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:

CHARLES McLAREN ARCHITECT AIBC

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

CONSENSUAL RESOLUTION AGREEMENT

The *Architects Act* authorizes the AIBC to attempt resolution of disciplinary matters by way of consensual resolution. AIBC Bylaws 36.0 through 36.22 provide the specific processes and procedures by which the AIBC and a member or other registrant may reach agreement on a complaint that would otherwise proceed to a hearing and decision at a disciplinary inquiry.

All consensual resolution agreements must be approved by the consensual resolution review panel before they are effective. By statute, this panel must have regard to the public interest when deciding whether to approve a consensual resolution agreement. An approved consensual resolution agreement has the same effect as an order made by a disciplinary committee under the *Architects Act*.

1.0 BACKGROUND AND AGREED FACTS

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

A. Overview

1.2 The AIBC's Investigations Committee (the "Committee") conducted an investigation into a complaint about Charles McLaren Architect AIBC regarding his conduct towards another architect.

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

B. Charles McLaren

1.5 Mr. McLaren was first registered as an architect with the AIBC on November 7, 1983, and has maintained his registration ever since. Mr. McLaren resides and practises in Yukon.

1.6 Mr. McLaren practises architecture in Yukon through Charles McLaren Architect Ltd.

C. The Complaint

1.7 In February 2019, the AIBC received a complaint about Mr. McLaren from AB, another Architect AIBC who also practises in Yukon (the "Complaint").

1.8 The Complaint arose out of a letter that Mr. McLaren sent to AB, which was copied to several other people, including employees of Government of Yukon.

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

D. The Investigation/Agreed Facts

1.10 The investigation involved a review of the material submitted by AB and Mr. McLaren, an interview with Mr. McLaren, and an interview with a Senior Project Manager from Government of Yukon. The agreed facts in paragraphs 1.11 – 1.27 below are based on material compiled during the investigation.

1.11 For many years, AB and Mr. McLaren have both practised in Yukon, which has a relatively small architectural community.

1.12 Mr. McLaren and AB do not regularly interact with each other. However, in some dealings they appear to have been confrontational towards each other. They have also occasionally made complaints about each other to the AIBC.

1.13 Some of that history underlies the events leading to the Complaint. The relevant background is summarized below:

1.13.1 AB practises through an architectural firm ("AB Firm"). AB Firm is the successor of another architectural firm.

1.13.2 In 2007, a magazine article featured AB and AB Firm. Following the publication of the article, Mr. McLaren wrote to the magazine, stating that some of the work claimed by AB Firm was actually designed by the principal of the predecessor firm. Mr. McLaren's letter was published by the magazine.

1.13.3 As a result of Mr. McLaren's letter to the magazine, AB complained to the AIBC. Upon receipt of the complaint about him, Mr. McLaren submitted a "response" complaint to the AIBC about AB's attribution of the work featured in the magazine (the "2007 Complaints").

1.13.4 Following investigation of the 2007 Complaints, the Investigations Committee recommended that disciplinary charges be brought against both Mr. McLaren (for his letter to the magazine) and AB (for his incorrect attribution).

1.13.5 The 2007 Complaints were ultimately resolved by agreement in May 2009. AB agreed to make changes to his attribution, and Mr. McLaren wrote a letter of apology and retraction to the magazine.

1.13.6 In concluding the 2007 Complaints, Mr. McLaren wrote a memorandum to AB, with copies to the magazine and the AIBC (the "Memorandum"). The Memorandum was titled "Resolution of Mutual Complaints" and enclosed Mr. McLaren's letter to the magazine.

1.13.7 The body of the Memorandum stated:

> Sir,
>
> As we have agreed with the Architectural Institute of B.C., I am forwarding the attached letter as my portion of the resolution of the complaint you lodged against me for a lack of courtesy, and the corresponding complaint I lodged against you for failing to give credit for the design of projects.
>
> I look forward to seeing the matter of attribution addressed on your web site in the near future.
>
> This should end the matter.

1.13.8 Following the apology/retraction letter from Mr. McLaren and the attribution corrections by AB, the 2007 Complaints were closed with no further action. No disciplinary charges were pursued.

