



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:

LUKAS ARMSTRONG 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*.

On February 10, 2023, the AIBC transitioned to the authority of the *Professional Governance Act*. As part of this transition, the *Architects Act (Act)* was repealed and the bylaws made under the *Act* were replaced with new updated [Bylaws](#). Pursuant to AIBC Bylaw 7.51, the Consensual Resolution Review Panel may continue to exercise its powers and duties under the repealed *Act* and bylaws, where the respondent has agreed to enter into a consensual resolution before the date of transition.

## 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 Lukas Armstrong Architect AIBC in relation to architectural services he provided on six different projects in the City of Nelson, B.C.

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

### B. Mr. Armstrong

1.5 Mr. Armstrong was first registered with the AIBC as an Intern Architect on June 15, 2009. On March 27, 2018, he registered as an Architect AIBC and has maintained his registration since that time.

1.6 Mr. Armstrong practises architecture through Cover Architectural Collaborative Inc. (“Cover”) a corporation that holds an AIBC certificate of practice.

1.7 Currently, Mr. Armstrong is a shareholder at Cover.

### C. The Complaint

1.8 In October 2020, a building official on behalf of the local authority (the “Complainant”) submitted a complaint to the AIBC against Mr. Armstrong, related to the adequacy of architectural services he provided on the six projects and his understanding of professional standards, evidenced through various submissions he made to the local authority over a span of several years (the “Complaint”).

1.9 The Complaint was provided to Mr. Armstrong for his response. Following its review of the Complaint and the response, the Committee initiated an investigation.

### D. The Investigation/Agreed Facts

1.10 The Committee’s investigation involved requests for information from the Complainant and Mr. Armstrong, and also included an interview with Mr. Armstrong.

1.11 The facts in paragraphs 1.12 – 1.57 below are based on material reviewed during the investigation and agreed to by the AIBC and Mr. Armstrong.

- 1.12 The Complaint identified concerns with the following six projects identified as:
- a) Cannabis Collective;
  - b) Latimer Street residential renovation;
  - c) Front Street residential renovation;
  - d) Selkirk College daycare;
  - e) Falls Street daycare renovation; and
  - f) Vernon Street office renovation.
- (collectively, the “Projects”)
- 1.13 The investigation into each Project is described below.
- a) *Cannabis Collective*
- 1.14 In July 2020, the local authority received preliminary plans for a development permit review for a cannabis collective project in which Mr. Armstrong was identified as the coordinating registered professional (“CRP”). The Complainant noted that the minimum number of exits required by the BC Building Code (“BCBC”), according to the size of the project, were not included in the submitted plans.
- 1.15 The Complaint stated that despite repeated phone calls and written correspondence to discuss the concerns with the exits, Mr. Armstrong and his office failed to identify the exiting error. Instead, Mr. Armstrong and his colleagues argued that the Complainant’s interpretation of the BCBC was incorrect.
- 1.16 In addition, the Complaint alleged there had been little to no coordination or communication with the CRP during the course of the project. The Complainant requested a meeting with Mr. Armstrong to discuss the concerns, but Mr. Armstrong was unavailable to attend and instead sent two colleagues from Cover, both of whom were Architect AIBCs. The meeting went forward and following a review of the plans, a third-party code review, which the Complainant requested due to the exiting oversight, was agreed upon.
- 1.17 Mr. Armstrong stated his client was adamant about a single airlock/entry/exit to each pod, and that several iterations were considered in the project. He stated that the preliminary design was not formally submitted as a building permit application to the local authority. It was instead intended to present the client’s preferred layout for review and to promote an informal discussion on how to approach the exiting given project security considerations. Mr. Armstrong rejected the Complainant’s position that the exiting proposal was an error or gross oversight, because in his view he was presenting and advocating for the client’s preferred layout.
- 1.18 Subsequently, third-party code consultations were completed, and design revisions were made. The revised development permits and submitted building permit drawings reflected BCBC compliant exiting strategies and a revised construction approach.

