Let's not violate the public interest

By Steve Cohlmeyer

ABRAHAM Lincoln conducted a successful legal practice for 25 years before he was elected president. His legal studies were limited to self-selected readings, and there were no regulations to be satisfied before he could call himself a lawyer. Two hundred years ago barbers and medical doctors were one and the same, their principal technical expertise that of bleeding patients.

Over the last 100 years things have changed. Our culture has become increasingly complex and interdependent. Problems have occurred because of inconsistent professional qualifications. And it has been recognized that allowing anyone to call him or herself a doctor-lawyer-engineer-accountant-or-architect poses a risk to public health and welfare.

In response to this concern, governments in all industrialized countries have established legislation controlling participation in any of the five classic professions. The aim of the legislation is to assure a reliable and consistent level of education, training and experience for all those who purport to practise one of the professions.

In Manitoba, formal acts of the legislature regulate the professions of medicine, law, engineering, accounting and architecture. These acts restrict the provision of clearly defined professional activities, and those who are not qualified and duly licenced are not permitted to perform these specified services.

A key legal precept underpinning these various acts is that ability or knowledge is not the same as authorization to practise; the inmate of Stony Mountain who knows more law than the lawyer is not permitted to practise law; authorization to practise flows only from satisfying specified and repeatable criteria.

The Architects Act of 1914 states that all buildings having an area over 400-square metres require the services of an architect to provide "planning or supervision for others of the erection, enlargement, or alteration of buildings."

The act also requires architectural services for buildings of any size that accommodate assembly and institutional occupancies — classifications which include restaurants, community halls and churches. There are some exceptions — rural agricultural buildings, private single-family residences and grain elevators do not require professional architectural services.

Over the past 20 years, a number of buildings have been completed in Manitoba without the services of an architect in contravention of the Architects Act. The courts have determined that this practice is illegal (Pestrak vs.Denoon, 2000; and Manitoba Association of Architects vs. City of Winnnpeg, 2005).

The more recent decision has imposed a permanent injunction on the City of Winnipeg from issuing any further permits for construction which contravene the Architects Act.

The legal framework and restricted scope status of the profession of architecture is similar throughout North America. Though there have been challenges to enforcement of acts in many of the provinces of Canada, and in many of the states of the United States, the resolution in every case has been recognition and enforcement of the architect acts as they are written.

Manitoba is the only major jurisdiction to lag behind this consistent direction in legal and administrative process, and the recent decision from Court of Queen's Bench has done no more than clarify correct interpretation and bring Manitoba into harmony with the rest of North American law and practise.

There are a number of issues which surround the current debate. Though each deserves its own full discussion, the limitations of space dictate that the following arguments be presented simply as points of information and comment:

Architects are subject to an international accreditation scheme which demands six to eight years of university education, three years of specified practice, nine nationally administered (three to six hours long) examinations, and an ongoing program of continuing education.

The problem which has been corrected by the recent court decision was one of governments misinterpreting their own laws. The fact that engineers have been illegally practising architecture has simply been the most visible result of a bureaucratic error.

Architects are trained tested and certified to provide their services for the design and construction of buildings. Engineers are trained tested and certified to provide their services for the design and construction of the systems of buildings; most often these are structural, electrical and mechanical systems. These are different curricula and different standards of competence, and are not immediately transferable simply because one (in this case engineers) can read and interpret the Building Code.

There has been a lot of discussion about cost imposed by the recent court decision. If there are costs, they are short-term costs to solve a temporary problem resulting from a governmental error. As soon as this bottleneck is resolved, no cost increase should result from following the same laws that govern the rest of North America.

In 1979, there was a similar court case in British Columbia. The judge in that case noted that, no matter what overlaps may occur and be contested, the fact that there are two separate acts, one for engineers, and one for architects, makes it clear that the intent of the legislature was that there be two separate and distinct professions.

As clearly noted in that decision, the effect of the proposed exemption clause will be to allow engineers to prastice architecture. Allowing engineers to practise architecture would be inconsistent with legislative intent, inconsistent with international precedent, and a violation of the public interest.

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