



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:

BENEDICT LUK 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 Benedict Luk Architect AIBC in relation to non-compliance with the AIBC’s Continuing Education System (“CES”) requirements for the period ending September 30, 2020.

1.3 Following its investigation, the Committee recommended that the matter proceed to a disciplinary inquiry for determination of whether Mr. Luk 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”), and council rules in AIBC Bulletin 80.

1.4 Mr. Luk chose to pursue a consensual resolution agreement.

### B. Background – AIBC Continuing Education System

1.5 In 2001, members of the AIBC voted to adopt Bylaw 30.2, which became effective as of July 2001, and established the requirements for architects to undertake and report on continuing professional education.

1.6 AIBC Council thereafter formally adopted CES, which is administered by the AIBC’s Professional Services department.

1.7 The requirements for CES are formalized in the AIBC Bylaws and AIBC Bulletin 80: *Mandatory Continuing Education System* (CES). CES requirements for AIBC registrants follow a two-year reporting period which runs from July 1 to June 30 of the second following year.

1.8 As part of response to the COVID-19 pandemic, the deadline to comply with the CES requirements for the reporting period July 1, 2018, to June 30, 2020, was extended to September 30, 2020, (the “Fourteenth Reporting Period”).

1.9 All CES participants were notified of the deadline extension on March 26, 2020. CES participants were also notified that a grace period would not be available to earn and report deficient learning units given the deadline extension for the Fourteenth Reporting Period.

1.10 CES participants were required to earn and report 36 learning units (“LUs”), including a minimum of 16 “Core” LUs, by September 30, 2020. Each LU represents one hour of eligible educational activity.

1.11 CES participants who failed to earn and report the required LUs by the September 30, 2020, extended deadline were assessed an administrative fine mandated by AIBC Council and subject to a complaint of unprofessional conduct. For the Fourteenth Reporting Period, the fine amount for Architects AIBC was \$1,048.95.

1.12 CES participants were notified that if they failed to earn and report the required LUs and/or failed to make the fine payment by December 31, 2020, they would be subject to further penalties through the professional conduct process.

**C. Benedict Luk**

1.13 Mr. Luk is a resident of Hong Kong.

1.14 Mr. Luk was first registered as an architect with the AIBC on March 2, 1998. Mr. Luk was removed from the register in 2005 for failing to pay his annual fees. Mr. Luk was reinstated on March 31, 2017, and has maintained his registration ever since.

1.15 Mr. Luk does not hold an AIBC certificate of practice.

**D. The Complaint**

1.16 In April 2021, the AIBC's Professional Services department submitted a complaint with respect to CES participants who failed to comply with their continuing education requirements in accordance with Bylaw 30.2 and AIBC Bulletin 80. This included Mr. Luk.

1.17 The complaint was provided to Mr. Luk for his response, and the Committee initiated an investigation.

**E. The Investigation/Agreed Facts**

1.18 The investigation involved a review of the material provided by the AIBC's Professional Services department and the response submitted by Mr. Luk. The agreed facts in paragraphs 1.19 – 1.34 below are based on material reviewed during the investigation.

1.19 All AIBC registrants receive regular updates and reminders about approaching CES deadlines from the Institute. In particular, during the last year of the Fourteenth Reporting Period, the AIBC regularly communicated with CES participants regarding the approaching CES deadline.

1.20 Beginning in July 2019, seven reminders were published on the AIBC's website and distributed through its newsletter, *AIBC Connected*.

1.21 As part of the AIBC's response to COVID-19, a targeted *AIBC Notice* was sent to all CES participants in March 2020, advising of the CES deadline extension until September 30, 2020.

1.22 A further targeted *AIBC Notice* was sent to all CES participants on September 9, 2020, three weeks before the extended deadline.

1.23 As the extended deadline approached, additional personalized email messages were sent to all non-compliant CES participants through the registrant database, with a breakdown of their currently recorded LUs and their outstanding LUs. These personalized email messages were sent at regular intervals in March, July, September and November 2020.