*b) Latimer Street*

- 1.19 Mr. Armstrong was the CRP on this project which involved renovations to an old house to add a fully separate suite.
- 1.20 The Complaint identified issues with Mr. Armstrong's lack of understanding regarding the requirement for fire separations between the suite and other BCBC requirements such as smoke alarms.
- 1.21 Mr. Armstrong submitted Schedules A and B Letters of Assurance to the local authority for this project, a Part 9 building, although they were not required. The Complainant alleged that Mr. Armstrong refused the offer to retract the submitted schedules and have the building office conduct inspections. It was further alleged that Mr. Armstrong did not conduct any field reviews himself and provided insufficient oversight and guidance to a Cover employee who was a building technologist.
- 1.22 Mr. Armstrong admitted during the investigation that some of the firestopping was not installed correctly. He stated that solutions were identified, such as creating the required separation through interconnected alarms and were made acceptable to the local authority. Mr. Armstrong stated during investigation that he attended the initial field review and the building technologist carried out the remainder of the field reviews which he reviewed.
- 1.23 Emails concerning the firestopping and other matters on the project were exchanged between the Complainant and the building technologist, on which Mr. Armstrong was also copied. Mr. Armstrong did not directly respond to any of the correspondence or contribute to the email thread on this issue.
- 1.24 Mr. Armstrong stated during the investigation that Cover is committed to continuous learning for its staff. He also stated that since this Complaint, all communication with the local authority has been directed to go through the CRP.

*c) Front Street*

- 1.25 In August 2019, the Complainant received an application to construct an addition to a single-family dwelling that did not require Letters of Assurance. The Complainant informed the project owner that if he wished to use a new window assembly that did not have North American Fenestration Standard certification, a qualified professional or building envelope specialist was required to ensure the windows and their installation complied with Part 5 of the BCBC.
- 1.26 In July 2020, Mr. Armstrong submitted a Schedule B Letter of Assurance for this project, taking responsibility for integration of building envelope components and environmental separation requirements. There was no clarification provided on Schedule B to indicate that the scope of the work was limited to just the windows.
- 1.27 In September 2020, the inspector from the local authority who was called to the site to review the insulation and vapor barrier asked for a field review report from Mr. Armstrong to support his issued Schedule B.

- 1.28 Mr. Armstrong stated that he was surprised to be asked for a report since he was only contracted for the windows, and the project was a Part 9 building that did not require schedules.
- 1.29 Mr. Armstrong stated he became involved in the project because the prior architectural firm which had been retained for the project closed, and the project owner approached him to certify a new window product. Mr. Armstrong stated the project owner asked him to fulfill the final inspections, since the prior architectural firm had informed the local authority it would complete that process on the project.
- 1.30 When Mr. Armstrong was informed that the Schedule B he issued did not limit the scope of his services, he retracted it and resubmitted a new Schedule B that was only limited to window installation.
- 1.31 The Complainant contacted Mr. Armstrong for confirmation that the new Schedule B he resubmitted provided his assurance that the windows met the minimum standards referenced in the BCBC. Mr. Armstrong replied that his firm had no capacity, or expertise, to perform any kind of testing on the final installation. Mr. Armstrong stated to the Committee that the Complainant interpreted his reply to mean that he did not understand what he was doing rather than as a point of clarification.
- 1.32 Mr. Armstrong received an email from his client stating that the local authority could place no value on the work done by Cover for the windows, but the local authority would allow the work to continue since the risk was nominal; and because the Complainant had worked with the builders before and had confidence they would complete the installation with the attention required.
- 1.33 Mr. Armstrong stated that as a gesture of conciliation, he withdrew his new Schedule B and returned the fee to the project owner, even though Cover had expended considerable effort and the design work was complete.

