

ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA
IN THE MATTER OF BRIAN GEE ARCHITECT AIBC AND GL ARCHITECTURE
REASONS FOR DECISION

Committee members:	John Scott, Architect AIBC (Chair); Sean F. Rodrigues Architect AIBC; Barbara Brink, Lieutenant Governor Appointee to AIBC Council
Hearing Date:	June 27-29, 2022
Counsel for the Architectural Institute of British Columbia:	David McKnight and Menka Sull
Counsel for Brian Gee Architect AIBC and GL Architecture:	self-represented; did not attend hearing
Counsel for Disciplinary Committee:	Donald B. Lebens

Introduction

[1] Further to an order of the Council of the Architectural Institute of British Columbia (the “AIBC” or the “Institute”) under ss. 46 and 48 of the *Architects Act*, RSBC 1996, c. 17 (the “Act”), and a Notice of Inquiry issued on January 19, 2022 (the “Notice of Inquiry”) against Brian Gee Architect AIBC and GL Architecture (“GLA”) under sections 37.30 and 37.32 of the Bylaws of the AIBC (the “Bylaws”), the disciplinary committee of the AIBC (the “Committee”) conducted a hearing for an inquiry into a complaint against Mr. Gee and GLA (the “Hearing”).

[2] Effective February 10, 2023, the Act was repealed and the AIBC was continued under the *Professional Governance Act*, SBC 2018, c. 47 (the “PGA”). Under section 89 of the PGA and further to *Architects Regulation*, B.C. Reg. 33/2023, the profession of architecture was designated for the purposes of the PGA. Following on that designation, section 7(2) of the *Architects Regulation*, deems the Committee to be a discipline committee for the Institute on and after the designation for the purpose of continuing the Hearing. The Committee issues these reasons further to that continuing authority.

Background

[3] The Notice of Inquiry arose from a complaint made to the AIBC by Ms. Amy Chang on July 6, 2020 (the “Complaint”). As is described in more detail below, Ms. Chang was involved in management of the Lulu Island Wine Group (“Lulu”), a company that she said had contracted with Mr. Gee and GLA for architectural services further to the construction of buildings for a winery at 2550 Boucherie Road in West Kelowna BC (the “Project”). The West Kelowna winery was to operate under the name Grizzli Winery. In the Complaint, Ms. Chang alleged that, during their work on the Project, Mr. Gee and GLA had breached a number of the Bylaws. The Complaint was investigated by the AIBC, resulting in the AIBC Council ordering the Institute’s chief executive officer to issue the Notice of Inquiry.

[4] The Notice of Inquiry set out seven allegations against Mr. Gee and GLA. A number of the allegations refer to Mr. David Lin who worked with GLA but, as is described below, was not an architect. During closing submissions at the Hearing, legal counsel for the AIBC advised that the AIBC was revising three of the seven allegations to remove certain aspects of the conduct asserted in the Notice of Inquiry. With those revisions (which are identified in blackline below),¹ the allegations against Mr. Gee and GLA considered in these reasons are as follows:

1. Between April 2015 and July 2017, Mr. Gee offered to provide and did provide architectural services for a project located at 2550 Boucherie Road, West Kelowna, BC (the “Project”) through GL Architecture when neither Mr. Gee nor the firm held a certificate of practice, contrary to sections 27(2), 28, and 63(2) of the Act and Bylaw 33.3.
2. Mr. Gee practiced architecture in partnership with David Lin, who is not an architect, under the firm name GL Architecture, contrary to section 65(1) of the Act and AIBC Bylaw 33.3 and council ruling (a).
3. The client-architect agreement (with attached Service Fee and Proposal) and the service and fee proposal dated April 25, 2015, for the Project, ~~as well as the fee proposal dated July 13, 2015 for a project known as the Agri Tourism Hotel at the same location,~~ were entered into by David Lin on behalf of GL Architecture and did not contain the required clauses pertaining to professional liability insurance and

¹ In addition to the revisions made by the AIBC noted in blackline, in restating the allegations of conduct from the Notice of Inquiry here and below, the Committee has replaced the word “you” with either “Mr. Gee” or “he” for reasons of readability.

compliance with AIBC Bylaws, contrary to Bylaw 34.10 and council rulings (d), (e) and (f) and Bylaw 34.1 and council ruling (b).

4. Mr. Gee failed to responsibly exercise professional discretion and judgment and failed to act in accordance with professional standards for certification of construction performance, when he did not notify the bank of the Project's change orders and when he prepared and processed progress claims provided by the client for certification in order for the bank to release funds, including a certification that was dated the same day the client agreement for the Project was signed, contrary to Bylaws 28.2 and 34.5.
5. Mr. Gee participated in his client's and the Project owner's scheme to withhold change orders from the bank and instead processed them separately, which mislead the bank as to the true value of the cost of the Project, ~~when the bank had a reasonable expectation that they were acting in the best interest of the lender and the owner,~~ contrary to Bylaws 30.1, ~~32.3, 33.1~~ and 34.5.
6. Mr. Gee failed to complete field reviews with reasonable care and competence by failing to identify concerns with construction, such as issues with the building envelope, roof and flashing, which were subsequently detected by other professionals, contrary to Bylaw 30.1.
7. Mr. Gee failed to provide adequate supervision, direction, and control of the architectural services provided on the Project. In addition to being the signatory on the client-architect agreement (with attached Service Fee and Proposal), David Lin submitted invoices on GLA's letterhead that were rendered payable to him personally, ~~maintained control of many Project documents, and was responsible for all communications with the client on the Project,~~ contrary to Bylaw 34.1 and council ruling (b).

[5] The AIBC called three witnesses at the Hearing: Ms Chang; Joe Minten, Architect AIBC; and Jenelyn Torres. Mr. Minten was the AIBC's lead investigator for the Complaint. Ms. Torres is the Institute's Director of Registration and Licensing. A summary of the evidence of each of these witnesses is set out below.

[6] Counsel for the AIBC also provided oral and written submissions and legal authorities to the Committee.

[7] The Committee's decision as set out in these reasons considers the evidence adduced at the Hearing, the oral and written submissions of AIBC's counsel and the legal authorities provided.

Adjournment Application and Non-attendance

[8] As noted above, the AIBC issued the Notice of Inquiry on January 19, 2022. In addition to setting out the allegations against Mr. Gee and GLA, the Notice of Inquiry

advised that a hearing into those allegations was to proceed on June 27 to 30, 2022 starting at 9:30 in the morning. As is explained further below, on February 25, 2022, the Notice of Inquiry was personally served on Mr. Gee who accepted service on his own behalf and on behalf of GLA.

[9] Further to a request from counsel for the AIBC, Menka Sull, a pre-hearing conference took place before the Committee on May 13, 2022 by way of Microsoft Teams (the “PHC”). The purpose of the PHC was to consider requests for orders for exchange of documents and lists of witnesses leading up to the Hearing.

[10] As is detailed in reasons issued by the Committee on May 15, 2022, Mr. Gee was not present online at the 11:00 a.m. start time for the PHC, so the Committee decided to wait 10 minutes before beginning. When the PHC began at 11:10 a.m., Mr. Gee was still not in attendance. He did not join the PHC before it ended at approximately 11:30 a.m.

[11] When the PHC began, Ms. Sull provided submissions on the efforts made by the AIBC and by her following the issuing of the Notice of Inquiry to communicate with Mr. Gee about the Hearing and the PHC. Those submissions detailed the extensive efforts made to schedule the PHC in advance of the dates set for the Hearing. Based on these submissions, the Committee determined that it was appropriate to proceed with the PHC and to hear from Ms. Sull on the orders sought, despite Mr. Gee not being present.

[12] In its May 15, 2022 reasons following on the PHC (the “PHC Reasons”), the Committee provided the AIBC and Mr. Gee with directions on the further exchange of documents and witness lists in advance of the Hearing. The Committee determined the deadlines in those directions on the basis that the Hearing was proceeding on June 27 to 30, 2022, as indicated in the Notice of Inquiry. Legal counsel for the Committee, Donald Lebans, emailed the PHC Reasons to the AIBC counsel, Menka Sull, and to Mr. Gee. Ms. Sull acknowledged receipt of the reasons as requested. Mr. Gee did not acknowledge receipt of the reasons, but he did send a reply to Mr. Lebans’ email, commenting on another topic. By sending this reply email, Mr. Gee confirmed that he had received Mr. Lebans’ email and the attached PHC reasons.

[13] On June 24, 2022, Mr. Gee wrote a letter to Ms. Sull, informing her and the Committee that

... upon advice from my lawyer, I will not be attending the hearing scheduled for Monday June 27, 2022, on the basis that the Hearing is predicated on the fact that the complainant, Amy Chang, has violated the terms of the Mutual Release Agreement signed on May 8, 2022 and the supreme court ruling registered on July 5th, 2019, and that she has withheld this information from the AIBC in order to misled [sic] them into conducting the investigation against GL Architecture. [emphasis in original]

[14] Mr. Gee also asserted in his June 24, 2022 letter that Mr. Minten had conducted the inspection of the Complaint with contempt and bias, because he had not forwarded Mr. Gee's questions for Ms. Chang to Ms. Chang, and had not interviewed other persons from Lulu that were involved with the Project. Mr. Gee requested that the Hearing "be remanded for 30 days" so that his lawyer would have time to "review this matter in order to consider our next course of action that may include legal actions against the complainant lying outside the jurisdiction of the AIBC".

[15] On the instructions of the Committee, Mr. Lebens wrote back to Mr. Gee on June 26, 2022. Mr. Lebens advised Mr. Gee that, for the Committee to properly consider his request for an adjournment of the Hearing, it needed his lawyer to write to it confirming a retainer to act for him and explaining the need for the adjournment. Mr. Lebens also advised Mr. Gee that the Committee would "wait until 1:00 p.m. tomorrow, June 27, 2022 to receive that letter" (emphasis in original). Mr. Lebens explained that, after that time, if no letter had been received from Mr. Gee's lawyer, the Committee intended to convene the Hearing and anticipated receiving submissions from counsel for the AIBC on proceeding with the Hearing as scheduled. Mr. Lebens cautioned that "should the Disciplinary Committee decide to proceed with the Hearing, it reserves the right to do so immediately following its decision, whether you are present or not (in accordance with section 48(4) of the *Architects Act*), and without further notice to you."

[16] The Hearing commenced as originally scheduled at 9:30 a.m. on June 27, 2022. Neither Mr. Gee nor a lawyer representing Mr. Gee were present at that time. There was a discussion about the status of the communications with Mr. Gee, and counsel for the AIBC outlined AIBC's submissions on why the Hearing should proceed that day as

planned, whether Mr. Gee was present or not. The Hearing was then adjourned until 1:00 p.m. in accordance with Mr. Lebans' letter.

[17] At 11:35 a.m. that same day, Mr. Gee sent an email to Mr. Lebans that provided as follows:

Hi Don

At this point in time, I am representing myself for the hearing.

You can take this email as my request for a 30 days adjournment for the hearing.

