact on speeding up the delivery of buildings. For years, the OAA has flagged that Site Plan Approval accounts for nearly 75 per cent of the total time taken to obtain a construction permit. By contrast, obtaining building permit accounts for roughly six per cent of the total time. An independent study by Altus Group found that delays in Site Plan Approval are costing the province up to \$900 million annually—a number that the OAA believes is likely in excess of \$1 billion due to the conservative nature of their economic model. As Toronto continually leads on the number of building permits, it is fair to assume a significant portion of that amount is lost directly within the city limits.

If the goal is speeding up the design and construction of buildings, then the OAA fails to understand why the Province has not focused on Site Plan Approval. The OAA can only surmise that planning matters are complicated, and building permits are an easier, low-hanging fruit. However, if we are collectively serious about fixing the significant delays in the building process, then Site Plan Approval must be our collective focus.

### Conclusion

The OAA does not agree with some of the concerns advanced by City Council, but is in agreement regarding requirements for Prime Consultants as well as shares its opposition to implementing a Certified Professional program. The OAA stands in solidarity with Building Officials and supports the important work they do. Duplicating an existing regime creates a more complicated process that is not in the public interest. It fails to focus on the real matter at hand and the real cause of delays—Site Plan Approval.

Sincerely,



Kathleen Kurtin, Architect  
OAA, FRAIC  
President

