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:

GEORGE BERRY 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 This matter began as a potential complaint regarding George Berry Architect AIBC with respect to the provision of architectural services for an 82-room bunkhouse in Golden, BC. Following its review of Mr. Berry's response to the potential complaint, the AIBC's Investigations Committee (the "Committee") initiated a complaint about Mr. Berry in accordance with AIBC Bylaw 37.16(c).

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

B. Mr. Berry / Berry Architecture Inc.

1.5 Mr. Berry was registered as an architect with the AIBC on November 13, 2018, and has maintained his registration ever since.

1.6 Mr. Berry's primary practice is in Alberta, where he ordinarily resides. Mr. Berry has been registered with the Alberta Association of Architects since May 1999.

1.7 Mr. Berry practises architecture through Berry Architecture & Associates Ltd. ("Berry Architecture"), a corporation that holds an AIBC certificate of practice. Berry Architecture obtained an AIBC Certificate of Practice on March 26, 2019.

1.8 Berry Architecture has offices in Red Deer, Alberta and Cranbrook, British Columbia.

C. The Information Request / Complaint

1.9 In September 2018, the AIBC's illegal practice department was contacted regarding the design of an 82-room Canadian Pacific Railway bunkhouse in Golden, BC (the "Bunkhouse").

1.10 The person who contacted the AIBC was concerned that the illegal practice of architecture may have been taking place because it appeared that the drawings for the Bunkhouse were not prepared by an Architect AIBC, but rather by the construction company.

1.11 The AIBC contacted the construction company regarding the drawings for the Bunkhouse. In response, the construction company advised that they would be working with Berry Architecture on the Bunkhouse, but that there was no requirement for an architect's involvement because the Bunkhouse was a "federal project", being constructed in accordance with Canada's National Building Code.

1.12 In support of this position, the construction company provided the AIBC with a letter from Mr. Berry dated February 12, 2019, in which he stated that Berry Architecture would be responsible for the architectural work on the Bunkhouse. In his letter, Mr. Berry concluded that "Berry Architecture and [the construction company] are not breaking any of the rules, obligations or professional requirements or involvement of the AIBC."

1.13 At the time the letter was received, Mr. Berry was an AIBC registrant but neither he nor Berry Architecture had an AIBC Certificate of Practice. Following receipt of this material, the file was opened as a potential complaint, pursuant to AIBC Bylaw 37.2. The AIBC contacted Mr. Berry and requested his response.

1.14 The Committee considered Mr. Berry's response at its March 2019 meeting. The Committee reviewed the materials before it and determined that there was sufficient basis to initiate a complaint about Mr. Berry in accordance with AIBC Bylaw 37.16(c).

D. The Investigation/Agreed Facts

1.15 The investigation involved a review of the material compiled during the illegal practice investigation material submitted by Mr. Berry, and a detailed chronology prepared by the AIBC's Registration & Licensing department. Mr. Berry also attended an interview with the Committee.

1.16 The facts in paragraphs 1.17 – 1.26 below are based on material reviewed during the investigation and agreed to by the AIBC and Mr. Berry.

1.17 On September 27, 2018, Mr. Berry submitted a fee proposal for the Bunkhouse on behalf of Berry Architecture (the "Fee Proposal"). The Fee Proposal did not include the compliance statement required by council ruling (f) of AIBC Bylaw 34.10.

1.18 On October 4, 2018, Mr. Berry applied for registration as an architect with the AIBC. On that same date, an application for an AIBC Certificate of Practice was submitted for Berry Architecture.

1.19 On November 13, 2018, Mr. Berry's registration was approved by AIBC council. A letter confirming his registration was sent on November 16, 2018 (the "Registration Letter"). The Registration Letter contained the following statement:

> You are now entitled to apply for a Certificate of Practice, or to practise architecture through a registered architectural firm holding a current Certificate of Practice issued by the AIBC. Please note that as a requirement of the Architects Act, if you intend to open your own firm, you must register your architectural firm and obtain a Certificate of Practice from the AIBC prior to offering your services.
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> [Emphasis added]

1.20 At the time of Mr. Berry's registration, Berry Architecture did not have an AIBC Certificate of Practice. Although an application had been submitted on October 4, 2018, there were some outstanding issues that required resolution before Berry Architecture was eligible for an AIBC Certificate of Practice.