Regards

Brian Gee, Architect, AIBC

[18] The Hearing reconvened at 1:00 pm. Again, Mr. Gee was not present. The Committee heard submissions from counsel for the AIBC on the issues of Mr. Gee's non-attendance and his request for a 30-day adjournment of the Hearing. Included with those submissions, counsel for the AIBC entered on the record two Affidavits of Service sworn by Mr. Christopher Paul Johnson and dated March 14, 2022 (the "Johnson Affidavits"). Mr. Johnson, a process server, deposes in the Johnson Affidavits that he personally served Mr. Gee with copies of the Notice of Inquiry on the morning of February 25, 2022 at 2451 East 24 Avenue, Vancouver. In one of the Johnson Affidavits, Mr. Johnson deposes that, at the time of being served, Mr. Gee admitted to being authorized to accept service on behalf of himself. In the other of the Johnson Affidavits, Mr. Johnson deposes that Mr. Gee also admitted to being authorized to accept service on behalf of GLA.

[19] Having considered the submission of the AIBC counsel, the Committee issued the following decision on June 27, 2022:

The disciplinary committee has considered the request for a 30-day adjournment made by the registrant, Brian Gee, in a letter sent to Ms. Sull, counsel for the AIBC, late on the afternoon of June 24, 2022, and reiterated in an email sent to Mr. Lebans, counsel, for the disciplinary hearing shortly before noon today. The committee is of the view that Mr. Gee's request does not provide a sufficient basis for adjourning the hearing of this matter, and therefore, the committee has decided to proceed with the hearing according to the schedule as set out in the notice of inquiry. The committee intends to deliver reasons for its decision regarding this adjournment application in conjunction with the

reasons it will be issuing further to section 50 of the *Architects Act* after the close of the hearing.

[20] The Committee's reasons for this decision now follow.

[21] When, under section 46 Act, the AIBC Council orders an inquiry into a complaint or into the conduct, capability or fitness of a member, architectural firm, licensee or associate, the AIBC must deliver notice of the inquiry hearing to the member, architectural firm, licensee or associate that is the subject of the inquiry. The requirements for notice are found in section 48 of the Act:

Hearing

- 48**
- (1) At least 2 weeks before the commencement of the hearing, a notice of the inquiry, the time and place of the hearing of the disciplinary committee and the subject matter of the inquiry must be delivered to the complainant and the member, architectural firm, licensee or associate that is the subject of the inquiry.
 - (2) The testimony of witnesses must be taken under oath.
 - (3) There is a right to cross examine witnesses and to call other witnesses.
 - (4) If the complainant or the person whose conduct is being examined does not attend, the committee, on proof by affidavit or otherwise of personal delivery of the notice of hearing, may proceed with the inquiry without that person being present and make its decision without further notice.
 - (5) The evidence given at an inquiry hearing must be taken down and transcribed.

[22] The Johnson Affidavits satisfy the requirements in section 48(1) and (4) of the Act regarding delivery of notice of the Hearing. They constitute proof by affidavit that notice of the Hearing in the form of the Notice of Inquiry was personally delivered to Mr. Gee and GLA on February 25, 2022. This is four months prior to the commencement of the Hearing.

[23] At the same time, the Committee notes the extensive correspondence from counsel for the AIBC to Mr. Gee regarding preparations for the Hearing, including the scheduling of the PHC. Further, in his letter dated June 24, 2022, Mr. Gee expressly acknowledged his understanding that the Hearing was scheduled to start on June 27,

2022, but then said he would not be attending. There can be no doubt that Mr. Gee was fully aware of the date of the Hearing, but made a conscious decision not to attend.

[24] Mr. Gee was also made aware that the Hearing date was peremptory, in the sense that the Committee could proceed with the Hearing even if he was not present. A statement to this effect was included in the Notice of Inquiry. Counsel for the AIBC advised in their submissions that they had reiterated this message in correspondence sent to Mr. Gee after he communicated his intention not to attend. It was certainly repeated in Mr. Lebars June 26, 2022 letter which advised that, in accordance with section 48(4) of the Act, the Committee could proceed with the Hearing whether Mr. Gee was present or not.

[25] The Committee considered the reasons for not attending the Hearing articulated by Mr. Gee in his June 24, 2022 letter. In the Committee's view, those reasons do not represent a reasonable basis for his decision not to attend. As a matter of public policy, the Committee does not accept that any release Ms. Chang might have signed further to the resolution of a civil proceeding could properly bar the AIBC from continuing with its regulatory action against Mr. Gee as a member of the Institute. With that said, if Mr. Gee wanted to argue this position, sections 47 and 48 of the Act provide for him to be able to submit evidence and call witnesses at the Hearing. The same is obviously true of Mr. Gee's stated concerns about the fairness and completeness of the AIBC's investigation.

[26] Mr. Gee also first sought an adjournment of the Hearing in the same letter, which was sent on the afternoon of Friday, June 24, 2022 when the Hearing was scheduled to commence three days later, on the morning of Monday, June 27, 2022. Mr. Gee's request for an adjournment was based on the need for his lawyer "to be given time to review this matter in order to consider our next course of action that may include legal actions against the complainant lying outside the jurisdiction of the AIBC". Implicit in this request is that Mr. Gee had a lawyer who was assisting him with this matter. If that was so, it is not clear why Mr. Gee was communicating directly with counsel for the AIBC

and the Committee. It is also not clear why, four months after service of the Notice of Inquiry, that lawyer might have required “time to review this matter”.

[27] In fact, the request did not actually state that Mr. Gee and his lawyer needed time to prepare for the Hearing. Rather, as noted, the request was for time for Mr. Gee and his lawyer “to consider our next course of action that may include legal actions against the complainant lying outside the jurisdiction of the AIBC”. The Committee does not see such consideration as relevant to the ability of Mr. Gee to proceed with the Hearing. On its face, the contemplation of action in another venue in relation to issues lying outside the jurisdiction of the AIBC is not a valid basis for delaying the commencement of the Hearing.

[28] Counsel for the AIBC advised the Committee that they had requested the name of Mr. Gee’s lawyer on numerous occasions. The Committee made the same request in Mr. Lebars’ June 26, 2022 letter. As set out in paragraph 17 above, Mr. Gee’s response to the Committee’s request to identify his lawyer was to advise that he was representing himself for the Hearing. Once Mr. Gee acknowledged that he was not represented by a lawyer, the only basis he had articulated for requesting an adjournment was no longer applicable.

[29] Mr. Gee did reiterate his request for a 30-day adjournment in his June 27 email. However, he did not provide any new explanation as to why that adjournment might be necessary. Of course, If Mr. Gee wanted to argue for an adjournment, he could have attended before the Committee to do so. However, as discussed above, he chose not to attend the Hearing, and did not provide a reasonable basis for this decision.

[30] Adjournment is a matter of discretion that must be considered judicially (*Sharma v. Veterinary Medical Assn. (British Columbia)*, 2008 BCSC 240 at para. 73 citing *Stolove v. College of Physicians & Surgeons (Ontario)* (1998), 30 O.A.C. 236 (Div. Ct.)). Given the notice of the Hearing date that AIBC provided him, Mr. Gee had ample time to prepare for the Hearing and to retain counsel if he wished. He made his application for an adjournment of the Hearing very late in the day, and without any supporting reasoning, or at least, any reasoning that was rationally connected to the need for an

adjournment. The Committee has the right to govern its own proceedings, and there was not sufficient reason for it to exercise its discretion in favour of an adjournment.

[31] In light of the above, the Committee decided not to grant an adjournment and to proceed with the Hearing on June 27, 2022 despite Mr. Gee not being present.

Burden of Proof

[32] The AIBC bears the burden of proof and must prove its case on a “balance of probabilities”. The leading authority, *F.H. v. McDougall*, 2008 SCC 53, states that the “evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.”

[33] In addition, the Committee notes that section 67 of the Act includes the following provisions relation to proof at a hearing before the Committee”

Proof in proceedings

- 67** (1) In a prosecution, it is sufficient proof of an offence under this Act if it is proved that the defendant has committed a single act of unlawful practice or has committed on one occasion any act prohibited by this Act.
- (2) In a proceeding or prosecution under this Act, if it is shown that a name, title, designation or descriptive term has been used indicating that a person has held himself or herself out, or has been held out by another person, as being an architect or registered under this Act or willing to perform architectural services, it is not necessary to prove that the name, title, designation or descriptive term was used by the defendant or with the defendant's knowledge, but the onus is on the defendant to establish that the name, title, designation or descriptive term was not used by the defendant or with the defendant's knowledge.

Evidence

[34] As noted above, the AIBC called three witnesses at the Hearing: Amy Chang; Joe Minten; and Jenelyn Torres. Each of these witnesses gave evidence under oath and were subject to questioning by the Committee.

Amy Chang

[35] Ms. Chang testified as to her involvement with Mr. Gee and GLA in relation to the Project, including introducing into evidence and reviewing documents from Lulu’s files for the Project. The evidence of Ms. Chang included the following:

- (a) Lulu is a family business which operates Grizzli Winery, and Ms. Chang and her parents are the directors of Lulu.
- (b) Lulu previously operated under the name Blossom Winery Limited.
- (c) The Project consisted of a winery, restaurant and farmhouse. Lulu was also planning to construct an agri-tourism hotel; however, it decided not to proceed with the hotel construction.
- (d) Lulu entered into a CCDC-2 contract with a company called CPOS System Corp. ("CPOS") for construction of the Project on February 7, 2015. The CCDC-2 contract stipulated that Lulu, then operating under the name Blossom Winery, was the owner, CPOS was the contractor and Michael Chiang, an employee of CPOS, was the consultant. The contract price, excluding taxes, was \$8,500,000.
- (e) Lulu, still operating under the name Blossom Winery, entered into a "Service Fee and Proposal" with GLA dated April 25, 2015. The document was signed by Ms. Chang's father, John Chang, on behalf of Lulu and by David Lin on behalf of GLA.
- (f) Ms. Chang was not initially involved in the Project and it was being overseen by her parents.
- (g) On or around March 23, 2016, Ms. Chang's parents were detained in China and she began overseeing the Project on behalf of Lulu. Ms. Chang's parents were not able to return from China until 2021.
- (h) As of March 23, 2016, Ms. Chang had just graduated from university and had no experience in construction.
- (i) Ms. Chang told Alex Chiang, the owner of CPOS, about her parents' detention in China, and he told her that he would "handle it with [GLA] from there. While Ms. Chang did not advise anyone from GLA about her parents' detention, she is certain that GLA knew about it.