*d) Selkirk College Daycare*

- 1.34 The local authority received an application for a proposed new daycare building at a college campus and contacted Mr. Armstrong, the CRP, about whether the preferred method for fire detection on the project was smoke alarms or a fire alarm system. The Complaint alleged there was a lack of understanding on this issue, as well as on the issue of limiting the occupancy of the building if only smoke alarms were installed.
- 1.35 Mr. Armstrong stated that a decision needed to be made whether to use a fire alarm for the project. Although the occupant load was under 40 and the BCBC did not require a fire alarm, the client wanted a fire alarm tied to the rest of the college system.
- 1.36 Mr. Armstrong's response further stated that a set of drawings was submitted for the building permit and the electrical engineer included the fire alarm design and specifications in their drawings. Mr. Armstrong acknowledged that his code review overlooked including the occupant load and that if he had included it, all ambiguity would have been removed.

1.37 Mr. Armstrong stated the occupant load calculation was added to the building permit application and resubmitted, at which time the local authority completed its review and issued the permit.

1.38 Mr. Armstrong admits that the omission of the occupant load in the code review was an unfortunate oversight.

*e) Falls Street Daycare*

1.39 In April 2019, the local authority issued a building permit for renovations to an existing daycare. A Building Permit Conditions letter was issued with the permit, which included specific requirements to supply and amend the fire alarm inspection report identifying any deficiencies and requiring any new devices to be verified after installation. The Complaint notes that Schedule B included responsibility for the functional testing of architecturally-related fire emergency systems and devices.

1.40 On September 9, 2019, Mr. Armstrong affixed his seal and signature to Schedule C-B providing assurance that his field review obligations were fulfilled and those components of the project with his initials reflected substantial compliance with the BCBC and other enactments relating to safety.

1.41 On September 11, 2019, the Complainant carried out an inspection and review of documents and noted there was no information or verification on the fire alarm system and therefore issued a deficiency report.

1.42 On October 10, 2019, the Complainant received confirmation that the deficiencies had been rectified and the alarm system was verified to be operating properly. Mr. Armstrong issued a new field report and revised Schedule C-B.

1.43 The Complaint alleged that Mr. Armstrong missed a critical safety component of the project and if the local authority accepted Schedule C-B as initially submitted, the daycare would have had an inadequate or non-functional fire alarm system.

1.44 Mr. Armstrong stated he was aware that an alarm re-verification was needed when he issued his initial Schedule C-B. Mr. Armstrong also stated that he knew the local authority had allowed, or was about to allow, occupancy and that he should have noted the verification report was forthcoming in a field review when he first issued Schedule C-B.

*f) Baldface Office*

1.45 Mr. Armstrong approached the Complainant about the requirement for a mechanical engineer for this design-build project that involved renovations to an older industrial building. He stated that in order to save his client money, he proposed that neither a mechanical nor an electrical engineer were required because he would rely on the subcontractors to conduct the design-build, as is the case for single-family dwellings.

1.46 The Complainant stated that when work was underway, neither the ventilation nor the plumbing contractor was familiar with typical firestopping details required at fire separations. Mr. Armstrong was contacted and reminded that he had taken responsibility for fire resisting assemblies and fire separations and their continuity and since a mechanical engineer was not identified, this was his responsibility.

