

# CONFLICT OF INTEREST - Financial Incentives

## CONFLICT OF INTEREST - FINANCIAL INCENTIVES

The ARIDO Practice Standards provide for the rules around what is appropriate conduct and expected member behaviour when practicing interior design. The Practice Standards cover various areas such as duty of a practitioner to the client, public, employer and the profession as a whole. The standards also mandate the responsibility of upholding public safety within the practice of interior design and the commitment to competency and knowledge in all work they undertake. These are some examples. Members should review the Practice Standards which can be found in [ARIDO By-law no. 4](#).

Perceived or actual conflicts of interest are one area of conduct that is imperative for the profession to understand and navigate appropriately. The Practice Standards outline specific and expected behavior that ARIDO mem-

bers should be aware of, as well as understand appropriate steps that should be taken.

This is the first release in a series of Best Practice Tools that will focus on ARIDO's Code of Ethics and Practice Standards, to assist members in understanding their practice obligations.

### ARIDO'S PRACTICE STANDARDS

The matter of Conflict of Interest is covered in the following areas of the ARIDO Practice Standards:

[Section A - BUSINESS AND PROFESSIONAL ETHICS, 4, 5, 7, 11 and 15;](#)

[Section F - CONFLICT OF INTEREST, 1, 2 and 4](#)

ARIDO's Practice Standards apply to all members and categories of membership including Student, Intern, Educator, and Registered members. See Appendix A for a full list of the Practice Standards.

## **INTERIOR DESIGN SCOPE OF PRACTICE**

While the title “Interior Designer” in Ontario is protected under ARIDO’s Bill Pr6, the scope of interior design remains unprotected and can be carried out by any individual, including those that are unqualified. In fall of 2016, Ontario Government proposed the collaboration between ARIDO and the Ontario Association of Architects (OAA) for the regulation of the interior design scope via the existing *Architects Act*. This new partnership has resulted in the development of a Direct Regulation model by ARIDO and the OAA which outlines future regulation for interior design in Ontario including a protected scope. As a result of this work, the organizations have also developed a defined scope of practice for Interior Design which can be found in Appendix B.

For the purposes of this document, ARIDO has focused on those tasks and activities that are included within the proposed scope of practice.

## **WHAT IS A CONFLICT OF INTEREST?**

A conflict of interest occurs when an interior designer’s professional judgement may be at risk of being compromised due to a personal bias or external influence. In particular, an ARIDO member is in a conflict of interest when they consider other interests above and beyond the interest of the client and/or project. This in turn, creates a conflict with the obligation and/or responsibilities to the client to whom the member is providing services and the project they are designing.

Where an ARIDO Member does not actively mitigate a potential or actual conflict of interest,

or allows for the mismanagement of it, there can be considerable impact on the designer’s professional judgement and credibility, opening the practitioner up to legal risks and increased liability. But most importantly, such conduct puts the client and the project at risk. One cannot provide an unbiased recommendation on project-related product or services where their recommendation is driven by personal gain.

Many other professions, such as lawyers, doctors, architects and engineers, address the need to mitigate and avoid conflicts of interest as a means of ensuring that public interest and protection are at the forefront of professional practice. This sets a foundation within the collective profession that focuses on duty to the client, integrity of professional judgment, and public interest as priorities for the profession as a whole.

## **TYPES OF CONFLICT OF INTEREST - FINANCIAL INCENTIVES**

Not all conflicts of interest are equal, nor should all matters be treated or managed in the same way.

There are various types of conflicts of interest outlined in the Practice Standards. This particular publication will focus primarily on conflicts of interest that include financial incentives offered to and/or accepted by the interior designer.

An interior designer enters a state of potential conflict of interest when they:

1. are presented with or are aware of a financial incentive payable to them where they agree to specify a particular vendor product or recommend a vendor for services on a project, and/or;
2. request that a financial incentive is paid to

them in exchange for specifying a particular vendor's product or for the recommendation of a vendor for services on a project.

A conflict of interest is actualized when an interior designer formally accepts a financial incentive in exchange for the specification of project-related goods or services. This applies to current and future projects.

Under ARIDO's Practice Standards, this is prohibited and considered a conflict of interest. The Practice Standards do not discriminate whether the initiating party is the vendor or the designer; this type of activity is prohibited in all instances.