1.14 On October 4, 2018, Mr. McLaren contacted the AIBC, frustrated with what he considered further inaccurate attribution by AB and AB Firm.

1.15 Mr. McLaren appeared to want some immediate action taken by the AIBC. Mr. McLaren alluded to the prospect of circulating a letter stating his dissatisfaction with AB's advertising and asserted his entitlement to do so under the AIBC Bylaws.

1.16 In response, AIBC staff encouraged Mr. McLaren to attempt to resolve the matter with AB, and provided information about the complaint process.

1.17 On or around that same day, Mr. McLaren and AB both submitted bids to the Infrastructure Development Branch of Government of Yukon in response to an RFP for a firehall & public works building (the "Firehall Project").

1.18 On October 10, 2018, Mr. McLaren sent AB a letter (the "Letter"). The Letter was blind-copied to the Alberta Association of Architects, the Northwest Territories Association of Architects, and twelve employees of Government of Yukon. Mr. McLaren also submitted a complaint to the AIBC about AB's attribution, enclosing the Letter.

1.19 In the Letter, Mr. McLaren asserted that AB had engaged in misleading advertising by overstating or misstating his involvement on several projects, and cited several AIBC Bylaws. The Letter included criticism of AB's previous work on a project that they had both been involved with, stating that "concept adjustments were necessary to comply with the Codes and make the project cost effective".

1.20 The Letter also included a reference to the 2007 Complaints, stating as follows:

> The Architectural Institute of B.C. (AIBC) and similar provincial or territorial associations have Bylaws and conduct bulletins that architects pledge to follow, so that other parties may rely on our claims of experience in good faith. You are aware of these requirements, **having been disciplined in 2007** for claiming credit for work designed by your predecessor…
>
> [Emphasis added]

1.21 Although the timing of the Letter overlapped with the award of the Firehall Project, the Letter did not make any direct reference to the Firehall Project. On or around October 24, 2018, the Firehall Project was awarded to AB Firm.

1.22 In March 2019, AB submitted the Complaint to the AIBC. In his submission, he highlighted the fact that the Letter incorrectly stated that he had been disciplined in 2007, and that the Letter was submitted at a time when both he and Mr. McLaren were bidding on the Firehall Project. AB also stated that Government of Yukon is AB Firm's biggest client, and that the false statements in the Letter "put his business at risk". Finally, AB stated that one of the outcomes he was seeking from the Complaint was a letter of retraction from Mr. McLaren.

1.23 In his responses to the Complaint, Mr. McLaren stated his position as follows:

1.23.1 The AIBC did not advise him of the result of the complaint he filed against AB in 2007, and based on the attribution changes made by AB at that time, Mr. McLaren reasonably

concluded that disciplinary measures must have been taken as a result of his complaint. To the best of his knowledge and belief, the statement about AB "having been disciplined" was true;

1.23.2 The transmission of the Memorandum in 2009 was only to confirm that Mr. McLaren had done as he had agreed, and should not be seen as confirmation that Mr. McLaren knew the outcome of his complaint about AB;

1.23.3 He did not have any intention to harm AB's business prospects. The fact that the Letter was distributed to Government of Yukon employees at a time when the Firehall Project, for which both he and AB had submitted bids, was open for tender was coincidental;

1.23.4 The AIBC Bylaws are not intended to "stifle or oppress fair comment", and that it is acceptable to point out misrepresentations, even in a public forum;

1.23.5 The AIBC did not actively caution him against proceeding as he did; and

1.23.6 None of these matters would arise if AB Firm simply made accurate representations about their work.

1.24 A Government of Yukon employee who received the Letter described his reaction to it. He felt it was "unusual" and "accusatory". He noted that it "seemed to have gone to everyone" in his department, and that it was received prior to the award of the Firehall Project. Overall, he felt that the Letter was not "something he liked to see", and not something he would have expected from the architectural profession.

1.25 At the conclusion of the investigation, Mr. McLaren acknowledged that he had acted inappropriately and that he would approach a similar situation differently in the future. In November 2019, Mr. McLaren wrote to AB and the other recipients of the Letter to correct his inaccurate reference to AB's discipline history with the AIBC and apologized to AB for that statement.

