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:

JESSIE ARORA ARCHITECT AIBC

AND

DF ARCHITECTURE INC.

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 concerning Jessie Arora Architect AIBC and DF Architecture Inc. ("DFA") (together, the "Respondents") regarding architectural services provided for a proposed daycare in Surrey, B.C.

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

B. Mr. Arora and DF Architecture Inc.

1.5 Mr. Arora was first registered as an architect with the AIBC on February 17, 2010, and has maintained his registration ever since.

1.6 Mr. Arora practises architecture through DFA, a corporation, which holds an AIBC certificate of practice that was issued on June 29, 2010.

1.7 Mr. Arora is the principal, sole shareholder, and director of DFA. Mr. Arora is also the only registered architect working at DFA at the relevant times.

C. The Complaint

1.8 In September 2019, the AIBC received a complaint about the Respondents from a client (respectively, the "Complaint" and the "Complainant").

1.9 The Complaint reported concerns with the Respondents' provision of architectural services for the proposed daycare without a client-architect agreement in place, and raised concerns about invoices subsequently issued by the Respondents for services not mutually agreed upon with the Complainant in writing.

1.10 The Complaint was provided to the Respondents for 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 the Respondents. The Complainant and Mr. Arora also attended for interviews with the Committee.

1.12 The facts in paragraphs 1.13 – 1.41 below are based on material reviewed during the investigation and agreed to by the AIBC, Mr. Arora and DFA.

1.13 At some date prior to June 4, 2019, DFA was contacted by the Complainant to draft a preliminary feasibility study for a daycare facility to be constructed in Surrey, BC (the "Project").

1.14 Mr. Arora stated during the investigation that it was his understanding that DFA would draft the preliminary work and submit it to the City of Surrey, the authority having jurisdiction ("AHJ") for review and approval, following which the Complainant would commission DFA to design and draft plans for the Project.

1.15 On June 4, 2019, a DFA staff member sent an email to the AHJ's manager of area planning and development division stating that the firm was working with a prospective client to rezone for a daycare development. The address in the subject line of the email was the same address as the Complainant's Project. Various links to documents were attached and a request was made to the AHJ to review and advise on the proposed uses. Mr. Arora was not copied on this email.

1.16 On June 7, 2019, there were email exchanges between the AHJ and DFA of what could be built on the site. The AHJ response to DFA identified preliminary issues and concerns with the proposal presented. Mr. Arora was copied on these emails.

1.17 On June 10, 2019, a DFA staff member forwarded the AHJ's email to the Complainant and asked for his initial thoughts and comments. Mr. Arora was not copied on this email.

1.18 On June 10, 2019, a DFA staff member sent an email to the AHJ explaining that the issues and concerns they had raised had been shared with their client, who had provided additional information and suggested a few options for their consideration. Mr. Arora was copied on this email.

1.19 On June 11, 2019, a DFA staff member sent an email to the Complainant that stated:

"As per your discussion with [another DFA employee] today morning, we are very excited to work with you. The initial sketches to move forward with the City and the development data for the same, the total cost would be $5,000 + G.S.T. Please let us know, so that we can proceed with the same and also, how would you like to make the payment. Look forward to hearing from you soon."

Mr. Arora was copied on this email.

1.20 A response to the above email was not provided during the investigation. The Committee was provided with a copy of a cheque dated June 12, 2019, from the Complainant to DFA in the amount of $5,250 against an invoice of the same date which detailed the payment was for the cost of the preliminary sketch and development data for the Project.

1.21 A fee proposal addressed to the Complainant and dated June 13, 2019, (the "Fee Proposal") identified the scope of services to include preparation of architectural drawings in the rezoning and development permit stage and building permit stage. The services included were identified as:

a. Schematic design to determine the optimal development of site.

b. Design development to determine Final Floor Plan layouts and elevations.

c. Preparation of Architectural drawings for rezoning and development permit applications.

d. Preparation of Architectural working drawings for Building Permit application.

e. Architectural working drawings for Building Permit application to include drawings as designed for shell finish only. (No millwork design to be provided).

The Fee Proposal also included a payment schedule with a breakdown of fees that identified a retainer in the amount of $10,000 and pre-design initial sketches and development data in the amount of $5,000. The fees for the rezoning and development permit; building permit services; contract documentation; and contract administrations were marked as "TBD". The Fee Proposal was signed by Mr. Arora only and not by the Complainant.

1.22 In the course of the investigation, Mr. Arora stated the Complainant provided his verbal instructions to proceed with work for the Project during a visit to DFA's offices, when he paid the retainer payment. A copy of the retainer payment or receipt for the retainer amount was not provided by either the Respondents or the Complainant in response to requests made by the Committee.