1.21 A staff member of Berry Architecture was in regular communication with the AIBC's Registration & Licensing department about the outstanding requirements between November 2018 and March 2019. A complete application for an AIBC Certificate of Practice was submitted on March 14, 2019. Berry Architecture's AIBC Certificate of Practice was issued on March 26, 2019.

1.22 Meanwhile, work on the Bunkhouse had been proceeding. The Fee Proposal was signed on November 30, 2018, and formed the client-architect agreement for the Bunkhouse.

1.23 On January 31, 2019, drawings for the Bunkhouse were affixed with Mr. Berry's seal above Berry Architecture's title block. As of that date, neither Mr. Berry nor Berry Architecture held an AIBC Certificate of Practice. Additionally, the seal affixed to the drawings was a "jpeg" image of Mr. Berry's seal and signature, not an original "wet" seal or approved electronic seal.

1.24 During the investigation, Mr. Berry provided the following responses to the concerns raised:

1.24.1 He asserted that the delays in obtaining Berry Architecture's Certificate of Practice were due to poor response time or inaccurate information from the AIBC's Registration & Licensing department. He stated that, notwithstanding the statement in the Registration Letter reproduced above and his staff's ongoing communication with the AIBC, he was told that "Berry Architecture had completed all the requirements for registration and no additional information was needed and our registration was complete."

1.24.2 Regardless of the Certificate of Practice issue, he was confident that no architect was required for the Bunkhouse because it was proceeding under the National Building Code.

1.24.3 Regardless of the Certificate of Practice issue, in the present "difficult economic situation, time is very much of the essence", and that it was in the best interest of the Bunkhouse project that Berry Architecture proceeded when it did.

1.24.4 He initially advised that the drawings for the Bunkhouse had all been wet-sealed. Following further review, he clarified that only the first page of the drawings was wet-sealed, and the additional pages were affixed with an electronic image of his seal and signature. He stated that proceeding in this way "saved [his] staff considerable time and money and greatly reduced the file size" for electronic transmission.

1.24.5 He stated that any non-compliance with the *Act* or the AIBC Bylaws was not intentional.

1.25 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.

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

E. Relevant Professional Standards

1.27 Sections 27(2), 63(2) and 77(1) of the *Act*, and AIBC Bylaws 33.3, 34.2, and 34.10 (with associated council rulings), and the council rulings and professional standards in AIBC Bulletin 60 and 61 are relevant to the complaint against Mr. Berry.

1.28 Section 27(2), 63(2), and 77(1) of the *Act* state:

Certificate of practice

27 (2) A person must not practise or offer to practise the profession of architecture unless the person

(a) is a holder of a current certificate of practice, or

(b) practises as authorized by this Act through an architectural firm that is a holder of a current certificate of practice.

Further prohibitions

63 (2) A person or architectural firm that does not hold a certificate of practice must not be held out or implied to hold a certificate of practice.

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 practices 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

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

Bylaw 33.3 **An architect shall comply with the Architects Act of British Columbia, the Bylaws under the Architects Act, and Council rulings**.

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 ruling**.

Bylaw 34.10 **Except in an approved competition, an architect shall provide no form of service until retained and in receipt of the client's instructions**.

(f) Each (i) proposal for architectural services, and (ii) client-architect agreement (contract), must contain the statement that it "is in compliance with the AIBC Bylaws, including especially (but not limited to) Bylaw 28: Professional Engagement and Bylaws 34.16: the Tariff of Fees for Architectural services; and the Code of Ethics."

1.30 The relevant council rulings and professional standards in AIBC Bulletins 60 and 61 state:

Bulletin 60

1.6 Applying an image (picture) of an architect's professional seal and signature is not the same as digitally signing and sealing that document with a digital certificate. An image alone of a seal is not secure, and any such document is vulnerable to being seamlessly modified by others without the issuing architect's knowledge. It is fundamental to the protection of the public that the architectural seal applied by the architect is secure, i.e. that i[t] can be reasonably relied upon bas being accurate and not having been tampered with. **For electronically transmitted documents, the only acceptable means of signing and sealing is with the Notarius digital certificate**.

