



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

AIBC Disciplinary Decision

March 25, 2020

As the regulator of the architectural profession in British Columbia, the AIBC establishes, monitors and enforces standards of ethical and professional conduct for all AIBC registrants: architects, architectural firms, associates, and temporary licensees.

All discipline findings and admissions are published in accordance with the AIBC's publication guidelines and AIBC Bylaw 36.20.

DISCIPLINARY DECISION SUMMARY

Marque Curzon-Thompson Architectural Technologist AIBC was the subject of a disciplinary inquiry scheduled for January 30-31, 2020 at the AIBC offices. Mr. Curzon-Thompson submitted his resignation from the AIBC on the evening before the hearing, resulting in the AIBC not having authority to proceed with the matter.

The full decision can be read below.

ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA
IN THE MATTER OF MARQUE CURZON-THOMPSON
DECISION OF DISCIPLINARY COMMITTEE ON HEARING OF INQUIRY

Committee members: Stuart Rothnie, Architect AIBC (Chair); John Scott, Architect AIBC; Michelle Rupp, Lieutenant Governor Appointee to AIBC Council

Hearing Date: January 30, 2020

Counsel for the Architectural Institute of British Columbia: Kaitlin Smiley
Thomas M. Lutes, AIBC Deputy Chief Executive Officer

Counsel for Marque Curzon-Thompson: self-represented; did not attend hearing

Counsel for Disciplinary Committee: Donald B. Lebens

I. Introduction

[1] In a Notice of Inquiry dated November 6, 2019 (the “Notice of Inquiry”), the Council of the Architectural Institute of British Columbia (the “AIBC”) alleges that Marque Curzon-Thompson, an associate of the AIBC in the architectural technologist class,

- overstated the number of learning units he was claiming in satisfaction of the AIBC’s mandatory continuation education requirements,
- failed to complete the required number of learning units, and
- failed to respond to the AIBC’s investigation of the alleged deficiencies in his reporting and completion of the required learning units.

[2] The Notice of Inquiry advises that a hearing of those allegations (the “Hearing”) would proceed at the AIBC office on January 30 and 31, 2020 starting at 9:30 in the morning.

II. Facts

[3] The disciplinary committee as constituted for the Hearing (the “Disciplinary Committee”) convened the Hearing at 9:30 on the morning of January 30, 2020. Mr. Curzon-Thompson was not present.

[4] Upon the commencement of the Hearing, counsel for the AIBC, Kaitlin Smiley, provided the Disciplinary Committee with the Affidavit of Service of Mr. Christopher Paul Johnson dated November 12, 2019 (the “Johnson Affidavit”). Mr. Johnson, a process server, deposes in the Johnson Affidavit that he personally served Mr. Curzon-Thompson with a copy of the Notice of Inquiry on the afternoon of November 7, 2019 at 235 17th Street in West Vancouver. According to Mr. Johnson, at the time of that service, the person whom he served admitted he was Mr. Curzon-Thompson.

[5] Ms. Smiley also provided the Disciplinary Committee with a copy of an email Mr. Curzon-Thompson sent to the AIBC on the evening of January 29, 2020, as well as a copy of a letter from Mr. Curzon-Thompson to the AIBC dated January 27, 2020 (the “January 27 Letter”) that was attached to that email. In the January Letter, Mr. Curzon-Thompson complained about both the AIBC’s enforcement of practice requirements and its communications with him further to that enforcement. More significant to the reasons and decision of the Committee that follow below, Mr. Curzon-Thompson advised that he would not be present for the Hearing as he needed to attend to his father who was experiencing health concerns. Finally, Mr. Curzon-Thompson asserted that he was resigning from the AIBC:

...I have no further interest in belonging to an Institution so out of touch with the core of its being... I therefore submit my resignation from AIBC effective forthwith...

[6] Together with the January 29, 2020 email and January 27 Letter, Ms. Smiley provided the Disciplinary Committee with two emails exchanged between Mr. Curzon-Thompson and Thomas M. Lutes, Deputy Chief Executive Officer of the AIBC, later that same evening. In his email to Mr. Curzon-Thompson, Mr. Lutes urged Mr. Curzon-Thompson to attend the Hearing starting the next day on January 30, 2020. In reply, Mr. Curzon-Thompson again advised that he would not be attending, stating that his “father[']s wellbeing is more important”. He closed his email by stating, “I tired [sic] of this conversation with you and your fellows and I see no advantage to prolonging it for either party.”

