



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:

DOUGLAS AUSTIN 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 the conduct of Douglas Austin Architect AIBC.

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

B. Mr. Austin

1.5 Mr. Austin was first registered with the AIBC as an architect on October 9, 2007, and has maintained his registration since that time.

1.6 Mr. Austin practises architecture in BC through AVR P Architecture Inc. (“AVRP”) a corporation that holds an AIBC certificate of practice.

1.7 Mr. Austin is a majority shareholder and the only architect at AVR P. Mr. Austin also practises architecture through AVR P Studios in California, USA.

C. The Complaint

1.8 In October 2020, the AIBC received a complaint alleging that Mr. Austin failed to provide notification to an architect whose firm had previously been engaged by the same client on the same project, as required by AIBC Bylaw 34.8 (the “Complaint”).

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

D. The Investigation/Agreed Facts

1.10 The investigation involved a review of the material submitted by the complainant and Mr. Austin. Mr. Austin also attended an interview with the Committee.

1.11 The AIBC informed Mr. Austin, as it does all registrants during the complaints and investigation process of their right to be represented by legal counsel. Mr. Austin participated in the investigation, including attending the interview, without obtaining legal counsel.

- 1.12 The facts in paragraphs 1.13 – 1.51 below are based on material reviewed during the investigation and agreed to by the AIBC and Mr. Austin.
- 1.13 At all relevant times, Mr. Austin was the only AIBC-registered architect at AVRVP. The AVRVP office in Vancouver is headed by TA and HH. Neither TA nor HH are architects. Mr. Austin stated during the investigation that TA is a talented professional in whom he has confidence to carry out the affairs in AVRVP’s office in Vancouver during his absence and who keeps him informed.
- 1.14 On May 22, 2017, the complainant and his firm (together, the “First Architect”) entered into an agreement to provide architectural services through rezoning to CD-1 use for a residential building on Kingsway, Vancouver, BC (the “Project”). The contract was based on an hourly charge with no restrictions.
- 1.15 On March 25, 2018, the First Architect sent the client a fee proposal to complete architectural services after rezoning was in place. The March 2018 fee proposal was not returned. The First Architect continued to work through rezoning under the May 2017 contract.
- 1.16 On January 16, 2020, at the request of the client’s former development manager, the First Architect sent a fee agreement dated January 15, 2020, for architectural services through to the completion of the Project.
- 1.17 On September 15, 2020, the authority having jurisdiction approved the rezoning application with conditions.
- 1.18 On September 23, 2020, the client’s new development manager (“Client Representative”) for the Project, contacted the First Architect introducing himself and requesting a meeting.
- 1.19 On September 23, 2020, the Client Representative also sent an email to TA at AVRVP soliciting the firm’s interest in working on the Project. The Client Representative informed AVRVP that the current architect was not on contract.
- 1.20 On September 24, 2020, the Client Representative emailed the First Architect to clarify that any further communications with them from this point were not pursuant to any contractual or fee-based charges. The email also requested a meeting with the First Architect to confirm the scope of work required for the First Architect to move forward with the Project.
- 1.21 The First Architect replied that they were currently under contract for the Project and that the meeting would be billable.
- 1.22 On September 25, 2020, the Client Representative emailed the First Architect and requested copies of their contracts with the client and outstanding invoices. He also stated he wanted to discuss obtaining a proposal for architectural services for a development permit, building permit and construction drawings.
- 1.23 On September 28, 2020, the First Architect replied to the Client Representative stating that the previous development manager had requested a set fee for the remainder of the Project which was provided on January 16, 2020, and work had been continuing under the original, March 22, 2017, hourly agreement.