Bulletin 61

Drawings

…

4.5 Members are reminded that since October 2009, the AIBC has permitted and encouraged the use of the electronic seal by architects. See AIBC Bulletin 60: Signature, Seal and Delivery of Electronic Documents for detailed information on the use of the electronic seal, including possible advantages when submitting multiple sets of drawings requiring an architect's seal. It is vital for members to understand that applying an electronic seal is a specific, highly-secure protocol that requires purchase of a license authorized by the AIBC. **The simple application of a seal graphic (such as JPEG, PDF, BMP, etc.) to documents does not constitute proper electronic sealing of such documents and invites considerable civil liability and professional conduct exposure**.

…

[Emphasis Added]

2.0 ADMISSIONS

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

2.1.1 he contravened section 27(2) of the *Act* and AIBC Bylaw 33.3 by failing to obtain a certificate of practice prior to offering and providing architectural services in British Columbia;

2.1.2 he contravened AIBC Bylaw 34.10 and council ruling (f) by entering into a client-architect agreement that did not contain the required compliance statement;

2.1.3 he contravened section 63(2) and 77(1) of the *Act*, and AIBC Bylaw 34.2 by applying his seal to drawings bearing the title block of Berry Architecture, an entity that did not hold a certificate of practice; and

2.1.4 he contravened AIBC Bylaw 34.2 and the professional standards for use of an architect's seal in AIBC Bulletins 60 and 61 by applying, or allowing to be applied, an image of his seal to drawings prepared by him or under his supervision, direction or control.

3.0 PENALTY AGREEMENT

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

3.1.1 A reprimand will be recorded against George Berry Architect AIBC;

3.1.2 Mr. Berry is required to pay a fine in the amount of $3500 to the AIBC, within 30 days after the approval of this Agreement by the consensual resolution review panel; and

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

3.2 Mr. Berry 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. Berry 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 name to another architect or architectural firm holding a current certificate of practice. In this portion of the undertaking letter, Mr. Berry is to provide the project owner's name, project name and location and the name of the architect or architectural firm assuming responsibility for the project. This list must include all projects undertaken which are not completed;

b) Informed the appropriate officials and authorities having jurisdiction, in writing, of his status on any projects submitted for municipal approval as a development permit application, building permit application, subdivision application or any other municipal process. Such notification letters must be copied to the AIBC;

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

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

3.4 Mr. Berry 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. Berry 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. Berry is an acknowledgement of the AIBC's partial costs resulting from the consensual resolution process, and is separate from the agreed-upon penalty.

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

5.0 PUBLICATION

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

5.2 In the event Mr. Berry 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. Berry 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 George Berry 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

GEORGE BERRY ARCHITECT AIBC

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

1.0 REASONS FOR PENALTY

1.1 George Berry 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.
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> [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.
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> [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": *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 In his work on the Bunkhouse, Mr. Berry contravened four professional standards applicable to AIBC registrants:

1.14.1 He submitted a fee proposal for the Bunkhouse, and proceeded to provide architectural services on the Bunkhouse, prior to the issuance of an AIBC Certificate of Practice for himself or Berry Architecture;

1.14.2 He entered into a client-architect agreement that did not include the required AIBC compliance statement;

1.14.3 He applied his seal to drawings bearing Berry Architecture's title block, when it did not hold an AIBC Certificate of Practice; and

1.14.4 He used or allowed to be used a "jpeg" image of his seal and signature.

1.15 The requirement for a certificate of practice is stated unambiguously in the *Act*. It was also brought directly to Mr. Berry's attention in the Registration Letter. The fact that Mr. Berry continued with work on the Bunkhouse after this fact was brought to his attention is an aggravating factor. On that point, Mr. Berry's assertion that "it was in the best interest of the Bunkhouse" to proceed with work even in the absence of a certificate of practice is unproductive and misguided. No project is best-served by proceeding unlawfully.

1.16 The requirement to include the AIBC compliance statement in a client-architect agreement is clearly stated in the AIBC Bylaws.

