



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:

MICHAEL TING HO CHEUNG 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 As part of this transition, the *Architects Act* (*Act*) was repealed, and the bylaws made under the *Act* were replaced with new updated [Bylaws](#).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AIBC Bylaw 7.51, the Consensual Resolution Review Panel may continue to exercise its powers and duties under the repealed *Act* and bylaws, where the respondent has agreed to enter into a Consensual Resolution before the date of transition.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”) investigated a complaint about Michael Ting Ho Cheung Architect AIBC with respect to the provision of architectural services for a proposed mixed-use development located in Vancouver, B.C. (the “Project”).
- 1.3 Following its investigation, the Committee recommended that the matter proceed to a disciplinary inquiry for determination of whether Mr. Cheung 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. Cheung chose to pursue a consensual resolution with the AIBC.

B. Mr. Cheung

- 1.5 Mr. Cheung was first registered as an architect with the AIBC on June 6, 2010, and has maintained his registration since that time.
- 1.6 At all relevant times, Mr. Cheung practised architecture through Esatto Architecture Ltd., (“Esatto”), a corporation that held an AIBC certificate of practice issued on June 2, 2020. Mr. Cheung was the only registered architect at Esatto.
- 1.7 On November 9, 2022, Esatto became an inactive firm and since that date has not held an AIBC certificate of practice.
- 1.8 Mr. Cheung currently practices architecture through Spectra Design Architecture Ltd., (“Spectra”) a corporation that holds an AIBC certificate of practice issued on January 11, 2011. Mr. Cheung is the sole owner of Spectra.
- 1.9 Mr. Cheung also practices architecture through Opulence Architecture Inc., (“Opulence”) a corporation that holds an AIBC certificate of practice issued on June 7, 2022.

C. The Complaint

- 1.10 In October 2021, the AIBC received a complaint from the previous architect and his firm (the “Complainants”) who had provided architectural services for the Project in or about 2019.
- 1.11 The Complainants alleged that they did not receive any notification or communication from Mr. Cheung regarding his use of their rezoning documents for the Project that were included in a new rezoning application that Esatto submitted to the local authority (the “Complaint”).

- 1.12 The Complaint was provided to Mr. Cheung for his response, and the Committee initiated an investigation.

D. The Investigation/Agreed Facts

- 1.13 The investigation involved a review of the material submitted by the Complainants and Mr. Cheung. Mr. Cheung also attended an interview with the Committee.
- 1.14 The facts in paragraphs 1.15 – 1.26 below are based on material reviewed during the investigation and agreed to by the AIBC and Mr. Cheung.
- 1.15 In early 2019, the Complainants were retained to provide architectural design services for the Project. Specifically, the Complainants prepared a rezoning application submitted to the local authority in December 2019 (the “Complainants’ Application”). This completed the scope of architectural services that had been contracted between the Complainants and the client for the Project.
- 1.16 In June 2021, the Complainants became aware, through an online newspaper, that a new rezoning application for the Project had been submitted by Esatto to the local authority (“Esatto’s Application”).
- 1.17 Upon reviewing Esatto’s Application on the local authority’s website, the Complainants noted there were numerous similarities between the Complainants’ Application and Esatto’s Application, notably:
- 1.17.1 the graphic layout in Esatto’s Application was identical to the Complainants’ Application;
 - 1.17.2 photographic images, icons, pictograms and site photos used in Esatto’s Application were identical to the Complainants’ Application;
 - 1.17.3 Project description and wording in Esatto’s Application, were in many instances unaltered copies of the content used in the Complainants’ Application, including the executive summary, site context, rezoning rationale, and sustainability;
 - 1.17.4 the massing diagrams in the Complainants’ Application was copied into Esatto’s Application; and
 - 1.17.5 Esatto’s files had numerous ghosted locations of the Complainants’ practice name and original text, indicating the use of ‘digital patches’ to [apparently] conceal information from the Complainants’ Application.
- 1.18 The Committee also noted that Esatto’s Application submitted to the local authority was not sealed and signed.
- 1.19 Mr. Cheung’s response to the Complaint stated that he was contacted by the client on December 8, 2020, and on December 21, 2020, the client confirmed they had formally terminated their relationship with the Complainants.