- 1.47 The Complaint alleged that Mr. Armstrong assigned a Cover employee who was a junior designer, with the responsibility of conducting field reviews and advising the subcontractors on how to proceed.
- 1.48 The Complainant identified numerous significant errors from the initial field review report, including placing fire stop collars and metal ducting and fire dampers on plastic waste pipe.
- 1.49 When the Complainant carried out the final inspection, it noted that some firestopping was missed on pipes exiting the mechanical room. Mr. Armstrong's response indicated that he had been sent photographs of the firestopping and that he was unaware the firestopping was incomplete.
- 1.50 Mr. Armstrong's reply stated an architect was not required for this project, a Part 9 building, and it was also not common to have mechanical or electrical consultants involved. However, Mr. Armstrong stated that his client wanted an architect involved, so he issued Schedules A and B, which increased his responsibilities pertaining to the mechanical and electrical oversight.
- 1.51 Mr. Armstrong stated that he worked on this project with the junior designer, who conducted many field reviews, completed research, and compiled solutions for Mr. Armstrong's review and approval. Mr. Armstrong also went to the site with the junior designer on multiple occasions to meet the contractor and help answer questions and refine solutions.
- 1.52 Mr. Armstrong stated that because he was concerned the mechanical and electrical contractors on-site appeared to have no experience with firestopping, Cover increased its site presence and photographic review of the work and supplied contractors with information to properly complete the fire-stopping.
- 1.53 The architectural field review report submitted to the Complainant on firestopping indicates it was reviewed by the junior designer and Mr. Armstrong, but is only signed by the junior designer who is identified as 'the Consultant'. The field review report also indicates that the Consultant is to be notified once all items in the field review are addressed.
- 1.54 Mr. Armstrong stated he approved the final firestopping deficiencies using photographs since he had a higher level of confidence in the building team by that time and because the items were in an exposed wall.
- 1.55 Mr. Armstrong admitted that his junior designer maintained a dialogue with the local authority which may not have been appreciated. He states that all communication with the local authority is now required to flow through the CRP.

*Overall complaint matters*

- 1.56 In response to the overall Complaint, Mr. Armstrong stated that he took responsibility for the life safety of the public seriously and always engaged with the municipality during the process depending on the complexity of the case.
- 1.57 Mr. Armstrong also stated that as a result of the Complaint he has initiated various strategies to improve the processes by which Cover delivers services, which include:

- a) having three architects as partners to relieve the workload on the principals and increased the number of CRP's to five;
  - b) hiring three additional architects to assist with the workload;
  - c) retaining a code consultant on retainer to answer code-related questions and provide third party reviews;
  - d) retaining support from two specification writers to reduce the workload for CRP's;
  - e) starting a quality assurance squad to research and develop a quality control system;
  - f) hiring a junior technologist and two senior technologists to add capacity to the production team and provide quality control assistance;
  - g) recruiting for an operation manager to provide organizational assistance; and
  - h) evolving use of building information modeling, and addition of software templates to the knowledge bank.
- 1.58 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.
- 1.59 Upon being notified of the recommended charges, Mr. Armstrong chose to pursue consensual resolution with the AIBC. A notice of inquiry has not been issued.

#### **E. Relevant Professional Standards**

- 1.60 AIBC Bylaws 30.1, 33.1, 33.4, and 34.1 are relevant to the complaint against Mr. Armstrong and state:

- Bylaw 30.1** In practising architecture, an architect shall act with reasonable care and competence, and shall apply the knowledge, skill and judgment which are ordinarily applied by architects currently practising in the province of British Columbia.
- Bylaw 33.1** In practising architecture, an architect shall not knowingly violate any law or regulation.
- Bylaw 33.4** In practising architecture, an architect shall take into account all applicable federal, provincial and municipal building laws and regulations and an architect may rely on the advice of other professionals and other qualified persons as to the intent and meaning of such regulations.
- 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.

## 2.0 ADMISSIONS

- 2.1 Considering the facts agreed to above, Mr. Armstrong acknowledges and admits that he:
- 2.1.2 contravened AIBC Bylaw 30.1 by failing to act with reasonable care and competence and to the standard expected of an architect, when he submitted several documents to an authority having jurisdiction for the Projects that failed to accurately calculate measurements; classify the proper limits of his responsibility; and identify the occupant load. In addition, he relied on the authority of jurisdiction to identify these issues for him to correct;
  - 2.1.3 contravened AIBC Bylaws 33.1 and 33.4 by submitting a Schedule C-B Letter of Assurance to the authority have jurisdiction, for a project knowing that the fire alarm verification was in process and had not been completed; and
  - 2.1.4 contravened AIBC Bylaw 34.1 by failing to provide adequate direction, supervision, or control with respect to architectural services provided for the Projects and allowed firm staff to unduly rely on an authority having jurisdiction for direction and guidance.

