



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:

AUSTIN HAWKINS 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 As part of this transition, the *Architects Act* (*Act*) was repealed, and the bylaws made under the *Act* were replaced with new updated [Bylaws](#).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 current AIBC Bylaw 7.51, the Consensual Resolution Review Panel may continue to exercise its powers and duties under the repealed *Act* and bylaws, where the respondent has agreed to enter into a Consensual Resolution before the date of transition. Pursuant to AIBC Bylaw 7.52, if this Consensual Resolution does not result in an agreement approved by the Consensual Resolution Review Panel, the matter is referred to Discipline Hearing and must be resolved under the processes established by the *Professional Governance Act* and the current AIBC Bylaws.

1.0 BACKGROUND AND AGREED FACTS

1.1 The parties agree that the relevant facts and circumstances leading to the investigation and this consensual resolution agreement (the “Agreement”) are set out below.

A. Overview

1.2 The AIBC’s Investigation Committee (the “Committee”) conducted an investigation into a complaint concerning Austin Hawkins Architect AIBC in relation to his provision of architectural services for a residence in Naramata, BC.

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

B. Mr. Hawkins

1.5 Mr. Hawkins was first registered as an architect with the AIBC on November 14, 2017, and has maintained his registration since that time.

1.6 At all relevant times, Mr. Hawkins practiced architecture through F2A Architecture Ltd., a corporation, together with another Architect AIBC and an Intern Architect AIBC (“Intern Architect”). F2A Architecture Ltd. holds an AIBC certificate of practice that was issued on January 15, 2018.

1.7 Mr. Hawkins is currently the principal and sole shareholder of F2A Architecture Ltd. (the “Firm”).

C. The Complaint

1.8 In October 2020, the AIBC received a complaint against Mr. Hawkins from former clients (respectively, the “Complaint” and the “Complainants”).

1.9 The Complaint made various conduct and competence allegations against Mr. Hawkins with respect to architectural services he had been retained to carry out on the Complainants’ property in Naramata, BC.

1.10 The Complaint was provided to Mr. Hawkins for his response, following which the Committee initiated an investigation.

D. The Investigation/Agreed Facts

- 1.11 The investigation involved a review of the material submitted by the Complainants and Mr. Hawkins. Mr. Hawkins, one of the Complainants, and the general contractor, each appeared separately for interviews with the Committee.
- 1.12 All of the concerns raised in the Complaint pertaining to errors and omissions made by Mr. Hawkins were investigated and considered. The Committee's investigation revealed that not all of the alleged errors and omissions could be substantiated or amounted to a breach of professional standards.
- 1.13 The facts in paragraphs 1.14 – 1.43 below are based on information and material provided during the investigation, and agreed to by the AIBC and Mr. Hawkins, which did identify concerns about his competence and conduct while providing architectural services to the Complainants.
- 1.14 On or about May 17, 2018, the Complainants and Mr. Hawkins entered into a client-architect agreement to build a house, a secondary suite, and a farm products sales shed at their property in Naramata, B.C. (the "Project"). The scope of architectural services to be provided were for the following phases: feasibility study, schematic design, design development, construction documentation, construction procurement and construction administration.
- 1.15 By July 31, 2018, design development drawings were ready. Between August and October 2018, discussions took place with respect to the Firm providing general contractor services for the Project. However, due to unforeseen personal circumstances concerning the senior Architect AIBC with whom Mr. Hawkins worked closely, the Firm withdrew its offer to provide design-build services. The Firm and the Complainants did not enter any contract for construction or project management. The Complainants agreed to postpone the start of construction to Spring 2019.
- 1.16 In or around November 2018, Mr. Hawkins prepared drawings and documents from which contractors' estimates could be provided.
- 1.17 In December 2018, Mr. Hawkins assisted the Complainants in obtaining proposals, including estimates of construction costs from contractors through a request for proposal process. The maximum net price of \$700,000 for construction was included to invite comment on whether this would be feasible.
- 1.18 In January 2019, one general contractor (the "General Contractor") provided an initial pre-construction cost estimate of approximately \$1.1 million for the house, secondary suite, and sales shed and included additional features such as air-conditioning and a hot tub, which had not been included in the Firm's documents.
- 1.19 During February and March 2019, the Complainants sought advice from Mr. Hawkins on how to proceed in light of the estimate provided by the General Contractor. Mr. Hawkins set out possible reasons for the higher estimate, which included the increased scope of work included in the contractor's estimate and the increasing costs of materials and labour. He also proposed a process for discussing design modifications to balance the Complainants' budget.

