



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:

LUBOMIR (LARRY) PODHORA 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 Investigations Committee (the “Committee”) conducted an investigation into a complaint concerning Lubomir (Larry) Podhora Architect AIBC in relation to his provision of architectural services for a daycare and a physiotherapy (collectively, the “Projects”) in the City of Abbotsford, BC (the “City”).

1.3 Following its investigation, the Committee recommended that the matter proceed to a disciplinary inquiry for determination of whether Mr. Podhora 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. Podhora chose to pursue a consensual resolution with the AIBC.

### B. Mr. Podhora

1.5 Mr. Podhora was first registered as an architect with the AIBC on July 1, 1985, and has maintained his registration since that time.

1.6 Mr. Podhora practises architecture through Larry Podhora Architecture Inc. (“LPA”), a corporation that holds an AIBC certificate of practice.

1.7 Mr. Podhora is the principal, sole shareholder, and director of LPA. LPA is retained to provide architectural services for Krahn Engineering Ltd., an engineering company that does not have a certificate of practice with the AIBC (“Krahn”).

### C. The Complaint

1.8 In October 2019, the AIBC received a complaint about Mr. Podhora from a building official on behalf of the City (the “Complaint”).

1.9 The Complaint raised concerns with respect to the application of Mr. Podhora’s seal placed next to a disclaimer stamp on drawings prepared by a design firm for the Projects. It was alleged Mr. Podhora had submitted sealed drawings for the Projects which were not prepared under his direct supervision, direction and control.

1.10 The Complaint was provided to Mr. Podhora for his response, and the Committee initiated an investigation.

#### **D. The Investigation/Agreed Facts**

- 1.11 The investigation involved a review of the material submitted by the complainant and Mr. Podhora. Mr. Podhora also attended an interview with the Committee.
- 1.12 The facts in paragraphs 1.13 – 1.26 below are based on material reviewed during the investigation and agreed to by the AIBC and Mr. Podhora.
- 1.13 On February 6, 2019, Mr. Podhora entered into an AIBC Document 8C consulting agreement with Krahn to provide architectural services for a tenant improvement project to reconfigure an existing space to suit a new daycare in Abbotsford, BC (the “Daycare Project”).
- 1.14 The contract for the Daycare Project specified that Mr. Podhora was an architectural consultant to Krahn. His responsibilities on the Daycare Project included the following: review and comment on design solutions; review, edit and coordinate building permit architectural drawings indicating all design requirements; review and comment on architectural shop drawings; change orders, provide site reviews and reports; architectural site work; review final documents; and provide all necessary professional schedules for occupancy.
- 1.15 On September 9, 2019, Mr. Podhora entered into an AIBC Document 8C consulting agreement with Krahn to provide architectural services for a tenant improvement project to an existing unit to house a physiotherapy office in Abbotsford, BC (the “Physiotherapy Project”). The scope of his services on the Physiotherapy Project were identical to those identified in the Daycare Project.
- 1.16 On October 15, 2019, a drawing set was submitted to the City for the Daycare Project. Each drawing sheet identified “Willson Design” on the title block and displayed Mr. Podhora’s seal with the date October 15, 2019, next to a stamp that stated, “This document is sealed to record a professional review of design prepared by others”.
- 1.17 On October 16, 2019, a drawing set was submitted to the City for the Physiotherapy Project. Similar to the Daycare Project, each drawing sheet identified “Willson Design” on the title block and displayed Mr. Podhora’s seal, next to a stamp that stated, “This document is sealed to record a professional review of design prepared by others” (hereinafter the “Disclaimer Stamp”).
- 1.18 The date listed on the drawing set for the Physiotherapy Project was August 30, 2019, which is 10 days before the date that appears on the contract Mr. Podhora signed with Krahn.
- 1.19 Mr. Podhora’s response to the Complaint stated that all the drafting work for the Projects was performed by Willson Design Ltd. (“Willson Design”) under his direct supervision. Willson Design does not have a certificate of practice and is not registered with the AIBC.
- 1.20 Mr. Podhora explained that he provided instruction to Willson Design’s employees to prepare the initial drawings, in accordance with his instructions on both the Daycare Project and the Physiotherapy Project. Mr. Podhora maintained that he supervised, provided guidance, reviewed and made necessary revisions to the initial plans prepared by the drafters/designers employed by Willson Design. He also stated that he reviewed the drawings to ensure they complied with local codes, bylaws, and the authority having jurisdiction’s requirements. He explained it was challenging to

substantiate a fluid editing process on small projects such as the Daycare Project and the Physiotherapy Project, since communications occurred verbally with staff, contractors and the City.