1.23 Mr. Arora also stated during the investigation that since the Complainant wanted to explore his options, he could not confirm the terms and conditions of engagement in a written agreement. Therefore, according to Mr. Arora, the Complainant verbally agreed to the terms of the Project and a printed copy of the Fee Proposal was provided to the Complainant when he visited DFA's office at a later, unknown date.

1.24 On June 20, 2019, the AHJ sent an email to DFA providing a detailed summary of the design restrictions/constraints for the site of the daycare proposal site. On the same day, a DFA staff member forwarded the AHJ's email to the Complainant stating:

"Please find below the email received from the [AHJ] regarding your property. As discussed, please not that this is their initial comments, however, we can still convince them with additional information, I would be replying to the [AHJ] after discussing with [another DFA employee] and would keep you updated regarding the same. Please let me know, if you would have any further questions of concerns."

Mr. Arora was not copied on this email.

1.25 On June 27, 2019, a DFA staff member emailed the initial feasibility drawings to the Complainant asking that he review and then instruct that it be sent to the AHJ for review. The Complainant asked for changes to be made to the initial feasibility drawings which the Respondents stated amounted to a new design.

1.26 The Respondents stated during the investigation that on June 29, 2019, the Complainant was informed via a telephone call that he would be billed at an hourly rate for any and all work done after the feasibility option had been drafted.

1.27 On July 8, 2019, a DFA staff member emailed to the Complainant the second set of drawings which had his requested changes. The email also attached an invoice for the second set of drawings which was submitted to the AHJ in July 2019.

1.28 On receipt of the second set of drawings, the Complainant asked for further changes and additions. The Respondents stated that they informed the Complainant, in another telephone call, that making further changes would incur an additional expense.

1.29 The Respondents stated the further requested changes were made and on July 24, 2019, the third set of drawings were emailed to the Complainant together with an invoice for the additional cost of drafting the third set of drawings.

1.30 In response to the Committee's questions, the Complainant stated there was no written contract for services and costs, and there were no verbal discussions by telephone or in person regarding an hourly rate or extra charges for changes.

1.31 Mr. Arora confirmed he was out of the office from June 11, 2019, to July 1, 2019, travelling in Europe and was not present during the initial meetings and calls with the Complainant. Mr. Arora stated that he and the Complainant negotiated the Fee Proposal over text messages.

1.32 In response to the Committee's request for copies of the text messages exchanged with the Complainant, Mr. Arora stated he did not have these available because he purchased a new phone and discarded his previous phone.

1.33 Mr. Arora told the Committee that he advised his staff to begin initial work on the Project and that he would discuss and finalize the scope of work and programming when he returned to the office.

1.34 Mr. Arora also told the Committee that he was in contact with DFA staff remotely, via email and text message while he was away from the office. He stated that he drafted the design for the Project and an architectural technologist at DFA converted it into a draft which Mr. Arora then reviewed together with all subsequent revisions before they were provided to the Complainant.

1.35 The Committee made requests for copies of the email and text exchanges between Mr. Arora and staff at DFA to demonstrate his involvement and evidence his supervision direction and control of the Project. He was also asked to contact his cell phone provider in order to retrieve his text messages.

1.36 Mr. Arora replied that he was not able to provide the copies requested because he had purchased a new phone and could not access the record of his text messages from his old phone which he had discarded. He also stated his cell phone provider did not keep text message history for security and privacy reasons.

1.37 Mr. Arora did provide an email dated June 26, 2019, which he received from a DFA staff member, attaching the initial feasibility drawings for the Project, confirming payment of the retainer payment and asking Mr. Arora to provide his review and feedback before it was sent to the Complainant. Mr. Arora stated that on the same day, he had a telephone call with DFA staff to discuss the drawings, at

which time he directed them to make revisions. He stated it was these drawings that were sent to the Complainant on June 27, 2019.

1.38 The Committee was not provided with any documents or drawings showing the revisions that Mr. Arora directed his staff to make by telephone on June 26, 2019, or any document to evidence that the revisions were reviewed by Mr. Arora before they were sent to the Complainant.

1.39 Mr. Arora stated that the DFA staff member who was responsible for the day-to-day conduct of the Complainant's file had left the firm and DFA had no record of her communications with Mr. Arora.

1.40 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.

1.41 Upon being notified of the recommended charges, Mr. Arora and DFA chose to pursue consensual resolution with the AIBC. No notice of inquiry has been issued.

E. Relevant Professional Standards

1.42 AIBC Bylaws 34.10 and 34.1 and associated council rulings are relevant to the complaint against the Respondents.

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

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.**

. . .

(b) Prior to being retained, an architect is not permitted to provide solutions, suggestions, ideas or evidence of same (in any format) which have value to the client or upon which the client might be expected to rely.

. . .

(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.

