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:

PAUL GILES ARCHITECTURAL TECHNOLOGIST 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 Investigation Committee (the "Committee") conducted an investigation into a complaint about Paul Giles Architectural Technologist AIBC in relation to non-compliance with the AIBC's Continuing Education System ("CES") requirements for the period ending June 30, 2018.

1.3 Following its investigation, the Committee recommended that the matter proceed to a disciplinary inquiry for determination of whether Mr. Giles 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"), and council rules in AIBC Bulletin 80.

1.4 Mr. Giles chose to pursue a consensual resolution agreement.

B. Background – AIBC Continuing Education System

1.5 In 2001, members of the AIBC voted to adopt Bylaw 30.2, which became effective as of July 2002, and established the requirements for architects to undertake and report on continuing professional education.

1.6 AIBC Council thereafter formally adopted CES, which is administered by the AIBC's Professional Services department.

1.7 In June 2012, AIBC Council passed a rule requiring the Architectural Technologist, Building Designer and Residential Designer associate categories comply with the rules and guidelines for the CES.

1.8 The requirements for CES are formalized in the AIBC Bylaws and AIBC Bulletin 80: *Mandatory Continuing Education System* (CES). CES requirements for AIBC registrants follow a two-year reporting period which runs from July 1 to June 30 of the second following year.

1.9 This Consensual Resolution Agreement concerns the thirteenth CES reporting period, which ran from July 1, 2016, to June 30, 2018 (the "Thirteenth Reporting Period").

1.10 CES participants were required to earn and report 36 learning units ("LUs"), including a minimum of 16 "Core" LUs, by June 30, 2018. Each LU represents one hour of eligible educational activity.

1.11 CES participants who failed to earn and report the required LUs by the June 30, 2018 deadline were assessed an administrative fine mandated by AIBC Council. For the Thirteenth Reporting Period the fine amount for Architectural Technologists AIBC was $248.85.

1.12 CES participants who were non-compliant as of June 30, 2018 were given until September 30, 2018, to earn and report all outstanding LUs and to pay the council-imposed fine.

1.13 A complaint of unprofessional conduct was filed against CES participants who failed to both earn and report the required LUs and pay the council-imposed fine by September 30, 2018.

C. Paul Giles

1.14 Paul Giles was first registered as an architectural technologist with the AIBC on January 15, 2016, and has maintained his registration ever since.

1.15 Since Mr. Giles become registered in the second year of the Twelfth Reporting Period, he was given until the end of the Thirteenth Reporting Period to become CES compliant, in accordance with Rule 17 in AIBC Bulletin 80.[1] His CES Reporting Period was effectively longer than usual because he had from January 15, 2016 (rather than July 1, 2016) until June 30, 2018 to earn and record the required LUs.

D. The Complaint

1.16 In November 2018, the AIBC's Professional Services department submitted a complaint with respect to all CES participants who failed to both earn and report the required LUs and pay the council-imposed fine by September 30, 2018, as provided for in AIBC Bulletin 80. This included Mr. Giles.

1.17 The complaint was provided to Mr. Giles for his response, and the Committee initiated an investigation.

E. The Investigation/Agreed Facts

1.18 The investigation involved a review of the material provided by the AIBC's Professional Services department and the response submitted by Mr. Giles. The agreed facts in paragraphs 1.19 – 1.31 below are based on material reviewed during the investigation.

1.19 All AIBC registrants receive regular updates and reminders about approaching CES deadlines.

1.20 In particular, during the last year of the Thirteenth Reporting Period, the AIBC regularly communicated with CES participants regarding the approaching CES deadline.

1.21 As a new registrant, Mr. Giles received a personal reminder at the end June 2017.

1.22 Beginning in July 2017, monthly reminders were published on the AIBC's website and distributed through its newsletter, *AIBC Connected*. Additionally, targeted *AIBC Notices* were sent to all CES participants five months prior to the CES deadline, and again one month before the deadline.

1.23 As the deadline approached, additional personalized email messages were sent to all non-compliant CES participants, with a breakdown of their currently recorded LUs and their outstanding LUs. Messages were sent at regular intervals in March, June, August and September 2018.

[1] Bulletin 80 has since been revised and renumbered, and this rule is now Rule 18.

1.24 Mr. Giles did not obtain and report the requisite LUs (including 16 Core LUs) prior to the June 30, 2018 deadline.

1.25 Having missed the June 30, 2018 deadline, Mr. Giles was required to earn and report all outstanding LUs and pay the council-imposed fine by September 30, 2018.

1.26 Mr. Giles failed to become LU compliant or pay the council-imposed fine by the September 30 deadline. Following the passage of this deadline, a complaint was submitted by the AIBC's Professional Services Department.