- 1.20 Mr. Hawkins offered the Complainants a 10% fee reduction because construction did not start in Fall 2018 as initially planned, and also to ease their financial burden.
- 1.21 On April 19, 2019, the General Contractor provided a final pre-construction budget estimate of approximately \$786,000 that included the carport and sales shed plus a few additions. The General Contractor stated that although the estimate exceeded the target budget, he thought more could be done to reduce overall costs.
- 1.22 By email dated April 22, 2019, the Complainants instructed the Firm and the General Contractor to include the sales shed and carport in the design but omit them from the construction budget.
- 1.23 The Complainants signed a cost-plus agreement with the General Contractor before construction commenced.
- 1.24 Mr. Hawkins stated that after the General Contractor was hired and construction commenced, the Complainants had discussions with the General Contractor, expanding the scope of the Project without the Firm's involvement, which impacted the budget.
- 1.25 Mr. Hawkins stated to the Committee that tensions built up when he advised the Complainants that they needed to eliminate features if they were to meet their budget. He also stated that after telling them this, the Complainants lost their trust in him and moving forward his recommendations were not seriously considered.
- 1.26 On May 3, 2019, Mr. Hawkins emailed the architectural and structural drawings set, structural Schedule B Letter of Assurance and the complete specifications package to the Complainants. He stated that he then printed them and allowed the General Contractor to deliver them directly to the permitting office to expedite the submission. His email stated that the drawings 'technically' should be sealed and signed by the architect, which he was willing to do; however, in his experience, the authority having jurisdiction was not concerned about this, and he was aware the General Contractor was in a rush.
- 1.27 Mr. Hawkins acknowledged that he did not apply his architect's seal to permit application drawings and Project specifications sent to the authority having jurisdiction. He stated during his interview that he has since reviewed the professional standards and corrected his understanding of the seal application requirements, and has obtained a digital seal through Notarius.
- 1.28 After the General Contractor was hired, Mr. Hawkins agreed to prepare an updated construction administration agreement to minimize architectural fees to the Complainant. The agreement, signed on May 6, 2019, limited the Firm's role to a minimum scope of construction administration services.
- 1.29 Project construction commenced in June 2019.
- 1.30 On July 19, 2019, following a site visit to the Project by the Intern Architect, and a senior Architect AIBC, it was noted that the Complainants had authorized the General Contractor to expand the scope of work to include the carport and the sales shed/studio. The field review report cautioned

the Complainants that these changes were not within their budget. This field report also recognized a grade discrepancy that required a foundation height adjustment. Mr. Hawkins stated the grade discrepancy was identified by the senior Architect AIBC and that he later travelled to the site to review it himself.

- 1.31 By email dated July 31, 2019, the General Contractor informed Mr. Hawkins that following his discussion with the Complainants, they had approved the use of prefabricated windows, which the General Contractor had estimated would offer significant cost-saving to the Project. Mr. Hawkins stated that although he had previously advised the Complainants of the risks of using prefabricated windows with a site-built wooden structure, he proceeded with the contractor's recommendation because he wanted to realize the General Contractor's promise of significant savings and because he had previously informed the Complainants of the risk.
- 1.32 Between August and September 2019, Mr. Hawkins redesigned the Project to accommodate the prefabricated windows. He stated that the General Contractor's initial estimates for the prefabricated units, excluding installation costs, resulted in higher costs than the original line item for site-glazed windows installed.
- 1.33 On September 4, 2019, the window supplier provided window shop drawings to the General Contractor. He did not confirm site measures as required by the specifications but directly forwarded the shop drawings to Mr. Hawkins for review of design intent.
- 1.34 The window shop drawings displayed the supplier's stamp on each page. The Intern Architect reviewed, signed and dated the supplier's form stamp to indicate they had been checked and approved.
- 1.35 Mr. Hawkins acknowledged that he should have reviewed the Intern Architect's review of the shop drawings more closely and made sure that their standard review for design intent stamp had been applied to the drawings before returning them to the General Contractor and reminding him of his contractual obligations for quantities and dimensions.
- 1.36 Mr. Hawkins stated that after the windows arrived and installation began, it was discovered that six small windows did not fit in their glulam frames. The General Contractor stated that quantities and measures were not his responsibility and that based on the level of design complexity, he could not assume responsibility for the window re-order as there were too many specific elements that had been reviewed and detailed for him to properly complete the order. Mr. Hawkins stated that although it remained the contractor's contractual responsibility, in order to expedite the Project completion, Mr. Hawkins completed the final measures for the window re-order himself.
- 1.37 Mr. Hawkins agreed that after his team signed the suppliers' shop drawing stamp, it was difficult to argue that any errors in the design and measurement of the window package were not the Firm's responsibility. He stated that for this reason, and with permission from his insurer, he offered to personally cover the cost of window replacement and complete work on the Project without charging further fees. He further stated that the Complainants declined the offer to settle, informing him that