- (j) When Ms. Chang located a copy of the signed April 25, 2015 Service Fee and Proposal, she understood that GLA was responsible for providing the described services.
- (k) Ms. Chang initially believed that David Lin was the architect for the Project because Alex Chiang of CPOS referred her to Mr. Lin if she needed anything from the architects or had questions for the architects. She also noted that Mr. Lin was signing documents for GLA. Ms. Chang was not aware of Mr. Gee's involvement until later on.
- (l) For the first few months of her involvement with the Project, Ms. Chang was dealing mainly with Mr. Lin. In her experience, and to her knowledge, it was Mr. Lin who was conducting the onsite visits. Mr. Lin was also attending meetings with the city, after the city had recommended that Lulu have its architect and other consultants present.
- (m) Ms. Chang only came to understand that Mr. Gee was an architect and Mr. Lin was not, when, likely in the fall of 2016, she noted the title used by Mr. Gee when signing his name and that Mr. Lin did not use the same title.
- (n) Lulu had taken out a loan with Farm Credit Canada ("FCC") to pay for the Project. GLA provided certificates of payment with progress claims to FCC. Ms. Chang reviewed the certificates when received. Ms. Chang assumed that those certificates were accurate since GLA was signing off on them knowing they were being provided to FCC further to the release funds to pay for the Project.
- (o) Ms. Chang was not aware of any agreement between CPOS and Lulu to not include change orders on payment certificates and progress payments and instead to deal with them separately. However, GLA advised her that such an agreement existed and GLA would not be reviewing them.
- (p) GLA prepared a change order dated March 4, 2016. This change order, with the heading "Change Order #1" at the top of the page, was signed as

approved by John Chang on behalf of Lulu and by CPOS. This was the only change order prepared by GLA that was signed by Lulu and CPOS.

- (q) In May 2016, CPOS provided Ms. Chang with a binder of change orders totalling \$620,439.41 and requested payment in that amount. Thereafter, CPOS continued to send further change orders to Ms. Chang.
- (r) Ms. Chang did not know what to do with the change order payment requests received from CPOS and advised FCC of the change orders in the summer of 2016. She also consulted with her uncle who advised her to pay some amounts in order to appease CPOS.
- (s) Lulu paid CPOS two installments for the change orders in July 2016 totalling approximately \$706,000,
- (t) Ms. Chang eventually discussed the change orders with GLA in late 2016 or early 2017 and they advised her that reviewing change orders “was not part of their scope” of services and they would have to charge extra for reviewing change orders. At that time, she did not realize that GLA had agreed to review change orders in the April 25, 2015 Service Fee and Proposal.
- (u) On March 1, 2017, Mr. Gee emailed Ms. Chang GLA’s Certificate of Payment #17 which enclosed CPOS’s Progress Claim No.17. In that Progress Claim CPOS represented that the Project was 100% complete.
- (v) Ms. Chang took issue with the assertion that the Project was 100% complete as there were aspects of the Project that were not finished, including the landscaping and fixing the winery roofing to stop it from leaking. In addition, there were a number of items included in the architectural drawings that were missing from the Project for which GLA was claiming that change orders were required.
- (w) Ms. Chang only realized there was a concern because of the assertion that the Project was 100% complete when she could see that was not the case.

- (x) Ms. Chang requested a meeting with CPOS and GLA with GLA acting as the “mediator”; however, Ms. Chang felt as though GLA was siding with CPOS as Mr. Lin suggested that Lulu pay all outstanding change orders in order to get CPOS to complete the work.
- (y) On March 15, 2017, Mr. Lin attended the Project to review deficiencies, and on or about April 3, 2017, Mr. Gee sent Ms. Chang a Deficiency List containing 58 items. A note included with the list advised that “there may be other deficiency items coming from the owner and other consultants”, and indeed, the then manager of Grizzli Winery, Edwin Chu, was able to identify other deficiencies that were not include in the GLA list.
- (z) On or about April 4, 2017, Ms. Chang learned from Mr. Lin that GLA took over as the building envelope consultant for the Project after Aqua-Coast Engineering (“Aqua Coast”), the prior building envelope consultant quit the project “after [a] dispute with CPOS”. Ms. Chang was advised by a representative of Aqua-Coast that Aqua-Coast quit the Project due to dissatisfaction with how the roof of the Project was being completed.
- (aa) On April 12, 2017, Mr. Gee sent Mr. Chu and Ms. Chang an email advising that he would not be able to review change orders to determine their validity, and suggesting that Lulu identify the change orders with which it disagreed. Mr. Gee wrote that he had been advised by CPOS that the change order balance was \$117,000. CPOS would later claim for over \$1,000,000 in change orders.
- (bb) On May 3, 2017, Mr. Gee sent Ms. Chang a new contract for services to help resolve the dispute between Lulu and CPOS, including for “reviewing and interpreting in an impartial and unbiased manner the scope of work relating to the CCDC2 contract, the contract documents and the accompanying outstanding change orders.” Ms. Chang did not want to enter into a further contract with GLA because she did not want to pay GLA additional fees for work that, in her view, it was already supposed to be doing.

- (cc) To Ms. Chang's knowledge, GLA was paid for its all its work on the Project. GLA never advised her that any of its invoices were outstanding.
- (dd) Lulu retained Pierre Gallant of the engineering firm of Morrison Hershfield to assist in the dispute with CPOS and get the Project back on track. He prepared a Memorandum of Understanding in July 2017; however, that Memorandum was never signed because CPOS and GLA wanted to make changes to the document.
- (ee) Lulu eventually terminated the contract with CPOS and its relationship with GLA, and CPOS filed a lawsuit against Lulu claiming over \$1,000,000 in damages. Lulu counterclaimed against GLA.
- (ff) The lawsuits were resolved, and Ms. Chang subsequently filed the Complaint.
- (gg) Lulu ended up having to redo the roof for the winery. It retained a new contractor and building envelope consultant to complete that work.
- (hh) Lulu spent over \$1,000,000 to fix the various Project deficiencies, including around \$500,000 to redo the roof.

Joe Minten

[36] Mr. Minten testified as to his involvement in the AIBC's investigation of the Complaint, including introducing into evidence and reviewing documents that were obtained by the AIBC in the course of that investigation. The evidence of Mr. Minten included the following:

- (a) Mr. Minten has been a registered architect with the AIBC for over 20 years. He was an investigator with the AIBC for approximately six years and was the lead investigator for the Complaint.
- (b) This file was the most complex file Mr. Minten had worked on, and the Investigation Committee reviewed numerous documents including correspondence received from the complainant and Mr. Gee. The

Investigation Committee also conducted interviews with both Ms. Chang and Mr. Gee and met on several occasions to review the file.

- (c) Mr. Gee attended two interviews; however, he was sometimes “evasive” and “uncooperative”.
- (d) During the two interviews with Mr. Gee, Mr. Gee gave the impression that he and Mr. Lin were in partnership and worked “hand-in-hand”.
- (e) Mr. Minten was aware that Mr. Lin was not a registered architect. Through online searches, he found that Mr. Lin was involved with an entity known as David Lin Design Studio. The address for David Lin Design Studio (916 Finlay Street, White Rock) was the same as the address used in the letterhead on documents from GLA found in the AIBC investigation file.
- (f) In the course of its investigation, the AIBC obtained a signed copy of an AIBC Standard Short Form Agreement between CPOS as client and GLA as architect dated April 25, 2015. Appended to this Short Form Agreement was a copy of a “Service Fee and Proposal” between CPOS and GLA also dated April 25, 2015. The Service Fee and Proposal appeared to have been signed by Alex Chiang on behalf of CPOS and David Lin on behalf of GLA.
- (g) Mr. Minten was concerned that GLA entered into agreements with both CPOS and Lulu as this appeared to be a conflict of interest. It was also significant for the investigation that both Service Fee and Proposals were signed by Mr. Lin instead of Mr. Gee.
- (h) As part of the investigation, Mr. Minten reviewed 16 certificates of payment signed by GLA, noting in particular that
 - (i) certificate #1 is dated April 25, 2015, the same day on which GLA entered into the Service Fee and Proposal with Lulu and the AIBC Standard Short Form Agreement with CPOS, and certificate #2 is dated April 29, 2015, only four days later,

- (ii) together certificate #1 and certificate #2 (dated April 29, 2015) certified payments to CPOS totalling over \$600,000, even though GLA did not complete a field review report confirming the status of the Project until May 21, 2015,
 - (iii) certificate #2 stated that the payment to CPOS was approved “without audit by the architect”.
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- (i) Mr. Minten and the Investigation Committee reviewed eight GLA field review reports for the Project completed between May 21, 2015 and May 27, 2016. The documentation received by the Investigation Committee suggested that someone from GLA might have conducted two additional site visits at the Project, but that no field review reports were prepared.
 - (j) Mr. Minten would have expected to see at least one field review per month “at the absolute minimum”. This is necessary to prepare certificates of payment for monthly invoicing from the contractor. GLA prepared a total of 17 certificates of payment respecting the Project, and Mr. Minten would have expected to see a field review for each of those certificates of payment.
 - (k) Except for, perhaps, one instance, the timing of the GLA field review reports did not correspond with GLA certificates of payment, in the sense that a field review was prepared in advance of preparing a certificate of payment. In many cases, it appeared that GLA issued certificates of payment without a corresponding field review report.
 - (l) The eight field reviews from GLA included in the Investigation Committee file and were very “minimalist”. They included “very loose observations” of the work being done on the site of the Project, but did not address site issues, conversations with consultants or action items.
 - (m) In or about the spring of 2016, although GLA had been alerted to concerns raised by Aqua Coast, the then building envelope consultant, about

deficiencies with the building envelope that were not being addressed, GLA's field reviews did not include any mention of those problems.

- (n) On March 1, 2017, Mr. Gee emailed Ms. Chang a progress claim for the Project prepared by CPOS that indicated 100% of the work on the Project was complete. In the email attaching that progress claim, Mr. Gee wrote simply that "with this draw, the contractor is claiming 100% of the contract price excluding the cost of any change orders." At the time Mr. Gee emailed this last progress claim to Ms. Chang, GLA had not issued a field review report since May 27, 2016. When Lulu received the last progress claim, it brought to the attention of GLA that there were deficiencies with the Project.
- (o) On April 3, 2017, GLA sent a letter to Lulu (addressed to Grizzli Winery) listing deficiencies noted on a walkthrough of the Project that occurred on March 15, 2017. The letter listed 58 deficiencies, including that the roof was leaking and life safety issues that were required to be completed before Lulu could obtain an occupancy permit.
- (p) On June 15, 2017, another architect, Todd Dust of Thinkspace Architecture Planning Interior Design, wrote to Ms. Chang advising that in the course of repairing the winery roof leaks, the new contractor discovered deficiencies in the construction of the building envelope that were consistent with the problems Aqua Coast had previously noted but had not yet been fixed.
- (q) Although GLA represented to Lulu that one service it was providing was the review of change orders and represented to FCC that it would be reviewing the progress claims, Mr. Gee advised the Investigation Committee he did not include change orders in the certificates of payment because of an agreement between Lulu and CPOS.
- (r) All invoices issued by GLA for the Project, with the exception of the first invoice, were payable to David Lin Design Studio.

Jenelyn Torres

[37] Ms. Torres testified as to the information found in the AIBC register pertaining to Mr. Gee and GLA. She introduced into evidence and reviewed printouts of the register databases for Mr. Gee and GLA, as well as documents from the paper files for Mr. Gee and GLA that the AIBC keeps as part of its register. The evidence of Ms. Torres included the following:

- (a) Mr. Gee was initially registered with the AIBC on September 9, 1996, and then, after a period of when he was not registered, reinstated as an architect on February 6, 2001. He has been registered continuously since his reinstatement in 2001.
- (b) GLA is a sole proprietorship with Mr. Gee being the owner.
- (c) GLA was granted a certificate of practice on July 4, 2017. Mr. Gee applied to obtain the certificate of practice for GLA in May 2017, but spoke to staff about not having the certificate issued until after July 1, 2017 to take advantage of a prorated annual fee for that year.
- (d) Mr. Lin has never been registered as an architect with the AIBC. He was registered as an intern architect at some point, but that status was terminated in April 1989.