- 1.20 On December 23, 2020, the client emailed the signed client-architect agreement to Esatto. Mr. Cheung stated that, on the following day, the client e-mailed a copy of the Complainants' Application, together with the Urban Design Panel ("UDP") meeting minutes and other correspondence to Esatto for review.
- 1.21 Mr. Cheung stated that in March 2021, Esatto, the client, and the local authority held an intake meeting at which the client told the local authority that the Project's proposed program and general floor plans submitted by the Complainant, needed to be changed due to market changes caused by the pandemic.
- 1.22 Mr. Cheung stated that the local authority informed the client that most of the content in the rezoning application should be retained because of the approval provided at the UDP meeting and the drafted zoning bylaws. He further stated that the client and the local authority agreed that resubmission of the rezoning application would only revise the architectural design and drawing of the interior floor plans, minor exterior articulation according to general floor plan and program changes and minor consultant report updates.
- 1.23 In May 2021, Esatto's Application was submitted to the local authority in accordance with the content revisions agreed to by the local authority and the client.
- 1.24 Mr. Cheung stated he reviewed his team's communications for the Project and found that direct communication and confirmation with the Complainants was overlooked. He stated that they relied on the client's confirmation of all details and matters with respect to the Complainants.
- 1.25 Mr. Cheung apologized for the oversight in communication with the Complainants. He stated that he would contact the client and the local authority to resubmit Esatto's Application without the content that had been copied from the Complainants' Application submission.
- 1.26 Mr. Cheung also acknowledged that he failed to seal and sign the material contained in Esatto's Application before it was submitted to the local authority.
- 1.27 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.
- 1.28 Upon being notified of the recommended charges, Mr. Cheung chose to pursue consensual resolution with the AIBC. No notice of inquiry has been issued.

E. Relevant Professional Standards

- 1.29 Section 77 (1) of the *Architects Act*, AIBC Bylaws 30.1, 32.2, 34.2 and associated council rulings in the Code of Ethics, and professional standards in AIBC Bulletins 61 and 44 are relevant to the complaint against Mr. Cheung.

1.30 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.

1.31 The relevant AIBC Bylaws and associated council rulings in the Code of Ethics 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 32.2 An architect shall accurately represent to the public, a prospective or existing client or employer the architect's qualifications and the scope of the architect's responsibility in connection with work for which the architect is claiming credit.

...

- (b) An architect or firm claiming credit for a project, or any part of the architectural services on a project, must ensure that credit is given to the project's original firm or firms and that any credit taken is accurate and limited to the extent of services provided.

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.

1.32 The relevant professional standards in AIBC Bulletin 44 state:

The Bedrock Principle

- 2.1 While attribution can appear to be a complex issue given firm mergers and acquisitions, copyright claims and the division of work among design professionals in modern architectural practice, a fundamental principle is constant in every scenario: **the 'original' or 'author' firm or firms must be given clear and accurate project credit.**

...

- 2.4 While more than one individual or firm may take some project credit for the same project, every individual or firm that does so must credit the original firm. A potential client may receive several fee proposals from different firms that include images of the same project. That client (and the public generally) is entitled to know who did what. **All references by various firms to the same project should include the same basic information attributing credit to the original firm.**
- 2.5 Subsidiary credit may be taken by individuals and other firms as long as the original firm has been clearly credited and the subsidiary credit is accurate. Individuals, whether partners, employees, contractors, Intern Architects or others, may display and describe the work they performed while in the practice they left, as long as they clearly credit the authorship to the original architectural firm and limit the images, descriptions and claims for credit to the extent of their specific contribution.