- 1.21 In response to his use and application of the Disclaimer Stamp, Mr. Podhora stated this was an attempt to limit his liability for work carried out in an outside office, albeit under his supervision. He acknowledged the Disclaimer Stamp may have been misleading since it erroneously conveyed the impression to the authority having jurisdiction that he was not controlling his work when he maintains that the drawings had been supervised, reviewed and approved by him before he affixed his seal to the drawings.
- 1.22 Mr. Podhora also stated the Disclaimer Stamp had been in existence for less than two months and that upon being notified of the Complaint, he immediately removed it from his practice and remains fully aware of his responsibility to direct, supervise and control all support work done on his behalf.
- 1.23 With regard to the omission of LPA's logo from the drawings submitted for the Projects, Mr. Podhora stated this was an error and that he intends to request building design firms to include LPA's logo on all sheet title blocks so that it is clear he has supervised and reviewed the drawings.
- 1.24 At his interview, Mr. Podhora stated he was involved in both Projects in a meaningful way and in a manner consistent with his professional obligations and provided evidence of supervision which satisfied the Committee. He reiterated that he could understand why the Disclaimer Stamp caused confusion and has stopped using it since the issue was brought to his attention. He acknowledged that mistakes happened from time to time and that he needs to be accountable for them and adjust his methods to resolve the problem.
- 1.25 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.
- 1.26 Upon being notified of the recommended charges, Mr. Podhora chose to pursue consensual resolution with the AIBC. A notice of inquiry has not been issued.

#### **E. Relevant Sections of the Architects Act, AIBC Bylaws and Code of Ethics**

- 1.27 Sections 63(2), 77(1) and 78 of the *Act*, and AIBC Bylaws 33.3, 34.2 and 34.10 (with associated council rulings) are relevant to the complaint against Mr. Podhora.
- 1.28 Sections 63(2), 77(1) and 78 of the *Act* states:

##### **Further prohibitions**

**63 (2)** A person or architectural firm that does not hold a certificate of practice must not be held out or implied to hold a certificate of practice.

##### **Architect's seal**

**77 (1)** An architect must apply a seal, with signature and date, to letters of assurance, certificates, drawings and specifications prepared by or under the architect's supervision, direction or control if the architect practices architecture

- (a) as a member of the institute holding a current certificate of practice,
- (b) as a sole proprietor or partner of an architectural firm, or
- (c) on behalf of an architectural corporation as a continuing employee or shareholder of the corporation

**Use of seal**

**78** A member of the institute or a licensee must not affix his or her seal to a plan, working drawing, detail drawing, specification or other document unless it was prepared by or under the supervision, direction or control of the member or licensee.

1.29 The relevant sections of the AIBC Bylaws and associated council rulings in the Code of Ethics state:

**Bylaw 33.3 An architect shall comply with the Architects Act of British Columbia, the Bylaws under the Architects Act, and Council rulings.**

- (a) An architect must not directly or indirectly condone or encourage contravention of the Architects Act, Bylaws and Council rulings by others.

**Bylaw 34.2 An architect shall seal the architect’s work in accordance with the requirements of the Architects Act of British Columbia and the Bylaws and Council rulings.**

...

- (b) Architects may apply their seals as continuing employees of architectural corporations or as employees or contractors to architectural partnerships and sole proprietorships in keeping with the rules established by Council, including any requirements for obtaining a certificate of practice as a “member of the institute” pursuant to Section 77(1)(a) of the Architects Act.

**Bylaw 34.10 Except in an approved competition, an architect shall provide no form of service until retained and in receipt of the client’s instructions.**

...

- (d) An architect must confirm the terms and conditions of engagement, in a written agreement with the client, executed prior to the architect’s commencing work, on any commission

**2.0 ADMISSIONS**

2.1 Considering the facts agreed to above, Mr. Podhora acknowledges and admits that :

2.1.1 He improperly used his seal on drawings for the Projects, namely by applying his seal:

- next to a disclaimer stamp that stated the seal was to record a professional review of a design prepared by others, contrary to section 78 of the *Act* and AIBC Bylaw 34.2 and council ruling (b);
  - on drawings that displayed the title block of Willson Design, an entity that does not hold an AIBC certificate of practice, contrary to section 77(1) of the *Act* and AIBC Bylaw 34.2 and council ruling (b); and
  - on drawings that displayed the title block of Willson Design, an entity that does not hold an AIBC Certificate of Practice, thus creating potential confusion that could allow a person to reasonably conclude Willson Design was a certificate of practice holder and/or entitled to practise architecture in British Columbia, contrary to section 63(2) of the *Act* and AIBC Bylaw 33.3 and council ruling (a).
- 2.1.2 By providing architectural services on the Physiotherapy Project before he confirmed the terms of the commission in a written agreement, he contravened AIBC Bylaw 34.10 and council ruling (d).