Allegation 1 – Practicing Architecture without a Certificate of Practice

[38] The first allegation in the Notice of Inquiry is as follows:

Between April 2015 and July 2017, Mr. Gee offered to provide and did provide architectural services for a project located at 2550 Boucherie Road, West Kelowna, BC ... through GL Architecture when neither Mr. Gee nor the firm held a certificate of practice, contrary to sections 27(2), 28, and 63(2) of the Act and Bylaw 33.3.

The Legal Framework

[39] The first allegation cites three sections of the Act: sections 27, 28 and 63. Those sections provide as follows:

Certificate of practice

- 27** (1) The council may issue a certificate of practice to an architectural firm, member or licensee.
- (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.

Prohibition against corporation carrying on business

- 28** A corporation that has words as part of its name to indicate that it practises architecture must not carry on any business unless it holds a valid certificate of practice.

Further prohibitions

- 63** (1) Subject to this Act, a person not registered as a member or as an architectural firm must not use or be held out under the title "architect" or any similar title or description or use, and must not advertise or be held out under any name, title, addition or description implying, or likely to lead the public to infer, that a registration under this Act applies.
- (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.
- (3) A person not licensed under this Act must not be held out or implied to be licensed under this Act.

[40] Further to the interpretation of these three sections, section 1 of the Act includes a definition of "architectural firm" and section 59 of the Act defines the practice of architecture:

Definitions

- 1** In this Act:

. . . .

"architectural firm" means a sole proprietorship, partnership or corporation entered on the register of the institute;

Practice of architecture

- 59** A person is deemed to practise the profession of architecture within the meaning of this Act if the person
- (a) is engaged in the planning or supervision of the erection or alteration of buildings for the use or occupancy of persons other than himself or herself, or
 - (b) by advertisement, sign or statement of any kind, written or oral, alleges or implies that the person is an architect or that the person is, or holds himself or herself out as being, qualified, able or willing to do any act set out in this section.

[41] The Institute also relies on Bylaw 33.3² in the first allegation. Bylaw 33.3 provides as follows:

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

Analysis and Findings

[42] The AIBC may issue certificates of practice to registered architects, architectural firms and licensees (architects who have been granted a temporary licence to practice in BC in collaboration with a registered architect). Under section 27(2) of the Act, a person must not practice the profession of architecture or even offer to practice architecture unless the person holds a current certificate of practice or practices through an architectural firm that holds a current certificate of practice.

[43] As noted above, in her testimony before the Committee, Ms. Torres reviewed the records from the AIBC's register database and paper files pertaining to the registration of Mr. Gee and GLA. Those records show that Mr. Gee was first registered as an architect with the AIBC in 1996. At some point he gave up his registration, but then was reinstated on February 16, 2001. Mr. Gee has been continuously registered since that date. However, over this period of registration, the AIBC has never issued a certificate of practice directly to him.

² Counsel for the AIBC provided the Committee with four editions of the Bylaws that were in effect during the events at issue in this matter: the editions effective June 15, 2015, January 17, 2016, August 26, 2016 and January 3, 2017. None of the provisions of the Bylaws cited and relied on by the Committee in these reasons changed over the course of these editions.

[44] On the other hand, the records from the register database and paper file for GLA show that it was first registered as an architectural firm on July 4, 2017. GLA is identified in the database as a sole proprietorship with Mr. Gee as the owner. According to these records, GLA was also first issued a certificate of practice on July 4, 2017. Ms. Torres gave evidence that Mr. Gee applied to obtain the certificate of practice for GLA in May 2017, but spoke to staff about not having the certificate issued until after July 1, 2017 to take advantage of a prorated annual fee for that year.

[45] It was noted during the Hearing that Mr. Gee was employed by Burnaby based architectural firm Buttjes Architecture Inc. between 2006 and 2020. While this overlaps with the time that Mr. Gee and GLA were involved with the Project, there is no evidence that Mr. Gee was practicing through Buttjes Architecture in relation to the Project or that Buttjes Architecture had any involvement with the Project. The only reference to Buttjes Architecture that the Committee identified in the Project documents identified at the Hearing was an email sent on August 4, 2016 by David Lin from the GLA email address, glarchitecture.inc@gmail.com, to Alex Chiang at CPOS that was blind copied to Mr. Gee at the address brian@buttjesarchitecture.com. Otherwise, the documentation for the Project refers only to Mr. Gee and GLA. In particular, as is discussed below, this includes the contract and retainer documents for the Project.

[46] As regards the Project, therefore, the evidence is that Mr. Gee has never held a certificate of practice, and, that GLA did not have a certificate of practice until July 4, 2017. Indeed, prior to that date, GLA was not registered as an architectural firm, and therefore, could not be issued a certificate of practice under section 27(1) of the Act. Of course, as Ms. Torres also testified, Mr. Lin has never been registered as an architect with the AIBC, and therefore, he has never been qualified to obtain a certificate of practice.

[47] Despite Mr. Gee only having a certificate of practice through GLA after July 4, 2017, the testimony of Ms. Chang and Mr. Minten and the documents introduced into evidence through those witnesses, reveals that he had been both offering to practice

and practicing architecture in relation to the Project starting in 2015 and carrying through to the spring of 2017.

[48] Ms. Chang gave evidence that, after she became involved in the Project in late March 2016, following the arrest and detention of her parents in China, she understood that GLA was providing architectural services for the Project and that the architects were Mr. Gee and David Lin. It was only later, that Ms. Chang came to understand that Mr. Lin was not actually an architect.

[49] Prior to Ms. Chang becoming involved in the Project, GLA completed a Service Fee and Proposal with Lulu on April 25, 2015 that was signed by Ms. Chang's father on behalf of Lulu, then operating under the name Blossom Winery Ltd., and by Mr. Lin on behalf of GLA. The April 25, 2015 Service Fee and Proposal between Lulu and GLA set out both the scope of services that GLA would provide in furtherance of the Project and the "architectural fee" that Lulu was to pay to GLA for the performance of those services. The services to be provided by GLA further to the Service Fee and Proposal included a number of activities that fall within the practice of architecture as defined in section 59 of the Act:

- 1.1 The architect will carry out field reviews and attend site meetings during construction in order to determine if the work is progressing in general conformity with the contract documents. Sanford Design Group with Michael Barley Architect shall remain as the architect on record for the design and 'issue for construction' set of architectural drawings (dated March 24, 2019).
- 1.2 Review of IFC set and provide suggestions/changes and provide revised schedule A and B as required for field reviews to the municipal authorities.
- 1.3 Review construction schedule and establish central channel for communication and distribution during the construction phases.
- 1.4 Assist in resolving contractual construction issues during construction.
- 1.5 Co-ordinate with other consultant's field reviews and site meetings.
- 1.6 Provide site review reports to owner, contractor and city officials as required.
- 1.7 Review shop drawings, sample material, and other submittals.
- 1.8 Advising and reviewing contemplated changes and issuing change orders, change directives and site instructions as required.
- 1.9 Prepare a list of deficiencies prior to substantial occupancy.

- 1.10 Obtaining consultant's schedule letters and collating all documentations as required for occupancy.
- 1.11 Prepare Certificate of Completion in accordance with the builder's lien Act.
- 1.12 Issue architectural schedule letters C-A & C-B as required to Municipal Authorities for occupancy.
- 1.13 Provide an as-built record drawing set for an additional fee if required.

[50] Ms. Chang testified that when she found and reviewed the April 25, 2015 Service Fee and Proposal signed by Lulu and GLA, it reaffirmed her understanding that GLA was responsible for providing the listed architectural services for the Project.

[51] Under the terms of the April 25, 2016 Service Fee and Proposal signed by Lulu and GLA, Lulu was to pay GLA a fee of \$43,200 for the listed services with additional fees and disbursements to be paid for such things as any changes to drawings, and travel costs for site visits. Ms. Chang testified that, to her knowledge, GLA was paid for its all its work on the Project. GLA never advised her that any of its invoices were outstanding.

[52] At the same time, GLA and CPOS entered into an AIBC Short Form Agreement for the Project dated April 25, 2015 with CPOS described as the client and GLA as the architect. It appears that Alex Chiang signed this agreement on behalf of CPOS and Mr. Gee signed it on behalf of GLA. As regards the services to be performed by GLA as architect, the Short Form Agreement attached a Service Fee and Proposal also dated April 25, 2015 that was signed by Alex Chiang on behalf of CPOS and Mr. Lin on behalf of GLA. The terms of the Service Fee and Proposal signed by CPOS and GLA are identical to the terms of the Service Fee and Proposal signed by Lulu and GLA. In particular, in both Service Fee and Proposals, GLA was retained to provide the same scope of services and was to be paid a fee of \$43,200 with the same provision for additional fees for listed tasks and activities.

[53] The Committee will comment further on these contractual arrangements in its discussion of the third allegation below.³ For present purposes, however, the

³ See in particular paragraphs 86 to 90.

significance of these contracts is as evidence that in April 2015, at a time when neither Mr. Gee nor GLA held a certificate of practice, Mr. Gee was offering to both Lulu and CPOS to practice architecture – indeed, he was entering into agreements for that purpose.

[54] Further, the evidence is that, prior to July 4, 2017, Mr. Gee also practiced the profession of architecture as defined in section 59 of the Act by engaging in the supervision of the erection or alteration of the Grizzli Winery buildings – buildings that were clearly for the use or occupancy of Lulu and not Mr. Gee – and by holding out himself in writing as being, qualified, able and willing to do that work.

[55] On April 25, 2015 GLA provided the lender for the Project, FCC, with a “Performa-Architects Certification” confirming both that an attached project analysis “substantially reflect[ed] the status of the [P]roject” and that the Project was “being constructed in a workmanlike manner, with materials of acceptable quality and are in general conformity to the plans and specifications for which the specific building/development permit was issued”. Mr. Gee signed this “Performa-Architects Certification” and applied his personal professional seal to it. Attached to the “Performa-Architects Certification” was the first of the certificates of payment that GLA submitted to Lulu. During the course of its involvement with the Project, GLA submitted 17 certificates of payment to Lulu. In each case, Mr. Gee signed these certificates of payment and applied his personal professional seal.

[56] In addition, on May 25, 2015, Mr. Gee wrote to FCC confirming that he had entered into an agreement with Lulu “to oversee the construction phase of the ... [P]roject”. In that letter, he also stated that he had reviewed the design drawings prepared by the prior architect for the Project, Sanford Design Group, and provided the opinion that the budget for the Project “appears reasonable”. Finally, Mr. Gee advised FCC that

As the registered co-ordinating professional, I will be reviewing the monthly progress claims issued by the contractor and will be ensuring that all documentation as required to obtain the occupancy permit is completed. Please call me if you need further clarification.

