

Meeting Note
Department of Digital Government and Service NL (DGSNL)
Architecture and Scope of Practice Concerns
August 13, 2024, 1:00pm
Executive Boardroom, DGSNL

Attendees:

The Honourable Elvis Loveless; Paul Baldwin, Executive Assistant; The Honourable John Abbott; Scott Jones, Assistant Deputy Minister; Gail Boland, Assistant Deputy Minister

Charles Henley, Past President and current council member of the Newfoundland and Labrador Association of Architects (NLAA); Sandy Gibbons, Member of Client Liaison Committee, NLAA

Purpose of Meeting:

- To discuss the cross-practice of engineers and architects in the province.

Background:

- The **Architects Act, 2008** (the Act) came into force on July 2, 2010, to establish a self-governance framework for architects in Newfoundland and Labrador.
- The Newfoundland and Labrador Association of Architects (NLAA), a professional association, is continued under the Act. Its objectives are promoting and increasing the knowledge, skill and proficiency of its members in all things relating to the profession of architecture; advancing and maintaining a high standard in the provision of architectural services; and promoting public appreciation of architecture and the allied arts and sciences.
- Pursuant to the Act, an architect is a person licensed under the Act by the Architects Licensing Board of Newfoundland and Labrador (ALBNL), a self-regulatory organization, to provide architectural services. Architects are trained to design and plan buildings, as well as prepare construction drawings, and are involved in more aspects of the building process such as administering construction contracts and navigating regulatory requirements.
- The ALBNL Board includes two public interest representatives: Sheldon Peddle, whose term expires September 23, 2024, and a vacancy.
- Charles Henley and Sandy Gibbons previously met with then-Minister Stoodley on July 26, 2023, to discuss scope of practice, and representatives from the NLAA and the ALBNL met with the then-Minister Stoodley on November 15, 2022, to discuss projects undertaken without an architectural licence.

Agenda item #1 (Projects undertaken without Architectural Licence)

- Charles Henley and Sandy Gibbons wrote to DGSNL on March 14, 2023, raising further concerns about certain engineers practicing outside their scope of practice, and claimed it is a direct contravention of not only the Act but also the engineers' own code of ethics. The correspondence stated, engineers do not follow the rigours of the ... "Conditions for Licensure of Architects in Canada" and they must only practice in areas that they are "certifiably qualified" as defined in the **Engineers and Geoscientists Act, 2008** and in which they are competent as per their code of ethics. The authors argue only the ALBNL can determine the

competency in the practice of Architecture, not an individual engineer or Professional Engineers and Geoscientists Newfoundland and Labrador (PEG-NL).

Analysis

- Issues involving alleged illegal provision of architectural services have been ongoing for several years, particularly between the ALBNL and PEG-NL. While the engineers see this as an issue of overlap in scope of practice, the ALBNL believe that there is no overlap and that building plans should be stamped by a licensed architect.
- Before the Act came into force in 2010, the areas of overlap in question were managed through a voluntary 1992 Memorandum of Agreement (MOA) between PEG-NL and the NLAA (see Annex A). It identified the following project types for which a licensed engineer could provide architectural services, and thus act as the “professional designer”:
 - Group “F” building (industrial), as defined in the National Building Code of Canada, 1990 edition (e.g. plants, factories, warehouses, etc.).
 - Mixed occupancy building, where the major occupancy is Group “F”, and where minor occupancy does not exceed 600 square metres of total floor area.
 - Extension not greater than 300 square metres of an existing building.
 - Renovation or alteration not involving life safety or spatial planning.
- DGSNL’s understanding is that the MOA was not continued sometime after the new Act came into force. PEG-NL advised that the new Act nullified the MOA, as the licensing function was assumed by a separate body, the ALBNL. The ALBNL suggested at the November 15, 2022, meeting with DGSNL that there was no MOA. Charles Henley and Sandy Gibbons provided DGSNL with a copy of the MOA. They maintain that “[t]he 1992 MOA has never been officially rescinded by PEG-NL, so it is still valid, albeit being ignored.”
- Other amendments in section 35 of the new Act increased the scope of buildings requiring the services of an architect, including:
 - Lodging houses or bed and breakfast establishments where the maximum number of guests is between 5 and 10; and
 - Buildings used or intended for industrial occupancy where the building’s total occupant load exceeds 50 persons.
- DGSNL’s April 3, 2007, Guidance Document for the Submission of Building Design Drawings and Plans provided that building plans subject to review must “bear the authorized seal and signature of the professional designer.”
- DGSNL’s December 4, 2013, Guidance Document stated, “that the **Architects Act, 2008**... requires an Architect to design and prepare construction drawings for the construction, enlargement, and alteration of all buildings, except those specified in Section 35 of the Act...”
- In December 2016, DGSNL revised the Guidance Document to state that a designer can be “a professional architect or engineer skilled in the work concerned”. The NLAA and ALBNL claim that “This change exacerbated the issue of non-Architects practising Architecture and in essence may have facilitated violations of the Architects’ Act.”
- The Guidance Document is consistent with the 2020 National Building Code of Canada which states, “Designer means the person responsible for the design.” The Code also states, “For