they intended to claim a much greater sum of damages. The Complainants later incorporated the ill-fitting windows elsewhere into the Project.

- 1.38 Mr. Hawkins confirmed that he and the Intern Architect reviewed the Project glulam order for design intent. He stated that he did not identify the presence of the carport and art studio glulam as problematic since he sensed the Complainants had stopped taking his recommendations seriously and had warned the Complainants in a July 2019 field review report, that they would overrun their budget if they proceeded with construction of these additional buildings.
- 1.39 Mr. Hawkins stated to the Committee that the Firm prepared piece drawings at the General Contractor's request to expedite shop drawing preparation and procurement of steel required to accommodate the alternate windows. He also stated to the Committee that he offered to do so without charging extra fees to the Complainants to minimize costs and assist the General Contractor in completing the Project quickly, whose responsibility it remained to review measures per specifications.
- 1.40 Mr. Hawkins acknowledged that the Complainants incurred a few hundred dollars of additional costs as a result of misleading shop drawings, which resulted in one 12-foot steel column which had to be cut down by 2 feet.
- 1.41 Mr. Hawkins stated to the Committee that he may have caused confusion on some aspects of the Project because he took responsibility for mistakes in the coordination of the steel fabrication package, and on the window shop drawings, and offered to reimburse the Complainants. He also stated that in hindsight, he would not do this again; and that he did so without taking time to thoroughly review the Project records in order to placate the Complainant. He stated that he struggled to guide the Complainants through their stresses as this was his first experience of being a project architect.
- 1.42 Mr. Hawkins stated to the Committee that an ongoing challenge during the Project was the Complainants' misunderstanding of the roles of an architect and the General Contractor. He told the Committee that he tried using the original contract to clarify the differing roles to the Complainants in meetings and in writing, and accepts he was unsuccessful. For instance, he was unable to have the Complainants understand and agree that it was not his or the Firm's role to review dimensions of components for procurement.
- 1.43 Mr. Hawkins stated that he communicated clearly with the Complainants, and in his view, in light of the financial benefit they were receiving from him taking on additional Project tasks at no additional cost, they continued to claim in writing they did not understand contractual roles. Mr. Hawkins also stated that during a meeting for which he travelled to Whistler, the Complainants stated they were satisfied, and that they did understand contractual roles.
- 1.44 Mr. Hawkins acknowledged that by preparing shop drawings for steel production, he went beyond his professional responsibility, and that his goal in doing so was to help the Complainants. This was the first time he acted as a project architect, and he stated his current practice strictly adheres to the terms of the contract. He confirmed to the Committee that he will never again go beyond what he is

obliged to do. He stated that since this dispute, he began using a standard AIBC task list for proposals that allows him to clarify expectations with clients and delegate tasks to staff.

1.45 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.

1.46 Upon being notified of the recommended charges, Mr. Hawkins chose to pursue a consensual resolution with the AIBC. No notice of inquiry has been issued.

E. Relevant Professional Standards

1.47 Sections 77(1) of the *Act*, and AIBC Bylaws 30.1, 34.1, 34.2 are relevant to the complaint against Mr. Hawkins.

1.48 Section 77(1) of the *Act* states:

Architect's seal

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

(a) as a member of the institute holding a current certificate of practice,

(b) as a sole proprietor or partner of an architectural firm, or

(c) on behalf of an architectural corporation as a continuing employee or shareholder of the corporation.

