By Andrea Lee

IS IT TIME TO ACKNOWLEDGE INTERIOR DESIGNERS' LIEN RIGHTS?

In 2003 and 2004, Nova Scotia introduced a new Interior Designers Act and a new set of Interior Designers Regulations. The practice of interior design in Nova Scotia is now defined to mean providing design services in relation to the non-structural aspects of a building. This definition includes, among other things, the analysis of the use of an interior area and the development of designs for an interior area. The Nova Scotia Interior Designers Act does not affect the entitlement of architects to practice interior design. Thus, in Nova Scotia, architects may practise interior design or hold themselves out as entitled to practise interior design, but interior designers may not practice architecture.

In June of 2006, Ontario's Bill 121, the Interior Designers Act, 2006, passed through second reading. This statute defines the practice of interior design as being that which relates to the construction, demolition or management of the enlargement, alteration, configuration, fitting out or furbishing of the interior space of the whole or part of a building, including finishes, fixed or loose furnishings, equipment, fixtures and partitioning of space, and certain exterior elements such as signs, finishes, glazed openings used for display purposes.

Ontario's Bill 121 is clear that the provision of interior decoration services related to the selection of materials, window treatments, wall coverings, paint and floor coverings, among other things, does not constitute interior design. Similar to Nova Scotia, the practice of architects in Ontario is not affected by the proposed legislation.

A slightly different approach has been taken in the province of Alberta. The Alberta Architects Amendment Act, 2006 gained royal assent in May 2006 and is currently awaiting proclamation. This new statute, read in conjunction with Alberta regulations, defines the practice of interior design to be that portion of the practice of architecture which includes the preparation of designs respecting interior finishes in a building, fixed or loose furnishings and equipment, and the subdivision of a floor area but excludes services which affect the structural integrity of a building, electrical or mechanical systems, building envelope, usable floor space and means of egress. It would seem that Alberta's Architects Amendment Act includes interior designers within a defined area of architectural practice.

With more provinces beginning to carve out defined subsets of architectural and interior design practice, one might now ask whether lien rights should be explicitly granted to interior designers. The fundamental argument would appear to be that certain services supplied by interior designers within the newer definitions of "interior design" appear to add value to the improvement, just like those of architects on the same improvements.

In 1977, architects' lien rights were acknowledged by the Nova Scotia County Court in Thompson and Purcell Surveying Ltd. v. Burke, [1977] N.S.J. No. 751. In 1980, the Alberta Court of Appeal in Peter Hemingway Architect Ltd. v. Abacus Cities Ltd. et al (1980), 25 A.R. 146 (C.A.), upheld an architect's ability to file a builder's lien in respect of architectural drawings and other services supplied to an improvement. In Ontario, architects opted out of their lien rights after an earnest lobbying effort in the early 1980. However, after some further lobbying a decade later, the Ontario Construction Lien Act was amended in 1997 to grant architects lien rights once again.

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The 1989 decision of Master Saunders in Agnelli & Orisni Designs Inc. v. Penturn, 17 A.C.W.S. (3d) 38, may be the only reported instance in Canadian case law where an interior designer was granted the right to lien for services related to the relocation of walls and doorways, electrical work, painting and wallpapering, installation of mouldings, carpet, tiles, fabric, and fixtures and reupholstering of furniture. By way of contrast, recent decisions hold that the mere supply of detachable items, such as walls and furniture systems (see 3726843 Canada inc. v. 879115 Ontario Ltd. (2005), 42 C.L.R. (3d) 200 (S.C.J.)), does not constitute a lienable service.

If interior designers are included within the professional category of architecture, albeit in a limited way, the statutory lien rights of architects may have to be expressly extended to cover the work of interior designers. If interior design and architecture are defined as two distinct areas of practice, however, the question of what services are lienable will remain an issue of concern to interior designers across Canada.

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