



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

IN THE MATTER OF THE *ARCHITECTS ACT*
R.S.B.C. 1996 C. 17 AS AMENDED

AND

IN THE MATTER OF A CONSENSUAL
RESOLUTION BETWEEN:

BRADLEY LAMOUREUX ARCHITECT AIBC

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

CONSENSUAL RESOLUTION AGREEMENT

The *Architects Act* authorizes the AIBC to attempt resolution of disciplinary matters by way of consensual resolution. AIBC Bylaws 36.0 through 36.22 provide the specific processes and procedures by which the AIBC and a member or other registrant may reach agreement on a complaint that would otherwise proceed to a hearing and decision at a disciplinary inquiry.

All consensual resolution agreements must be approved by the consensual resolution review panel before they are effective. By statute, this panel must have regard to the public interest when deciding whether to approve a consensual resolution agreement. An approved consensual resolution agreement has the same effect as an order made by a disciplinary committee under the *Architects Act*.

1.0 BACKGROUND AND AGREED FACTS

- 1.1 The parties agree that the relevant facts and circumstances leading to the investigation and this consensual resolution agreement (the “Agreement”) are set out below.

A. Overview

- 1.2 The AIBC’s Investigation Committee (the “Committee”) conducted an investigation into a complaint about Bradley Lamoureux Architect AIBC regarding his conduct towards another architect.
- 1.3 Following its investigation, the Committee recommended that the matter proceed to a disciplinary inquiry for determination of whether Mr. Lamoureux breached certain sections of the *Architects Act*, R.S.B.C. 1996, c. 17 (the “*Act*”), the AIBC Bylaws and the applicable council rulings in the Code of Ethics and Professional Conduct (the “Code of Ethics”).
- 1.4 Mr. Lamoureux chose to pursue a consensual resolution with the AIBC.

B. Mr. Lamoureux

- 1.5 Mr. Lamoureux was first registered as an architect with the AIBC on June 15, 1990, and has maintained his registration ever since.
- 1.6 Mr. Lamoureux practises architecture through Lamoureux Architect Incorporated, a corporation. Lamoureux Architect Incorporated holds an AIBC certificate of practice that was issued on February 14, 1994.
- 1.7 Mr. Lamoureux is the principal, and sole shareholder, and director of Lamoureux Architect Incorporated.

C. The Complaint

- 1.8 In September 2019, the AIBC received a complaint that Mr. Lamoureux failed to provide notification to an architect who had been previously engaged by the same client on the same project, as required by AIBC Bylaw 34.8.
- 1.9 The complaint was provided to Mr. Lamoureux for his response, and the Committee initiated an investigation.

D. The Investigation/Agreed Facts

- 1.10 The investigation involved a review of the material submitted by the complainant and Mr. Lamoureux. Mr. Lamoureux also attended an interview with the Committee.
- 1.11 The facts in paragraphs 1.12 – 1.30 below are based on material reviewed during the investigation and agreed to by the AIBC and Mr. Lamoureux.