[7] Finally, Ms. Smiley provided the Disciplinary Committee with a letter that the AIBC had previously sent to Mr. Curzon-Thompson on September 12, 2019. That letter described two avenues available to Mr. Curzon-Thompson to resolve the AIBC investigation of the allegations underlying this matter, including either consensual resolution or an inquiry hearing. The letter also included the following paragraph:

Finally, while the AIBC does not encourage any registrant to resign their registration, if neither of the options above is acceptable to you, you may consider doing so. Under the *Architects Act* as currently in force, the AIBC has no jurisdiction to pursue disciplinary action against a former registrant (although resigning when disciplinary action is pending may influence an application for reinstatement, or lead to the resumption of disciplinary process on reinstatement).

[8] Having provided these documents to the Disciplinary Committee, Ms. Smiley made submissions on the AIBC's concerns as to whether, in light of Mr. Curzon-Thompson's non-attendance and purported resignation, the Disciplinary Committee had the jurisdiction to proceed with the Hearing in relation to the allegations set out in the Notice of Inquiry. In essence, Ms. Smiley argued that, based on Johnson Affidavit, the Disciplinary Committee could proceed with the Hearing despite Mr. Curzon-Thompson's non-attendance. At the same time, however, she expressed concern that Mr. Curzon-Thompson's resignation meant the Disciplinary Committee no longer had jurisdiction to hear the allegations set out in the Notice of Inquiry or to make an order disciplining Mr. Curzon-Thompson if it decided those allegations were proven.

[9] Following Ms. Smiley's submissions, the Disciplinary Committee made the decision to adjourn the Hearing generally so that it could consider its jurisdiction to hear the allegations in the Notice of Inquiry and render a decision on that issue. What follows is the Disciplinary Committee's decision on jurisdiction and its reasons in support of that decision.

III. Issues

[10] The issues arising from the facts as set out above and to be decided by the Disciplinary Committee are as follows:

- (a) Was it appropriate for the Disciplinary Committee to commence the Hearing on January 30, 2020 even though Mr. Curzon-Thompson was not present?
- (b) Can Mr. Curzon-Thompson resign as an associate of the AIBC?
- (c) If so, what is the effect of that resignation as regards the Committee's jurisdiction to hear the issues raised in the Notice of Inquiry?

[11] The Disciplinary Committee will address each of these issues in turn.

IV. Analysis

Proceeding with hearing despite non-attendance

[12] When, under s. 36 of the *Architects Act*, RSBC 1996, c. 17 (the "Act"), the AIBC Council orders an inquiry into a complaint or into the conduct, capability or fitness of an associate, the AIBC must deliver notice of the inquiry hearing to the associate. The requirements for notice are found in s. 48 of the Act:

Hearing

- 48** (1) At least 2 weeks before the commencement of the hearing, a notice of the inquiry, the time and place of the hearing of the disciplinary committee and the subject matter of the inquiry must be delivered to the complainant and the member, architectural firm, licensee or associate that is the subject of the inquiry.
- (2) The testimony of witnesses must be taken under oath.

- (3) There is a right to cross examine witnesses and to call other witnesses.
- (4) If the complainant or the person whose conduct is being examined does not attend, the committee, on proof by affidavit or otherwise of personal delivery of the notice of hearing, may proceed with the inquiry without that person being present and make its decision without further notice.
- (5) The evidence given at an inquiry hearing must be taken down and transcribed.

[13] The Johnson Affidavit satisfies the requirements in s. 48(1) and (4) of the Act regarding delivery of notice of the Hearing. It constitutes proof by affidavit that notice of the hearing in the form of the Notice of Inquiry was personally delivered to Mr. Curzon Thompson on November 6, 2019, which is close to three months prior to the commencement of the Hearing.

[14] Incidentally, the Disciplinary Committee notes that the content and timing of Mr. Curzon-Thompson's correspondence with the AIBC on January 29, 2020 confirm his understanding of when the Hearing was to occur. As is also noted above, when responding to Mr. Curzon-Thompson's correspondence, Mr. Lutes reiterated that the Hearing was to proceed the following day.