design carried out in accordance with Part 4 of Division B, the designer shall be a professional engineer or architect skilled in the work concerned.”

- A scan indicates there is general recognition of the overlapping scope of practice in the rest of Canada, which is addressed in various ways as noted below:
 - ON, BC and NB have a joint bulletin issued by both professions;
 - SK and NWT accept an architect or engineer similar to Newfoundland and Labrador;
 - MB has the **Architects and Engineers Scope of Practice Dispute Settlement Act** (Various Acts Amended);
 - NS and PEI have provisions for joint practice committees;
 - AB issues permits that may allow engineers to engage in architectural work;
 - NU and YK have no legislation governing architects; and
 - no information was found relating to addressing the overlap in QC.
- The ALBNL remains opposed to the idea of an overlap between the architectural and engineering professions and mentioned their concerns in each of their past eight annual reports. The 2023 report noted a specific dispute related to this issue between ALBNL and PEG-NL. According to ALBNL, PEGNL responded and forwarded a letter of rebuttal written by the subject engineer. ALBNL states they provided a response to PEG-NL and are awaiting the direction of PEGNL on whether it will take the case to their disciplinary committee.
- There are significantly fewer architects than engineers in Newfoundland and Labrador, and most architectural firms are in the St. John’s metropolitan area; therefore, it can be difficult and costly to secure an architect in more remote areas.
- Any overlaps between the **Architects Act, 2008** and the **Engineers and Geoscientists Act, 2008** should be addressed with PEG-NL, and if an engineer is operating non-compliant with the **Engineers and Geoscientists Act, 2008**, the disciplinary procedures under that Act should be followed.

Potential Speaking Points

- The issue raised by the attendees is really an issue to be addressed between PEG-NL and the ALBNL and the ALBNL should continue to engage with PEG-NL on this matter. If the 1992 MOA is still in force, any breach of the commitments is a matter for the parties to it to resolve.
- The purpose of building plan review by Engineering and Inspection Services Division is to ensure plans comply with fire and life safety and buildings accessibility requirements. The Division identifies the professional designer requirements under the **Fire Protection Services Act** and **Buildings Accessibility Act**.

Proposed Actions

- DGSNL will continue to follow the Guidance Document for the Submission of Building Plans and Specifications.

Prepared/Approved by: T. Duggan/S. Dutton
August 9, 2024

Annex A: PEG-NL and NLAA MOA

**Design or Construction Projects
which Require a Licensed Architect¹**

For any of the following design or construction projects planned for the Province of Newfoundland and Labrador only a licensed Architect^{1,2} can provide the required architectural services, except only where noted in Part 2.