[57] GLA also provided Lulu with 8 Field Review reports and a letter dated April 3, 2017 setting out Project deficiencies. Each of these reports and the letter indicate that they were prepared by Mr. Gee. The Field Review reports document observations made on site visits to the Project on May 21, July 24, October 4 and November 27, 2015 and February 25, April 1, April 28 and May 27, 2016.

[58] All of the reports include photographs taken during the site visits. They also all include the following paragraph

Field Reviews constitute applying such selective sampling procedures at the Project site as the Architect, in his sole professional discretion, considers necessary to enable him to ascertain whether the Contractor is carrying out the Work in general conformity with the Documents for the Project

[59] The April 3, 2017 letter also includes photographs taken during a March 15, 2017 site visit that document the listed deficiencies. In addition, in the letter, Mr. Gee makes a recommendation to Lulu on the amount of a holdback for outstanding landscaping work, as well as a recommendation to withhold the final progress claim from CPOS.

[60] GLA issued 12 invoices for the work it was doing. Copies of these invoices were received by the AIBC in course of its investigation, and these were identified by Mr. Minten in the course of his testimony. Each of the invoices includes a basic charge of \$3,600 plus G.S.T. Some of the invoices include additional charges for site visits and photocopying. The total of the basic charges is \$43,200 which is the amount of the fee for GLA's services that was indicated in both the Service Fee and Proposal signed by Lulu and GLA and the Service Fee and Proposal signed by CPOS and GLA. The charges for site visits indicate that GLA made 10 visits to the Project site.

[61] In the Committee's view, the evidence introduced at the Hearing is sufficiently clear, convincing and cogent to establish on a balance of probabilities that,

- (a) starting in 2015 and carrying through to the spring of 2017, Mr. Gee was contracting to provide and then providing architectural services for the Project, and

- (b) at that time, he did not have a certificate of practice, either directly or through GLA.

As such, contrary to section 27(2) of the Act, Mr. Gee was offering to practise and was practising the profession of architecture when he was not a holder of a certificate of practice or practising through an architectural firm that was a holder of a certificate of practice.

[62] The evidence also establishes to the same standard proof that Mr. Gee was holding out or implying that he or GLA was the holder of a certificate of practice contrary to section 63(2). Under the Act, to offer to practise architecture or to engage in the practice of architecture, a person must be a registered architect with a certificate of practice or must be practising through an architectural firm with a certificate of practice. As a registered architect, Mr. Gee is expected to have read and to understand the Act, Bylaws and Code, and to abide by those. By contracting to provide architectural services for the Project and then providing those services, Mr. Gee was holding out or implying that he was qualified to practise architecture, including that he held a certificate of practice, either personally or through GLA, when that was not the case.

[63] Counsel for the AIBC also submitted that Mr. Gee's use of his professional seal constituted holding out or implying that he or GLA held a certificate of practice, pointing to two prior AIBC consent resolution agreements in which there were admissions that the use of an architect's seal in the same circumstances (i.e. when the architect was not practicing with or under a certificate of practice) constituted a breach of section 63(2) of the Act.⁴ The Committee agrees. Under sections 77 and 78 of the Act, only a practising architect may apply a professional seal. The AIBC's Bulletin 61 describes the legal foundation for the use of a professional seal in the following terms:

An architect's seal is a representation to the public – including clients, other consultants, approval-granting entities such as local governments and authorities having jurisdiction, contractors, consultants and sub-trades – that the architect who applied it not only takes responsibility for the document, but that the document was prepared by that architect or under his or her direct supervision, direction or control. The seal is a solemn confirmation that a qualified, registered architect is sufficiently aware of the relevant

⁴ See *George Berry Architect AIBC (Re)* and *Lubomir (Larry) Podhara Architect AIBC (Re)*.

considerations that went into the drawing or other instrument of service such that, in the architect's opinion, the document is ready for publication and intended to be relied upon and used by others for the purposes intended.

[64] As noted above, Mr. Gee placed his professional seal on an April 25, 2015 "Performa-Architects Certification" sent to the Project lender FCC which certified the accuracy of an attached project analysis both from the perspective of the status of the Project and the quality of the construction work that had been completed. Mr. Gee also placed his seal on the 17 certificates of payment provided to Lulu. In so doing, Mr. Gee created the risk that a reader of these documents would assume that he or GLA held a certificate of practice when they did not. As such, Mr. Gee's use of the seal was a breach of section 63(2) of the Act.

[65] The AIBC has also alleged a breach of section 28 of the Act. However, in the Committee's view, section 28 does not apply in this case. Section 28 prohibits "[a] corporation that has words as part of its name to indicate that it practises architecture" from carrying on any business "unless it holds a valid certificate of practice". While the name of GLA includes the word "architecture", and while the evidence is that Mr. Gee was practising architecture at a time when neither he nor GLA held a certificate of practice, GLA was, and continues to be, a sole proprietorship. It is not, therefore, a corporation, and therefore, cannot be subject to the prohibition in section 28.

[66] Finally, given that Bylaw 33.3 requires compliance with the Act, Mr. Gee's breach of sections 27(2) and 63(2) of the Act, necessarily entails a breach of Bylaw 33.3.

Allegation 2

[67] The second allegation in the Notice of Inquiry is as follows:

Mr. Gee practiced architecture in partnership with David Lin, who is not an architect, under firm name GLA, contrary to section 65(1) of the Act and AIBC Bylaw 33.3 and council ruling (a).

Legal Framework

[68] The second allegation cites section 65 the Act which provides as follows:

Partnership with non-architect

- 65** (1) A member, architectural firm or licensee must not practise architecture in partnership with a person not entitled to practise architecture, or make an agreement or arrangement or do an act that will enable the person to practise architecture contrary to this Act.
- (2) A person registered or licensed under this Act may enter into a partnership with a professional engineer registered under the laws of British Columbia for the practice of the person's profession.

[69] Further to the interpretation of section 65, the term “member” is synonymous with the term “architect” in the Act. The terms are defined together in section 1 as follows:

Definitions

- 1** In this Act:

“architect” or **“member”** means an individual who is a member of the institute;

[70] In addition, the AIBC again relies on Bylaw 33.3 of the Bylaws. The text of Bylaw 33.3 is set out above at paragraph 40. The Institute also cites council ruling (a) to Bylaw 33.3. The council rulings are found in the AIBC’s Code of Ethics and Professional Conduct (the “Code”)⁵. As described in the Code, council rulings “are binding ‘rules’ that identify and elaborate on the Bylaws’ fundamental statements”. The council rulings are accompanied by “advisory commentary” which “is included throughout the Code in an effort to provide practical, updated information to readers.” Council ruling (a) to Bylaw 33.3 and the associated commentary (in italics) provide as follows:

- (a) An architect must not directly or indirectly condone or encourage contravention of the Architects Act, Bylaws and council rulings by others.

Refer to Bulletin 65, Part B.

Analysis and Findings

[71] Section 65(1) of the Act includes two prohibitions. The first prohibition specifically forbids architects, architectural firms and licensees from practicing in partnership with a person who is not entitled to practice architecture. The second prohibition is more

⁵ Throughout these reasons, the Committee cites to the April 17, 2015 edition of the Code which was in effect during the events at issue in this matter.

general. It precludes architects, architectural firms and licensees from making an agreement or arrangement or doing an act that would enable a person to practise architecture contrary to the Act. In the Committee's view, these prohibitions are separate and distinct. Under the first prohibition, it is a specific kind of relationship with a person who is not entitled to practice architecture that is at issue. Under the second prohibition, the concern is conduct that enables a person who is not entitled to practice architecture to practise contrary to the Act.

[72] In this allegation of the Notice of Inquiry, the Institute has only pleaded a breach of the first prohibition under section 65(1), namely that "Mr. Gee practiced architecture in partnership with Mr. Lin, who is not an architect". The Institute has not alleged that Mr. Gee made an agreement or arrangement or did an act that enabled Mr. Lin to practice architecture contrary to the Act.

[73] The Committee has decided the evidence is not sufficient to prove that Mr. Gee practiced in partnership with Mr. Lin.

[74] In support of this allegation, Counsel for the AIBC relied on the evidence that

- (a) Mr. Lin signed two Service Fee Proposals on behalf of GLA,
- (b) GLA's address is on its letterhead is noted as 916 Finlay Street in White Rock which was the address of David Lin Design Studio,
- (c) both Mr. Gee and Mr. Lin used the same email address to correspond with clients,
- (d) Ms. Chang believed that Mr. Lin was the architect for the Project based on her interactions with him, the fact that CPOS had a pre-existing relationship with him and the fact that he often attended the Project site without Mr. Gee,
- (e) the landscape architect was also under the impression that Mr. Lin was the architect when he emailed Mr. Lin at his personal email address about landscaping issues,

- (f) On March 15, 2017, Mr. Lin attended the Project without Mr. Gee to review deficiencies in order to create a deficiency list, and
- (g) Mr. Lin invoiced for the Project and payments were to be made payable to David Lin Studio.

[75] The Committee agrees that these facts point to the confusion around Mr. Lin's qualification and status with respect to the Project, and the conduct of Mr. Gee which fostered that confusion. However, the allegation here is specifically that Mr. Gee "practiced architecture in partnership" with Mr. Lin contrary to section 65(1) of the Act, not just that they practiced in a manner that might suggest a partnership or that that Mr. Gee made an agreement or arrangement or did an act that enabled Mr. Lin to practice architecture contrary to the Act.

[76] In the Committee's view, the term "partnership" as used in section 65(1) refers to a formal, legal partnership. The wording of section 65 supports this interpretation. First, under subsection (1), if an agreement, arrangement or act that created the appearance of a partnership was sufficient to constitute "practis[ing] architecture in partnership with a person not entitled to practise architecture", then the specific prohibition against that form of business relationship would be redundant. As a matter of statutory interpretation, therefore, the first part of subsection (1) must prohibit something other than just "an agreement or arrangement or do an act that will enable the person to practise architecture contrary to [the] Act". Further, subsection (2) of section 65, creates an exception to the partnership prohibition in subsection (1), permitting a member, architectural firm or licensee to "enter into a partnership with a professional engineer registered under the laws of British Columbia". The use of the phrase "enter into a partnership" reinforces the conclusion that what is referred to in both subsections of section 65 is a formal, legal partnership. Still further, the Committee points to the use of the term "partnership" elsewhere in the Act, where it is compared and contrasted with the other forms of business relationships through which members of the AIBC might practice architecture. For example, section 26 which allows the Council to "permit the registration of a sole proprietorship, partnership or corporation as an architectural firm".

[77] While Mr. Gee and Mr. Lin were working together on the Project under the name GLA, there is no evidence that Mr. Gee and Mr. Lin entered into a formal partnership agreement, whether under the name GLA or otherwise. To the contrary, the evidence is that GLA was and remains a sole proprietorship with Mr. Gee as its sole proprietor.

[78] Beyond that, the Committee did not receive submissions on what might be required to establish that a partnership existed between Mr. Gee and Mr. Lin outside of a formal partnership agreement. However, in the Committee's opinion, the evidence is not sufficiently clear and convincing for it to conclude on a balance of probabilities that they were practicing in a partnership as alleged.