- 1.12 In 2015, the complainant and her firm (together the “First Architect”) were hired by an independent school (the “Client”) for the construction of a new school building in North Vancouver, BC (the “Project”).
- 1.13 In August 2017, shortly after Mr. Lamoureux’s children joined the school, he was asked by the headmaster to volunteer on the building advisory committee and assist in the tender evaluation process. The school was looking to its parent body for parents with construction experience to assist in the building process.
- 1.14 At the time Mr. Lamoureux joined the building advisory committee, the First Architect had submitted a building permit application to the City of North Vancouver and construction documents had been completed.
- 1.15 Mr. Lamoureux’s primary role on the building advisory committee was to assist the Client in understanding the actual projected costs of construction as proposed by selected builders.
- 1.16 During 2018, there was little activity on the Project, as the estimates for construction greatly exceeded projected costs. The parties explored value engineering strategies and other financial options to obtain funds.
- 1.17 Due to the inability to secure funds, there were delays in the Project proceeding in a timely manner. The City of North Vancouver advised that the building permit application might be cancelled due to inactivity if an update clarifying the status of the Project was not received by July 5, 2019.
- 1.18 On or about June 24, 2019, the Client instructed the First Architect to provide a response to the City of North Vancouver in order to keep the building permit application active, which response the First Architect provided.
- 1.19 In early July 2019, Mr. Lamoureux learned that the Client wished to terminate the First Architect. He advised against it due to the late stage of the Project and completeness of the design and documents. However, the Client was determined to terminate the First Architect and engage another architect.
- 1.20 On July 10, 2019, the Client met with the First Architect to advise it had decided to change architects for the value engineering and construction administration portion of the Project and there would be a termination of the firm’s services.
- 1.21 On July 12, 2019, at approximately 9 a.m., the Client telephoned Mr. Lamoureux to discuss whether his firm would be interested in taking over the Project. The Client informed him that a decision had been made not to continue with the First Architect, and that the First Architect had been advised of the decision. The Client also informed Mr. Lamoureux that a termination letter would be sent to the First Architect that day. He was advised the Client was considering a couple of other architects as well as his firm.
- 1.22 On July 12, 2019, the Client sent a letter to the First Architect confirming the termination and advising that no architect had yet been engaged, although the letter confirmed that Mr. Lamoureux was among the architects the Client was considering.

- 1.23 On July 17, 2019, Mr. Lamoureux provided a fee proposal to the Client to complete the project. The fee proposal was accepted on July 25, 2019.
- 1.24 On July 25, 2019, the First Architect sent an acknowledgment letter to the Client confirming termination and close out details.
- 1.25 On July 29, 2019, at approximately 4 p.m., Mr. Lamoureux telephoned the First Architect to confirm that she had been terminated from the Project and that his firm had been appointed to take over. During this telephone call Mr. Lamoureux enquired whether all fees owing to her firm had been paid.
- 1.26 Mr. Lamoureux agreed to complete the Project only after he understood the Client had already terminated the First Architect's services for the Project and he had called the First Architect to confirm the same.
- 1.27 Mr. Lamoureux confirmed at his interview that he did not send the First Architect a letter or any other written notification about taking over the Project. He stated that the First Architect followed up with a letter to him after their telephone conversation.
- 1.28 Although it was not requested, during the investigation, the Client provided the Committee with a letter dated October 2, 2019, stating that:
- 1.28.1 the decision to discontinue with the First Architect was made before they approached Mr. Lamoureux about taking over the Project;
- 1.28.2 Mr. Lamoureux was not involved in the decision to terminate the First Architect; and
- 1.28.3 Mr. Lamoureux did not attempt to solicit the work directly or indirectly.
- 1.29 Following its review of the material gathered during the investigation the Committee decided to recommend charges for determination at an inquiry by a disciplinary committee.
- 1.30 Upon being notified of the recommended charges, Mr. Lamoureux chose to pursue consensual resolution with the AIBC. No notice of inquiry has been issued.

E. Relevant Professional Standards

- 1.31 AIBC Bylaw 34.8 and the council ruling (a) are relevant to the complaint against Mr. Lamoureux.

Bylaw 34.8 An architect may only accept a commission for a project when the services of any architect previously retained for the project have been terminated.

- (a) An architect, on being either approached or instructed to proceed with services for which the architect knows or can ascertain by reasonably inquiry that another architect is or has been engaged by the same client, shall notify the other architect in writing of that fact.

The ethical responsibility for notifying a previously engaged architect lies with the new architect and cannot be delegated to the client. Upon notifying the

previous architect in writing, the new architect is under no obligation to delay acquiring the commission until the first architect's fee has been paid.

2.0 ADMISSIONS

- 2.1.1 Considering the facts agreed to above, Mr. Lamoureux acknowledges and admits that he contravened AIBC Bylaw 34.8 and council ruling (a) by not providing a previously engaged architect with written notice when being approached by the same client to provide architectural services for the Project.