## 3.0 PENALTY AGREEMENT

- 3.1 The following penalty and terms have been agreed upon by Mr. Armstrong and the AIBC:
- 3.1.1 A reprimand will be recorded against Lukas Armstrong Architect AIBC;
  - 3.1.2 Mr. Armstrong is required to pay a fine in the amount of \$8,500 to the AIBC, within 30 days after the approval of this Agreement by the consensual resolution review panel;
  - 3.1.3 Mr. Armstrong 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 January 31, 2024. The Director of Professional Conduct and Illegal Practice is authorized to provide a reasonable extension, upon request by Mr. Armstrong, if he is unable to complete such course(s) by the prescribed date due to extenuating circumstances; and
  - 3.1.4 Mr. Armstrong is required to attend and complete the AIBC's BC Building Code course or an education program or programs (agreed to in advance by the AIBC) that cover substantially similar material to the AIBC's course "BC Building Code", at his expense, no later than January 31, 2024. The Director of Professional Conduct and Illegal Practice is authorized to provide a reasonable extension, upon request by Mr. Armstrong, if he is unable to complete such course(s) by the prescribed date due to extenuating circumstances.
- 3.2 Mr. Armstrong acknowledges and agrees that failure to complete the requirement in paragraph 3.1.2 - 3.1.4 above within the time specified will result in his removal from the register of the AIBC.
- 3.3 Mr. Armstrong 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 agreement with Notarius, the Canadian company authorized to issue digital seals to British Columbia architects; and
- 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. Armstrong 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*, *Professional Governance Act* and its regulations, until such time as he has been returned to the AIBC register.
- 3.4 Mr. Armstrong 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.

#### **4.0 COSTS**

- 4.1 Mr. Armstrong agrees to pay costs for this consensual resolution, fixed at an amount of \$2,500, 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. Armstrong 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, must 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. Armstrong 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. Armstrong 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 Lukas Armstrong Architect AIBC and the AIBC, represented by Mark Vernon, CPA, CA, CPA (IL), CEO.*

*Approved by the Consensual Resolution Review Panel on October 6, 2023.*

*Note: The above matter was conducted under the repealed Architects Act and former Bylaws and refers to bylaw breaches in force at the time of the conduct. The referenced bylaw breaches remain in force under the PGA but are now known as Professional Standards located in AIBC Bylaws Schedule A: Code of Ethics and Professional Conduct.*

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

**LUKAS ARMSTRONG ARCHITECT AIBC  
AND  
THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA**

**1.0 REASONS FOR PENALTY**

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

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

1.2 Consensual resolution of AIBC disciplinary matters operates pursuant to section 51.1 of the *Architects Act* and AIBC Bylaws 36.0 through 36.22. The proposed admissions and disciplinary action do not take effect unless the Agreement is approved by the consensual resolution review panel.

1.3 Under the process established by the *Act*, the consensual resolution review panel has a very important task: to review proposed disciplinary agreements in the public interest.

1.4 The role of a reviewing panel was discussed in *Law Society of BC v. Rai*, 2011 LSBC 2. In that case, a panel was considering an agreement between a lawyer and the regulator on agreed facts and disciplinary action. The panel conducted an analysis of its role in determining whether to accept the agreement as proposed. The discussion in that case is relevant to the AIBC's process. The panel stated:

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

[7] The Panel must be satisfied that the proposed admission on the substantive matter is appropriate. In most cases, this will not be a problem. The Panel must also be satisfied that the proposed disciplinary action is “acceptable”. What does that mean? This Panel believes that a disciplinary action is acceptable if it is within the range of a fair and reasonable disciplinary