- 1.24 On September 29, 2020, the First Architect emailed the Client Representative a copy of their March 25, 2018, and January 16, 2020, proposals to complete architectural services.
- 1.25 On September 30, 2020, the Client Representative followed up by email to TA at AVRPP, requesting a proposal for the Project work and attached the May 22, 2017, agreement the First Architect had with the client for the Project.
- 1.26 On October 7, 2020, the First Architect learned in an email from the Client Representative that the fee agreement for hourly work on the rezoning contract was considered finished, and that he had asked another one or two architectural firms for proposals for post-zoning architectural services for the Project.
- 1.27 On October 9, 2021, the First Architect sent an email to the Client Representative enquiring from which other architectural firms he was obtaining proposals for the Project.
- 1.28 On October 9, 2020, the First Architect received an email from one architectural firm advising they had been approached by the Client Representative to provide architectural services on the Project. The email stated that they understood the First Architect had been working on the Project and requested confirmation that their services had concluded so they were free to discuss the Project with the Client Representative and present a fee proposal. The First Architect followed up in a telephone discussion with the architectural firm.
- 1.29 On October 9, 2020, the Client Representative called AVRPP and confirmed he had received a fee proposal on the Project from another architectural firm.
- 1.30 On October 14, 2020, AVRPP submitted its fee proposal for the Project to the Client Representative. Mr. Austin stated at his interview with the Committee that he was not involved with the fee proposal for the Project.
- 1.31 By email dated October 16, 2020, the Client Representative informed the First Architect that in the “last few weeks” he had requested proposals from AVRPP and the architectural firm who had called the First Architect on October 9. The Client Representative also stated that either AVRPP or the other architectural firm would be engaged and an announcement would be made the following week.
- 1.32 On October 16, 2020, the Client Representative sent an email to TA and HH confirming AVRPP had been awarded the commission for the Project. The email asked AVRPP to provide a “formal proposal” and to also notify the First Architect.
- 1.33 On October 21, 2020, TA emailed a draft fee proposal and a standard form client-architect agreement to the Client Representative, asking that it be signed before the commencement of services. The email stated that upon receipt the final agreement would be completed for a final review and signature.
- 1.34 On October 26, 2020, the Client Representative sent an email to the First Architect stating he had made payment in full of the First Architect’s fees, and requested a release of intellectual property to AVRPP. This email was copied to TA and HH but not to Mr. Austin.

- 1.35 On October 27, 2020, AVRVP met with the Client Representative in person to advise they required confirmation the First Architect had been terminated and paid in full before any contract could be signed and work commenced.
- 1.36 On October 29, 2020, the Client Representative sent an email to the First Architect requesting that the Project document files be sent to him and AVRVP. TA and HH were copied on this email, but Mr. Austin was not.
- 1.37 On October 29, 2020, the First Architect confirmed by email to the Client Representative that their services on the Project had been paid in full.
- 1.38 By email dated October 29, 2020, HH informed the First Architect that AVRVP had been contacted to take on the Project.
- 1.39 HH also attached an email exchange between the First Architect and the Client Representative which AVRVP considered to be confirmation that the First Architect had terminated its work on the Project and been paid in full so that AVRVP could start work on the Project. Mr. Austin was not copied on these emails.
- 1.40 On November 6, 2020, TA emailed a draft client-architect agreement to the Client Representative for the client to execute. Mr. Austin was not copied on this correspondence.
- 1.41 On November 9, 2020, AVRVP presented its first drawings and information to the Client Representative with regard to the Project. Mr. Austin was not involved in this exchange.
- 1.42 On November 11, 2020, AVRVP had a meeting with the client in the Vancouver office about the Project. Mr. Austin was not part of this meeting.
- 1.43 On November 12, 2020, a review of the client-architect agreement was conducted. Mr. Austin was not involved.
- 1.44 On November 18, 2020, a signed copy of the client-architect agreement was delivered by the Client Representative to AVRVP by email. However, AVRVP was not able to access and open the document due to technical difficulties.
- 1.45 On December 1, 2020, TA sent an email to the Client Representative stating that AVRVP had succeeded in downloading the file containing the client-architect agreement and it appeared that the agreement had been accepted by the client 'as is'. The contract was signed by TA on behalf of AVRVP.
- 1.46 In response to the complaint, Mr. Austin stated that contract negotiations and executions were carried out after receipt of written confirmation of satisfactory termination of the First Architect's contract.
- 1.47 During his interview Mr. Austin stated that although he was familiar with AIBC Bylaw 34.8 which states that an architect can only accept a commission after termination of a previous architect; he was not familiar with the council rulings and commentary to Bylaw 34.8 in the AIBC's Code of Ethics requiring an architect to notify the other architect in writing, on being approached to proceed

with services where the architect either knows or can ascertain by reasonable inquiry that another architect is or has been engaged by the same client.