3.0 PENALTY AGREEMENT

- 3.1 The following penalty and terms have been agreed upon by Mr. Lamoureux and the AIBC:

3.1.1 A reprimand will be recorded against Bradley Lamoureux Architect AIBC; and

3.1.2 Mr. Lamoureux is required to pay a fine in the amount of \$750 to the AIBC, within 30 days after the approval of this Agreement by the consensual resolution review panel.

- 3.2 Mr. Lamoureux acknowledges and agrees that failure to complete the requirement in paragraph 3.1.2 above within the time specified will result in his removal from the register of the AIBC.

- 3.3 Mr. Lamoureux acknowledges and agrees that if he is removed from the register for failure to complete any of the requirements of this Agreement, he must do the following within 10 days of being advised in writing by the AIBC of his removal from the register:

3.3.1 Return his professional seal to the AIBC;

3.3.2 Provide the AIBC with a letter of undertaking confirming that he and his firm have;

- a) Assigned, with client consent, any ongoing projects under his name to another architect or architectural firm holding a current certificate of practice. In this portion of the undertaking letter, Mr. Lamoureux is to provide the project owner's name, project name and location and the name of the architect or architectural firm assuming responsibility for the project. This list must include all projects undertaken which are not completed;
- b) Informed the appropriate officials and authorities having jurisdiction, in writing, of his status on any projects submitted for municipal approval as a development permit application, building permit application, subdivision application or any other municipal process. Such notification letters must be copied to the AIBC;
- c) Removed project site signs which identified him, or alternatively, amended such project signs by removing his identity; and
- d) Confirmed that he will not refer to himself as an architect and that he will not practise architecture or offer to provide architectural services as defined by the *Architects Act*, until such time as he has been returned to the AIBC register.

- 3.4 Mr. Lamoureux acknowledges and agrees that if he is removed from the register for failure to complete the requirements of this Agreement, or if he resigns from the register prior to completing all requirements, he may not apply for reinstatement until he has done so. Upon completion of all outstanding requirements, he may apply for reinstatement and will be subject to all applicable fees and requirements for reinstatement as stated in AIBC Bulletin 2.

4.0 COSTS

- 4.1 Mr. Lamoureux agrees to pay costs for this consensual resolution, fixed at an amount of \$750, payable to the AIBC within 30 days following approval of this Agreement by the consensual resolution review panel.
- 4.2 The parties acknowledge that costs are not intended as a punitive measure reflecting the conduct that is the subject of this Agreement. The assessment of costs payable by Mr. Lamoureux is an acknowledgement of the AIBC's partial costs resulting from the consensual resolution process, and is separate from the agreed-upon penalty.
- 4.3 The parties have referred to the AIBC's Consensual Resolution Costs Guidelines in agreeing on the amount of costs.

5.0 PUBLICATION

- 5.1 This Agreement, including the attached Schedule, shall be published by the AIBC including website publication and distribution to all registrants of the AIBC, in a manner that the AIBC deems fit in the public interest.
- 5.2 In the event Mr. Lamoureux is removed from the register for non-compliance with this Agreement, the AIBC may notify the public, registrants, and other interested parties where appropriate.

6.0 ACKNOWLEDGEMENT

This Agreement may be executed and delivered in one or more counterparts, whether by facsimile transmission or other electronic means, with the same effect as if all parties had signed and delivered the same document and all counterparts.

Mr. Lamoureux acknowledges that he has been given adequate opportunity to seek legal or other professional advice with respect to the negotiation, execution and consequences of this Agreement and has taken such advice or freely elected not to do so.

The facts and terms of this Consensual Resolution Agreement are acknowledged and agreed to by Bradley Lamoureux Architect AIBC and the AIBC, represented by Mark Vernon, CPA, CA, CPA (IL), CEO.

Approved by the Consensual Resolution Review Panel on August 14, 2020.

SCHEDULE – REASONS FOR PENALTY TO CONSENSUAL RESOLUTION AGREEMENT BETWEEN

BRADLEY LAMOUREUX ARCHITECT AIBC
AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

1.0 REASONS FOR PENALTY

- 1.1 Bradley Lamoureux and the AIBC agree that, in light of the agreed facts and admissions, the proposed penalty is proportionate, fair, and consistent with the public interest. A detailed analysis follows.