There may be other forms of benefit of "incentive" such as gifts, forms of entertainment or other means of inducement which are offered to the designer or requested by the designer in exchange for the specification of goods and services. This will be addressed in supplementary tools.

**Under the current ARIDO Practice Standards, Section 4. A, it states:**  
*"Member shall not participate in nor receive directly or indirectly any payment, benefit or other inducement for the specification of goods and services for a project other than fees or payments from a client or an employer."*

### **WHY IS IT IMPORTANT TO IDENTIFY A CONFLICT OF INTEREST?**

The Practice Standards clearly identify appropriate conduct and expected member behaviour when practicing in order to ensure that clients are protected and that all members are practicing from the same level of integrity and professionalism. As a professional and interior design-

er, it is integral that all decisions you make and the activities you engage in related to the project are focused on what is in the best interest of the client and the project.

### **BEST PRACTICES – WHAT TO DO WHEN A CONFLICT OF INTEREST ARISES?**

Here are some recommended best practices to follow when a situation arises.

#### **DO NOT ACCEPT PAYMENTS OR FEES FOR SPECIFICATION OF PRODUCT OR SERVICES**

Accepting a fee for the specification of product or services is outside acceptable interior design services. Avoidance is always the best practice, regardless of the situation or circumstances.

Interior Designers should only accept payments and fees received directly from a client or employer you are working for and in direct relation to the professional services the designer is providing for the project.

Members should not engage in activities, discussion or accept remuneration for services rendered that could place them in a conflict of interest with the client and the project. This applies to all practicing designers at all levels; including Principals, Partners or Owners (PPO) and those who are employees within a firm.

If a vendor initiates a discussion around a financial incentive, immediately advise the vendor that ARIDO's Practice Standards prohibit you from engaging in such activities.

#### **SPECIFY APPROPRIATELY**

Interior Designers should specify product and services solely on the basis of the appropriate

recommendations for the design, project, and budget. This involves making recommendations that are informed, researched, unbiased, and free of any personal conflict.

### **INTERIOR DESIGN FIRM POLICIES**

PPOs should ensure the activities carried out by their firms and all employees align with these standards. It is recommended that an organization-wide policy is developed prohibiting any representative from the firm, including employees, to engage in these types of activities. PPOs should then also ensure it is presented, understood, and agreed upon by all employees.

**FULL DISCLOSURE** – Where the conflict occurs, it is best practice to fully disclose in writing the conflict to the client and/or the employer where applicable. Written disclosure should identify the financial interest that exists and advising that it may affect your professional judgement. At the direction of the employer or client, a designer may be removed from the project and/or disengaged from any project. In all cases, where a conflict of interest is identified, the firm should also seek and obtain written approval from the client and/or employer, documenting their direction prior to proceeding with the project.

### **BREACH OF PRACTICE STANDARDS**

In accordance with ARIDO By-law No. 4, Complaints and Discipline By-law, ARIDO members are required to comply with the by-law and the Practice Standards as defined. Section M, 2 of the By-law states constitutes an act of professional misconduct where the member has not acted in compliance with the law, with the standards of the profession or with honesty and integrity.

Where a member has engaged in conflict of interest activities, a complaint can be filed against them and directly with ARIDO. A complaint can be filed, in writing, by any individual including the client, another member, or any other individual.

Once a written complaint alleging a breach of the Standards of Practice is filed, ARIDO will initiate its Complaints and Disciplinary procedures to investigate the allegations. Where a member is found to have committed an act of professional misconduct, one or more of the following orders may occur:

- a. direct the Registrar to revoke the Member's Certificate of Membership;
- b. direct the Registrar to suspend the Member's Certificate of Membership for a specified period of time;
- c. direct the Registrar to impose specified terms, conditions and limitations on the Member's Certificate of Membership for a specified or indefinite period of time;
- d. require the Member to appear before the Discipline Committee to be cautioned or send a letter of caution to the Member; or,
- e. require the Member to appear before the Discipline Committee to be reprimanded or send a letter of reprimand to the Member.

ARIDO may also publish the Discipline Committee's decision and its reasons or a summary of its reasons in its Annual Report or in any other publication of ARIDO. The name of the Member who was the subject of the proceeding may also be published.