[15] Based on the Johnson Affidavit and cognisant of the prior evening's exchange of correspondence between Mr. Curzon-Thompson and Mr. Lutes, the Disciplinary Committee decided on January 30, 2020 to proceed with the Hearing despite Mr. Curzon-Thompson not being present.

Mr. Curzon-Thompson's ability to resign as an associate

[16] Section 40 of the Act authorizes the AIBC Council to admit people as associates:

Associates

40 The council may admit any person as an associate of the institute, may divide associates into different classes and set the qualifications for each class.

[17] Associates are not "members" of the AIBC (i.e. architects). They are permitted to attend the general meetings of the AIBC, but cannot vote at such meetings. Associates cannot be Council members but are eligible to sit on committees of the AIBC and to receive AIBC communications, as determined from time to time.¹

[18] The AIBC Bylaws authorize the Council to establish classes of associates, to create qualifications for admission to those classes and rules for associates to qualify for and remain registered in those classes.² One such class of associates is architectural technologist, the class of associates to which Mr. Curzon-Thompson has belonged.

¹ AIBC Bylaws, s. 13.2

² AIBC Bylaws, ss. 13.3 or 13.4

[19] Under s. 34 of the Act, architects may resign from the AIBC in writing, and upon resigning, cease to be members of the AIBC and must be removed from the registrar. By contrast, the Act does not include a similar right for associates. In fact, the Act only gives the Council the power to direct that associates cease to be associates if they fail to pay their annual fees.³ The AIBC Bylaws are also essentially silent on the issue of associate resignation. Although, s. 13.4 of the Bylaws does provide that the Council “may pass rules for persons to ... remain registered in any associate class”.

[20] Pursuant to its rule-making authority under the Act⁴ and in s. 13.4 of the Bylaws, the AIBC Council has created “Council Rules 6: Designation and Admission Qualifications for AIBC Associates” (“Council Rules 6”). In referencing the Council’s discretion to direct that a defaulting associate cease to be an associate, s. 2.2.6 of Council Rules 6 states that “it is a pre-requisite for continued registration as an architectural technologist associate that all applicable registration fees are paid on an annual basis.” If the payment of annual fees is a “pre-requisite” to continuing as an architectural technologist associate, this suggests that when an architectural technologist associate fails to pay those fees, the Council must direct that he or she cease to be an associate.

[21] Further, in “Bulletin 5: Resignation of Registration” (“Bulletin 5”), the AIBC Council has recognized that associates have a right to resign from the AIBC whenever they wish. Section 4.1 of Bulletin 5 provides as follows:

- 4.1 Associates (Intern Architects AIBC, Architectural Technologists AIBC, and Retired Architects AIBC) may voluntarily resign from the AIBC in writing at any time. Associates that choose not to renew their registration with the AIBC must resign in writing prior to the February 1 deadline for payment of annual renewal fees. If an associate resigns part-way through the year after having paid their annual renewal fee they are eligible for a partial refund. The refund shall first be applied to any outstanding balance before refunding to the account holder. Refer to Bulletin 1 for the pro-rating schedule. Architectural Technologists who have resigned are encouraged to maintain current knowledge of architectural practice if they plan to pursue reinstatement at a future date.

[22] Likewise, “Bulletin 2: Reinstatement of Registration” (“Bulletin 2”) states that “associates (Intern Architects AIBC, Architectural Technologists AIBC, and Retired Architects AIBC) may cease to be registered through voluntary resignation” and provides a process for associates who “voluntarily resigned” to reinstate as an associate of the AIBC.⁵

[23] The Disciplinary Committee understands that the AIBC has used bulletins for a number of years to supplement and provide interpretive advice respecting standards established in and under the Act, the AIBC Bylaws, and the AIBC Code of Ethics. While not expressly termed rules, the creation of bulletins would seem to accord with the AIBC

³ Act, s. 74

⁴ Act, s. 5

⁵ See ss. 1.2 and 4.1 of Bulletin 2.

counsel's authority under the Act to make rules as necessary to govern the affairs of the AIBC,⁶ and broadly speaking, may also fit within the rule-making authority for associates specified in s. 13.4 of the Bylaws.

