

MEMBER ADVISORY: 2019-01

Considerations for the Professional of Record in Contractual Disputes

March 15, 2019

BACKGROUND

There are occasions when an engineer 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 engineer to leave as well.
- A contractor is fired on a project and pressures the engineer 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 engineer should be aware of the following in these types of scenarios:

- An engineer cannot rescind documents that have been submitted to the Authority Having Jurisdiction. This includes code-mandated Letters of Assurance and any associated documents.
- An engineer 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 engineer 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 engineer, 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 the association cautions engineering professionals against agreeing to any contractual terms that are in violation of the law in BC.

- When an engineer determines they will cease to be the Registered Professional of Record on a project, they should follow the guidelines set out in Building and Safety Standards Branch's [Guide to the Letters of Assurance](#) depending on what stage the project is in. The engineer 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 engineer 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 engineer to engage in a contract directly with the owner.

SUMMARY

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