...

- 2.7 **Failing to give and take proper credit amounts to a misrepresentation to the public.** Unlike some other professions, an architect's services may endure for generations. The public's interest extends beyond fundamental contemporary concerns such as 'truth in advertising' to the indefinite legacy of the built environment.

1.33 The relevant professional standards in 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.
- 4.3 The following documents must be sealed:

...

Drawings

All drawings issued by an architect for approval by an authority or for reliance by a client or third party, including the general public, must be sealed. This includes drawings submitted for rezoning, development permit (including such processes as “development permission”, “preliminary plan approval”, etc.), design panel review, community presentation, building permit, tender, construction (working) drawings, addenda and drawings accompanying change orders, change directives and site instructions. Drawings submitted for amendments to applications must also be sealed.

...

[Emphasis added]

2.0 ADMISSIONS

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

- 2.1.1 section (77)(1) of the *Act*, AIBC Bylaw 34.2, and the professional standards in AIBC Bulletin 61 by failing to apply his seal, signature and date to the Project’s rezoning application which he submitted to the local authority;
- 2.1.2 AIBC Bylaw 30.1 by not exercising the care and competence expected of an architect in British Columbia when he used documentation prepared by the original architectural firm, without their authorization, in support of his rezoning application for the Project; and
- 2.1.3 AIBC Bylaw 32.2 and council ruling (b) and the professional standards in AIBC Bulletin 44 by failing to provide any project credit to the original architectural firm in the material which he submitted to the local authority in support of the Project’s rezoning application.

3.0 PENALTY AGREEMENT

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

- 3.1.1 A reprimand will be recorded against Michael Ting Ho Cheung Architect AIBC;
- 3.1.2 Mr. Cheung is required to pay a fine in the amount of \$5,000 to the AIBC, within 30 days after the approval of this Agreement by the Consensual Resolution Review Panel; and
- 3.1.3 Mr. Cheung is required to attend and complete an education program or programs (agreed to in advance by the AIBC) that cover substantially similar material to the AIBC’s course “Ethics, Act and Bylaws”, at his expense, no later than March 31, 2024. The Director of Professional Conduct and Illegal Practice is authorized to provide a reasonable extension, upon request by Mr. Cheung, if he is unable to complete such course(s) by the prescribed date due to extenuating circumstances.

- 3.2 Mr. Cheung acknowledges and agrees that failure to complete the requirement in paragraphs 3.1.2 to 3.1.3 above within the time specified will result in his removal from the register of the AIBC.
- 3.3 Mr. Cheung acknowledges and agrees that if he is removed from the register for failure to complete any of the requirements of this Agreement, he must do the following within 10 days of being advised in writing by the AIBC of his removal from the register:
- 3.3.1 Return his professional seal to the AIBC, and if applicable, his digital seal as required by his agreement with Notarius, the Canadian company authorized to issue digital seals to British Columbia architects;
 - 3.3.2 Return his certificate of practices to the AIBC; and
 - 3.3.3 Provide the AIBC with a letter of undertaking confirming that he has;
 - a) concluded all architectural business operations under both Spectra's and Opulence's certificates of practice if these firms have no other employed registered architect;
 - 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. Cheung is to provide the project owner's name, project name and location and the name of the architect or architectural firm assuming responsibility for the project. This list must include all projects undertaken which are not completed;
 - c) informed the appropriate officials and authorities having jurisdiction, in writing, of his status on any projects submitted for municipal approval as a development permit application, building permit application, subdivision application or any other municipal process. Such notification letters must be copied to the AIBC;
 - d) removed project site signs which identified him and both Spectra and Opulence, if these firms have no other employed registered architect; 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* and its regulations, until such time as he has been returned to the AIBC register.
- 3.4 Mr. Cheung 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. Cheung agrees to pay costs for this consensual resolution, fixed at an amount of \$1,500, payable to the AIBC within 30 days following approval of this Agreement by the consensual resolution review panel.
- 4.2 The parties acknowledge that costs are not intended as a punitive measure reflecting the conduct that is the subject of this Agreement. The assessment of costs payable by Mr. Cheung 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. Cheung 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. Cheung 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 Michael Ting Ho Cheung 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