1.27 On November 22, 2018, Mr. Giles became LU compliant for the Thirteenth Reporting Period.

1.28 On February 5, 2019, Mr. Giles paid the $248.85 council-imposed fine.

1.29 In response to the complaint, Mr. Giles initially contested the council-imposed fine and claimed that he had gone over and above the AIBC's CES requirements by completing over 200 hours of learning activities during the reporting period. As the investigation continued, Mr. Giles acknowledged that his LUs were not reported by the deadline and he paid the fine.

1.30 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.

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

F. Relevant Professional Standards

1.32 AIBC Bylaw 30.2 and council rules in Bulletin 80 are relevant to the complaint about Mr. Giles.

1.33 AIBC Bylaw 30.2 and commentary from the AIBC's Code of Ethics and Professional Conduct states:

> **Bylaw 30.2** **In order to better serve the public, and in keeping with the architect's declaration set out in Bylaw 9.0 and the obligation of the architect set out in Bylaw 30.1, an architect shall undertake continuing education and shall report on that continuing education to the Institute, in accordance with the rules for mandatory continuing education established by Council**.
>
> *Refer to Bulletin 80 for Council rules relating to compliance.*
>
> **It is important to note that while the word "architect" is used throughout the Bylaws and this Code for ease of reference, the Bylaws and this Code also apply to architectural firms, licensees and associates of the institute. The only exceptions occur where the nature of the Bylaw, council ruling and commentary – or the type of conduct at issue – may be specific to one or more type of AIBC registration category.*
>
> [AIBC Code of Ethics and Professional Conduct, page 3]

1.34 The relevant sections of AIBC Bulletin 80 with accompanying council rules state:

2.1.1 CES Participants are defined as architects and architectural technologists registered with the AIBC. All CES Participants must satisfy the requirements of the mandatory CES as per Bylaw 30.2. **Rule 1**

…

3.5.1 The minimum number of LUs that must be earned and reported by the end of each reporting period is 36, of which a minimum of 16 must be Core LUs. **Rule 11**

3.5.2 All LUs must be earned and reported by the deadline of the reporting period in which they are earned. **Rule 12**

…

6.2 A CES Participant who does not earn and report the required LUs to the AIBC in a reporting period, in accordance with these Rules, will be required to pay a Council-mandated fine to the AIBC, and to earn and report the required LUs by no later than September 30 after the end of the reporting period. **Rule 25**

6.3 Should a CES Participant's LUs remain incomplete and unreported, or the Council-mandated fine unpaid, beyond September 30, a complaint of unprofessional conduct against the member will be placed with the Director of Professional Conduct. **Rule 26**

2.0 ADMISSIONS

2.1 Mr. Giles acknowledges and admits that he contravened AIBC Bylaw 30.2 and the rules established by council in AIBC Bulletin 80 by failing to earn and report the requisite learning units and failing to pay the council-mandated fine by the September 30, 2018 deadline.

3.0 PENALTY AGREEMENT

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

3.1.1 A reprimand to be recorded against Paul Giles Architectural Technologist AIBC;

4.0 COSTS

4.1 Mr. Giles 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 against Mr. Giles is an acknowledgement of the AIBC's partial costs resulting from the consensual resolution process.

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 a manner that the AIBC deems fit in the public interest.

6.0 ACKNOWLEDGEMENT

This Consensual Resolution 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. Giles 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 Paul Giles Architectural Technologist 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

PAUL GILES ARCHITECTURAL TECHNOLOGIST AIBC

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

1.0 REASONS FOR PENALTY

1.1 Paul Giles 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.
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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 In providing this submission on penalty, the AIBC has given due consideration to the range of sanctions that have been imposed for similar conduct in the past. The parties submit that the penalty proposed 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 The AIBC's CES program, which has been in place since 2001, is a foundational professional practice expectation. Indeed, it is explicitly referenced on the application form that every person seeking registration as an architectural technologist must complete.

1.15 The importance of continuing education requirements in the regulated professions, and the need for compliance with them, was discussed by the Supreme Court of Canada in the case of *Green v. Law Society of Manitoba,* 2017 SCC 20.

1.16 In *Green,* a lawyer was challenging his suspension for non-compliance with the Law Society's mandatory continuing education requirements. He was unsuccessful. On behalf of the majority of the Court, Justice Wagner (as he then was) stated:

> The Law Society is required by statute to protect members of the public who seek to obtain legal services by establishing and enforcing educational standards for practising lawyers. CPD [continuing professional development] programs serve this public interest and enhance confidence in the legal profession by requiring lawyers to participate, on an ongoing basis, in activities that enhance their skills, integrity and professionalism. CPD programs have in fact become an essential aspect of professional education in Canada.