## **INSURANCE**

As a requirement to qualify for and maintain membership, ARIDO mandates that all members offering and carrying out interior design services to the public in Ontario must be covered under Errors & Omissions Insurance. While ARIDO does not mandate a sole provider for insurance, PROLINK Insurance Inc. ("PROLINK") is the official brokerage appointed by ARIDO to offer insurance that is available to ARIDO members only.

As our insurance partner, PROLINK has included information related to both professional liability and risk management.

### **IMPACT ON PROFESSIONAL LIABILITY**

#### **INSURANCE:**

The purpose of the ARIDO Professional / Errors & Omissions ("E&O") Liability Insurance policy is to defend members against professional negligence allegations for interior design services. The definition of professional services covered is broad and comprehensive for the benefit of Registered Interior Designers.

The ARIDO E&O policy is intended to respond to an allegation related to a conflict of interest. This is a benefit for members; however, all members should be aware that a conflict of interest claim with merit could result in the following when the ARIDO E&O policy renews after the claim was brought against a member:

1. An increase in the E&O insurance premium; and/or
2. The removal of coverage for a future claim related to a conflict of interest.

The insurer for the ARIDO E&O policy understands that clients, suppliers or other Interior Designers might bring a frivolous conflict of interest allegation against a member. The ARIDO policy is in place to protect members from frivolous claims. The E&O insurer would view a legitimate conflict of interest claim with concern. The risk profile for a member found to be in a conflict of interest would be deemed significantly higher because the insurer would be concerned about the member in question becoming a moral hazard. ARIDO's insurer has an expectation that members are performing in accordance with ARIDO's Practice Standards and placing their client's best interest ahead of personal gain.

Intentional unethical activity by a member may result in a declination by the insurer of any form of legal defense against a lawsuit brought against you by a third party (i.e., client, another professional, or supplier).

### **UNINTENDED CONSEQUENCES RELATED TO A CONFLICT OF INTEREST:**

Financial incentives connected to a member's recommendations or specifications on certain products or services can also lead to clients alleging that you "guaranteed" or "promised" that a supplier would deliver a certain result or savings. However, Professional Liability policies do not cover claims resulting from allegations that a member provided a "guarantee, promise or warranty".

Reputational damage can result from conflict of interest claims that become public through court documents. Financial loss can be significant for professionals because current and prospective clients and suppliers may be unwilling to work with a member who has been found guilty of a conflict of interest by a court of law.

## **RISK MANAGEMENT RECOMMENDATIONS:**

The recommended risk management approach for members is dependent upon the product procurement services provided. Researching, providing, and reviewing product specifications on behalf of clients is considered by ARIDO as part of the interior design scope and would not be viewed as procurement services by ARIDO or the ARIDO program insurer.

### **1. MEMBERS DO NOT PROCURE PRODUCTS ON BEHALF OF THEIR CLIENTS:**

Your client agreements and contracts should indicate that you do not purchase products on behalf of your clients. Clarity with your clients will reduce risk because clients have a better understanding of your services. Specify in your agreement that you do not receive additional funds or compensation from third party product suppliers that you recommend to your client and that clients will be instructed to remit payments for products or services directly to the supplier.

Members should connect their clients directly with suppliers of products or professional services to avoid being perceived as an agent or representative of a supplier. The supplier's invoices and/or contracts should be issued in the name of your client.

There will be a risk of allegations of misrepresentation brought against you by clients if you specify that you do not receive compensation from suppliers and your client becomes aware that you actually received compensation.

### **2. MEMBERS PROCURE PRODUCTS AND SERVICES ON BEHALF OF THEIR CLIENTS:**

It is recommended that members indicate the following in their client agreements and contracts:

1. You do not receive compensation, outside design fees, (i.e., financial incentives, fees or commissions) from third party suppliers or other professionals or sub-trades.
2. You accept funds directly from clients for products or services provided by third parties solely for the payment of those products and/or services as those costs are not included in your design fees. A detailed and itemized summary of the costs for product and/services by a third-party provider will be given to the client.

Clarity with your clients will ensure transparency so that clients do not misinterpret your actions or recommendations to purchase certain products or services, on their behalf, from third parties.

The perception of clients can often change when you purchase products on their behalf. Clients could be more likely to hire a lawyer if they are dissatisfied with the products or services you purchased. Requesting reimbursement from your clients can also be more difficult if the product or service did not meet their expectations.