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

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

[Emphasis added]

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

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

## **B. Ogilvie Factors**

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

- (g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
  - (h) the possibility of remediating or rehabilitating the respondent;
  - (i) the impact upon the respondent of criminal or other sanctions or penalties;
  - (j) the impact of the proposed penalty on the respondent;
  - (k) the need for specific and general deterrence;
  - (l) the need to ensure the public’s confidence in the integrity of the profession; and
  - (m) the range of penalties in similar cases.
- 1.10 The *Ogilvie* Factors were subsequently consolidated and streamlined in the case of *Edward Dent (Re)*, 2016 LSBC 5. In that case the hearing panel acknowledged that the *Ogilvie* Factors are not all applicable in every case, and will overlap in many cases.
- 1.11 The panel in *Dent* consolidated the *Ogilvie* Factors into four broad categories:
- (a) Nature, gravity and consequences of conduct;
  - (b) Character and professional conduct record of the respondent;
  - (c) Acknowledgment of the misconduct and remedial action; and
  - (d) Public confidence in the profession, including public confidence in the disciplinary process.
- 1.12 Since the decision was issued in *Dent*, the consolidated framework (informed by the complete list from *Ogilvie*) has become the preferred approach in Law Society disciplinary proceedings. However, the jurisprudence acknowledges that the simplified approach may not be appropriate in every case. For example, the Law Society returned to the full *Ogilvie* analysis in a case that was “very difficult” [and] “unlike any previous discipline hearing”: *Sabota (Re)*, 2017 LSBC 18. The AIBC has also employed it in a recent case that was novel and complex.
- 1.13 The parties agree that the consolidated *Ogilvie* Factors are appropriate in this case. They are reviewed in detail below.
- (a) The nature, gravity and consequences of the conduct**
- 1.14 Mr. Armstrong’s conduct in the Projects demonstrate that he did not apply reasonable care and competence expected of an architect when he submitted documents to the local authority, including when he failed to accurately calculate measurements, classify the proper limits of his responsibility, and identify the occupant load. His actions in the Projects support the view that he relied on the officials at the local authority to identify the issues, which he then corrected when they were brought to his attention, instead of recognizing the issues himself.
- 1.15 Mr. Armstrong admitted that he submitted a signed and sealed a Schedule C-B to the authority having jurisdiction for the Falls Street Daycare project knowing that the fire alarm verification was in process and had not been completed. In doing so he made representations about the building that were not accurate.

- 1.16 Schedule C-B is an important document. It represents to the authority having jurisdiction that, in the architect's opinion and based on their expertise, the underlying project is in compliance with the stated requirements. Authorities rely on Schedule C-B when making a decision about whether to issue a permit for occupancy. An inaccurate Schedule C-B may incur liability for all parties, and may create risk to the public.
- 1.17 Architects must provide Letters of Assurance when they are required by the BCBC, and when specifically requested by a local government. They should not be provided if there is neither a BCBC requirement nor a local government requirement for them.
- 1.18 The AIBC requires that architects submit accurate Letters of Assurance that represent compliance with the BCBC and when the underlying project has actually achieved compliance in all material respects. The act of submitting Letters of Assurance when compliance has not been achieved directly contravenes the AIBC Bylaws, creates exposure to significant potential liability, and dilutes confidence in the architectural profession. The words of the Letters of Assurance are very clear, and "intended compliance" or "future compliance" are not sufficient.
- 1.19 Considering all of the relevant facts, including the life safety mitigating factors, this misconduct is serious. In addition, the repeated occurrence of issues that have been identified with respect to Mr. Armstrong's provision of architectural services for multiple projects over an extended period of time is an aggravating factor and adds to the seriousness of the concerns.
- 1.20 Mr. Armstrong also failed to provide adequate direction, supervision, or control over his junior colleagues who were working on projects with him, and instead allowed them to unduly rely on officials at the local authority for direction and guidance. This conduct is moderately serious.
- 1.21 It is noted that there was no evidence of injury or financial loss to any individual and that Mr. Armstrong did rectify the errors that were communicated to him. These are mitigating factors.