1.49 The relevant sections of the AIBC Bylaws 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 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.

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

1.50 The relevant professional standards in the AIBC Bulletin 61 state:

Documents and Instruments of Service that Must be Sealed

4.2 Section 77(1) of the Architects Act establishes the documents that require the application of a seal by the architect who prepared them or who provided supervision, direction or control of their preparation. Note that it is not relevant to an architect's statutory and professional conduct obligations whether an authority (or client) has a seal requirement or expectation that differs from the obligations outlined below. For example, it is not acceptable to dispense with the sealing requirements merely because, for example, a particular authority does not require development permit drawings to be sealed, whether that "requirement" derives from advice, policy or customary practice. The proper use of an architect's seal is a matter for the Architects Act and AIBC professional standards such as Bylaw 34.2, Council rulings thereto and this bulletin, not expectations established by local governments, clients or third parties.

2.0 ADMISSIONS

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

2.1.1 section 77(1) of the *Act* and AIBC Bylaw 34.2 by failing to seal Part 9 building permit drawings intended for the authority having jurisdiction;

2.1.2 AIBC Bylaw 30.1 by failing to exercise the care and competence expected of an architect when undertaking construction contract administration services for the Project in that he

2.1.2.1 failed to follow best practices for reviewing shop drawings;

2.1.2.2 ineffectively coordinated the fit of six clerestory windows proposed by the General Contractor as an alternate to the windows included in the construction documents; and

2.1.2.3 made an error in producing steel shop drawings.

2.1.3 AIBC Bylaw 34.1 by failing to exercise adequate supervisory control of the Intern Architect AIBC who was providing architectural services on the Project, by allowing the shop drawings to leave the office without their standard review of design intent stamp and with the Intern Architect's approval on the supplier's stamp.

3.0 PENALTY AGREEMENT

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

3.1.1 A reprimand will be recorded against Austin Hawkins Architect AIBC;

3.1.2 Mr. Hawkins is required to pay a fine in the amount of \$3,000 to the AIBC, within 30 days after the approval of this Agreement by the Consensual Resolution Review Panel; and

- 3.1.3 Mr. Hawkins is required to attend and complete the AIBC’s “Professional Practice Standards and Ethics” online course 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. Hawkins, if he is unable to complete such course(s) by the prescribed date due to extenuating circumstances.
- 3.2 Mr. Hawkins acknowledges and agrees that failure to complete the requirement in Paragraphs 3.1.2 and 3.1.3 above within the time specified will result in his suspension from the register of the AIBC.
- 3.3 Mr. Hawkins acknowledges and agrees that if he is suspended 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 suspension 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 seal 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;
- 3.3.4 Provide the AIBC with a letter of undertaking confirming that he and his Firm have;
- 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. Hawkins 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, or alternatively, amended such project signs by removing his identity; 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*, *Professional Governance Act*, or the *Architects Regulation* until such time as he has been returned to the AIBC register.
- 3.4 Mr. Hawkins acknowledges and agrees that if he is suspended 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. Hawkins 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. Hawkins is an acknowledgement of 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. Hawkins 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. Hawkins 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 Austin Hawkins Architect AIBC and the AIBC, represented by Mark Vernon, CPA, CA, CPA (IL), CEO.

Approved by the Consensual Resolution Review Panel on December 7, 2023.

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

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

1.0 REASONS FOR PENALTY

1.1 Austin Hawkins 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. Hawkins did not apply his seal to Project documents prepared by him or under his supervision which he provided to his clients and their contractor for submission to the local authority. The need for a seal on architectural drawings is a long-established public protection and accountability requirement stated in the *Act* and reinforced in AIBC Bylaw 34.2.
- 1.15 This misconduct is moderately serious in nature. An architect’s seal is a representation to the public that the architect takes responsibility for the drawings and that they were prepared by that architect, or they supervised the preparation of the drawings. The seal is a solemn confirmation that a qualified architect is aware of the relevant considerations that went into the drawings and documents, such

that in the architect's opinion, the documents are ready for publication and can be relied upon and used by others for the purposes intended.

