



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

IN THE MATTER OF THE *PROFESSIONAL GOVERNANCE ACT*
S.B.C. 2018, C. 47

AND

IN THE MATTER OF A CONSENT ORDER BETWEEN:

PHILIP STREET ARCHITECT AIBC

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

CONSENT ORDER

The *Professional Governance Act* (“PGA”) authorizes the AIBC to propose resolution by consent order on matters that may otherwise be dealt with at a Discipline Hearing. Section 73 of the *PGA* and current AIBC Bylaws 7.16 through 7.20 provide the specific processes and procedures by which the AIBC and a Registrant may reach agreement.

1.0 BACKGROUND AND AGREED FACTS

- 1.1 The parties agree that the relevant facts and circumstances leading to the investigation and this Consent Order (the “Order”) are set out below.

A. Overview

- 1.2 The AIBC’s Investigations Committee (the “Committee”) conducted an investigation into a complaint about Philip Street Architect AIBC (the “Respondent”) with respect to non-compliance with the AIBC’s Continuing Education System (“CES”) requirements for the period ending June 30, 2022 (the “Fifteenth Reporting Period”).
- 1.3 On February 10, 2023, the AIBC transitioned to the authority of the *Professional Governance Act* (the “PGA”) which replaced the repealed *Architects Act*, R.S.B.C. 1996, c. 17 (the “Act”). The *Act* and the AIBC Bylaws (March 25, 2021) made under the *Act* are no longer in force; however, they are relevant in cases where complaints and investigations were initiated before the transition date, such as this matter.
- 1.4 Following its investigation, the Committee recommended that the matter proceed to a disciplinary inquiry for determination of whether the Respondent breached certain sections of the *Act*, the AIBC Bylaws made under the *Act*, and the applicable council rulings in the Code of Ethics and Professional Conduct effective March 25, 2021 (the “Code of Ethics”), and former council rules in AIBC Bulletin 80: *Mandatory Continuing Education System* (March 2021) (“AIBC Bulletin 80”).
- 1.5 Following this determination, the Committee exhausted its powers and function under the *Act*.
- 1.6 The file was then referred to the new PGA Investigation Committee who followed the discipline process prescribed under the PGA and current AIBC Bylaws.
- 1.7 The newly established PGA Investigation Committee has broader powers and functions than the previous Committee, including determining discipline resolutions, which were not available under the *Act*.
- 1.8 Following a review of the file, the PGA Investigation Committee proposed this Order as a resolution to the matter.

B. Background – AIBC Continuing Education System

- 1.9 In 2001, architects and honorary members of the AIBC voted to adopt AIBC Bylaw 30.2 made under the *Act* (“Bylaw 30.2”) which became effective as of July 2001, and established the requirements for architects to undertake and report on continuing professional education.
- 1.10 AIBC council thereafter formally adopted CES which is administered by the AIBC’s Professional Services department.

- 1.11 The requirements for CES are formalized in the AIBC Bylaws made under the *Act* and AIBC Bulletin 80. Typically, CES requirements follow a two-year reporting period which runs from July 1 to June 30 of the second following year.
- 1.12 Bylaw 30.2 and AIBC Council Rules 6: Designation and Admission Qualifications for AIBC Associates establishes that CES requirements apply to registered architects and architectural technologists and, as of July 1, 2020, also included intern architects registered with the AIBC (together the “CES Participants”).
- 1.13 For the Fifteenth Reporting Period, CES Participants were required to earn and report 36 learning units (“LUs”), including a minimum of 16 “Core” LUs, by June 30, 2022. Each LU represents one hour of eligible educational activity.
- 1.14 CES Participants who failed to earn and report the required LUs by the June 30, 2022, deadline, were issued an administrative fine mandated by AIBC council. For the Fifteenth Reporting Period, the fine amount for registered architects was \$1,019.00 plus 5% GST.
- 1.15 Non-compliant CES Participants received additional reminders to pay the administrative fine and earn and report deficient LUs before September 30, 2022, and were notified that if the fine was not received by that date, the fine would be increased and they could be subject to a complaint of unprofessional conduct.

C. Philip Street Architect AIBC

- 1.16 The Respondent was first registered as an Architect AIBC on September 10, 1990, and has maintained his registration since that time.
- 1.17 The Respondent practices architecture through Chernoff Thompson Architects (the “Firm”), a corporation which holds a certificate of practice.

D. The Complaint

- 1.18 On October 31, 2022, the AIBC’s Professional Services department submitted a complaint against the Respondent for failing to comply with the CES requirements for the Fifteenth Reporting Period, in accordance with Bylaw 30.2 and AIBC Bulletin 80 (the “CES Complaint”).
- 1.19 On November 28, 2022, the Respondent was asked to provide a reply to the CES Complaint, and the Committee initiated an investigation.