PROLINK has defended multiple lawsuits alleging professional negligence by a client after the member aggressively pursued reimbursement for outstanding balances due for products and services purchased by the member. These claims are often frivolous; however, the defense is stressful and time consuming for the affected members.

Members should feel comfortable recommending certain suppliers and professionals to their clients. Members can avoid having clients perceive recommendations as a financial conflict of interest by disclosing their long-term relationship with third parties and by including references from other clients who relied upon their recommendations.



## **Appendix A – Relevant ARIDO Practice Standards**

### **CONFLICT OF INTEREST ARIDO PRACTICE STANDARDS**

#### **Sections –**

#### **A - BUSINESS AND PROFESSIONAL ETHICS and F. CONFLICT OF INTEREST**

A. 4. A Member shall not participate in nor receive directly or indirectly any payment, benefit or other inducement for the specification of goods and services for a project other than fees or payments from a client or an employer.

A.5. A Member shall not reduce the Member's professional services fees which are supplemented or replaced by the sale of goods or provision of services unless such reduction is made a condition of a contract which expressly outlines the method of charging for professional services.

A. 7. A Member shall not compete unfairly with others or compete primarily on the basis of fees without due consideration for other factors to ensure that the Member's engagement is based on the merit of the services performed or offered.

A. 11. Prior to engagement, a Member shall disclose to an employer or client, in written form, any direct or indirect financial interest they may have that could affect their impartiality in specifying project-related goods or services and shall not knowingly assume or accept any position in which their personal interests' conflict with their professional duty, and shall withdraw upon objection by the employer or client.

A. 15. A Member shall not make use of goods or services offered by manufacturers, suppliers or contractors if such use is accompanied by a direct or indirect condition or obligation without disclosure to and written consent of the Member's client.

F. 1. A Member shall not engage in activities or accept remuneration for services rendered that may create a conflict of interest with a client or employer unless the Member first makes full disclosure of such conflict and obtains the client or employer's written consent.

F. 2. A member shall immediately disclose to a client or employer any interest, direct or indirect, that might be construed as prejudicial in any way to the Member's professional judgement in rendering service to the client or employer.

F. 4. A Member has a conflict of interest where the Member or an officer, director, partner or employee of the Member has a direct or indirect financial or other interest in any material, device, invention or service used in a project with respect to which the Member provides services or makes use of any service offered by a contractor that may adversely affect the judgement of the Member as to any question that arises on the project as a direct or indirect financial or other interest which may adversely affect the judgement of the Member.

## **Appendix B - Proposed Scope of Work For Direct Regulation Model**

### **THE PROPOSED PROTECTED SCOPE OF PRACTICE IS AS FOLLOWS:**

1) A person practices interior design when the person,

- a. prepares or provides a design respecting the construction, enlargement, alteration, configuration, fitting out or refurbishing of the interior space of the whole or part of a building, including, without limiting the generality of the foregoing, finishes, fixed or loose furnishings, equipment, fixtures and partitioning of space, and related exterior elements such as signs, finishes and fixtures, where the design does not affect or is not likely to affect,
  - i. the structural integrity of the building,
  - ii. a fire safety system or fire separation,
  - iii. a main entrance or public corridor on a floor,
  - iv. an exit,
  - v. the construction or location of an exterior wall,
  - vi. the usable floor space through the addition of a mezzanine, infill or other similar element of the building, or
  - vii. fire separations, firewalls, the strength or safety of the building, and the safety of persons in the building where the design is for alterations within a dwelling unit.
- b. reviews, evaluates, advises on or reports on the construction, enlargement or alteration of the interior space of the whole or part of a building where the design does not affect or is not likely to affect,
  - i. the structural integrity of the building,
  - ii. a fire safety system or fire separation,
  - iii. a main entrance or public corridor on a floor,
  - iv. an exit,
  - v. the construction or location of an exterior wall,
  - vi. the usable floor space through the addition of a mezzanine, infill or other similar element of the building, or
  - vii. fire separations, firewalls, the strength or safety of the building, and the safety of persons in the building where the design is for alterations within a dwelling unit.
- c. provides services in the specification of materials, fabrics, window treatments, wall coverings, paint and floor coverings that are subject to regulations under any applicable law, including for example; fire code, building code or municipal by-laws.
- d. provides service in the planning of furniture and permanent fixtures that are subject to any applicable law, including for example; fire code, building code, or municipal by-laws.