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

- 1.22 Mr. Armstrong is 50 years old. He has been registered as an architect with the AIBC since 2018.
- 1.23 Mr. Armstrong does not have a professional conduct record with the AIBC.
- 1.24 Although all members of the architectural profession are held to the same standard, a relatively new member of the profession may be less familiar and experienced with the expectations of the profession. While this may be a relevant factor in determining the penalty for misconduct in certain cases, it is inappropriate in this case where the misconduct was due to a lack of competence and knowledge of the basic principles of the practice of architecture.

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

- 1.25 During the investigation, Mr. Armstrong acknowledged that his conduct was unprofessional. He admitted that he should not have issued a Schedule C-B under the circumstances in which it was issued and that he needs to coordinate more effectively with his staff and not have them rely on officials at the local authority.

- 1.26 Mr. Armstrong was candid and cooperative during the investigation. He accepted his errors, recognized the seriousness of the Complaint, and once it was brought to his attention, demonstrated a willingness to improve his practice and made significant changes to his firm's operations.
- 1.27 Mr. Armstrong's acknowledgement of his misconduct, his willingness to undertake remedial steps, and his professionalism and cooperation during the investigation are all 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. Armstrong has engaged in a meaningful exchange with the AIBC to understand the issues resulting in this consensual resolution; has initiated strategies at Cover to improve delivery of architectural services; and has no prior professional conduct record with the AIBC. Therefore, there is less need for specific deterrence.
- 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 only sealing and submitting Letters of Assurance and Schedules in accordance with the requirements of the BC Building Code, and only when all assurances and representations of compliance contained within them are completely fulfilled.
- 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 There are no AIBC precedents that demonstrate the same combination of allegations and admissions. Penalties and sanctions that have been imposed in files where similar conduct was at issue to the one in this case, in which the penalty is an aggregate of all the contraventions at issue in the file are summarized below.
- 1.33 In AIBC File 18.03, the architect issued Letters of Comfort to his client prior to submitting Schedules C-A and C-B for portables, resulting in their occupancy when there were no occupancy permits in place. The architect took no steps to communicate with the municipality to arrange for conditional or provisional occupancy and believed that his client would take that step, although he took no steps to confirm that this occurred. In addition to breaching the AIBC's standards, the provision of Letters of Comfort in this case contravened the municipality's permitting process. The architect was charged with contravention of AIBC Bylaws 30.1 and 33.4. He had no previous professional conduct history. The complaint was resolved by reprimand, a two-month suspension,

an AIBC Oral Conduct Review, completion of the AIBC Ethics, Act and Bylaws course, and publication to AIBC members.

- 1.34 In AIBC File 17.07, the architect sealed and signed a Schedule C-B, knowing that there were deficiencies with the building that were not in compliance with the BCBC. In doing so, the architect made representations about the building's compliance that were not accurate. The architect acknowledged that his conduct was unprofessional and recognized the deficiencies that existed in the building. He was charged with contravention of AIBC Bylaw 33.4. Throughout the investigation, the architect was cooperative and professional. The architect had no professional conduct history. The complaint was resolved by reprimand, a penalty in the amount of \$1,000, and completion of the AIBC course Building Code II.
- 1.35 AIBC Files 14.02/14.05 consist of two complaints. In the first complaint, the architect released Schedule C-B for the project prior to the installation of entry railings, a life safety issue and did not act in a timely manner to rectify errors communicated to him by the local authority. The architect stated that he relied on the general contractor not to submit the Schedule C-B until the railings were installed. He was charged with contravening AIBC Bylaws 30.1, 33.1 and 34.5. In the second complaint, the architect failed to apply his seal and signature to drawings for a single-family home and admitted to a contravention of section 77(1) of the *Architects Act* and AIBC Bylaw 34.2. The architect had no professional conduct record and was cooperative throughout the investigation. The architect agreed to a penalty of a reprimand, a fine in the amount of \$5,000, an Oral Conduct Review, and completion of the AIBC Ethics, Act and Bylaws course, and AIBC Building Code II course.