E. The Investigation/Agreed Facts

- 1.20 The investigation involved a review of the material provided by the AIBC’s Professional Services department and the response submitted by the Respondent. The agreed facts in paragraphs 1.21 to 1.31 below are based on material reviewed during the investigation.

- 1.21 The CES Complaint stated that:
- a. All AIBC registrants receive regular updates and reminders about approaching CES deadlines from the Institute. In particular, during the last year of the Fifteenth Reporting Period, the AIBC regularly communicated with CES Participants regarding the approaching CES deadline.
 - b. Beginning in July 2021, eight reminders were published on the AIBC's website and distributed to CES Participants through the AIBC newsletter, *AIBC Connected*.
 - c. Two broadcasts were sent to all CES Participants with the CES deadline reminder on February 10, 2022, and June 16, 2022. A separate broadcast was also sent to all non-compliant CES Participants on March 17, 2022.
 - d. On May 30, 2022, a further targeted *AIBC Notice* was sent to all CES Participants one month before the deadline.
 - e. Further personalized email messages were sent to all non-compliant CES Participants from the AIBC's Professional Services department on September 16 and September 22, 2022.
 - f. The Respondent did not report the requisite LUs (36 LUs, including a minimum of 16 Core LUs) prior to the June 30, 2022, deadline.
 - g. On August 18, 2022, the Respondent was issued the administrative fine because he was not CES compliant by the June 30, 2022, deadline.
 - h. The Respondent was informed that he was required to earn and report all outstanding LUs and pay the administrative fine by September 30, 2022, to avoid incurring an increased fine and potentially further penalty through the professional conduct process.
- 1.22 The Respondent remained non-compliant on September 30, 2022.
- 1.23 On November 28, 2022, the Respondent was provided with notice of the CES Complaint.
- 1.24 On December 14, 2022, the AIBC left a voicemail and sent an e-mail to the Respondent reminding him to provide a response and granted an extension to December 23, 2022.
- 1.25 On January 13, 2023, after receiving no response, the Respondent was notified in writing that he was provided with an extension to January 27, 2023.
- 1.26 On January 16, 2023, the Respondent provided a response stating that due to the pandemic and local floods, self-reporting LUs and attending seminars were a severe issue.
- 1.27 On January 17, 2023, the Respondent provided an additional reply, apologizing for his late response to the CES Complaint and stated this was because in November 2022, he was being treated for a medical issue and was continuing his recovery. He also stated he had technical difficulties which interrupted his ability to respond.

- 1.28 On January 23, 2023, the Respondent became LU compliant but had not paid the increased \$1,337.44 CES non-compliance administrative fine.
- 1.29 On January 27, 2023, the Respondent apologized for his non-compliance with the CES requirements and stated it was due to the various events he had described.
- 1.30 On February 21, 2023, the Committee decided to refer this matter to discipline, and in doing so exhausted its powers and function under the *Act*. A notice of inquiry has not been issued.
- 1.31 On October 31, 2023, the Respondent paid the CES non-compliance administrative fine.
- 1.32 The matter, now in the discipline stage, was referred to the *PGA* Investigation Committee for consideration.
- 1.33 Following its review of the file, the *PGA* Investigation Committee proposed this Order as a resolution to the matter.

F. Relevant Professional Standards

- 1.34 Bylaw 30.2 and council rules in AIBC Bulletin 80 are relevant to the CES Complaint against the Respondent.
- 1.35 Bylaw 30.2 states:

Bylaw 30.2 In order to better serve the public, and in keeping with the architect's declaration set out in Bylaw 9.0 and the obligation of the architect set out in Bylaw 30.1, an architect shall undertake continuing education and shall report on that continuing education to the Institute, in accordance with the rules for mandatory continuing education established by Council.

Refer to Bulletin 80 for council rules relating to compliance.

- 1.36 The relevant sections of AIBC Bulletin 80 with accompanying council rules state:
 - 2.1 CES Participants are designated as architects and architectural technologists registered with the AIBC. As of July 1, 2020, and thereafter, the CES Participants category includes Intern Architects AIBC. All CES Participants must satisfy the requirements of the mandatory CES as per Bylaw 30.2. **Rule 1**

...

- 3.16 A reporting period is two years long and runs from July 1 to June 30, on the even years. **Rule 11**

CES Obligations

- 3.17 The minimum number of LUs that must be earned and reported by the end of each reporting period is 36, of which a minimum of 16 must be Core LUs. **Rule 12**

- 3.18 All LUs must be earned and reported by the deadline of the reporting period in which they are earned. **Rule 13**

...