A. The Public Interest and Principles of Sentencing (Sanctions)

- 1.2 Consensual resolution of AIBC disciplinary matters operates pursuant to section 51.1 of the *Architects Act* and AIBC Bylaws 36.0 through 36.22. The proposed admissions and disciplinary action do not take effect unless the Agreement is approved by the consensual resolution review panel.
- 1.3 Under the process established by the *Act*, the consensual resolution review panel has a very important task: to review proposed disciplinary agreements in the public interest.
- 1.4 The role of a reviewing panel was discussed in *Law Society of BC v. Rai*, 2011 LSBC 2. In that case, a panel was considering an agreement between a lawyer and the regulator on agreed facts and disciplinary action. The panel conducted an analysis of its role in determining whether to accept the agreement as proposed. The discussion in that case is relevant to the AIBC's process. The panel stated:

[6] This proceeding operates (in part) under Rule 4-22 of the Law Society Rules. That provision allows for the Discipline Committee of the Law Society and the Respondent to agree that professional misconduct took place and agree to a specific disciplinary action, including costs. This provision is to facilitate settlements, by providing a degree of certainty. However, the conditional admission provisions have a safeguard. The proposed admission and disciplinary action do not take effect until they are “accepted” by a hearing panel.

[7] The Panel must be satisfied that the proposed admission on the substantive matter is appropriate. In most cases, this will not be a problem. The Panel must also be satisfied that the

proposed disciplinary action is “acceptable”. What does that mean? This Panel believes that a disciplinary action is acceptable if it is within the range of a fair and reasonable disciplinary action in all the circumstances. The Panel thus has a limited role. The question the Panel has to ask itself is, not whether it would have imposed exactly the same disciplinary action, but rather, “Is the proposed disciplinary action within the range of a fair and reasonable disciplinary action?”

[8] This approach... protects the public by ensuring that the proposed disciplinary action is within the range of fair and reasonable disciplinary actions. In other words, a degree of deference should be given to the parties to craft a disciplinary action. However, if the disciplinary action is outside of the range of what is fair and reasonable in the circumstances, then the Panel should reject the proposed disciplinary action in the public interest.

[Emphasis added]

- 1.5 As stated above in *Rai*, it is important to note that there will be a *range* of fair and reasonable outcomes in any particular file. The complexity of sentencing does not admit to only one appropriate outcome.
- 1.6 This principle was well-articulated in the case of *Peet v. The Law Society of Saskatchewan*, 2014 SKCA 109 where the Chief Justice wrote for a unanimous panel of the Court of Appeal:

[84] All of this is significant because sentencing of any sort, including sentencing for professional misconduct, is a difficult business. There is no single “right answer”. This is so because the sentencing authority must consider, balance, and reconcile a number of different considerations...
- 1.7 The parties submit that the penalty proposed in this case appropriately balances the mitigating and aggravating factors, and is consistent with previous decisions and the public interest in professional disciplinary matters.

B. Ogilvie Factors

- 1.8 In determining an appropriate penalty, professional regulatory bodies in B.C. have often referred to the factors considered in the case of *Law Society of British Columbia v. Ogilvie* [1999] LSBC 17 (known as the “*Ogilvie* Factors”).
- 1.9 This involves an assessment of whether the *Ogilvie* Factors apply and if so, whether they are aggravating or mitigating. The *Ogilvie* Factors include the following:
 - (a) the nature and gravity of the conduct proven;
 - (b) the age and experience of the respondent;
 - (c) the previous character of the respondent, including details of prior discipline;
 - (d) the impact upon the victim;
 - (e) the advantage gained, or to be gained, by the respondent;
 - (f) the number of times the offending conduct occurred;