- 1.16 In this case, Mr. Hawkins provided unsealed drawings to the Complainants knowing that they would be submitted to the authority having jurisdiction and that sealing was a professional requirement.
- 1.17 During his interview, Mr. Hawkins confirmed that he was aware drawings must be sealed, despite the local authority's practice of accepting them unsealed. He has since reviewed the related AIBC Bylaw professional standards and bulletins and understands he was mistaken with respect to the required extent and consistency of seal application. He confirmed that he has since adjusted his practice to sealing documents and now uses Notarius to electronically seal most documents.
- 1.18 It is not relevant to an architect's statutory and professional conduct obligations whether an authority has a seal requirement or expectation that differs from the obligations required by the *Act* and the AIBC Bylaws. The proper use of an architect's seal is a matter for the *Act* and the AIBC's professional standards and not expectations established by local authorities.
- 1.19 Failing to follow regulatory professional standards undermines the public's confidence in the architectural profession.
- 1.20 Second, Mr. Hawkins did not exercise the care and competence expected of an architect when undertaking construction contract administration services for the Project in that he:
- 1.20.1 did not follow best practices for reviewing shop drawings;
 - 1.20.2 did not correct errors in the design and measurement of the window package, and
 - 1.20.3 made an error in the steel shop drawings he produced.
- 1.21 This breach is moderately serious.
- 1.22 Mr. Hawkins took on additional responsibilities of reviewing shop drawings and completing shop drawings for steel fabrication, and having done so, he made errors, which caused the Complainants to lose a few hundred dollars.
- 1.23 Third, Mr. Hawkins did not maintain adequate supervision, direction, and control over an Intern Architect working on the Project and allowed him to confirm review of shop drawings for design intent by signing a supplier's stamp, rather than affixing the firm's standard "reviewed for design intent" stamp.
- 1.24 This misconduct is reasonably serious as it relates to the professional education and practical training for internships. However, Mr. Hawkins corrected this aspect of the Intern's training immediately after it was discovered, and the Intern Architect has since been registered as an Architect AIBC.
- 1.25 There are mitigating facts in this case. Mr. Hawkins did not gain any financial advantage from the misconduct admitted. This Project was the first time Mr. Hawkins served as the project architect and

it was apparent that he did not have a clear understanding of how to manage his clients and took on additional work at each stage of the Project for which he had not been contracted.

- 1.26 His errors were connected to his inexperience in managing inexperienced clients. His well-intentioned attempts to quell their budgetary concerns and to assist by taking on additional responsibilities were done without realizing their consequences.

(b) Character and professional conduct record of the respondent

- 1.27 Mr. Hawkins is 36 years old. He has been registered as an architect with the AIBC since November 14, 2017.
- 1.28 At the time the matters in this case occurred he had been registered as an architect for only about two years and was 32 years old. This was his first experience being a project architect and he was left without the guidance and support of the senior Architect AIBC at the Firm who had to leave practice to manage his unforeseen and unexpected personal circumstances. Additionally, he had the responsibility of overseeing the work of an Intern Architect on a Project that had inexperienced clients, who lost trust in him after a certain point in the client-architect relationship.
- 1.29 Mr. Hawkins has no professional conduct record with the AIBC, which is neither a mitigating nor aggravating factor.

(c) Acknowledgement of the misconduct and remedial action

- 1.30 Mr. Hawkins recognized that his failure to seal and sign documents submitted to the local authority was unprofessional and a clear breach of a professional standard. He has reviewed regulatory documents that have reinforced his learning, and he is now aware of the seal requirements notwithstanding a local authority's process. He has also signed up with Notarius to use an electronic seal.
- 1.31 As a first-time project architect, Mr. Hawkins was overwhelmed and made admissions of wrongdoing, provided extra work over and above his obligations and reduced his fees for his clients, when not required. He acknowledged that his admissions of fault and taking responsibility for errors, were not carefully thought through. He did so in order to placate his client's concerns and distress over the budget and also to manage their confusion and lack of understanding about the roles of different professionals on the Project.
- 1.32 Offers of reduced fees and credits, in addition to taking on extra work that is not charged, do not support any financial motive. Mr. Hawkins did not gain any advantage from his actions. Instead, it appears that he was attempting to reassure the Complainants and ensure the Project would be completed as expediently as possible.
- 1.33 While the investigation revealed there was a breakdown of the client-architect relationship that resulted in significant pressure on Mr. Hawkins, it is usually the case that every project is subject to

some level of time pressure or client pressure. The expectation of the architect is unchanged: complete and timely compliance with all professional requirements.