- 1.48 Mr. Austin stated he was in regular contact with his office in Vancouver and had regular scheduled meetings and informal meetings as required to conduct the architectural practice. He also stated that due to COVID-19 it had not been possible for him to make regular in-office visits as before.
- 1.49 Based on the review of material gathered in the investigation up to this point, the Committee expanded its investigation and made further requests for documents and information from Mr. Austin related to his supervision, direction and control of his firm in Vancouver.
- 1.50 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.
- 1.51 Upon being notified of the recommended charges, Mr. Austin consulted with legal counsel and chose to pursue consensual resolution with the AIBC. A notice of inquiry has not been issued.

E. Relevant Professional Standards

- 1.52 AIBC Bylaws 34.8, 34.1, and 28.0 with associated council rulings in the Code of Ethics are relevant to the complaint against Mr. Austin.

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

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

The ethical responsibility for notifying a previously engaged architect lies with the new architect and cannot be delegated to the client. Upon notifying the previous architect in writing, the new architect is under no obligation to delay acquiring the commission until the first architect's fee has been paid.

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.

- (a) An architect's site or auxiliary office for a specific project is a convenient extension of the base office for a single project and is not itself permitted to offer or to provide independent architectural services to the public.
- (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.

Bylaw 28.0 **An architect is not permitted to provide architectural services to a client until the following conditions are satisfied:**

- (a) All terms and conditions of engagement have been confirmed in a written architectural services contract with the client, executed by the parties; and**
- (b) The client has been advised in writing:**
 - (i) whether professional liability insurance is in place in relation to the architectural services to be provided for the commission;**
 - (ii) that the professional liability insurance policy in (i) is available for review by the client upon request; and**
 - (iii) that the contract “is in compliance with AIBC Bylaws, including the Code of Ethics and Professional Conduct.”**

2.0 ADMISSIONS

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

- 2.1.1 contravened AIBC Bylaw 34.8 and council ruling (a) in the Code of Ethics by not providing a previously-engaged architect with written notice when being approached by the same client to provide architectural services for the Project;
- 2.1.2 contravened AIBC Bylaw 34.1 and council ruling (b) in the Code of Ethics when the fee proposal and client-architect contract for the Project provided to the client, was executed on behalf of the firm by a non-architect;
- 2.1.3 contravened AIBC Bylaw 34.1 and council ruling (a) in the Code of Ethics by failing to provide adequate direction, supervision, or control of staff who were providing architectural services on the Project, including making proposals for service and contract reviews; and
- 2.1.4 contravened AIBC Bylaw 28.0 when AVRPA staff met with the client and provided a first set of drawings and other information on the Project, prior to having an executed architectural services contract.

3.0 PENALTY AGREEMENT

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

- 3.1.1 A reprimand will be recorded against Douglas Austin Architect AIBC; and

- 3.1.2 Mr. Austin is required to pay a fine in the amount of \$5,000 to the AIBC, within 30 days after the approval of this Agreement by the consensual resolution review panel; and
- 3.1.3 Mr. Austin 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 September 30, 2022. The Director of Professional Conduct and Illegal Practice is authorized to provide a reasonable extension, upon request by Mr. Austin, if he is unable to complete such course(s) by the prescribed date due to restrictions imposed by the current pandemic.
- 3.2 Mr. Austin 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. Austin 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 Return his certificate of practice to the AIBC;
- 3.3.3 Return any project site signs under his firm name to the AIBC; and
- 3.3.4 Provide the AIBC with a letter of undertaking confirming that he has;
- a) Concluded all architectural business operations under his firm name;
 - b) 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. Austin 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;
 - c) 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;
 - d) Removed project site signs which identified him and his firm; and
 - e) 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. Austin 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. Austin agrees to pay costs for this consensual resolution, fixed at an amount of \$2,000, 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. Austin 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. Austin 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. Austin 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 Douglas Austin 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**