MICHAEL TING HO CHEUNG ARCHITECT AIBC
AND
THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

1.0 REASONS FOR PENALTY

1.1 Michael Cheung 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. Cheung entered into a contractual relationship agreement with the client knowing that a previous architect had provided similar architectural services on the Project. Subsequently, he submitted a new rezoning application that substantially relied on the previous architect's work, without notifying or contacting them and without providing necessary attribution.
- 1.15 Further, the application to the authority having jurisdiction was submitted without applying his seal, signature, and date to the materials. Overall, this is moderately serious conduct.
- 1.16 His failure to use the original architect's work product without notifying them or providing attribution undermines a fundamental conduct expectation and is a matter of professional courtesy. The failure to do so results in public confusion about the accuracy and credibility of who in fact is performing and providing architectural services.

- 1.17 It is a bedrock principle that the original or author firm must be given clear and accurate project credit. Subsidiary credit may be taken by individuals and other firms as long as the original firm has been clearly credited and the subsidiary credit is accurate.
- 1.18 The requirement for Mr. Cheung to apply his seal and signature to material submitted to an authority having jurisdiction is well-established in the *Act* and the AIBC Bylaws and AIBC bulletins. An architect's seal is a representation to the public that the architect who applies the seal is taking responsibility for the document to which it is applied.
- 1.19 Notwithstanding instructions and pressures from clients and local authorities, an architect is required to ensure that architectural services are provided in accordance with regulatory obligations. As the only registered architect at Esatto, it was Mr. Cheung's responsibility to oversee that the team providing architectural services was doing so in accordance with professional standards. Mr. Cheung's his lack of knowledge and oversight are aggravating factors.

(b) Character and professional conduct record of the respondent

- 1.20 Mr. Cheung is 48 years old and has been registered as an architect with the AIBC since June 6, 2010.
- 1.21 Mr. Cheung has no professional conduct record with the AIBC. This is neither an aggravating nor mitigating factor.

(c) Acknowledgement of the misconduct and remedial action

- 1.22 Mr. Cheung recognized and readily acknowledged his failure in not contacting the previous architect and using their work product in his own rezoning application for the same client and Project. He also admitted that he failed in not providing attribution to the previous architect for their work.
- 1.23 He acknowledged his oversight in failing to seal, sign, and date application materials for the Project which he subsequently submitted to the authority having jurisdiction.
- 1.24 Once the Complaint was brought to Mr. Cheung's attention, he took prompt steps to review the process taken by his team in handling the Project, and recognized that there was a failure to communicate with the previous architect. He also recognized that he should not have relied on the information the client was providing.
- 1.25 Mr. Cheung has been cooperative and candid throughout the course of the investigation.
- 1.26 Mr. Cheung's participation in the consensual resolution process and the admissions 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. Overall, these are mitigating factors.

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

- 1.27 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 registrants in the public interest, and whether the proposed disciplinary action is appropriate when compared to similar cases.
- 1.28 'Specific deterrence' means deterring the respondent from repeating the conduct in question. In this case, although Mr. Cheung benefitted from using the previous architect's work product in his own rezoning application, he has engaged in a meaningful exchange with the AIBC to understand and address the issues resulting in this consensual resolution. Looking ahead, it is unlikely that Mr. Cheung will repeat the conduct at issue in this matter.
- 1.29 '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 contacting the previous architect to obtain permission to use their material, and the importance of giving clear and proper attribution to a previous architect's material, in compliance with the *Act*, the AIBC Bylaws, and council rulings.
- 1.30 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 registrants through a process that is fair, proportionate, and consistent.
- 1.31 While no two files are identical, the following AIBC precedents demonstrate the penalties and sanctions that have been imposed in files where similar conduct was at issue.
- 1.32 Precedent files relating to improper application of an architect's seal are typically accompanied by other contraventions of the *Act* or Bylaws. The penalty is an aggregate of all the contraventions at issue in the file. The files which are most similar to the one at hand are summarized below.