### 3.0 PENALTY AGREEMENT

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

- 3.1.1 A reprimand will be recorded against Lubomir (Larry) Podhora Architect AIBC;
- 3.1.2 Mr. Podhora is required to pay a fine in the amount of \$6,000 to the AIBC, within 30 days after the approval of this Agreement by the consensual resolution review panel; and
- 3.1.3 Mr. Podhora is required to attend and complete the AIBC’s “Ethics, Act and Bylaws course or an education program or programs (agreed to in advance by the AIBC) that cover substantially similar material to the AIBC’s course “Ethics, Act and Bylaws”, at his expense, no later than June 30, 2021. The Director of Professional Conduct and Illegal Practice is authorized to provide a reasonable extension, upon request by Mr. Podhora, if he is unable to complete such course(s) by the prescribed date due to restrictions imposed by the current pandemic.

3.2 Mr. Podhora acknowledges and agrees that failure to complete the requirement in paragraph 3.1.2 - 3.1.3 above within the time specified will result in his removal from the register of the AIBC.

3.3 Mr. Podhora 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 has:
- 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. Podhora 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. Podhora 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. Podhora 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. Podhora 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. Podhora 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. Podhora 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.

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

*Approved by the Consensual Resolution Review Panel on January 29, 2021.*

**SCHEDULE – REASONS FOR PENALTY  
TO  
CONSENSUAL RESOLUTION AGREEMENT  
BETWEEN**

LUBOMIR (LARRY) PODHORA ARCHITECT AIBC  
AND  
THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

**1.0 REASONS FOR PENALTY**

1.1 Lubomir (Larry) Podhora 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 Mr. Podhora applied his seal to drawings:
- a) next to a disclaimer stamp for the purpose of limiting his liability for work produced on his behalf and under his supervision, direction and control;
  - b) bearing the title block of an entity that does not hold a certificate of practice; and
  - c) which allowed an entity without a certificate of practice to be held out as a certificate of practice holder.
- This is a moderately serious matter.
- 1.15 As section 4.10 of Bulletin 61 states, it is not permissible for an architect to affix a seal to another consultant’s drawings or documents. Application of an architect’s seal to a drawing that has the title

block of an entity who is not a certificate of practice holder, allows a person to reasonably conclude that the entity is a certificate of practice holder when in fact it is not.

- 1.16 The inappropriate use of the seal and disclaimer stamp led to confusion about which entity was responsible for the production of the drawings. The above seal violations, occurring on two separate Projects, are an aggravating factor.
- 1.17 Mr. Podhora providing architectural services on the Physiotherapy Project before a client-architect agreement was executed is also a moderately serious matter and an aggravating factor.
- 1.18 The requirement to have a client-architect agreement in place is a fundamental aspect of the practice of architecture. It ensures the services undertaken are based on and consistent with the agreement and is important to protect the public and the profession.

**(b) Character and professional conduct record of the respondent**

- 1.19 Mr. Podhora is 66 years old. He has been registered as an architect with the AIBC since July 1, 1985.
- 1.20 Mr. Podhora has a discipline history with the AIBC as follows:
  - a) In February 2018, a Consensual Resolution Agreement was approved for Mr. Podhora in which he admitted breaching AIBC Bylaw 34.2, by applying his seal to drawings that were prepared and already sealed by the first architect for a Project, for the purpose of securing a building permit application. Additionally, Mr. Podhora admitted he contravened AIBC Bylaw 34.8 and council ruling (b)(iv) by providing services based upon and continuing the work of a predecessor architect when no acquisition of the predecessor's copyright had occurred. In this matter, Mr. Podhora was given a reprimand, and a \$3,000 fine.
- 1.21 Mr. Podhora's pre-existing discipline history concerning the use of his seal is similar to the issue in this file which also concerns the use of his seal. This is an aggravating factor.