1.26 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.

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

E. Relevant Sections of the AIBC Bylaws and council rulings in the Code of Ethics

1.28 The relevant sections of the AIBC Bylaws and associated council ruling in the *Code of Ethics* state:

Bylaw 34.5 An architect shall conduct the architect's affairs in a professional manner and refrain from any act which would reflect unfavourably on the profession as a whole.

(a) An architect's conduct towards other architects shall be characterized by courtesy and good faith.

Bylaw 34.6 **An architect shall not falsely or maliciously injure the professional reputation or business prospects of another architect.**

2.0 ADMISSIONS

2.1 Considering the facts agreed to above, Mr. McLaren acknowledges and admits that his he contravened AIBC Bylaw 34.5 and council ruling (a), and AIBC Bylaw 34.6 by distributing the Letter in circumstances where:

- It was distributed to other parties without any attempt having been made to address his grievances with AB privately and directly;
- It was distributed to a number of employees of Government of Yukon;
- It was distributed when Mr. McLaren and AB were competing for the Firehall Project;
- It contained gratuitous criticisms of AB's work;
- It contained reference to AB's discipline history; and
- The reference to AB's discipline history was not accurate.

3.0 PENALTY AGREEMENT

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

3.1.1 A reprimand will be recorded against Charles McLaren Architect AIBC;

3.1.2 Mr. McLaren is required to pay a fine in the amount of $1500 to the AIBC, within 30 days after the approval of this Agreement by the consensual resolution review panel; and

3.1.3 Mr. McLaren is required to attend and complete the AIBC course "Ethics, Act and Bylaws", or another educational program that covers ethics and professionalism and is agreed to in advance by the AIBC, at his expense, no later than April 30, 2020;

3.2 Mr. McLaren acknowledges and agrees that failure to complete the requirements in paragraph 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. McLaren 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;

3.3.2 Provide the AIBC with a letter of undertaking confirming that he and his firm have;

a) Assigned, with client consent, any ongoing projects under his firm name to another architect or architectural firm holding a current certificate of practice. In this portion of the undertaking letter, Mr. McLaren is to provide the project owner's name, project name and location and the name of the 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 or provincial/territorial approval as a development permit application, building permit application, subdivision application or any other municipal or provincial/territorial process. Such notification letters must be copied to the AIBC;

c) Removed project site signs which identified him or, alternatively, amended such project signs by removing his identity; and

d) Confirmed that he will not refer to himself as an architect and that he will not practise architecture or offer to provide architectural services as defined by the Architects Act, until such time as he has been returned to the AIBC register.

3.4 Mr. McLaren acknowledges and agrees that if he is removed from the register for failure to complete the requirements of this Agreement, or if he resigns from the register prior to completing all requirements, he may not apply for reinstatement until he has done so. Upon completion of all outstanding requirements, he may apply for reinstatement and will be subject to all applicable fees and requirements for reinstatement.as stated in AIBC Bulletin 2.

4.0 COSTS

4.1 Mr. McLaren agrees to pay costs for this consensual resolution, fixed at an amount of $750, payable to the AIBC within 30 days following approval of this Agreement by the consensual resolution review panel.

4.2 The parties acknowledge that costs are not intended as a punitive measure reflecting the conduct that is the subject of this Agreement. The assessment of costs payable by Mr. McLaren is an acknowledgement of the AIBC's partial costs resulting from the consensual resolution process, and is separate from the agreed-upon penalty.

4.3 The parties have referred to the AIBC's Consensual Resolution Costs Guidelines in agreeing on the amount of costs.

5.0 PUBLICATION

5.1 This Agreement, including the attached Schedule, shall be published by the AIBC, including website publication and distribution to all registrants of the AIBC, in such manner that the AIBC deems fit in the public interest. A copy of this Agreement shall also be provided to Government of Yukon.

5.2 In the event Mr. McLaren is removed from the register for non-compliance with this Agreement, the AIBC may notify members 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. McLaren 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 Charles McLaren Architect AIBC and the AIBC, represented by Mark Vernon, CPA, CA, CPA (IL), CEO.