…

> To ensure that those standards have an effect, the Law Society must establish consequences for those who fail to adhere to them. As a practical matter, an unenforced educational standard is not a standard at all, but is merely aspirational

1.17 Similar reasoning applies to the AIBC and its CES program.

1.18 The AIBC's Professional Services Department devotes extensive time and effort to communicating with CES participants to promote compliance. A CES participant who was non-compliant during the Thirteenth Reporting Period would have received no less than **twenty** separate communications reminding them of the need to earn and report their LUs and pay the council-mandated fine.

1.19 CES has been a requirement for architectural technologists in British Columbia for seven years. The requirements are thoroughly communicated to all CES participants. It is foundational to the public's confidence in the profession, including the architectural technologist associate class. There is simply no excuse for non-compliance. For the public to have confidence in the profession, its registrants, and in the AIBC's ability to regulate the profession, timely and complete compliance is required.

1.20 Correspondingly, as stated in *Green,* non-compliance must have consequences. The AIBC, through the council rules established in Bulletin 80, has established a framework whereby the consequences escalate depending on the type of non-compliance. CES participants who fail to meet the June 30 deadline receive a fine and a three-month extension to achieve compliance. If either of those requirements is not fulfilled, a professional conduct investigation follows.

1.21 In this case, Mr. Giles did not report his continuing education prior to the deadline and therefore was not LU complaint at the end of the reporting period and was assessed a fine. Mr. Giles did not become LU compliant until November 22, 2018, and he did not make his fine payment until February 5, 2019.

1.22 By comparison to other cases of CES non-compliance, this misconduct is modest. Although Mr. Giles had earned the requisite LUs prior to the June 30 deadline, he failed to report them. Had Mr. Giles reported his LUs by the prescribed deadline he could have avoided a fine payment and the professional conduct and discipline process.

1.23 Each of the CES rules, including the reporting requirements, represents a clear standard for the profession. Mr. Giles' non-compliance, following numerous reminders and the expiration of a generous grace period, merits regulatory sanction.

(b) Character and professional conduct record of the respondent

1.24 Mr. Giles is 37 years old and this is his first CES reporting period.

1.25 Mr. Giles has no professional conduct record with the AIBC.

1.26 Mr. Giles status as a new CES participant and the fact that he has no professional conduct record are mitigating factors.

(c) Acknowledgement of the misconduct and remedial action

1.27 Mr. Giles had become LU complaint prior to receiving the professional conduct complaint. During the complaint process, Mr. Giles was cooperative and forthright in his communication. Mr. Giles has accepted responsibility for his failure to report his LUs as required.

1.28 Mr. Giles made his fine payment prior to the conclusion of the investigation.

1.29 By entering into this Agreement, Mr. Giles has acknowledged that he has committed a disciplinary violation. Importantly, he also took the steps to become compliant. These are mitigating factors.

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

1.30 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.

1.31 'Specific deterrence' means deterring the respondent from repeating the conduct in question. In this case, Mr. Giles and the AIBC are of the view that the combination of the administrative fine, the investigation and discipline process and a reprimand will help deter Mr. Giles from non-compliance with CES requirements in the future.

1.32 '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. General deterrence is important for CES files. The CES requirements apply to all architects and architectural technologists in BC. The CES rules are not mere suggestions. There is simply no excuse for non-compliance, and responding to non-compliance absorbs significant AIBC time and resources. The profession must understand that non-compliance will result in sanctions and that repeat non-compliance will result in increasingly serious sanctions.

1.33 The public has the right to expect that architectural technologist registered with the AIBC will know and comply with all applicable professional standards, and demonstrate that they have undertaken educational programming to remain current in accordance with established deadlines and procedures. This includes the requirement to report on their continuing education so that the AIBC can verify compliance. 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.

1.34 While no two files are identical, the penalties for non-compliance with CES requirements have been relatively consistent in past reporting periods, with the severity of the penalty increasing with the number of breaches of Bylaw 30.2. Typical penalties for breaches of Bylaw 30.2 have been:

- First breach: reprimand (see, for example, AIBC file 17.01, a grouped file of non-compliant CES participants from the Twelfth Reporting Period, where members who were not CES compliant for the first time received a reprimand);

- Second breach: reprimand and fine (see, for example, AIBC file 12.09, a grouped file of non-compliant CES participants from the Tenth Reporting Period, where a member who was not CES compliant for the second time received a reprimand and a $1,000 fine); and
- Third breach: reprimand and increased fine (see, for example, AIBC file 15.03, a grouped file of non-compliant CES participants from the Eleventh Reporting Period, where a member who was not CES compliant for the third time received a reprimand and an increased fine in the amount of $1,500).

1.35 It is also important to understand that the outcome of past cases does not alone determine the outcome in this case. In this case, the fact that this was Mr. Giles first CES reporting period, and the fact that he had actually completed the required educational programming prior to the deadline are important mitigating factors.

1.36 Mr. Giles and the AIBC submit that, based on the penalty review 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 all 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. Giles 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 Paul Giles Architectural Technologist 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.