**(c) Acknowledgement of the misconduct and remedial action**

- 1.22 Mr. Podhora quickly recognized that the application of the Disclaimer Stamp was misleading and why its application next to his seal would lead a person to understand that the drawings were not prepared by him or under his supervision, direction or control.
- 1.23 He has taken corrective action and discarded the Disclaimer Stamp from his practice since being notified of the issues in this Complaint. This is a mitigating factor.
- 1.24 Mr. Podhora has acknowledged that the drawings ought to have had his firm's logo appear in the title block, and he should not have started work on the Physiotherapy Project in August 2019, which was prior to the date of the executed contract to provide architectural services.
- 1.25 He has been professional, cooperative, and candid in the course of the investigation and has been prompt in providing responses.

1.26 Mr. Podhora’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**

1.27 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.

1.28 ‘Specific deterrence’ means deterring the respondent from repeating the conduct in question. In this case, while Mr. Podhora has engaged in a meaningful exchange with the AIBC to understand the issues resulting in this consensual resolution, it is of note this is his second disciplinary matter in four years concerning the application of his seal on drawings.

1.29 ‘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 the proper application of the architect’s seal, and the importance of providing architectural services after an agreement has been executed, in compliance with the *Act*, the AIBC Bylaws, and council rulings.

1.30 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.

1.31 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.

1.32 Precedent files relating to improper application of an architect’s seal are typically accompanied by other contraventions of the *Act* or Bylaws. The penalty is an aggregate of all the contraventions at issue in the file. The file which is most similar to the one at hand is summarized below.

1.33 In File 18.02, the architect provided architectural services without having confirmed the terms and conditions of the engagement with the client. In addition, the architect did not apply his seal with the correct date to drawings; applied or allowed to be applied an image of his seal to drawings; and applied his seal to drawings bearing the title block of an entity that did not hold a certificate of practice. The inappropriate use of the seal led to confusion about the status of the drawings and which entity was responsible for them. A consensual resolution agreement was approved under which the architect received a reprimand, a \$2,500 fine, and attend the AIBC course “Ethics, Act and Bylaws”.

***Improper application of seal***

1.34 In File 15.10, is Mr. Podhora’s prior discipline matter. In this case, Mr. Podhora, applied his seal to drawings that were prepared and already sealed by the first architect for a project, for the purpose of

securing a building permit application. In addition, he provided architectural services based upon and continuing the work of a predecessor architect when no acquisition of the predecessor's copyright had occurred. The matter was resolved by consensual resolution agreement that approved a reprimand and a \$3,000 fine.

- 1.35 In File 07.05, the architect failed to properly seal development permit drawings under the false impression that he was not required to do so. The architect also had a prior professional conduct history with the AIBC. The consensual resolution agreement was approved under which the architect received a reprimand and a \$3,000 fine.

***Providing architectural services prior to agreement***

- 1.36 In File 15.04, a senior architect provided services prior to completion and execution of an appropriate agreement, and the architect did not provide written notification to the client of his insurance status and did not include the required compliance statement. The architect did not have a prior professional conduct record, had been fully cooperative throughout the process and acknowledged he acted unprofessionally. The penalty agreed to in the consensual resolution agreement was of a reprimand and \$1,000 fine.
- 1.37 In File 14.04, a senior architect provided architectural services prior to being retained for the project through a written executed agreement. In addition, he failed to provide the requisite written notification regarding professional liability insurance and provide the compliance statement and did not adequately take into account the authority having jurisdiction's relevant bylaws, regulations and procedures while providing architectural services. A consensual resolution was approved that resulted in a reprimand, \$1,500 fine and the AIBC Ethics, Act and Bylaws course.
- 1.38 In light of the fact this is Mr. Podhora's second disciplinary matter within four years, it is submitted that the higher penalty proposed is in keeping with principles of progressive discipline. It is noteworthy that both of his disciplinary matters have charges related to the application and use of his seal. For these reasons, it is submitted that Mr. Podhora also be required to attend the AIBC's Ethics, Act and Bylaws course, or a course(s) that cover substantially the same material.
- 1.39 Mr. Podhora did not gain any substantive advantage as a result of the breach, was quick to acknowledge his misconduct, take steps to correct it, and was cooperative throughout the investigation. For these reasons, as well as his experience and registration with the AIBC for 35 years, it is submitted that further discipline is not warranted in this matter.
- 1.40 As noted in *Peet* above, there will rarely, if ever, be only one single appropriate outcome in a professional disciplinary file.
- 1.41 Mr. Podhora and the AIBC submit that, based on the cases above, and upon a careful review of the consolidated *Ogilvie* Factors, the proposed penalty is reasonable, 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. Podhora 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.

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*The facts and terms of this Schedule – Reasons for Penalty to Consensual Resolution Agreement are acknowledged and agreed to by Lubomir (Larry) Podhora Architect AIBC 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](mailto:msands@aibc.ca).*