1.17 The lawful and appropriate use of an architect's seal is stated in the *Act* and discussed in detail in AIBC Bulletins 60 and 61. There are two aspects to Mr. Berry's inappropriate use of his seal:

1.17.1 In the absence of a certificate of practice, he could not apply his seal. Further, he could not apply his seal as an employee or associate of Berry Architecture, as Berry Architecture did not hold a certificate of practice. Berry Architecture's title block on the drawings could only lead someone to the incorrect conclusion that Berry Architecture was a licensed architectural firm.

1.17.2 He was required to apply his seal in the acceptable way: through its physical application, or through the approved secure digital seal software. The use of an image of a seal is not permissible. It undermines the responsibility an architect assumes by applying their seal, and creates an avoidable risk of seal-tampering or unchecked modifications to the underlying document. The apparent "convenience" of applying an image of a seal does not overcome this requirement.

1.18 These requirements are not mere technicalities. They are legal and regulatory requirements. Further compounding the issue was Mr. Berry's incorrect assessment that the Bunkhouse did not require an architect. Indeed, the National Building Code clearly states in its preface that provincial governments may have enacted legislation regarding building design and construction, including "requirements for professional involvement". Compliance with the National Building Code does not displace the requirements of the *Act*.

1.19 In any event, AIBC registrants are required to practise in compliance with the *Act* and the AIBC Bylaws regardless of whether the project requires an architect under the *Act*. The AIBC requires, and the public is entitled to expect, that AIBC registrants comply with all applicable professional standards at all times on all projects.

1.20 This case features contraventions of foundational practice requirements. However, it must be acknowledged that no direct harm resulted to Mr. Berry's client or to the public. Overall, it is moderately serious.

(b) Character and professional conduct record of the respondent

1.21 Mr. Berry is 56 years old. He has been registered as an architect with the AIBC since November 2018.

1.22 Mr. Berry has been a registered architect in Alberta for approximately 20 years. While the AIBC appreciates that there may be different requirements in different jurisdictions, the standard expected in British Columbia is the same for all registered architects.

1.23 Mr. Berry has no professional conduct record with the AIBC. This is a mitigating factor.

(c) Acknowledgement of the misconduct and remedial action

1.24 At various times during the investigation, Mr. Berry took the position that he had done nothing wrong. This assertion was incorrect.

1.25 At other times, he took the position that he had practised without an AIBC Certificate of Practice as a result of the AIBC's Registration & Licensing Department's conduct. This response was unproductive and factually incorrect.

1.26 It must be acknowledged that Berry Architecture did obtain an AIBC Certificate of Practice, and Mr. Berry has now acknowledged the misconduct. However, this came only at the end of the investigation, and after several assertions that his conduct was appropriate or beneficial due to saved cost or time.

1.27 In all of the circumstances, this is an aggravating factor.

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

1.28 This involves an analysis of whether there is sufficient specific or general deterrence in the proposed disciplinary action, whether the proposed disciplinary action upholds the public's confidence in the AIBC's ability to regulate its members in the public interest, and whether the proposed disciplinary action is appropriate when compared to similar cases

1.29 'Specific deterrence' means deterring the respondent from repeating the conduct in question. In this case, Mr. Berry has no prior professional conduct record with the AIBC. However, the conduct in this case appears to have been motivated to some degree by convenience to Mr. Berry. It also concerns fundamental practice requirements that are highlighted at time of registration, and that must be known by all AIBC registrants. There is therefore some need for specific deterrence.

1.30 'General deterrence' is a sentencing objective promoting reduction of improper conduct in the community by the example, message, or influence established by the penalty in the present matter. The proposed penalties in this Agreement will serve to caution and remind architects of the importance of compliance with the *Act*, the AIBC Bylaws, and council rulings.

1.31 The public has the right to expect that architects will know and comply with all applicable professional standards. The public also has the right to expect that the AIBC will address instances of misconduct by its members through a process that is fair, proportionate, and consistent.

1.32 While no two files are identical, the following AIBC precedents demonstrate the penalties and sanctions that have been imposed in files where similar conduct was at issue.