- (g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
 - (h) the possibility of remediating or rehabilitating the respondent;
 - (i) the impact upon the respondent of criminal or other sanctions or penalties;
 - (j) the impact of the proposed penalty on the respondent;
 - (k) the need for specific and general deterrence;
 - (l) the need to ensure the public's confidence in the integrity of the profession; and
 - (m) the range of penalties in similar cases.
- 1.10 The *Ogilvie* Factors were subsequently consolidated and streamlined in the case of *Edward Dent (Re)*, 2016 LSBC 5. In that case the hearing panel acknowledged that the *Ogilvie* Factors are not all applicable in every case, and will overlap in many cases.
- 1.11 The panel in *Dent* consolidated the *Ogilvie* Factors into four broad categories:
- (a) Nature, gravity and consequences of conduct;
 - (b) Character and professional conduct record of the respondent;
 - (c) Acknowledgment of the misconduct and remedial action; and
 - (d) Public confidence in the profession, including public confidence in the disciplinary process.
- 1.12 Since the decision was issued in *Dent*, the consolidated framework (informed by the complete list from *Ogilvie*) has become the preferred approach in Law Society disciplinary proceedings. However, the jurisprudence acknowledges that the simplified approach may not be appropriate in every case. For example, the Law Society returned to the full *Ogilvie* analysis in a case that was “very difficult” [and] “unlike any previous discipline hearing”: *Sabota (Re)*, 2017 LSBC 18. The AIBC has also employed it in a recent case that was novel and complex.
- 1.13 The parties agree that the consolidated *Ogilvie* Factors are appropriate in this case. They are reviewed in detail below.
- (a) The nature, gravity and consequences of the conduct**
- 1.14 The allegation against Mr. Lamoureux is of a moderately serious nature. The duty of an architect to notify a previously engaged architect, upon being approached or instructed to proceed with services for which the architect knows or can ascertain by reasonable inquiry that another architect is or has been engaged by the same client, is a fundamental conduct expectation and a matter of professional courtesy.
- 1.15 While Mr. Lamoureux did telephone the First Architect on July 19, 2019, the contact should have been in writing and prior to him submitting a fee proposal to the Client.
- 1.16 The council ruling to AIBC Bylaw 34.8 explicitly mandates that the notification be in writing. Only after such notification is the subsequent architect under no obligation to delay acquiring the commission until the first architect's fees has been paid. It further states that the ethical

responsibility for notifying the first architect lies with the new architect, and the obligation to notify the first architect cannot be delegated to the client.

(b) Character and professional conduct record of the respondent

- 1.17 Mr. Lamoureux is 60 years old. He has been registered as an architect with the AIBC since June 15, 1990.
- 1.18 Mr. Lamoureux has no professional conduct record with the AIBC. This is a mitigating factor.

(c) Acknowledgement of the misconduct and remedial action

- 1.19 Mr. Lamoureux recognized that his failure to contact the First Architect in writing was improper.
- 1.20 Mr. Lamoureux has been cooperative and candid in the course of the investigation and has acknowledged that he ought to have written to the First Architect prior to accepting the commission of the Project.
- 1.21 Mr. Lamoureux's participation in the consensual resolution process and the admission he makes in the Agreement indicates he has acknowledged his misconduct. This acknowledgment suggests that the concerns arising in this matter have been brought to his attention in a meaningful way.

(d) Public confidence in the profession, including public confidence in the disciplinary process

- 1.22 This involves an analysis of whether there is sufficient specific or general deterrence in the proposed disciplinary action, whether the proposed disciplinary action upholds the public's confidence in the AIBC's ability to regulate its members in the public interest, and whether the proposed disciplinary action is appropriate when compared to similar cases.
- 1.23 'Specific deterrence' means deterring the respondent from repeating the conduct in question. In this case, while Mr. Lamoureux did not gain any advantage by his misconduct, he will be more careful in the future to ensure he provides written notification to a first architect when he takes over a project.
- 1.24 'General deterrence' is a sentencing objective promoting reduction of improper conduct in the community by the example, message, or influence established by the penalty in the present matter. The proposed penalties in this Agreement will serve to caution and remind architects of the importance of compliance with the *Act*, the AIBC Bylaws, and council rulings.
- 1.25 The public has the right to expect that architects will know and comply with all applicable professional standards. The public also has the right to expect that the AIBC will address instances of misconduct by its members through a process that is fair, proportionate, and consistent.
- 1.26 While no two files are identical, the following AIBC precedents demonstrate the penalties and sanctions that have been imposed in files where similar conduct was at issue.