Approved by the Consensual Resolution Review Panel on December 6, 2019.

SCHEDULE – REASONS FOR PENALTY

TO

CONSENSUAL RESOLUTION AGREEMENT

BETWEEN

CHARLES McLAREN ARCHITECT AIBC

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

1.0 REASONS FOR PENALTY

1.1 Charles McLaren 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.
>
> 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 did return to the full *Ogilvie* analysis in a case that was "very difficult" [and] "unlike any previous discipline hearing": *Sahota (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. McLaren's conduct in circulating the Letter falls below the professional standard expected of AIBC registrants.

1.15 The Letter was inappropriate in principle as it would rarely, if ever, be appropriate for an architect to copy a client or authority having jurisdiction with an antagonistic letter to another architect. Additionally, there are aggravating features with respect to the timing and content of the Letter:

1.15.1 The Letter was sent to 12 employees of Government of Yukon, virtually guaranteeing that it would be received by those who deal with AB. Further aggravating matters was the fact that the letter was "blind-copied", making it more difficult for AB to address and respond to the issues raised with the individual recipients.

1.15.2 The Letter included a reference to AB's professional conduct record, which reference was inaccurate. Mr. McLaren states that he did not realize that AB had not actually been disciplined, or that he did not appreciate the definition of that term. However, by asserting

it as a fact, Mr. McLaren was at the very least reckless as to whether his statement was true or not. A registrant's discipline history is a serious matter, and references to a registrant's discipline history should not be made carelessly.

1.15.3 The Letter included gratuitous allegations about substandard work done by AB on a project in which AB and Mr. McLaren had both been involved. These allegations were not relevant to Mr. McLaren's concerns about the attribution issue and related to a project that was completed several years ago.

1.15.4 The Letter was sent at a time when both architects were submitting for tender on a specific project. While Mr. McLaren asserted that this was "coincidental", it is difficult to ignore the pending award of the Firehall Project. In any event, even if it was not Mr. McLaren's intention to influence the outcome of the tender for the Firehall Project, the fact that the Letter was sent while both firms were in competition for it would have had the effect of injuring the business prospects of AB.

1.15.5 The Letter was sent without any attempt having been made to address the substantive issues directly and privately with AB.

1.16 Mr. McLaren has asserted that there is nothing wrong with making "fair and honest" comments on architectural matters, including the work of another architect. That is true. However, the contents of the Letter go beyond that, as set out above.

1.17 Although Mr. McLaren may have been justifiably frustrated with AB's inaccurate attribution, there were a number of options available to address that issue. In particular, he could have raised his attribution concerns with AB directly (and privately), as recommended in AIBC Bulletin 44, or he could have awaited the outcome of his complaint about AB's attribution. These options were known to Mr. McLaren. In any event, the Letter went beyond the issue of attribution.

1.18 AB has stated that the Letter has "threatened his firm's existence". There is no evidence that would allow the AIBC to assess the merits of that statement. However, it is reasonable to conclude that the Letter may have damaged his reputation with an important client. More importantly, the information received from a Government of Yukon employee indicates that the Letter has also cast a negative light on the architectural profession.

1.19 Overall, Mr. McLaren's conduct contravenes two long-standing provisions of the AIBC Code of Ethics and Professional Conduct and represents a marked departure from the standard expected of the architectural profession.

(b) Character and professional conduct record of the respondent

1.20 Mr. McLaren is 67 years old. He has been registered as an architect with the AIBC since 1983.

1.21 Mr. McLaren has no professional conduct record with the AIBC. As noted above, the 2007 Complaints were resolved by agreement and did not result in disciplinary action. The absence of a professional conduct record is a mitigating factor.

(c) Acknowledgement of the misconduct and remedial action

1.22 For most of the investigation, Mr. McLaren did not agree that sending the Letter as he did was inappropriate. He subsequently acknowledged that it was, and that with the benefit of hindsight he would have handled the matter differently.

1.23 In November 2019, Mr. McLaren wrote to AB to correct his statement that AB had been previously disciplined by the AIBC for inaccurate attribution and offered his apology for this incorrect statement.