Part 1


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| <p>(A) Assembly Occupancy, if the proposed public occupancy is fifty persons or more, and, without limiting the generality of the foregoing, including</p> <ol style="list-style-type: none"> 1) Amusement park structures 2) Arenas 3) Armories 4) Art Galleries 5) Auditoria 6) Bleachers 7) Bowling alleys 8) Churches and similar places of worship 9) Clubs, non residential 10) Community Halls 11) Court houses 12) Dance halls 13) Exhibition halls 14) Grandstands 15) Gymnasiums 16) Ice Rinks 17) Lecture halls 18) Libraries 19) Licensed beverage establishments 20) Lodge rooms 21) Museums 22) Passenger stations and depots 23) Recreational piers 24) Restaurants 25) Reviewing stands 26) Schools and colleges 27) Stadium 28) Swimming pools, indoor with spectator seating 29) Undertaking premises | <p>(B) Institutional Occupancy and, without limiting the generality of the foregoing including</p> <ol style="list-style-type: none"> 1) Children's custodial homes 2) Convalescent homes 3) Homes for the aged 4) Hospitals 5) Infirmarys 6) Bleachers 7) Orphanages 8) Penitentiaries 9) Police Stations 10) Prisons 11) Psychiatric Hospitals 12) Reformatories 13) Sanitoria <p>(C) Residential Occupancy, if the proposed sleeping occupancy is twenty persons or more, and, without limited the generality of the foregoing, including</p> <ol style="list-style-type: none"> 1) Apartments 2) Boarding 3) Clubs, residential 4) Convents 5) Dormitories 6) Hotels 7) Houses 8) Lodging houses 9) Monasteries 10) Motels 11) Motor Hotels 12) Schools and college, residential | <p>(D) Business and Personal Service Occupancy, if the proposed floor area is three thousand square feet or more and, without limiting the generality of the foregoing, including</p> <ol style="list-style-type: none"> 1) Banks 2) Barber and hair dressing shops 3) Beauty parlors 4) Dental offices and clinics 5) Dry cleaning, self service 6) Fire stations 7) Laundry, self service 8) Medical offices and clinics 9) Offices 10) Radio and television stations and studios 11) Small tool and appliance rental and service. 12) Telephone exchanges <p>(E) Mercantile Occupancy, if the proposed public area is three thousand square feet or more, and without limiting the generality of the foregoing, including</p> <ol style="list-style-type: none"> 1) Department stores 2) Markets 3) Shops 4) Stores 5) Supermarkets |
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Part 2

Only on the following project types can a licensed Engineer provide architectural services which would otherwise be provided by a licensed Architect.²

- (1) Group 'F' building (industrial), as defined by the National Building Code of Canada, 1990 edition.
- (2) Mixed occupancy building, where the major occupancy is Group 'F', and where the minor occupancy does not exceed 600 square metres of total floor area.
- (3) Extension not greater than 300 square metres to an existing building, or
- (4) Renovation or alteration not involving life safety or spatial planning.

Each architectural drawing accompanying a permit application, submitted to authorities having jurisdiction, or issued for tender or construction must be sealed with at least one of the following stamps.

| An Architect and member of the NAA who holds a Certificate of Practise | An Architect who holds a Temporary License issued by the NAA | An Engineer who holds a License to Practice Architecture in Newfoundland and Labrador ² issued by the NAA |
|---|---|--|
|  | <div style="border: 1px solid black; padding: 5px;"> A Temporary License has been issued to John Doe, Architect by the Newfoundland Association of Architects for ABC project only. Expires 01/01/95. Local Associate: Jane Doe, MNAA. </div> | <div style="border: 1px solid black; padding: 5px;"> A License has been issued to John Doe, P.Eng. by the Newfoundland Association of Architects for the Practice of Architecture in accordance with The Joint Board of Practice. Expires 01/01/95. </div> |

1 - An Architect licensed by the Newfoundland Association of Architects (NAA) or a Holder of a Joint Practice Certificate jointly issued by the NAA and the Association of Professional Engineers and Geoscientists of Newfoundland (APEGN).
 2 - As per the Architects Act 1978 and the Memorandum of Agreement between the NAA and APEGN.