**DOUGLAS AUSTIN ARCHITECT AIBC
AND
THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA**

1.0 REASONS FOR PENALTY

1.1 In light of the agreed facts and admissions, the parties agree that 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 totality of the concerns arising from the investigation and admissions made by Mr. Austin allegations are of a moderately serious nature.
- 1.15 The duty of an architect to notify a previously-engaged architect, upon being approached or instructed to proceed with services for which the architect knows or can ascertain by reasonable inquiry that another architect is or has been engaged by the same client, is a fundamental conduct expectation and a matter of professional courtesy.
- 1.16 In his interview, Mr. Austin recognized that he was unfamiliar with the AIBC Code of Ethics. Accordingly, he was unaware of council ruling (a) to AIBC Bylaw 34.8 that explicitly mandates notification to the previously-engaged architect must be in writing upon being contacted and prior to

submitting a fee proposal. His lack of awareness of his professional responsibility elevates the severity of the conduct.

- 1.17 Further, Mr. Austin did not present the fee proposal for the Project and did not execute the client-architect agreement. Instead, this was done on behalf of AVRVP by TA, who is not a registered architect.
- 1.18 Mr. Austin did not have direct knowledge and supervisory control of the architectural services being offered on the Project. Mr. Austin stated he relies on TA to keep him informed since he resides out of the province. While Mr. Austin has confidence that TA is a talented and experienced professional to manage AVRVP's office, TA is not an architect.
- 1.19 It is noteworthy that all of the documented exchanges provided in this matter occur between AVRVP staff and the Client Representative, and that Mr. Austin was not copied on any of the correspondence. Insufficient evidence was presented to support that Mr. Austin had direct knowledge and supervisory control over the architectural services offered in this Project. He allowed TA to enter into, present, and execute an agreement for architectural services with the client.
- 1.20 Moreover, prior to being retained and having an executed client-architect agreement, AVRVP began providing architectural services when it met with the client and presented first drawings and information for the Project which is a breach of a foundational practice requirement.
- 1.21 By not complying with the protocols and standards established in the Bylaws, Mr. Austin did not take the required steps to ensure that the public, including clients, were not misled that the architectural services being offered and provided for the project were supervised and controlled by an architect.

(b) Character and professional conduct record of the respondent

- 1.22 Mr. Austin is 72 years old. He has been registered as an architect with the AIBC since 2007 and is a mature and experienced professional.
- 1.23 Mr. Austin does not have a professional conduct record with the AIBC.
- 1.24 The absence of a discipline record for Mr. Austin is a mitigating factor.

(c) Acknowledgement of the misconduct and remedial action

- 1.25 Mr. Austin has been cooperative and candid in the course of the investigation and has recognized that he was unfamiliar with the AIBC's Code of Ethics.
- 1.26 Mr. Austin's participation in the consensual resolution process and admissions indicate 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.
- 1.27 Both his acknowledgement and participation in the consensual resolution process are mitigating factors.

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

- 1.28 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.
- 1.29 'Specific deterrence' means deterring the respondent from repeating the conduct in question. In this case, Mr. Austin has engaged in a meaningful exchange with the AIBC to understand and address the issues resulting in this consensual resolution. Looking ahead, it is very unlikely that Mr. Austin will repeat the conduct at issue in this matter.
- 1.30 '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 steps to take when approached by the same client to provide services on a project which the architect knows, or can reasonably determine that another architect has been retained, and the importance of exercising supervision, direction and control of architectural services, in compliance with the *Act*, the AIBC Bylaws, and council rulings.
- 1.31 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.
- 1.32 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.
- 1.33 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 files which are most similar to the one at hand are summarized below.