Bylaw 34.1 **Each office maintained for offering architectural service to the public shall have an architect who has direct knowledge and supervisory control of the services.**

. . .

(b) Proposals of service; agreements; assurances; certifications; official submissions to authorities having jurisdiction; and other representations on behalf of an architectural firm or certificate of practice holder must be made by an architect

2.0 ADMISSIONS

2.1 Considering the facts agreed to above, the Respondents acknowledge and admit that they:

2.1.1 contravened Bylaw 34.10 and council ruling (b) by providing architectural services on the Project, including initiating inquiries to an authority having jurisdiction, prior to being retained;

2.1.2 contravened Bylaw 34.10 and council ruling (d) by not confirming the terms and conditions of engagement in a written agreement with the client; and

2.1.3 contravened Bylaw 34.1 and council ruling (b) by failing to demonstrate there was an architect who had direct knowledge and supervisory control of the architectural services on the Project, including making proposals of service and representations to the client on behalf of DFA.

3.0 PENALTY AGREEMENT

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

3.1.1 A reprimand will be recorded against Jessie Arora Architect AIBC and DFA;

3.1.2 Mr. Arora and DFA jointly and severally are 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. Arora is required to attend and complete 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 September 30, 2021. The Director of Professional Conduct and Illegal Practice is authorized to provide a reasonable extension, upon request by Mr. Arora, if he is unable to complete such course(s) by the prescribed date due to restrictions imposed by the current pandemic.

3.2 Mr. Arora and DFA acknowledge and agree that failure to complete the requirement in paragraph 3.1.2-3.1.3 above within the time specified will result in their removal from the register of the AIBC.

3.3 Mr. Arora and DFA acknowledge and agree that if they are removed from the register for failure to complete any of the requirements of this Agreement, they must do the following within 10 days of being advised in writing by the AIBC of his removal from the register:

3.3.1 Mr. Arora must return his professional seal to the AIBC;

3.3.2 Mr. Arora must return DFA's certificate of practice to the AIBC; and

3.3.3 Mr. Arora and DFA must provide the AIBC with a letter of undertaking confirming that they have:

a) Concluded all architectural business operations through DFA;

b) Assigned, with client consent, any ongoing projects under their name to another architect or architectural firm holding a current certificate of practice. In this portion of the undertaking letter, Mr. Arora and DFA are 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;

c) Informed the appropriate officials and authorities having jurisdiction, in writing, of their 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;

d) Removed project site signs which identified them, or alternatively, amended such project signs by removing their identity; and

e) Mr. Arora must confirm 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. Arora 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. Arora and DFA agree jointly and severally, to pay costs for this consensual resolution, fixed at an amount of $1,500, 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. Arora and DFA 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. Arora and DFA are 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. Arora and DFA 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 Jessie Arora Architect AIBC and the AIBC, represented by Mark Vernon, CPA, CA, CPA (IL), CEO.

Approved by the Consensual Resolution Review Panel on June 7, 2021.

SCHEDULE – REASONS FOR PENALTY
TO
CONSENSUAL RESOLUTION AGREEMENT
BETWEEN

JESSIE ARORA ARCHITECT AIBC

AND

DF ARCHITECTURE INC.

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

1.0 REASONS FOR PENALTY

1.1 Jessie Arora, DFA 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.
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> [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": *Sahota (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. Arora and DFA failed to confirm the terms and conditions of engagement for the Project in a written agreement that was executed by the Complainant. Additionally, prior to being retained they began providing architectural services by contacting the AHJ to obtain suggestions, ideas and solutions about the proposed Project on which the Complainant would, and did in fact rely. These actions by Mr. Arora and DFA are aggravating factors.

1.15 Mr. Arora and DFA failed to have an architect who had direct knowledge and supervisory control of the architectural services (such as fee proposals, agreements, representations of work) being offered to the Complainant on the Project. Further aggravating the situation is that all of the documented exchanges provided in this matter occur between a DFA staff member and the Complainant. The public is entitled to expect that architectural services will be provided by an architect and the work of

staff at the firm is supervised and controlled by an architect. Insufficient evidence was presented to support that Mr. Arora had direct knowledge and supervisory control over the architectural services offered in this Project.

1.16 The allegations against Mr. Arora and DFA are of a moderately serious nature. This case features contraventions of foundational practice requirements.

1.17 The complainant had been impacted by Mr. Arora and DFA failure to use a written contract since it has contributed to a dispute over fees and the services being provided.

(b) Character and professional conduct record of the respondent

1.18 Mr. Arora is 54 years old. He has been registered as an architect with the AIBC since February 17, 2010.

1.19 Mr. Arora and DFA have no professional conduct record with the AIBC.

(c) Acknowledgement of the misconduct and remedial action

1.20 For most of the investigation Mr. Arora and DFA did not acknowledge that their conduct in this matter was inappropriate.