1.24 Mr. McLaren's acknowledgement and his letter of correction came late in the day. In particular, the letter of correction was sent over one year after the Letter was sent. This could have occurred sooner, and the delay dilutes the effect of Mr. McLaren's correction.

1.25 However, the fact remains that Mr. McLaren did eventually take these steps and his case must therefore be viewed more favourably than a similar case where no such steps were taken. Further, a letter of correction regarding his discipline history was an outcome specifically sought by AB in the Complaint.

1.26 This is a mitigating factor.

(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 members 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, Mr. McLaren has no prior professional conduct record with the AIBC. However, this is not the first instance where Mr. McLaren has brought his grievances with AB's attribution to a third party or to the public. This is not appropriate and must be discouraged. Therefore, there is a need for some degree of specific deterrence.

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 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 members through a process that is fair, proportionate, and consistent.

1.31 There is no case in the AIBC's recent precedents where there was a finding or admission of misconduct that is substantially similar to the present case.

1.32 There two most factually similar cases are summarized below.

1.33 In AIBC File 79.03, the relevant facts are:

1.33.1 The architect had unsuccessfully bid on a public library project. Following the award of the contract and presentation of the preliminary budget by another architect, the architect raised concerns with the design. The architect approached an alderman and requested a special meeting of an expanded advisory design panel to review.

1.33.2 The architect sat on the expanded advisory design panel, and personally initiated a multitude of points for consideration by the design panel – some of which extended well beyond the usual scope of design panel recommendations.

1.33.3 The architect proceeded with wide-ranging criticism of the project, including letters to the local press and criticism of the design and bid process on a local radio station.

1.33.4 The architect was found guilty of unprofessional conduct following a disciplinary hearing. AIBC Council, then presiding as the disciplinary panel, supported the architect's "right to speak out publicly", but criticized the way that it was done, noting that there was no reference of the architect's concerns to the AIBC, to the other architect, or to the client.

1.33.5 The architect was reprimanded and a "news announcement on Council's decision was provided to the B.C. press and news media".

1.34 In AIBC File 02.15, the relevant facts are:

1.34.1 The architect was a part-time instructor of design at a college. The architect complained to the college that another staff member was incorrectly listed on the college's staff list as a registered architect with the AIBC. The other staff member was not in fact a registered architect.

1.34.2 When submitting his complaint to the college, the architect left the "name" field in the complaint form blank and entered the email address of three former AIBC employees in the "email address" field. As a result, the college received three electronic complaint communications which appeared to be from three members of AIBC staff.

1.34.3 Upon realizing that the complaint came from the architect, the college complained to the AIBC.

1.34.4 The architect was reprimanded and ordered to pay a fine of $1,000.

1.35 There are other cases of contraventions of AIBC Bylaw 34.5, but none of them involve criticism of another architect. The only case of a contravention of AIBC Bylaw 34.6 is AIBC File 79.03, above, and it is now 40 years old.

1.36 These cases are of very limited assistance when assessing the appropriate penalty in Mr. McLaren's case. In the absence of helpful precedent, the following factors were considered:

1.36.1 The misconduct in this case is more serious than in AIBC File 02.15. That case did not involve statements harming an architect's reputation with clients, and did not include an

incorrect statement about an architect's discipline history with the AIBC. The misconduct in this case had an impact on third parties.

1.36.2 The misconduct in this case is serious, but less serious than in cases involving fundamental dishonesty, or issues impacting public safety. In such cases, the outcome has included a higher fine or a suspension from practice.

1.36.3 The misconduct in this case should attract a sanction that is part punitive and part remedial. This reflects the history of the matter. A modest fine and mandatory attendance at an ethics course satisfies both aspects.

1.37 As noted in *Peet* above, there will rarely, if ever, be only one single appropriate outcome in a professional disciplinary file.

1.38 Mr. McLaren 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 Bylaw 36.20, 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. McLaren 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 Charles McLaren Architect AIBC and the AIBC, represented by Mark Vernon, CPA, CA, CPA (IL), CEO.

For further information on the AIBC's consensual resolution process, please contact Meagan Sands, Paralegal, Professional Conduct and Illegal Practice at msands@aibc.ca.