- 1.24 Further personalized email messages were sent to all non-compliant CES participants from the AIBC's Professional Services department in September 2020, one week before the extended deadline and twice in December 2020.
- 1.25 In recognition that many in-person learning activities had been cancelled in response to the COVID-19 pandemic, the AIBC's Professional Services department assembled supplementary resources and programming to assist CES participants in meeting their CES requirements. Included in these resources were lists of online learning activities, and complimentary summer and fall online professional development series.
- 1.26 These resources were shared with CES participants through the *AIBC Connected* newsletter; *AIBC Notices*, personalized email messages; and on the AIBC website.
- 1.27 Mr. Luk did not report the requisite LUs (including 16 Core LUs) prior to the September 30, 2020, deadline extension.
- 1.28 Having missed the September 30, 2020, deadline, Mr. Luk was issued the council-imposed fine and subject to a professional conduct complaint.
- 1.29 Mr. Luk was advised that in order to avoid incurring further penalty through the professional conduct process, he was required to earn and report all outstanding LUs and pay the council-imposed fine by December 30, 2020.
- 1.30 Mr. Luk failed to complete either requirement and remained non-compliant. In April 2021, he was included in the CES complaint submitted by the AIBC's Professional Services Department. On June 7, 2021, he was provided with notice of the complaint.
- 1.31 In response to the complaint, Mr. Luk explained he inadvertently overlooked the CES deadline. He apologized, accepted responsibility, and stated he fully intended to make up the outstanding LUs. Mr. Luk also explained that living in a foreign country means that he has less contact with his peers and as a result it is easy to miss deadlines. As a remedy, Mr. Luk stated that he has formed a group of Architects AIBC who live in Hong Kong to help remind themselves of such important matters
- 1.32 As of the date of this agreement, Mr. Luk has not paid the \$1,048.95 council-mandated fine and he has not become LU compliant for the Fourteenth Reporting Period.
- 1.33 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.
- 1.34 Upon being notified of the recommended charges, Mr. Luk chose to pursue consensual resolution with the AIBC. No notice of inquiry has been issued.

#### **F. Relevant Professional Standards**

- 1.35 AIBC Bylaw 30.2 and council rules in Bulletin 80 are relevant to the complaint against Mr. Luk.

1.36 AIBC Bylaw 30.2 states:

**Bylaw 30.2** In order to better serve the public, and in keeping with the architect’s declaration set out in Bylaw 9.0 and the obligation of the architect set out in Bylaw 30.1, an architect shall undertake continuing education and shall report on that continuing education to the Institute, in accordance with the rules for mandatory continuing education established by Council.

*Refer to Bulletin 80 for Council rules relating to compliance.*

1.37 The relevant sections of AIBC Bulletin 80 with accompanying council rules state:

2.1 CES Participants are designated as architects and architectural technologists registered with the AIBC. As of July 1, 2020, and thereafter, the CES Participants category includes Intern Architects AIBC. All CES Participants must satisfy the requirements of the mandatory CES as per Bylaw 30.2. **Rule 1**

...

3.16 A reporting period is two years long and runs from July 1 to June 30, on the even years. **Rule 11**

3.17 The minimum number of LUs that must be earned and reported by the end of each reporting period is 36, of which a minimum of 16 must be Core LUs. **Rule 12**

...

## **6.0 Consequences for CES Bylaw Non-Compliance and Authority**

6.1 CES Participants will be deemed non-compliant should they fail to meet their CES obligations, as set out in these rules, namely CES Rule 12 and 13.

6.2 A non-compliant CES Participant will be required to pay an AIBC Council-mandated fine, as set out in Bulletin 1, *and* to earn and report the deficient LUs no later than September 30 after the end of the reporting period. **Rule 27\***

6.3 Should a CES Participant remain non-compliant beyond September 30, a complaint of unprofessional conduct against the member will be made to the director of professional conduct. This may result in disciplinary action, to and including suspension and/or removal from the register **Rule 28**

\* The date for the reporting period ending 2020 was amended in light of the pandemic

## 2.0 ADMISSIONS

- 2.1 Mr. Luk acknowledges and admits that he contravened AIBC Bylaw 30.2 and the rules established by council in AIBC Bulletin 80 by failing to earn and report the requisite LUs and failing to pay the council-mandated fine by the specified deadline.