[79] Finally, the Committee does not see that the reference to Bylaw 33.3 and council ruling (a) to Bylaw 33.3 in this allegation assists the AIBC. While, as noted above, Bylaw 33.3 is breached when an architect has failed to comply with the Act, the Bylaws or a council ruling, in this case, the Committee has decided that Mr. Gee did not fail to comply with section 65(1) of the Act in the manner pleaded. By the same token, although council ruling (a) broadly requires architects to "not directly or indirectly condone or encourage contravention of the Architects Act, Bylaws and council rulings by others", the contravention of the Act at issue in this allegation is practising architecture in partnership with a person not entitled to practise architecture, which the Committee has found not to have been proven.

Allegation 3

[80] As revised by the AIBC at the Hearing, the third allegation in the Notice of Inquiry provides as follows:

The client-architect agreement (with attached Service Fee and Proposal) and the service and fee proposal dated April 25, 2015, for the Project, were entered into by David Lin on behalf of GLA and did not contain the required clauses pertaining to professional liability insurance and compliance with AIBC Bylaws, contrary to Bylaw 34.10 and council rulings (e) and (f) and Bylaw 34.1 and council ruling (b).

Legal Framework

[81] For this allegation, the AIBC relies on two Bylaws and council rulings associated with those Bylaws: Bylaw 34.1 and council ruling (b) and Bylaw 34.10 and council rulings (e) and (f).

[82] Bylaw 34.1 provides as follows:

34.1 Each office maintained for offering architectural service to the public shall have an architect who has direct knowledge and supervisory control of the services.

[83] Council ruling (b) for Bylaw 34.1 and the associated advisory commentary are as follows:

- (b) Proposals of service; agreements; assurances; certifications; official submissions to authorities having jurisdiction; and other representations on behalf of an architectural firm or certificate of practice holder must be made by an architect.

[84] Bylaw 34.10 provides as follows:

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.

[85] Council rulings (e) and (f) for Bylaw 34.10 and the associated advisory commentary are as follows:

- (e) Before entering into an agreement to provide architectural services, a Certificate of Practice holder must notify the client in writing whether or not professional liability insurance is held and under what terms.

Refer to Bulletin 66. For associates, the insurance notification requirement is found in council ruling (j), below.

- (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 Bylaw 34.16; the Tariff of Fees for Architectural Services; and the Code of Ethics."

Refer to Bulletin 67.

Rules (c) through (f) above reinforce client awareness of an architect's professional obligations along with the need to articulate mutual understandings before commencing services... that being very much a matter of consumer protection as well as being of benefit to the architect.

Analysis and Findings

[86] GLA's contractual arrangements for the Project are puzzling. On April 25, 2015, GLA and Lulu signed a Service Fee and Proposal relating to the Project in which GLA is identified as the architect and Lulu as the client. On the same day, GLA and CPOS signed another Service Fee and Proposal relating to the Project with GLA again identified as the architect but with CPOS identified as the client. Both of these Service Fee and Proposals list the exact same "Scope of Services". Both provide for GLA to be paid the same fees for those services under the same terms for payment. The "General Conditions" in both Service Fee and Proposals are also identical, including the following terms:

- 3.1 The client will retain and pay for all the other consultants' services as required for them to complete their field services and issue their letters of assurances.
- 3.2 The client shall pay all outstanding fees owing to Sanford and the architect Michael D. Barley for services rendered to date as required per AIBC bylaw.
- 3.3 The client shall obtain permission from Sanford design to provide us architectural drawings in CAD format and the following documents: the building envelope report, the soils report, and the building code report. Other documents may also be requested as necessary for the administration of the project.
- 3.4 The client shall be responsible for all tendering services including the provision of specifications, preparation of tendering documents, reviewing prices, and the awarding of contracts to sub-trades.
- 3.5 The client shall be the payment certifier and shall be responsible for reviewing all claims and issuing payment based on the subcontractors work.

It is unclear to the Committee how the two different parties identified as "clients" in these overlapping Service Fee and Proposals were supposed to be responsible for these terms, or how they both were going to satisfy them, at the same time.

[87] Further complicating these arrangements, GLA also entered into an AIBC Short Form Agreement for the Project with CPOS on April 25, 2015. In the paragraph of that Short Form Agreement where space is provided for the parties to write in what "the Architect's services consist of", someone has typed "see attached service fee and proposal" and the Service Fee and Proposal signed by GLA and CPOS on April 25, 2015 is attached.

[88] An unsigned copy of that same Short Form Agreement was included together with the Service Fee and Proposal signed by GLA and Lulu in one tab of the Book of Documents provided to Committee for the Hearing. However, while Ms. Chang identified the Service Fee and Proposal signed by GLA and Lulu and confirmed that it had been included in Lulu's files for the Project, she had never seen the unsigned Short Form Agreement. Mr. Minten was also shown the two documents as they appeared together in the Book of Documents. While Mr. Minten recognized the documents from the AIBC's investigation file, he did not provide any evidence as to how they might be related or why they appeared together. As such, the Committee is left not knowing what the relationship is between these documents. Importantly, however, based on Ms. Chang's evidence, the Committee does know that both documents were not found in Lulu's files. Lulu only had a copy of the Service Fee and Proposal that it signed with GLA on April 25, 2015.

[89] It was based on the Service Fee and Proposal signed by GLA and Lulu on April 25, 2015 that Ms. Chang understood GLA had contracted to provide architectural services to Lulu in respect of the Project. Mr. Gee confirmed that Lulu was his client in two documents sent to the FCC. First, Mr. Gee sent FCC a copy of a document entitled "Progress Draw No. 1" that was dated April 25, 2015 and that named the client as "Blossom Winery Ltd". Subsequently, Mr. Gee sent FCC a letter on May 25, 2015, stating that he had "entered into an agreement with the Blossom Winery to oversee the construction phase of the ... [P]roject".

[90] Specific to the conduct pleaded in this allegation from the Notice of Inquiry, both of the April 25, 2015 Service Fee and Proposals were signed on behalf of GLA by Mr. Lin, who was not then, and has never been, an AIBC registered architect. Under Bylaw 34.1, it is an architect who must have "direct knowledge and supervisory control" of architectural services offered to the public. More precisely, under council ruling (b) to Bylaw 34.1, the important documentation relating to architectural services, including in particular, "[p]roposals of service" and "agreements" must be made by an architect.

[91] Bylaw 34.10 and council rulings (e) and (f) under Bylaw 34.10 set out requirements relevant to a retainer for architectural services. Council ruling (e) requires that, before entering into an agreement for that purpose, a certificate of practice holder (whether an architect or architectural firm) must provide written notice to the prospective client as to whether or not the certificate of practice holder has professional liability insurance, and if so, what the terms of that insurance are. On the other hand, council ruling (f) provides that each proposal for architectural services and each contract between an architect and a client relating to the provision of such services must contain a statement indicating that the proposal or contract

is in compliance with the AIBC Bylaws, including especially (but not limited to) Bylaw 28: Professional Engagement and Bylaw 34.16; the Tariff of Fees for Architectural Services; and the Code of Ethics.

[92] Again, both of the Service Fee and Proposals that GLA signed on April 25, 2015 did not include written notice as to whether Mr. Gee or GLA held professional liability insurance. They also did not include the compliance statement required under council ruling (f).

[93] There is, however, an important distinction to be drawn between these two Service Fee and Proposals. Ms. Chang has testified that the Service Fee and Proposal that GLA signed with Lulu was the only document in Lulu's files pertaining to its retainer of GLA to provide architectural services. On the other hand, the Service Fee and Proposal signed by GLA and CPOS was attached to and expressly referenced in the AIBC Short Form Agreement for the Project that GLA also executed with CPOS on April 25, 2015. While, the Short Form Agreement with CPOS, like the Service Fee and Proposals, did not provide any information on professional liability insurance, it did include the compliance statement required under council ruling (f), and it was signed by Mr. Gee.

[94] Based on this evidence, the Committee concludes that the Service Fee and Proposal that GLA signed with Lulu on April 25, 2015 was in breach of Bylaw 34.1, council ruling (b) of Bylaw 34.1 and council rulings (e) and (f) of Bylaw 34.10. However, the Committee does not draw the same conclusion in relation to the Service Fee and Proposal that GLA entered into with CPOS on the same date.

[95] With Mr. Lin having signed the Lulu Service Fee and Proposal there is no indication that Mr. Gee, the only architect at GLA, had “direct knowledge [of] and supervisory control” over that retainer as required under Bylaw 34.1. Also, as the Lulu Service Fee and Proposal is the only document Lulu received relating to its retainer of GLA, the fact it did not include the written insurance notice and compliance statement required under council rulings (e) and (f) of Bylaw 34.10 means those were not communicated to Lulu.

[96] Further, as noted in relation to Allegation 1, at the time that Mr. Lin signed the Service and Fee Proposal with Lulu on April 25, 2015, neither Mr. Gee nor GLA held a certificate of practice. As such, there was no certificate of practice holder who could have provided Lulu with written notice as to the existence of professional liability insurance and the terms of that insurance as required under council ruling (e) of Bylaw 34.10. In the Committee’s view this is important as it is a certificate of practice holder – whether architect or architectural firm – that is required to obtain and maintain professional liability insurance which provides coverage for the practice of architecture under the architect or through the firm. In fact, the Committee is unsure how Mr. Gee and GLA would have obtained professional liability insurance as they were not certificate of practice holders.

[97] By contrast, the CPOS Service Fee and Proposal and the Short Form Agreement with CPOS were expressly linked and were executed on the same date. As such, Mr. Gee’s signature on the Short Form Agreement with CPOS demonstrates his direct knowledge of and supervisory control over the retainer with CPOS and the services that, as set out in the CPOS Service and Fee Proposal, GLA was to provide to CPOS further to its retainer. The Committee deems this arrangement sufficient to satisfy council ruling (b) of Bylaw 34.1. For the same reason, the Committee finds that the presence in the Short Form Agreement of the compliance statement required under council ruling (f) of Bylaw 34.10 addresses its absence in the CPOS Service Fee and Proposal.

[98] The same reasoning does not apply in respect of council ruling (e) of Bylaw 34.10. Both the CPOS Service Fee and Proposal and the Short Form Agreement do not include written notice of whether Mr. Gee or GLA had professional liability insurance. So, the linking of these documents does not address the absence of the insurance notice in the CPOS Service Fee and Proposal. Further, as noted above, given that neither Mr. Gee nor GLA held a certificate of practice on April 25, 2015, neither of them were in the position to be able to provide the professional liability insurance notice required under council ruling (e) of Bylaw 34.10.

[99] As such, except as regards the application of Bylaw 34.1 and council ruling (f) of Bylaw 34.10 to the Service Fee and Proposal and Short Form Agreement signed by GLA and CPOS on April 25, 2015, the Committee finds this allegation is proved to the requisite standard.

Allegation 4

[100] The fourth allegation in the Notice of Inquiry is as follows:

Mr. Gee failed to responsibly exercise professional discretion and judgment and failed to act in accordance with professional standards for certification of construction performance, when he did not notify the bank of the Project's change orders and when he prepared and processed progress claims provided by the client for certification in order for the bank to release funds, including a certification that was dated the same day the client agreement for the Project was signed, contrary to Bylaws 28.2 and 34.5.