1.21 At times the responses Mr. Arora and DFA provided to the Committee were evasive, contradictory and not supported by the documentary evidence which was provided.

1.22 However, Mr. Arora's and DFA participation in the consensual resolution process and the admissions made in the Agreement indicates that they have acknowledged their misconduct. This acknowledgment suggests that the concerns arising in this matter have been brought to their attention in a meaningful way.

1.23 Overall, Mr. Arora and DFA's conduct was initially an aggravating factor which then became neutral.

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

1.24 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.

1.25 'Specific deterrence' means deterring the respondent from repeating the conduct in question. In this case, Mr. Arora and DFA do not have a prior professional conduct record with the AIBC. However, the misconduct in this case appears to have been motivated by convenience to Mr. Arora who was away from the office for most of the month of June 2019. It was during that time that the events which gave rise to this matter arose and there was no other registered architect at DFA who was able to assist. Accordingly, there is need for specific deterrence.

1.26 '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.

1.27 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.

1.28 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.

1.29 The most similar case to the one at issue is AIBC Files 04.18 and 05.03, in which the architect provided a potential client with architectural services in the form of sketches and meeting with the district planner prior to being retained by way of a client-architect agreement. The architect also failed to exercise direct knowledge and supervisory control with respect to a project and the design firm services and office. In addition he admitted that he failed to conduct adequate field reviews communicate with the AHJ and coordinate other project professionals and sufficiently coordinate the project. A consensual resolution was approved under which the architect received a reprimand, a $3,000 fine, was required to complete the AIBC course "Ethics, Act and Bylaws" and have an Oral Conduct Review.

Providing architectural services without a written agreement

1.30 In AIBC File 08.15, the architect provided architectural services prior to being retained by way of a written client-architect agreement. The architect attended meetings with the client, conducted a site visit, met with the AHJ, and prepared architectural drawings for the project. He also failed to notify the client of his insurance status and include the required compliance statement. The allegations were considered to be of moderate gravity and resolved by consensual resolution which approved a reprimand and $2,500 fine.

1.31 In AIBC File 03.12, the architect provided services prior to being retained and having a written agreement. He provided clients with concept sketches prior to being retained. He also continued to provide services to the clients based on an understanding of an hourly fee and failed to enter into a client-architect agreement. There were also additional charges for failing to conduct his affairs in a professional manner for failing to remove a lien from the clients' property in a timely manner. A consensual resolution was approved under which the architect received a reprimand, a $2,000 fine, and was required to complete the AIBC course "Ethics, Act and Bylaws".

Architectural services offered without an architect's direct knowledge and supervisory control

1.32 In AIBC File 09.08, the architect failed to exercise the required control over architectural services in addition to other contraventions. The allegations were considered to be of moderate gravity. It was noted the architect acknowledged his errors, cooperated throughout the investigation and had no prior professional conduct record. A consensual resolution was approved under which the architect received a reprimand, a $3,000 fine and was required to complete the AIBC course "Ethics, Act and Bylaws".

1.33 In AIBC File 04.23, the architect failed to exercise direct knowledge and supervisory control of the project. A fee proposal letter was submitted under the architect's letterhead and signed by the owner

of a design firm with whom the architect was collaborating. The architect did not personally prepare the fee proposal letter and did not review the contents prior to its transmission to the potential client but was informed of its contents afterwards. He thus failed to exercise direct knowledge and supervisory control with respect to the fee proposal. He also had a prior discipline history. A consensual resolution was approved under which the architect received a reprimand, $2,000 and was required to complete the AIBC course "Ethics, Act and Bylaws".

1.34 While this case is most similar to AIBC Files 04.18 and 05.03, a higher penalty is warranted because the fundamental failure to have a properly written and executed contract with the Complainant contributed to a dispute over fees and caused confusion over the services being provided.

1.35 Additionally, the facts support Mr. Arora intentionally permitted his DFA staff to manage the Complainant and his Project, not only while he was away from the office on holiday but also before a written agreement had been executed. As a seasoned architect Mr. Arora should know that an architect is required to oversee and direct architectural services, despite the capabilities of supporting staff who are not architects.

1.36 Another reason for the higher fine is that it stretches credulity that neither Mr. Arora and DFA were able to corroborate their version of events by way of documentary evidence, particularly as they related to email exchanges, telephone messages and text messages concerning architectural services for a client.

1.37 As noted in *Peet* above, there will rarely, if ever, be only one single appropriate outcome in a professional disciplinary file.

1.38 Mr. Arora, DFA 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. Arora and DFA acknowledge that they have been given adequate opportunity to seek legal or other professional advice with respect to the negotiation, execution and consequences of this Schedule and have 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 Jessie Arora 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.