Failure to apply seal

- 1.33 In AIBC File 20.03, the respondent submitted unsealed drawings in support of a development permit application to the authority having jurisdiction. When this was brought to the architect's attention, he took prompt and corrective action and submitted sealed drawings. Additional charges that were included related to the architect's failure to attend a formal presentation to the authority having jurisdiction. The architect was professional and forthright in his responses and a senior member of the profession. He did not have a professional conduct record. The matter was resolved by consensual resolution agreement that included a reprimand, penalty in the amount of \$2,000, and completing the Ethics, Act and Bylaws course.
- 1.34 In AIBC File 18.11, a client submitted the architect's unsealed drawings to the authority having jurisdiction. When this was brought to the architect's attention, prompt and corrective action was

taken to submit sealed drawings. Additional charges that were included related to the architect's failure to attend a formal presentation to the authority having jurisdiction. The architect was professional and forthright in his responses and a senior member of the profession. He also had a previous conduct record for CES non-compliance. The complaint was resolved by consensual resolution agreement that included a reprimand, penalty in the amount of \$2,000, and completing the Ethics, Act and Bylaws course.

Failure to act with reasonable care and competence

- 1.35 In AIBC File 16.16, the architect sealed and signed drawings that had already been sealed, signed and dated by the previous architect, and resubmitted the same drawings to the authority having jurisdiction. Additional charges that were included related to the architect's failure to ensure that the submitted drawings complied with the minimum BC Building Code requirements. The architect, a senior member of the profession who had a professional conduct history, was professional and forthright in his responses. The complaint was resolved by reprimand, a penalty in the amount of \$3,000, and completing the Ethics, Act and Bylaws course and AIBC course on the BC Building Code.

Failure to provide attribution

- 1.36 In AIBC File No. 19.10, a former employee architect of an architectural firm left to work for another firm and published a resume book of projects created at his previous firm on his new firm's website. The architect replaced the previous firm's branding with the new firm's branding on the published resume book of projects, and failed to provide clear and accurate project attribution to his previous firm for the projects. Following receipt of his previous firm's letter with their concerns, the architect removed the resume of projects from his new firm's website. The architect was professional and forthright in his responses, a senior member of the profession, and has had no previous professional conduct record. The complaint was resolved by reprimand and a penalty in the amount of \$2,000.
- 1.37 It is submitted that the above cases provide support for the higher monetary fine in this case because of the total number of contraventions that have been admitted. Not only did Mr. Cheung fail to seal materials in accordance with professional regulatory standards; he relied heavily on the previous architect's work product by replicating it in his own application submitted to the local authority; and did so without notifying the previous architect and also without providing attribution.
- 1.38 It is submitted that the penalty in this case including the higher monetary fine is appropriate because it is reflective of the multiple contraventions to which Mr. Cheung has admitted. Further the penalty is proportional to the seriousness of the misconduct and degree of responsibility to ensure future compliance with his obligations as a registered architect.
- 1.39 As noted in *Peet* above, there will rarely, if ever, be only one single appropriate outcome in a professional disciplinary file.

- 1.40 Mr. Cheung and the AIBC submit that, based on the cases above, and upon a careful review of the consolidated *Ogilvie* Factors, the proposed penalty is reasonable, fair, and consistent with the range of sanctions that have been imposed for similar conduct in the past.

2.0 PUBLICATION

- 2.1 This Agreement will be published as required by AIBC Bylaws, including website publication and distribution to 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 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. Cheung 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 Michael Ting Ho Cheung 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.