Legal Framework

[101] The AIBC is alleging a breach of Bylaw 28.2 and Bylaw 34.5.

[102] Bylaw 28.2 provides as follows:

28.2 Certification as to construction performance and as to payment therefor requires such general review of the work as the Architect deems necessary.

[103] Bylaw 34.5 provides as follows:

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.

Analysis and Findings

[104] In the Service Fee and Proposal that GLA and Lulu signed on April 25, 2015, Mr. Gee and GLA committed to providing a number of architectural services, including “[a]dvising & reviewing contemplated changes & issuing change orders, change directives and site instructions as required”. Subsequently, Mr. Gee wrote to FCC on May 25, 2015, advising that he had entered into an agreement with Lulu “to oversee the construction phase of the ... [P]roject” and that “[a]s the registered co-ordinating professional, I will be reviewing the monthly progress claims issued by the contractor.”

[105] Over the course of their involvement with the Project, Mr. Gee and GLA issued 17 payment certificates. The first two of these payment certificates were attached to letters that GLA sent directly to FCC on April 25 and 29, 2015. These letters were signed by Mr. Gee. Thereafter, GLA attached the payment certificates to letters sent to Lulu (under the name Blossom Winery). The first letter that GLA sent to FCC attaching a payment certificate and all of the letters sent to Lulu, included the following statement:

We confirm, having reviewed builder supplied documentation on [date of review] and certify that the percentage of completion in each category of (hard costs) “work in place” detailed, in the attached project analysis, substantially reflects the status of the project to date.

We also confirm that the building/development is being constructed in a workmanlike manner, with materials of acceptable quality and are in general conformity to the plans and specifications for which the building/development permit was issued.

The second letter sent to FCC on April 25, 2015 provided simply that GLA had “verified the percentage of work and recommend[ed] payment as claimed.” The last of the 17 payment certificates was issued by Mr. Gee and GLA and sent to Lulu on February 19, 2017.

[106] The correspondence Mr. Gee and GLA sent to FCC demonstrates that Mr. Gee was aware of FCC’s role as a lender in respect of the Project. Further, having sent two payment certificates directly to FCC, Mr. Gee understood that that the payment certificates were relevant to the loan arrangements between Lulu and FCC. On that basis, Mr. Gee would have also understood that the payment certificates GLA sent to Lulu were being forwarded to FCC. Ms. Chang’s evidence was FCC was relying on

GLA's certification to double-check that the work CPOS claimed was completed was in fact completed before it released funds from the loan for Lulu to pay CPOS.

[107] At the same time, Mr. Gee knew that CPOS was claiming for change orders further to its work on the Project. At the end of May 2015, GLA prepared a "Contemplated Change Order" relating to the electrical service for the Project. In a response to the Complaint that Mr. Gee provided to the AIBC, Mr. Gee acknowledged that GLA was prepared to write up change orders, but CPOS advised GLA that Lulu did not want to sign those. According to Mr. Gee, there was an arrangement between Lulu and CPOS to deal with change orders between themselves. As such, GLA did not issue change orders or document them in any way in the payment certificates. GLA did this despite Mr. Gee's acknowledgement that the processing of change orders would alter the stipulated cost of the Project every time a progress claim was issued by CPOS, and that would have implications for the loan issued by FCC. Mr. Minten described the significance of change orders to the contract price and the lender's knowledge of that price as follows:

... change orders will define both the cost of that proposed change, be that either a credit or an extra, and it could also define a portion of the time that may have to be added to the contract time. So both contract, cost and time would be associated with the change order and thereby of course be reflected in the certificate of payment as well to the lender.

.... In whatever circumstance, be it a credit or an extra, it's going to change the contract amount, and you'll recall in this case the original cost of construction was 8.5 million, so a change order would either increase or decrease that amount.

[108] In her testimony, Ms. Chang denied Mr. Gee's suggestion that there was an arrangement between Lulu and CPOS regarding change orders. What she described was an agreement between her father and Alex Chiang providing that "...after construction if they earned from it, they would share the profits, and if they lost from it, they would share the negatives". Moreover, it would appear GLA did prepare change orders for the Project. Ms. Chang identified a "Change Order #1" on GLA letterhead dated March 4, 2016 that was signed by her father on behalf of Lulu before he was detained in China. She also identified a "Change Order#2" on GLA letterhead dated July

26, 2016. "Change Order #2" was never signed, but was apparently prepared by Mr. Lin.

[109] In its submissions, the AIBC argued that any agreement between Lulu and CPOS did not change Mr. Gee's professional obligations as a registered architect. The Committee agrees, particularly in light of the representations Mr. Gee made to FCC concerning the certificates of payment. In this case, the value of the accumulated change orders was significant. On May 26, 2016, approximately one year after GLA decided not to document change orders in its payment certificates, CPOS issued an invoice to Lulu for change orders totaling \$620,439.51. According to Ms. Chang, by the time Lulu's relationship with CPOS ended, CPOS was claiming over \$1,000,000 in change orders.

[110] Despite the value of these change orders, Mr. Gee's knowledge of their significance to FCC, and the representations he made in his April 25, April 29 and May 25, 2015 letters to FCC, none of the 17 payment certificates issued by Mr. Gee and GLA between April 25, 2015 and February 19, 2017 revealed the existence of any change orders.

[111] Also of concern to the Committee is the manner in which Mr. Gee and GLA prepared the payment certificates which he knew were being forwarded on to FCC. As noted in this allegation, Mr. Gee and GLA prepared the first of these payment certificates and sent it to FCC on April 25, 2015, the very day they were retained to provide architectural services for the Project. At that time, Mr. Gee and GLA can have had no real understanding of the status of the Project. Indeed, the invoices issued by GLA which were introduced into evidence through Ms. Chang and Mr. Minten indicate that the first site visit did not occur until May 22, 2015, nearly a month after Mr. Gee and GLA sent the first payment certificate to FCC.

[112] Given Mr. Gee and GLA had not conducted a site visit as of April 25, 2015 when they submitted the first certificate of payment to FCC, it was not reasonable for Mr. Gee to assert to FCC that he was "certify[ing] that the percentage of completion in each category of (hard costs) "work in place" detailed, in the attached project analysis,

substantially reflects the status of the project to date”. As GLA had not yet visited the Project site, there was no way for him to know the actual status of the Project and objectively certify that the project analysis he sent to FCC substantially reflected that status.

[113] A similar concern applies to many of the other certificates of payment. The chart below shows the dates on which Mr. Gee and GLA issued the certificates of payment for the Project, the amounts certified in each of those certificates and the dates of the site visits made by GLA.

certificates of payment	amount certified	site visits
#1 April 25, 2015	\$239,036.00	
#2 April 29, 2015	\$440,584.25	
		May 21, 2015
#3 June 9, 2015	\$569,958.25	
#4 July 3, 2015	\$615,056.28	
		July 24, 2015
#5 August 3, 2015	\$971,348.76	
#6 September 1, 2015	\$381,100.45	
#7 October 2, 2015	\$1,088,324.67	
		October 4, 2015
#8 November 1, 2015	\$742,253.09	
		November 27, 2015
#9 December 1, 2015	\$745,648.45	
#10 January 5, 2016	\$705,885.60	
#11 February 5, 2016	\$623,071.80	
		February 25, 2016
#12 March 2, 2016	\$259,337.40	
		April 1, 2016
#13 April 4, 2016	\$183,428.40	
#14 April 25, 2016	\$537,000.25	
		April 28, 2016
		May 27, 2016
#15 July 29, 2016	\$220,998.00	
#16 October 15, 2016	\$104,761.40	
#17 February 19, 2017	\$72,216.95	

The chart illustrates how, on more than one occasion, Mr. Gee and GLA certified substantial payments when GLA had not been at the Project site for weeks. While Bylaw 28.2 permits the Architect to determine what review of work is necessary to proceed with certification of construction performance and payment further to that construction performance, some review is required. If GLA did not visit the site prior to

Mr. Gee and GLA issuing certificates of payment, it cannot have conducted any review of the work covered by those certificates before certifying the associated payments. This did not comply with Bylaw 28.2.

[114] In the discussion of Allegation 6 below, the Committee will have more to say about the sufficiency of both the review conducted by GLA during the site visits it did make and the field reports prepared further to that review.

[115] In the Committee's view, with Mr. Gee having represented to FCC that he would be "reviewing the monthly progress claims" and "certify[ing] that the percentage of completion ... substantially reflects the status of the project to date", and given his awareness of the significance of the certificates of payment to FCC, it was unprofessional and reflected unfavourably on the architectural profession as a whole for him to issue certificates of payment that did not reveal the existence of substantial change orders and that, in a number of cases, were not supported by recent site visits to review the work which was the subject of the payments. The Committee accepts the submission of the AIBC that both the owner and lender on a project valued at \$8,500,000 should be able to rely on and trust certifications provided by the registrant architect. As such, the Committee finds that Mr. Gee's conduct was contrary to Bylaw 34.5.

[116] This allegation is also proven to the requisite standard.

Allegation 5

[117] As revised by the AIBC, the fifth allegation in the Notice of Inquiry is as follows:

Mr. Gee participated in his client's and the Project owner's scheme to withhold change orders from the bank and instead processed them separately, which mislead the bank as to the true value of the cost of the Project, contrary to Bylaws 30.1 and 34.5.

Legal Framework

[118] For this allegation, the AIBC relies on Bylaw 30.1 and Bylaw 34.5.

[119] Bylaw 30.1 provides as follows:

30.1 In practising architecture, an architect shall act with reasonable care and competence, and shall apply the knowledge, skill and judgement, which are ordinarily applied by architects currently practising in the province of British Columbia.

[120] Bylaw 34.5 is set out above at paragraph 103.

Analysis and Findings

[121] The facts relevant to this allegation are summarized in the Committee's discussion further to Allegation 4 at paragraph 104 to 110. As noted there, Mr. Gee has claimed there was an agreement between Lulu and CPOS to address any change orders between themselves, such that FCC would not be aware of them and Lulu's loan would not be affected. However, Ms. Chang denied such an agreement in her testimony.

[122] Regardless, the Committee found that it was a breach of Bylaw 34.5 for Mr. Gee not to have advised FCC about the change orders for the Project after he had represented to FCC that he was going to certify the completion and quality of the work performed on the Project. The conduct by Mr. Gee underlying this allegation is the same.

[123] The Committee also finds that this conduct offends Bylaw 30.1. Mr. Gee did not show reasonable care and competence in withholding the change orders from FCC. Even more on point, Mr. Gee did not apply the judgement ordinarily applied by registered architects in the practice of the profession. This is underscored by Mr. Gee's own acknowledgement of the significance of the change orders to FCC and the fact that the total value of the change orders for the Project exceeded \$1,000,000.

[124] This allegation is also proven to the requisite standard.