[24] It makes sense to the Disciplinary Committee that the AIBC has recognized the ability of associates to resign from the AIBC in Bulletins 2 and 5. Obviously, becoming an associate cannot be an irreversible commitment. There are a number of legitimate reasons why a person might not want to be an associate any more. As examples, an intern architect associate might be unable to complete the national Internship in Architecture Program for health reasons, a retired architect associate might reach an age where he or she no longer obtains any value from continued involvement with the AIBC, or an architectural technologist might decide to retire. In each circumstance, it would be inappropriate if the associate was unable to resign.

[25] Further, to the extent that bulletins advise how the AIBC interprets and applies the rights of and requirements for members and associates, the Disciplinary Committee can see no reason why they would not be binding on the AIBC, provided they are not they inconsistent with the Act or the AIBC Bylaws. As noted above, the Act and the AIBC Bylaws are essentially silent on the issue of associate resignation. As such, there is nothing in Bulletins 2 and 5 that is inconsistent with those authorities.

[26] Of note, s. 4.1 of Bulletin 5 requires that associates resign in writing, but provides that they may do so "at any time". In addition, s. 4.1 states that associates who do not intend to renew their registration must resign in writing before the February 1 deadline for payment of annual fees. Mr. Curzon-Thompson's statement of resignation in the January 27 Letter complies with these requirements. It was communicated in writing and before February 1, 2020. The AIBC has confirmed for the Disciplinary Committee that, consistent with the written statement of resignation in the January 27 Letter, Mr. Curzon-Thompson has not paid the annual fees required to renew his registration for this year.

[27] Moreover, and of particular relevance to this case, s. 2.4 of Bulletin 2 contemplates the possibility of associates (or architects or architectural firms) resigning "prior to the resolution of a professional conduct complaint brought against them" and provides for the reopening of a prior unresolved professional conduct matter if a former associate reinstates:

- 2.4 Subject to sections 36 and 75 of the Architects Act, the AIBC may reinstate architects, associates or firms that resigned prior to the resolution of a professional conduct complaint brought against them. However, the professional conduct file will be re-opened by the AIBC upon reinstatement.

[28] This is exactly what was communicated to Mr. Curzon-Thompson in the letter that the AIBC sent him on September 12, 2019.

⁶ Ibid.

[29] For the reasons cited, the Disciplinary Committee is of the view that the resignation communicated by Mr. Curzon-Thompson in the January 27 Letter must be effective. Accordingly, when the Hearing commenced on the morning of January 30, 2020, Mr. Curzon-Thompson was no longer an associate of the AIBC.

Jurisdiction following resignation

[30] As noted above, Ms. Smiley expressed concern that Mr. Curzon-Thompson's resignation meant the Disciplinary Committee no longer had jurisdiction to hear the allegations set out in the Notice of Inquiry or to make an order disciplining Mr. Curzon-Thompson if it decided those allegations were proven.

[31] As provided in the Notice of Inquiry the purpose of the Hearing was for an inquiry into allegations concerning the conduct of Mr. Curzon-Thompson as an associate of the AIBC. However, following his resignation on January 27, 2020, Mr. Curzon Thompson is no longer an associate of the AIBC.

[32] Section 47(1) of the Act gives the AIBC Council the authority to

order an inquiry by a disciplinary committee into a complaint against a member, architectural firm, licensee or associate or into the conduct, capability or fitness to practise of a member, architectural firm, licensee or associate.

[33] Further, section 50 of the Act provides that, at the conclusion of an inquiry, the disciplinary committee that has heard the inquiry may make an order "respecting a member, architectural firm, licensee or associate",

... if it considers that [the] member, architectural firm, licensee or associate

- (a) has been unprofessional,
- (b) has contravened this Act or a bylaw,
- (c) has been negligent or guilty of misconduct in the execution of a duty of office,
- (d) is incompetent or unfit to practise architecture or is incapable of practising architecture, or
- (e) is an architectural corporation that has ceased to meet the applicable qualifications for registration under section 26 (2) or (3).

[34] It is the law in British Columbia that, where a professional regulator such as the AIBC is given disciplinary powers, the exercise of those powers must fall clearly within the legislative grant.⁷ In particular, the BC Court of Appeal has held that for disciplinary power to extend to former registrants of a professional regulator, the legislature must clearly and expressly grant that authority to the regulator in the governing legislation.⁸

⁷ *Stolen v. British Columbia College of Teachers*, 1995 CanLII 1443 (BC CA), at para. 31.