Architect Transition: Notification

- 1.34 In AIBC File 19.19, the respondent did not provide a previously engaged architect with written notice when they were approached by the same client to provide architectural services for the same project. Although notification in writing is explicitly described in the bylaw, the respondent subsequently telephoned the first architect after submitting a fee proposal to the client. The duty to approach a previous engaged architect is a fundamental conduct expectation. The respondent was a seasoned architect and had no professional discipline record. The consensual resolution terms agreed to included, a reprimand and a \$750 fine.
- 1.35 In AIBC File 06.03, the respondent firm failed to notify the previously engaged architect that they had been approached and had discussions with the same client for the same project. A period of more than one month elapsed before the firm notified the previously engaged architect, during which

delay, the firm submitted a fee proposal and executed a client-architect agreement with the client. The firm was of the view that seeking confirmation from the client regarding termination of the previously engaged architect's contract and payment issues was sufficient to satisfy Bylaw 34.8. The matter was resolved by consensual resolution, and the respondent firm agreed to a reprimand, a fine of \$1,000.

Supervision, Direction and Control and Providing Services Before Agreement

- 1.36 In AIBC File 19.20, the respondent failed to demonstrate there was an architect who had direct knowledge and supervisory control of the architectural services for a project, including making proposals of services and representations to the client on behalf of the firm. The respondent also admitted to the firm providing architectural services on the project prior to being retained and not confirming the terms and conditions of engagement in a written agreement with the client. The matter was resolved by way of a consensual resolution that included a reprimand, fine of \$6,000 and completing the Ethics, Act and Bylaws course.
- 1.37 In AIBC File 15.18, there were multiple breaches including failing to ensure the client-architect agreement met the required standards, failing to demonstrate adequate supervision, direction or control of architectural services for the project in addition to not communicating and keeping the client reasonably informed and failing to apply the architect's seal. The respondent resided out of province and relied heavily and exclusively on a staff member to be kept informed of the status of projects and the firm itself. He admitted that he allowed the staff member to enter into and execute the agreement for architectural services had not read AIBC's Bulletins. The respondent also had a discipline history with the AIBC. The terms of the consensual resolution included a reprimand, a \$5,500 fine, completing the Ethics Act and Bylaws course, and an Oral Conduct Review.
- 1.38 In AIBC File 04.23, the respondent failed to exercise direct knowledge and control of a project. The respondent did not personally prepare the fee proposal letter, the fee calculations or review the project's specific requirements prior to preparation and submission of the proposal. The respondent also did not review the contents of the letter prior to its transmission to the potential client, but was informed of its contents afterwards. The respondent had a prior discipline history with the AIBC. The terms of the consensual resolution included a reprimand, a \$2,000 fine, and completion of the Ethics, Act and Bylaws course.
- 1.39 In AIBC Files 04.18 and 05.03, the respondent failed to exercise direct supervision and control over firm projects, provided services prior to being retained and failed to sufficiently coordinate a project. The matter was resolved by consensual resolution which included a reprimand, \$3,000 fine, completion of the Ethics, Act and Bylaws course and an Oral Conduct Review.
- 1.40 It is submitted that the penalty in this case is proportional to the seriousness of the misconduct and degree of responsibility on Mr. Austin to ensure he is in compliance with his obligations as a registered architect with the institute. The sanctions are generally in parity with those previously imposed for similar misconduct in similar circumstances. The basis for the slight increase in the amount of the fine is in keeping with changing expectations of the public stemming from evolving contemporary values in society over time and accounts for the multiple charges.

- 1.41 As noted in *Peet* above, there will rarely, if ever, be only one single appropriate outcome in a professional disciplinary file.
- 1.42 Mr. Austin 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 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. Austin acknowledges that he has been given adequate opportunity to seek legal or other professional advice with respect to the negotiation, execution and consequences of this Schedule and has taken such advice or freely elected not to do so.

The facts and terms of this Schedule – Reasons for Penalty to Consensual Resolution Agreement are acknowledged and agreed to by Douglas Austin 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.