- 1.34 Throughout the investigation, Mr. Hawkins has been cooperative and candid, and replied promptly, thoroughly, and professionally. He admitted his errors and was forthright in his dealings with the AIBC.
- 1.35 Through this experience he has learned how to manage inexperienced clients, provide clarification of the architect's responsibilities, and adhere strictly to the terms of his contract.
- 1.36 Mr. Hawkins' participation in the consensual resolution process and the admission he makes in the Agreement indicates he has acknowledged his misconduct. This acknowledgment suggests that the concerns arising in this matter have been brought to his attention in a meaningful way.
- 1.37 Mr. Hawkins acknowledgment of his errors, professionalism and cooperation during the investigation are all mitigating factors.

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

- 1.38 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.
- 1.39 'Specific deterrence' means deterring the respondent from repeating the conduct in question. In this case, Mr. Hawkins suffered significant financial loss as a result of his misconduct, and the penalty in this case will impact him professionally and financially. It is likely the conduct process will cause him to be more careful in the future to ensure he communicates effectively with clients and other professionals about his obligations and responsibilities and is not pressured into providing services beyond his professional remit.
- 1.40 '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 not to neglect their responsibilities and the importance of compliance with the *Act*, the AIBC Bylaws, and Code of Ethics, notwithstanding external pressures from or client requirements.
- 1.41 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.
- 1.42 The public must have confidence that architects will comply with and discharge their responsibilities in keeping with applicable regulatory professional standards.

- 1.43 The public and the profession have the right to expect that the AIBC will address instances of misconduct by its registrants through a process that is fair, proportionate, and reasonably consistent.
- 1.44 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.

Failure to seal drawings and documents

- 1.45 There are several cases of discipline for failure to apply a seal to drawings and documents intended to be relied upon. Most of the precedents in this case often include other more serious conduct. The three most similar cases are reviewed below.
- 1.46 In AIBC File 20.03, the respondent failed to apply their seal to drawings that were prepared by them or under their supervision, and such drawings were used for a development permit application. Additionally, the respondent permitted a member of their staff who was not an architect to make a presentation to the local authority in the absence of an attending architect to provide personal supervision. The file was resolved by consensual resolution in which the agreed upon sanctions were a reprimand, a fine in the amount of \$2,000, completion of the Ethics Act and Bylaws course, plus costs and publication.
- 1.47 In AIBC File 18.14, the respondent failed to apply their seal to drawings that were prepared by them or under their supervision, direction or control; failed to apply the date when their seal was applied to drawings and letters of assurance; and submitted or allowed to be submitted architectural drawings and architectural letters of assurance, all bearing the professional seal of a person not registered to practise architecture, to the local authority in support of a building permit application. The respondent did not have a professional conduct history. The penalty terms agreed to were, a reprimand, a fine in the amount of \$3,500, completion of the Ethics Act and Bylaws course, plus costs and publication.
- 1.48 AIBC File 20.03 is most similar to Mr. Hawkins' case because they both include a charge for failing to apply a seal to drawings that required a seal, in addition to failing to supervise a staff member who was providing architectural services. Another similarity is that neither respondent had a prior discipline history. A significant difference is that the respondent in file 20.03 was a senior architect with 30 years of experience, whereas Mr. Hawkins was a newly minted Architect AIBC. File 18.14 supports a higher penalty is warranted when additional charges are included with a charge of failing to seal documents that require a seal.

Care and Competence

- 1.49 In AIBC File 02.09, the respondent was providing architectural services without a client -architect agreement to a client they had worked with previously under verbal agreements. They were not able to complete full documents in time because they were a sole practitioner. The contractor identified numerous deficiencies in their documentation and although the Respondent provided additional drawings, they did not remedy the problem of inadequate or missing information. The respondent did not provide documentation that provided sufficient detail to allow construction to proceed and

did not rectify inadequate design detail in a timely manner. The respondent had a prior professional conduct history. The matter was resolved by consensual resolution upon the following agreed upon terms: a reprimand, suspension for four months, fine in the amount of \$1,500, plus costs and publication.