⁸ *Ross v. B.C. Psychological Association*, 1987 CanLII 2482 (BC CA).

[35] There is no such grant in the Act. Section 47(1) only refers to an inquiry into a complaint against or the conduct, capability or fitness to practice of an “associate”. It does not clearly and expressly authorize the Disciplinary Committee to hear an inquiry into the conduct of a former associate. By the same token, section 50 does not authorize the Disciplinary Committee to make an order respecting a former associate at the conclusion of such an inquiry. Beyond that, there is nothing in the Act that provides for the term “associate” to be interpreted as including a former associate.

[36] Additionally, as reviewed above, there is nothing in the Act of the AIBC Bylaws, rules and bulletins which precludes an associate from resigning in the face of an inquiry. To the contrary, s. 2.4 of Bulletin 2 actually contemplates that, and provides that the inquiry may be reopened if the associate subsequently returns to the AIBC seeking reinstatement. Again, this is the advice that was given to Mr. Curzon-Thompson in the letter sent to him by the AIBC on September 12, 2019.

[37] As such, the Disciplinary Committee finds that, because Mr. Curzon-Thompson is no longer an associate, it does not have jurisdiction to consider or decide an inquiry into his conduct, and therefore, the Hearing cannot continue.

V. Disposition

[38] In summary, the Disciplinary Committee has concluded as follows:

- (1) Mr. Curzon Thompson was properly served with the Notice of Inquiry under section 48 of the Act, and therefore, it was appropriate to commence the Hearing on January 30, 2020;
- (2) nevertheless, Mr. Curzon-Thompson ceased to be an associate of the AIBC when he delivered to the AIBC the January 27 Letter communicating his resignation; and
- (3) given Mr. Curzon-Thompson is no longer an associate, the Disciplinary Committee does not have authority to proceed with or decide the inquiry into the his conduct as provided in the Notice of Inquiry.

[39] Having reached this conclusion, the Disciplinary Committee does wish to express its frustration that it has not been able to address the substantive issues raised in the Notice of Inquiry. Those issues are of significance to the AIBC and the profession. Continuing education supports continued competence, and thereby protects the public. It is the Disciplinary Committee’s understanding that there has not previously been a hearing that considered issues relating to the AIBC’s continuing education program. As such, the Hearing of the issues raised in the Notice of Inquiry could have provided important guidance on the continued operation of that continuing education program. This would have been of benefit to the AIBC and the profession, and more importantly, to the public.

[40] In addition, as the Hearing did not proceed to a consideration of the allegations raised against Mr. Curzon-Thompson, there is the further concern that those allegations remain unresolved. On top of this, having resigned, Mr. Curzon-Thompson can continue to do the work of an architectural technologist; although, he cannot do so as an associate of the AIBC. Therefore, going forward Mr. Curzon-Thompson will no longer be carrying out his work in a regulated context with the benefits for his clients that come from regulation. Again, this is also not in the public interest.

[41] With these concerns in mind, the Disciplinary Committee suggests that the AIBC consider approaching the provincial government about an amendment to the Act that will give the AIBC the authority to proceed with inquiries against associates after they have resigned from the AIBC.

Dated at Vancouver, British Columbia this 25th day of MARCH, 2020.

Disciplinary Committee

SEE ORIGINAL FOR SIGNATURE

25 MARCH 2020

Stuart Rothnie, Architect AIBC (Chair)

Date

John Scott, Architect AIBC

Date

Michelle Rupp, Lieutenant Governor Appointee to AIBC Council

Date

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Dated at Vancouver, British Columbia this _____ day of _____, 2020.

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John Scott, Architect AIBC **Date** March 25, 2020

Michelle Rupp, Lieutenant Governor Appointee to AIBC Council **Date**

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Dated at Vancouver, British Columbia this _____ day of _____, 2020.

Disciplinary Committee

Stuart Rothnie, Architect AIBC (Chair) **Date**

John Scott, Architect AIBC **Date**

SEE ORIGINAL FOR SIGNATURE **March 25th, 2020**

Michelle Rupp, Lieutenant Governor Appointee to AIBC Council **Date**