## 3.0 PENALTY AGREEMENT

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

3.1.1 A reprimand to be recorded against Mr. Luk Architect AIBC;

3.1.2 Mr. Luk is required to pay a fine in the amount of \$1,000 to the AIBC, within 30 days after approval of this Agreement by the consensual resolution review panel;

3.1.3 Mr. Luk is required to pay the council-mandated fine in the amount of \$1,048.95 to the AIBC, within 30 days after approval of this Agreement by the consensual resolution review panel; and

3.1.4 Mr. Luk is required to become LU complaint for the Fourteenth Reporting Period within 90 days after the approval of this Agreement by the consensual resolution review panel.

- 3.2 Mr. Luk acknowledges and agrees that failure to complete the requirement in paragraphs 3.1.2 to 3.1.4 above within the time specified will result in his removal from the register of the AIBC.

- 3.3 Mr. Luk 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, and if applicable, his digital seal as required by his agreement with Notarius, the Canadian company authorized to issue digital seals to British Columbia architects;

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. Luk 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. Luk 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. Luk 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 against Mr. Luk is an acknowledgement of the AIBC's partial costs resulting from the consensual resolution process.

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 in a form established by the AIBC, in keeping with AIBC Bylaws, including website publication and distribution to all registrants of the AIBC.

#### 6.0 ACKNOWLEDGEMENT

**This Consensual Resolution 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. Luk 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 Benedict Luk Architect AIBC and the AIBC, represented by Mark Vernon, CPA, CA, CPA (IL), CEO.*

*Approved by the Consensual Resolution Review Panel on May 13, 2022.*

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

**BENEDICT LUK ARCHITECT AIBC**

**AND**

**THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA**

**1.0 REASONS FOR PENALTY**

1.1 Mr. Luk 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 AIBC's CES program, which has been in place since 2001, is a foundational professional practice expectation. Indeed, it is explicitly referenced in the declaration that every person seeking registration as an architect must subscribe to.
- 1.15 The importance of continuing education requirements in the regulated professions, and the need for compliance with them, was discussed by the Supreme Court of Canada in the case of *Green v. Law Society of Manitoba*, 2017 SCC 20.
- 1.16 In *Green*, a lawyer was challenging his suspension for non-compliance with the Law Society's mandatory continuing education requirements. He was unsuccessful. On behalf of the majority of the Court, Justice Wagner (as he then was) stated:

The Law Society is required by statute to protect members of the public who seek to obtain legal services by establishing and enforcing educational standards for practising lawyers. CPD [continuing professional development] programs serve this public interest and enhance confidence in the legal profession by requiring lawyers to participate, on an ongoing basis, in activities that enhance their skills, integrity and professionalism. CPD programs have in fact become an essential aspect of professional education in Canada.

...

To ensure that those standards have an effect, the Law Society must establish consequences for those who fail to adhere to them. As a practical matter, an unenforced educational standard is not a standard at all, but is merely aspirational.

- 1.17 Similar reasoning applies to the AIBC and its CES program.
- 1.18 The AIBC's Professional Services Department devotes extensive time and effort to communicating with CES participants to promote compliance. A CES participant who was non-compliant during the Fourteenth Reporting Period would have received no less than **fifteen** separate communications reminding them of the need to earn and report their LUs and pay the council-mandated fine.
- 1.19 CES has been a requirement for all architects in British Columbia for almost twenty years. This requirement is thoroughly communicated to registrants. It is foundational to the public's confidence in the profession. There is simply no excuse for non-compliance. For the public to have confidence in the profession and in the AIBC's ability to regulate the profession, timely and complete compliance is required.
- 1.20 Correspondingly, as stated in *Green*, non-compliance must have consequences. The AIBC, through the council rules established in Bulletin 80, has established a framework whereby the consequences escalate depending on the type of non-compliance. In a typical reporting period, CES participants who fail to meet the June 30 deadline receive a fine and a three-month extension to achieve compliance. If either of those requirements is not fulfilled, a professional conduct investigation follows.
- 1.21 In light of the pandemic during the Fourteenth Reporting period, CES participants who were not in compliance by the extended deadline of September 30, 2020 received a fine and were subject to a professional conduct complaint. CES participants who did not earn and report the required LUs and/or pay the council mandated fine by December 31, 2020, were subject to further penalties through the conduct process.
- 1.22 In this case, Mr. Luk was not LU complaint by the deadline and was assessed a fine. Mr. Luk has not made his fine payment, and he remains LU non-compliant for the Fourteenth Reporting Period.
- 1.23 By comparison to other cases of CES non-compliance, this misconduct is serious.
- 1.24 Each of the CES rules, including the reporting requirements, represents a clear standard for the profession. Mr. Luk's non-compliance, following numerous reminders, merits regulatory sanction.