- 1.27 In AIBC File 12.08, the architect:
- 1.27.1 Failed to provide timely notification to the first architect that he had been approached by, and had discussions with the same client for revisions of the same project;
 - 1.27.2 Understood that the client had terminated the first architect before the client approached him; and
 - 1.27.3 Acknowledged it was his ethical responsibility to ascertain in writing, that the first architect had been properly terminated prior to accepting the commission.
- 1.28 No malicious intent was noted. The file resolved by consensual resolution whereby the architect agreed to a reprimand, a \$500 fine, and the matter was published.
- 1.29 In AIBC File 06.03, a firm failed to notify the previously engaged architect that they had been approached and had discussions with the same client for the same project.
- 1.29.1 A period of more than one month elapsed before the firm notified the previously engaged architect, during which delay the firm submitted a fee proposal and executed a client-architect agreement with the client.
 - 1.29.2 The firm was of the view that seeking confirmation from the client regarding termination of the previously engaged architect's contract and payment issues was sufficient to satisfy Bylaw 34.8.
- 1.30 The matter was resolved by consensual resolution, and the firm was given a reprimand, a fine of \$1,000, and the matter was published.
- 1.31 In AIBC File No. 03.15, two architects failed to notify the first architect that they had been approached by and had discussions with the same client to work on the same project.
- 1.31.1 The two architects understood from the client that the client would discuss their role in the project with the first architect.
 - 1.31.2 A period of more than six weeks elapsed between the approach by the client to the two new architects and the client meeting with the first architect.
- 1.32 The file resolved by way of consensual resolution in which the two architects were each given a reprimand, a fine of \$500, and the matter was published.
- 1.33 Similar to File 12.08, although no malicious intent was noted in this matter, a higher fine is appropriate since Mr. Lamoureux had an increased obligation to the First Architect. This is supported in light of his advisory capacity with the school and the Client which provided him with knowledge of the Project, including an insight into issues of delays, financing, and communications with the First Architect. His familiarity with the Project provided an advantage over any other architect who was being considered as a replacement.
- 1.34 As noted in *Peet* above, there will rarely, if ever, be only one single appropriate outcome in a professional disciplinary file.

- 1.35 Mr. Lamoureux and the AIBC submit that, based on the cases above, and upon a careful review of the consolidated *Ogilvie* Factors, the proposed penalty is fair and consistent with the range of sanctions that have been imposed for similar conduct in the past.

2.0 PUBLICATION

- 2.1 This Agreement will be published as required by AIBC Bylaw 36.20, including website publication for a period of six months and distribution to members and other registrants of the AIBC.
- 2.2 Publication helps fulfill the important transparency expectation that the public has of professional regulators and enhances the public's confidence in the integrity of the profession as a self-regulated entity. Publication to members and other registrants acts as a further deterrent and as an educational message with respect to ethical and professional conduct matters.

3.0 ACKNOWLEDGEMENT

This Schedule may be executed and delivered in one or more counterparts, whether by facsimile transmission or other electronic means, with the same effect as if all parties had signed and delivered the same document and all counterparts.

Mr. Lamoureux acknowledges that he has been given adequate opportunity to seek legal or other professional advice with respect to the negotiation, execution and consequences of this Schedule and has taken such advice or freely elected not to do so.

The facts and terms of this Schedule – Reasons for Penalty to Consensual Resolution Agreement are acknowledged and agreed to by Bradley Lamoureux and the AIBC, represented by Mark Vernon, CPA, CA, CPA (IL), CEO.

For further information on the AIBC's consensual resolution process, please contact Meagan Sands, Paralegal, Manager, Regulatory Compliance at msands@aibc.ca.