Allegation 6

[125] The sixth allegation in the Notice of Inquiry is as follows:

Mr. Gee failed to complete field reviews with reasonable care and competence by failing to identify concerns with construction, such as issues with the building envelope, roof and flashing, which were subsequently detected by other professionals, contrary to Bylaw 30.1.

Legal Framework

[126] For this allegation, the AIBC relies on Bylaw 30.1. The wording of Bylaw 30.1 is set out above at paragraph 119.

Analysis and Findings

[127] In the Committee's opinion, Mr. Gee and GLA did not complete its field reviews for the Project with reasonable care and competence contrary to Bylaw 30.1.

[128] The Service Fee and Proposal that GLA signed with Lulu on April 25, 2015 included a commitment for Mr. Gee, as the registered architect, to "carry out field review and attend site meetings during construction in order to determine if the work is progressing in general conformity with the contract documents", and to "[p]rovide site review reports to [the] owner, contractor and city officials as required".

[129] As described in detail in the Committee's discussion regarding Allegation 4, Mr. Gee and GLA completed only 8 field reviews in the year between May 21, 2015 and the May 27, 2016. During that same period, Mr. Gee and GLA issued 14 certificates of payment. They also issued 3 certificates of payment after their final field review, with the last of those certificates being issued on February 19, 2017, close to 9 months after GLA had last been on site to review the Project. As the Committee has found in relation to Allegation 4, the number of field reviews conducted by GLA was not sufficient to support the certificates of payment issued by Mr. Gee and GLA.

[130] Further, in the Committee's view, even when field reviews were conducted by Mr. Gee and GLA, they were not conducted with reasonable care and competence. The field reviews are documented in the field review reports prepared by Mr. Gee. The GLA

field review reports are brief and superficial. They include general comments about the progress of the work on the Project, and photographs that illustrate that progress. There is no detail in respect of the specific work being undertaken by the contractor, and whether or not that work conforms with the contract documents. The Committee also notes that the value and effectiveness of the GLA field review reports are compromised by Mr. Gee's failure to process change orders for the Project. Absent consideration of the ongoing change orders, it was impossible for Mr. Gee to assess how the associated changes were impacting the original design or whether they were being properly incorporated into the Project.

[131] The GLA field review reports stand in stark contrast to the reports being prepared at or around the same time by the then building envelope consultant, Aqua Coast. The reports from Aqua Coast are formatted similarly to the GLA reports with photographs and comments in respect of those photographs. However, the Aqua Coast reports focus on specific facets of the building envelope then under construction, giving a clear understanding of the status of that work. Most importantly, the Aqua Coast reports identify new deficiencies with the ongoing work, as well as deficiencies noted in previous reports that have been corrected or still need to be corrected. There is no such detail in the GLA reports.

[132] In fact, GLA prepared two field review reports after taking over for Aqua Coast as the building envelope consultant for the Project in or about March 2016. However, those reports, which describe field reviews that occurred on April 28 and May 27, 2016, do not mention any of the significant deficiencies with the winery roof and building envelope that Aqua Coast identified in what appears to have been its final 11-page field review report dated March 17, 2016. Ms. Chang testified that a representative from Aqua Coast advised her that Aqua Coast left the Project because the deficiencies it was identifying were not being corrected by CPOS. She also testified that after Lulu's relationship with CPOS and GLA broke down, Lulu had to retain a new contractor and building envelope consultant to redo the winery roof and spent \$500,000 completing that work. The architect that took over as the building envelope consultant wrote to Ms. Chang advising that in the course of repairing the winery roof leaks, the new contractor discovered

deficiencies in the construction of the building envelope that were consistent with the problems Aqua Coast had previously identified but had not yet been fixed.

[133] After Lulu received the last progress claim from Mr. Gee and GLA on March 1, 2017, Lulu communicated with GLA about a number of apparent deficiencies with the Project. This led GLA to conduct what Mr. Gee referred to as a “walk through” of the Project on March 15, 2017. As documented in a subsequent letter from Mr. Gee dated April 3, 2017, GLA identified 58 deficiencies during that “walk through”, including that the winery roof was leaking and that there were life safety issues which needed to be completed before Lulu could obtain an occupancy permit. Even after the “walk through”, Lulu sent GLA an email pointing out other deficiencies with the Project that GLA had failed to identify, including, apparently, a missing feature wall within the winery building.

[134] In the Committee’s view, it is inconceivable that Mr. Gee and GLA could have conducted the field reviews of the Project between May 21, 2015 and the May 27, 2016 with reasonable care and competence and still failed to identify the deficiencies that Aqua Coast was noting and reporting at the same time, and that GLA itself found during its “walk through” on March 15, 2017. Obviously, it was important for Lulu and FCC to be aware of these deficiencies as they paid CPOS for its work on the Project. It should be noted that between the first and last field reviews, Mr. Gee and GLA issued 12 certificates of payment certifying the completion of work by CPOS valued at over \$7,300,000.

[135] The Committee finds that this allegation is proved to the requisite standard. GLA’s field reviews of the Project were not conducted with reasonable care and competence contrary to Bylaw 30.1.

Allegation 7

[136] The seventh allegation in the Notice of Inquiry is as follows:

Mr. Gee failed to provide adequate supervision, direction, and control of the architectural services provided on the Project. In addition to being the signatory on the client-architect agreement (with attached Service Fee and Proposal), David Lin submitted invoices on GLA’s letterhead that were rendered payable to him personally, contrary to Bylaw 34.1 and council ruling (b).

Legal Framework

[137] For this allegation, the AIBC relies on Bylaw 34.1 and council ruling (b) for Bylaw 34.1. The wording of Bylaw 34.1 and council ruling (b) for Bylaw 34.1 is set out above at paragraphs 82 and 83.

Analysis and Findings

[138] Bylaw 34.1 requires a registered architect to have “direct knowledge and supervisory control of” architectural services. Council ruling (b) specifies that it is the registered architect who must make “representations on behalf of an architectural firm or certificate of practice holder” such as “[p]roposals of service; agreements; assurances; certifications; official submissions to authorities having jurisdiction; and other must be made by an architect”.

[139] The Committee has already found that the Service Fee and Proposal that GLA signed with Lulu on April 25, 2015 was in breach of Bylaw 34.1 and council ruling (b) when it was signed by Mr. Lin, and there was no indication that Mr. Gee, the only architect at GLA, had “direct knowledge [of] and supervisory control” over him doing so. Beyond that, however, the Committee does not find that the evidence supports any other violation of Bylaw 34.1 and council ruling (b).

[140] While, the AIBC has alleged that Bylaw 34.1 and council ruling (b) were breached when Mr. Lin submitted invoices on GLA letterhead that were payable to him also, the Committee does not find that the submitting of invoices constitutes an architectural service which must be under the direct knowledge and supervisory control of an architect. More specifically, an invoice is not included in the list of “representations on behalf of an architectural firm or certificate of practice holder” that, under council ruling (b), must be made by a registered architect.

[141] The Committee certainly recognizes the concern with these invoices being payable to Mr. Lin. This is one of a number of facts suggesting that much of GLA’s work on the Project was actually done by Mr. Lin. As noted above, the evidence is also that the address of David Lin Design Studio is the same as the address of GLA, and Mr.

Gee and Mr. Lin used a common email address to correspond with Lulu, CPOS and others involved in the Project. Ms. Chang remembered Mr. Lin attending the Project site for field reviews, and thought, but was not certain, that he may have been at the site by himself for some of those reviews. In addition, as is also noted above, Ms. Chang initially thought that Mr. Lin was an architect, and the landscape architect for the Project may have been similarly confused about Mr. Lin's qualification, as he was emailing Mr. Lin rather than Mr. Gee concerning issues with the landscaping.

[142] Ultimately, however, as is discussed above, all of the field review reports and payment certificates for the Project were issued in the name of Mr. Gee or signed by him or both. Not only does this comply with council ruling (b), but it indicates Mr. Gee had "direct knowledge [of] and supervisory control" over the Project.

Summary

[143] For the reasons set out above, the Committee considers, under section 50(1) of the Act, that Mr. Gee has contravened the Act and the Bylaws. In particular, the Committee finds as follows:

- (a) further to Allegation 1 of the Notice of Inquiry, Mr. Gee contravened sections 27(2) and 63(2) of the Act and Bylaw 33.3, but did not contravene section 28 of the Act, when, between April 2015 and July 2017, he offered to provide and did provide architectural services for the Project through GLA when neither he nor GLA held a certificate of practice;
- (b) further to Allegation 2, Mr. Gee did not contravene section 65(1) of the Act or Bylaw 33.3;
- (c) further to Allegation 3, Mr. Gee contravened Bylaw 34.10 and council rulings (e) and (f) of Bylaw 34.10, as well as Bylaw 34.1 and council ruling (b) of Bylaw 34.1, when Mr. Lin signed GLA's April 25, 2015 Service Fee and Proposal with Lulu on behalf of GLA and that Service Fee and Proposal did not include notice as to professional liability insurance and the required

clauses on compliance with the AIBC Bylaws, and as he did not provide CPOS with notice as to professional liability insurance;

- (d) further to Allegation 4, Mr. Gee contravened Bylaws 28.2 and 34.5, when he did not notify FCC of the change orders for the Project and in his preparation of the certificates of payment that he provided to FCC or knew would be provided to FCC, including a certificate of payment that he sent to FCC on the day GLA was retained to work on the Project;
- (e) further to Allegation 5, Mr. Gee contravened Bylaw 30.1 and Bylaw 34.5 when he did not advise FCC of the change orders for the Project;
- (f) further to Allegation 6, Mr. Gee contravened Bylaw 30.1 when he failed to complete field reviews for the Project with reasonable care and competence; and
- (g) further to Allegation 7, Mr. Gee contravened Bylaw 34.1 and council ruling (b) of Bylaw 34.1, when he failed to provide adequate supervision, direction, and control of the architectural services provided on the Project, but only in relation to the Service Fee and Proposal that GLA entered into with Lulu on April 25, 2015.

Submissions on Penalty and Costs

[144] As the Committee considers under section 50(1) of the Act that Mr. Gee has contravened the Act and the Bylaws, it may now make one or more of the orders permitted under section 50(3) of the Act. Section 51 also permits the Committee to direct costs further to the holding of the Hearing.

[145] Accordingly, following on these reasons, the Committee requests submissions on the appropriate order or orders under section 50(3) and the appropriate costs under section 51. The Committee is prepared to either convene a further in-person hearing for the receipt of those submissions or, alternatively, to receive those submissions in writing.

[146] Finally, the Committee requests that counsel for the AIBC deliver a copy these reasons to Mr. Gee. To the extent that Mr. Gee intends to make submissions further to section 50(3) and section 51, the Committee expects that the parties will coordinate on the form and timing of those submissions. If they are unable to resolve those issues as between them, they may seek further directions from the Committee.

Dated at Vancouver, British Columbia this 15th day of March, 2023.

[REDACTED]
<original signed>

John Scott, Architect AIBC (Chair)

MARCH 15, 2023
Date

<original signed> [REDACTED]

15 March 2023

Sean Rodrigues, Architect AIBC

Date

[REDACTED]
<original signed>

Barbara Brink, Lieutenant Governor Appointee to AIBC Council

MARCH 16, 2023
Date