1.33 In AIBC File 18.02, the relevant facts are:

1.33.1 The architect was registered in Prince Edward Island. He obtained registration with the AIBC, and an AIBC Certificate of Practice in his own name.

1.33.2 The architect had previously attempted to obtain an AIBC Certificate of Practice for the firm he practised with in Prince Edward Island. However, that firm operated under a name that made it ineligible for an AIBC Certificate of Practice.

1.33.3 The architect entered into an agreement for a project in British Columbia under the name of his Prince Edward Island firm. There was no written client-architect agreement, and therefore the client-architect agreement did not contain the required AIBC compliance statement. With no AIBC Certificate of Practice, the Prince Edward Island firm could not practise architecture or be held out as an architectural firm in British Columbia.

1.33.4 The architect prepared drawings for the project above the title block of his Prince Edward Island firm. The architect sealed those drawings.

1.33.5 The drawings were revised at various times during the project. The architect applied a "jpeg" image of his original seal to the revised versions. The matter came to the AIBC's attention when a building official noted that the image of the architect's seal had a date that was earlier than the date of the revisions.

1.33.6 A consensual resolution agreement was approved under which the architect received a reprimand, a $2500 fine, and was required to attend the AIBC course "Ethics, Act and Bylaws".

1.34 In AIBC File 11.08, the relevant facts are:

1.34.1 The architect was registered in Alberta. He worked on one project in BC over several years prior to registration with the AIBC and without an AIBC Certificate of Practice.

1.34.2 The architect used the title "architect" in British Columbia prior to registration with the AIBC, his firm was held out as an architectural firm prior to registration with the AIBC, and after he became registered he applied his seal to drawings prior to obtaining an AIBC Certificate of Practice.

1.34.3 With respect to his one active project, the client-architect agreement did not provide notification of the architect's professional liability insurance status and did not include the required AIBC compliance statement.

1.34.4 The architect had no professional conduct record. The architect was cooperative and contrite throughout the investigation, and provided evidence that his misconduct arose during a time of business and personal difficulty, which left him financially and emotionally challenged.

1.34.5 A consensual resolution agreement was approved under which the architect received a reprimand, a $3000 fine, and was required to attend the AIBC course "Ethics, Act and Bylaws". Additionally, a condition was placed on the architect's certificate of practice which

required him to notify the AIBC in writing prior to providing architectural services of any kind in British Columbia for a period of two years.

1.35 Mr. Berry's case is more serious than File 18.02. The significant distinction is that in File 18.02 the architect had a certificate of practice in place prior to initiating the project. The architect's error in relation to the certificate of practice was operating through his other firm, which did not have a certificate of practice. In this case, Mr. Berry did not have any certificate of practice, either for himself or Berry Architecture, when he provided architectural services with respect to the Bunkhouse.

1.36 The misconduct in this case is similar to File 11.08. The architect in File 11.08 practised for a much longer period of time without a certificate of practice, so that aspect of File 11.08 is more serious. There was also a period during which the architect in File 11.08 practised before being registered with the AIBC. On that point, it is important to note that the outcome of File 11.08 included the imposition of a condition on the architect's certificate of practice.

1.37 While the certificate of practice issue is less serious than in File 11.08, Mr. Berry's case features an additional element of misuse of his seal by the application of a digital "jpeg" image. This misconduct is notable in its own right, as this undermines the importance and integrity of an architect's seal.

1.38 Additionally, File 11.08 features two mitigating factors that are not present in this case: The architect immediately acknowledged his misconduct, and the architect provided evidence that the misconduct occurred during a time of considerable personal hardship.

1.39 By contrast, in this case Mr. Berry variously asserted that it was in the best interest of the project for him to proceed without an AIBC certificate of practice, that the delay in obtaining one was the AIBC's fault, or that the requirements of the *Act* did not apply to the project because it was being completed under the National Building Code.

1.40 Overall, Mr. Berry's case is more serious than File 18.02. It is similar to File 11.08. In File 11.08, the more serious certificate of practice issue was responded to through the imposition of a condition on the certificate of practice. File 11.08 also had mitigating factors not present in Mr. Berry's case.

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

1.42 Mr. Berry 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. Berry 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 George Berry 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.