- 1.50 In AIBC File 20.14, the respondent submitted several documents to a local authority on multiple projects that failed to accurately calculate measurements, classify proper limits of the architect's responsibility, and identify the occupant load. In addition, the respondent relied on the local authority to identify these issues for correction. In addition, the respondent was charged with failing to provide adequate supervision, direction, or control with respect to architectural services provide on several projects; as well as submitting Schedule C-B to the local authority knowing that the fire alarm verification had not been completed. The respondent was a relatively new registrant and had no previous conduct history. The matter was concluded by way of consensual resolution and the following penalty: a reprimand, fine in the amount of \$8,500, and completion of the AIBC Ethics, Act and Bylaws course and the BC Building Course.
- 1.51 Precedents provide guidance and are not a precise science. The above AIBC precedents are provided to show how a breach of Bylaw 30.1 has been measured and considered. However, it is acknowledged that the facts that gave rise to this breach represented in both cases are far more egregious and warranted a higher penalty than in Mr. Hawkin's case.
- 1.52 The facts relevant to this particular breach in Mr. Hawkins' case were that he did not follow best practices for reviewing shop drawings and made errors in clerestory window coordination and steel shop drawings. He provided detailed drawings and specifications in a timely manner but struggled to master their contractual implications.
- 1.53 In large part these acts were attributable to his lack of experience and confidence to master his rights under the contract, and were isolated incidents in the Project. He did not gain an advantage by taking the actions he did corrected each error.
- 1.54 Notwithstanding, as a result of his mistakes the Complainants incurred nominal additional costs, and it is submitted that a more modest financial penalty is appropriate for this beach, which has been agreed to above.

Supervision direction and control

- 1.55 In AIBC File 20.18, the architect failed to provide adequate supervision direction and control of staff providing architectural services on a project. The architect permitted the staff to prepare the fee proposal and also did not provide written notice to a previously engaged architect that they had been approached by the same client on the same project. The matter was resolved by consensual resolution with agreement to the following penalty: a reprimand, fine in the amount of \$5,000, completion of the Ethics, Act and bylaw course plus costs and publication.
- 1.56 In AIBC File 15.18, the respondent failed to ensure the client-architect agreement for the project met the required standards; failed to communicate and keep the client reasonably informed during the

course of the project; failed to demonstrate adequate supervision, direction, or control of architectural services; failed to apply their architect's seal to architectural drawings submitted to the local authority. The respondent resided out of province and relied heavily on staff and had a discipline history. The matter was resolved by consensual resolution with agreement to the following penalty terms: a reprimand, fine in the amount of \$5,500, completion of the Ethics Act and Bylaws course plus costs and publication.

- 1.57 While there are similarities between the above precedents and this case, the precedents are examples of significantly more severe misconduct. File 20.18 involves the complete absence of the supervising architect from the fundamental and critical pre-contract phase, and File 15.18 involves multiple failures in following regulatory procedures such as a communication failure, a long-term physical absence from the office where services were carried out, and a failure to seal drawings submitted by others in his name.
- 1.58 While Mr. Hawkins did fail to effectively review shop drawings produced by the Intern Architect, he worked very closely with him to correctly complete all other work under his review. However, as noted above, these two errors did result in a financial loss to the Complainant.
- 1.59 As noted in *Peet* above, there will rarely, if ever, be only one single appropriate outcome in a professional disciplinary file.
- 1.60 Mr. Hawkins and the AIBC submit that, based on the cases above, and upon a careful review of the consolidated *Ogilvie* Factors, the proposed penalty is fair and consistent with the range of sanctions that have been imposed for similar conduct in the past.

2.0 PUBLICATION

- 2.1 This Agreement will be published as required by AIBC 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. Hawkins 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 Austin Hawkins Architect AIBC and the AIBC, represented by Mark Vernon, CPA, CA, CPA (IL), CEO.

For further information on the AIBC's discipline process, please contact the Professional Conduct and Illegal Practice department at complaints@aibc.ca.