

PRACTICE ADVISORY

CONSIDERATIONS FOR THE PROFESSIONAL OF RECORD IN CONTRACTUAL DISPUTES

Version 1.1, Published August 30, 2022

This practice advisory has been issued for registrants of Engineers and Geoscientists BC (engineering professionals) acting as the Registered Professional of Record, to clarify their obligations as outlined in the *BC Building Code*, should a dispute between a contractor and the owner of a building arise during a project.

BACKGROUND

There are occasions when an engineering professional hired as the Registered Professional of Record by a contractor on a building project may find themselves caught in the middle when the relationship between the contractor and the owner of the building deteriorates.

Some scenarios include:

- A contractor leaves a project and pressures the engineering professional to leave as well.
- A contractor is fired on a project and pressures the engineering professional to withdraw their schedules and documents from the project.
- An owner is refusing to pay a contractor, so in turn the contractor withholds submitting the final schedules to the Authority Having Jurisdiction until they are paid.

CONSIDERATIONS

An engineering professional should be aware of the following in these types of scenarios:

- An engineering professional cannot rescind documents that have been submitted to the Authority Having Jurisdiction. This includes code-mandated Letters of Assurance and any associated documents.
- An engineering professional cannot withhold a Schedule C-B once the final field reviews have been completed.
- Consistent with the provisions in Clause 2.2.7.3.(3)(b) of the *BC Building Code* Division C, Part 2 Administrative Provisions, the engineering professional must provide a Schedule C-B to the relevant Authority Having Jurisdiction after ascertaining that the components of the project substantially comply, in all material respects, with the plans and supporting documents

prepared by the engineering professional, the requirements of the *BC Building Code*, and other applicable enactments respecting safety, not including construction safety aspects. This is an obligation of the *BC Building Code*, and Engineers and Geoscientists BC cautions engineering professionals against agreeing to any contractual terms that are in violation of the law in BC.

- When an engineering professional determines they will cease to be the Registered Professional of Record on a project, they should follow the guidelines set out in the *Guide to the Letters of Assurance in the BC Building Code* (Province of BC 2022), depending on what stage the project is in. The engineering professional remains the Registered Professional of Record up until the day they inform the Authority Having Jurisdiction that they are no longer on the project.

To avoid being caught in a dispute between an owner and a contractor, the following is worth considering at the start of a project:

- whether the engineering professional can include language in their own contract with the contractor that allows them to provide their signed schedules directly to the owner
- whether it is possible for the engineering professional to engage in a contract directly with the owner.

SUMMARY

Regardless of the state of the relationship between the contractor and building owner, the engineering professional acting as the Registered Professional of Record has obligations that must still be met. The engineering professional must be aware of these obligations as outlined in the *BC Building Code* and the associated guidance documents.

REFERENCE

Province of BC. 2022. *Guide to the Letters of Assurance in the BC Building Code 2018 and Vancouver Building By-law 2019. Version 6.1* (February 11, 2022). Victoria, BC: Building & Safety Standards Branch, Office of Housing and Construction Standards. [accessed: 2022 Aug 29]. <https://www.bccodes.ca/assurance/2018GuideLoA.pdf>.

VERSION HISTORY

VERSION NUMBER	PUBLISHED DATE	DESCRIPTION OF CHANGES
1.1	August 30, 2022	Updated reference and hyperlink to the <i>Guide to the Letters of Assurance</i> ; minor editorial and formatting corrections.
1.0	March, 15, 2019	Initial version.

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