*Precedents where Supervision is also an issue*

- 1.36 AIBC Files 04.18/05.03 consist of two complaints for two separate projects. One related to an allegation of providing services prior to being properly retained and without an agreement in place; and the other related to providing architectural services without supervision in breach of AIBC Bylaw 34.1 and failing to conduct adequate field reviews, communicate as project architect with the local authority and coordinating other project professionals, that was in breach of AIBC Bylaw 30.1. A consensual resolution was reached for both files that included a reprimand, a penalty in the amount of \$3,000, completion of the Ethics, Act and Bylaws course and an Oral Conduct Review.
- 1.37 In AIBC Files 15.02/16.02, the architect allowed a non-BC registered architect to prepare and provide a proposal for architectural services and failed to demonstrate adequate supervision, direction or control in both cases. Additional charges included failing to obtain a certificate of practice for his firm prior to offering or providing architectural services and failing to enter into a client-architect agreement. The architect was a senior member of the profession and had no professional conduct record admitted to a breach of AIBC Bylaws 34.1 in addition to several other contraventions. A consensual resolution agreement was reached for both files that included a reprimand, a penalty in the amount of \$4,500, and completion of the Ethics, Act and Bylaws course.
- 1.38 The conduct in this case is not as egregious as that in File 18.03 in which the respondent received a suspension, because Mr. Armstrong did not provide a Letter of Comfort before submitting his Schedule C-B. In keeping with the principle of proportionality, a suspension is not appropriate in Mr. Armstrong's case which warrants a lower penalty.

- 1.39 File 17.07 has conduct that is most consistent with that in Mr. Armstrong's case. However, Mr. Armstrong's case is more serious because his complaint concerned multiple projects and involved multiple contraventions. There are six different projects at issue in his complaint where similar issues and concerns were repeatedly identified by the local authority over the span of two years.
- 1.40 Files 14.02/14.05 have three charges that are identical to that in Mr. Armstrong's case, as well as an additional charge of failing to seal and sign submitted drawings. In that case, the respondent also did not have a professional conduct history and was cooperative with the investigation. However, in light of the number of projects in which ongoing concerns were identified, it is submitted that the higher penalty is appropriate in Mr. Armstrong's case.
- 1.41 Files 04.18/05.03 and 15.02/16.02 involve charges for a lack of adequate supervision and also have additional charges. File 04.18/05.03 also involves a charge of AIBC Bylaw 30.1 which is consistent with Mr. Armstrong's case. While the penalty amount attributable to the lack of supervision charge cannot be isolated and calculated, it is of note that the overall penalty issued in these eight-year-old cases is significant, even though the misconduct only pertained to one project.
- 1.42 Based on the precedents, the fact that the current complaint relates to six Projects over a two-year period and has multiple contraventions, as well as the fact that Mr. Armstrong has no prior professional conduct history, it is submitted the proposed penalty is fair and reasonable, and within the range of sanctions that has been imposed for similar conduct in the past.
- 1.43 As noted in *Peet* above, there will rarely, if ever, be only one single appropriate outcome in a professional disciplinary file.
- 1.44 Mr. Armstrong and the AIBC submit that, based on the cases above, and upon a careful review of the consolidated *Ogilvie* Factors, the proposed penalty is reasonable, fair, and consistent with the range of sanctions that have been imposed for similar conduct in the past.

## 2.0 PUBLICATION

- 2.1 This Agreement will be published as required by AIBC Bylaw, 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. Armstrong 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 Lukas Armstrong 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@aicbc.ca](mailto:msands@aicbc.ca).*