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

- 1.25 Mr. Luk is 57 years old and has participated in one previous CES reporting period.
- 1.26 Mr. Luk has a prior professional conduct record with the AIBC. Mr. Luk was not compliant with his CES requirements for the Thirteenth Reporting Period. In that instance, he also failed to earn and report the requisite LUs and pay the council mandated fine by the required deadline. That discipline matter was resolved by way of consensual resolution in AIBC file number 18.19.
- 1.27 Mr. Luk's previous conduct record is an aggravating factor, particularly in light of the fact that it relates to the same issues in the preceding CES reporting period.

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

- 1.28 Upon notification of the complaint, Mr. Luk acknowledged, apologized and took responsibility for not completing the LUs within the time requirement. Mr. Luk's failure to take remedial action and become CES compliant has now occurred in two consecutive reporting periods. This is an aggravating factor.
- 1.29 At the time of entering this Agreement, Mr. Luk has not reported any additional LUs to suggest that he is closer to becoming LU compliant.
- 1.30 By entering into this Agreement, Mr. Luk has acknowledged that he has committed a disciplinary violation.

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

- 1.31 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.
- 1.32 'Specific deterrence' means deterring the respondent from repeating the conduct in question. In light of the fact that Mr. Luk has not been CES compliant for two consecutive reporting periods, Mr. Luk and the AIBC are of the view that the combination of the administrative fine, the investigation and discipline process, a reprimand, and increased fine should deter Mr. Luk from non-compliance with CES requirements in the future.
- 1.33 '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. General deterrence is important for CES files. The CES requirements apply to all architects and architectural technologists in BC. The CES rules are not mere suggestions. There is simply no excuse for non-compliance, and responding to non-compliance absorbs significant AIBC time and

resources. The profession must understand that non-compliance will result in sanctions, and repeat non-compliance will result in increasingly serious sanctions.

- 1.34 The public has the right to expect that architects will know and comply with all applicable professional standards, and demonstrate that they have undertaken educational programming to remain current in accordance with established deadlines and procedures. 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.
- 1.35 While no two files are identical, the penalties for non-compliance with CES requirements have been relatively consistent in past reporting periods, with the severity of the penalty increasing with the number of breaches of Bylaw 30.2. Typical penalties for breaches of Bylaw 30.2 have been:
- First breach: reprimand (see, for example, AIBC file 17.01, a grouped file of non-compliant CES participants from the Twelfth Reporting Period, where members who were not CES compliant for the first time received a reprimand);
  - Second breach: reprimand and fine (see, for example, AIBC file 18.18, where the registrant who was not CES compliant for the second time received a reprimand and a \$1,000 fine); and
  - Third breach: reprimand and increased fine (see, for example, AIBC file 15.03, a grouped file of non-compliant CES participants from the Eleventh Reporting Period, where a member who was not CES compliant for the third time received a reprimand and an increased fine in the amount of \$1,500).
- 1.36 Mr. Luk and the AIBC submit that, based on the penalty review 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 Bylaws, including website publication 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. Luk 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 Benedict Luk 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, Professional Conduct and Illegal Practice at [msands@aibc.ca](mailto:msands@aibc.ca).*