

Architects, Engineers, and Builders — Oh My!

The Architectural Institute of British Columbia v. Langford (City), 2020 BCSC 801

In 2016, the City of Langford's Chief Building Inspector issued a building permit for the construction of a residential / commercial strata complex. An architect was not involved in the project - the design and drawings were completed by a designer. The *Architects Act* (the "Act") required the involvement of an architect in the project as the building exceeded 470 m² in gross area. The AIBC (the professional body that regulates the profession of architecture in British Columbia) brought a petition seeking a declaration that the decision to issue the building permit was unreasonable.

Background

The *Act* sets out which buildings in British Columbia require an architect by law.

The BC Building Code requires registered professionals (meaning a person who is registered or licensed to practise as an architect under the *Architects Act*, or a person who is registered or licensed to practise as a professional engineer under the *Engineers and Geoscientists Act*) in various provisions. For example, under Part 4 of Division B, structural design is to be carried out by a registered professional who is skilled and qualified to perform such work. Section 1.3.3.2. specifies where this Part applies, including buildings exceeding 600 m² in building area or exceeding 3 storeys in building height used for

major occupancies classified as Group C residential occupancies.

Under the *Act*, an architect must be retained any time architectural services are being provided on a building requiring an architect. When the building planning and design begins, the architect is to be involved at that stage and going forward. Not every building or application requires an architect. The *Act* includes a number of exceptions by which certain building types and sizes are exempted from the general requirement for architects or by which certain persons may be permitted to practice architecture.

Under section 60 of the *Act*, the services of a registered architect are required for the following buildings:

- (i) an apartment or residential building containing 5 or more dwelling units
- (ii) a hotel or similar occupancy containing 11 or more guest rooms for transient or permanent occupancy
- (ii) a commercial or industrial building, or combination of both with other occupancies, in excess of 470 m² gross area, being the aggregate area of all floors

(iv) a one-story building, other than a school building, to be used for public assembly, if the gross area exceeds 275 m² or the unsupported span exceeds 9 m

(v) a building of more than one story, other than a school building, to be used for public assembly, if the gross area exceeds 235 m²

(vi) a building, other than a veterinary hospital, to be used as a hospital, sanatorium or as a home for the aged and with a capacity of over 12 beds

(vii) any other building in excess of 470 m² gross area, being the aggregate area of all floors, or

(viii) any alteration to an existing building placing it within any of subparagraphs (i) to (vii)

This case highlights that the legislated requirements for an architect under the *Act* or other professionals under their professional legislation are not necessarily the same as the requirements for a registered professional under the Code.

City of Langford - Permitting Process

The City's Building Bylaw (s.2.3.9) provided that the Chief Building Inspector "may refuse to issue any permit...where the proposed work does not comply with... any enactment respecting health or safety." The Building Bylaw (s.2.3.6.1) also provided that the Chief Building Inspector "may require design and field review by an architect, where in the opinion of the Chief Building Inspector the site conditions, the size or complexity of the building, part of a building or building component warrant it."

The City's evidence was that it did not consider the requirements of the *Act* when it issued permits because

the reference to an "enactment respecting health and safety" in the Building Bylaw did not include the *Act*. But the Court disagreed and found that the *Act* was an "enactment respecting health or safety." The Court held that there was no evidence that the building inspector gave any consideration to the *Act*. A discretionary decision may be unreasonable where the decision makers fail to consider relevant criteria or turn their mind to all the factors relevant to the proper fulfilment of its statutory decision-making function. And further, the decision to issue the building permit without requiring the involvement of an architect was unreasonable "given the size and complexity of the building" and the legal constraints imposed by the Building Bylaw and the *Act*.

The Court declared that the decision of the Chief Building Inspector to issue a building permit for the property was unreasonable because: (1) the drawings submitted by the applicant seeking the building permit were not in compliance with the *Act*, a provincial law relating to the safety of buildings; and (2) the drawings submitted were prepared by an unlicensed person who provides design services, not an architect, contrary to the *Act*. In providing the remedy, the Court stated that a declaration would "provide guidance to municipal officials in exercising their permitting powers."

The case turned on the Building Bylaw language. To reasonably exercise their discretion, local governments with similar language in their building bylaws should not simply ignore the provisions of the *Act* or other enactments respecting health and safety when issuing permits. In this case, the City did not put

forth any evidence outlining their building permitting process and they did not turn their mind to the requirements of the *Act*, which, according to the Court, was not a reasonable exercise of discretion. Going forward, we do not believe the outcome of this case means that local governments must consider every statutory or regulatory requirement regarding health and safety. However, local governments that have similar language in their Building Bylaw should turn their minds to what enactments will be considered during the permitting process and be able to demonstrate how its discretion is being exercised.

The AIBC did not seek to overturn or quash the permits and did not seek damages. It only sought a declaration for the purpose of educating local governments. This case serves as a reminder to local governments, as well as all others in the construction industry, of the statutory requirements for involving professionals in certain projects, which apply in addition to the requirements under the Building Code.

****The Architectural Institute of British Columbia v. Langford (City), 2020 BCSC 801 is currently under appeal.***

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Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.



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Adrienne brings over 25 years of legal experience in litigation and dispute resolution representing local governments and other public entities, insurers and corporations, including in-house as Senior Staff Lawyer at Municipal Insurance Association of BC. Adrienne has represented and provided strategic and practical advice in relation to a variety of complex matters, including procurement, construction (including builders' lien, delay and defect claims), environmental, regulatory, expropriation, bylaw and FOIPPA disputes and processes, municipal jurisdiction, procedure, constitutional challenges, judicial reviews, remedial action orders, administrative hearing processes, contract claims, and privacy, insurance and risk management issues. Adrienne has extensive experience at all levels of Court in British Columbia, administrative tribunals, mediations and arbitrations. Adrienne regularly writes and presents on a variety of matters of interest to public entities and the construction industry.



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Navneet is an associate lawyer of the firm. Prior to joining Civic Legal LLP, Navneet practiced in the Okanagan Valley with a primary focus on real estate law. In addition to her formal education, Navneet has extensive practical experience in business and real estate, as her family owned and operated hotels in the Northeast United States for several decades. Navneet's entrepreneurial upbringing, unique background and viewpoint – having been a consumer of legal services as an owner / developer, allows her to fully understand the client's position and perspective.