6.0 Consequences for CES Bylaw Non-Compliance and Authority

- 6.1 CES Participants will be deemed non-compliant should they fail to meet their CES obligations, as set out in these rules, namely CES Rule 12 and 13.
- 6.2 A non-compliant CES Participant will be required to pay an AIBC council-mandated fine, as set out in Bulletin 1, *and* to earn and report the deficient LUs no later than September 30 after the end of the reporting period. **Rule 27**
- 6.3 Should a CES Participant remain non-compliant beyond September 30, a complaint of unprofessional conduct against the member will be made to the director of professional conduct. This may result in disciplinary action, to and including suspension and/or removal from the register **Rule 28**

2.0 ADMISSIONS

- 2.1 The Respondent acknowledges and admits that he contravened AIBC Bylaw 30.2 and the rules established by council in AIBC Bulletin 80 by failing to earn and report the requisite LUs and failing to pay the council-mandated fine by the specified deadline.

3.0 PENALTY ORDER

- 3.1 The following penalty and terms have been agreed upon by the Respondent and the AIBC:
- 3.1.1 A reprimand will be recorded against Philip Street Architect AIBC.

4.0 COSTS

- 4.1 The Respondent agrees to pay costs for this Order, fixed at an amount of \$1,500, payable to the AIBC within 90 days after this Order has been executed.
- 4.2 The parties acknowledge that costs are not intended as a punitive measure reflecting the conduct that is the subject of this Order. The assessment of costs against the Respondent is an acknowledgement of the AIBC's partial costs resulting from the consent order process.
- 4.3 The parties have referred to current AIBC Bylaws Schedule S: Costs Administrative Guidelines in agreeing on the amount of costs.

5.0 PUBLICATION

- 5.1 This Order, including the attached penalty schedule must be published by the AIBC on its website, pursuant to Section 73 of the *PGA* and current AIBC Bylaw 8.15, and distributed to all registrants of the AIBC, in a manner that the AIBC deems fit in the public interest.
- 5.2 An explanatory notation of and/or a link to this Order will also be included in the AIBC register pursuant to current AIBC Bylaw 8.5.8.

6.0 ACKNOWLEDGEMENT

This Order may be executed and delivered in one or more counterparts, whether by facsimile transmission or other electronic means, with the same effect as if all parties had signed and delivered the same document and all counterparts.

Philip Street acknowledges that he has been given adequate opportunity to seek legal or other professional advice with respect to the negotiation, execution and consequences of this Order and has taken such advice or freely elected not to do so.

The facts and terms of this Consent Order are acknowledged and agreed to by Philip Street Architect AIBC and the Investigation Committee. The Order was signed on January 31, 2024.

SCHEDULE – REASONS FOR PENALTY

TO

CONSENT ORDER

BETWEEN

PHILIP STREET ARCHITECT AIBC

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

1.0 REASONS FOR PENALTY

- 1.1 Philip Street Architect AIBC (the “Respondent”) and the AIBC agree that, in light of the agreed facts and admissions, the proposed penalty is proportionate, fair, and consistent with the public interest. A detailed analysis follows.

A. The Public Interest and Principles of Sentencing (Sanctions)

- 1.2 Pursuant to Section 73 of the *PGA*, the *PGA* Investigation Committee may, before the commencement of the discipline hearing, propose in writing to the person who is the subject of an investigation, that a consent order be made for the voluntary resolution of one or more matters that may otherwise be dealt with at the discipline hearing. Under current AIBC Bylaw 7.17, the *PGA* Investigation Committee makes a final determination as to whether all terms of the consent order have been satisfied.
- 1.3 The role of a reviewing panel was discussed in *Law Society of BC v. Rai*, 2011 LSBC 2. In that case, a panel was considering an agreement between a lawyer and the regulator on agreed facts and disciplinary action. The panel conducted an analysis of its role in determining whether to accept the agreement as proposed. The discussion in that case is relevant to the AIBC’s process. The panel stated:

[6] This proceeding operates (in part) under Rule 4-22 of the Law Society Rules. That provision allows for the Discipline Committee of the Law Society and the Respondent to agree that professional misconduct took place and agree to a specific disciplinary action, including costs. This provision is to facilitate settlements, by providing a degree of certainty. However, the conditional admission provisions have a safeguard. The proposed admission and disciplinary action do not take effect until they are “accepted” by a hearing panel.

[7] The Panel must be satisfied that the proposed admission on the substantive matter is appropriate. In most cases, this will not be a problem. The Panel must also be satisfied that the

proposed disciplinary action is “acceptable”. What does that mean? This Panel believes that a disciplinary action is acceptable if it is within the range of a fair and reasonable disciplinary action in all the circumstances. The Panel thus has a limited role. The question the Panel has to ask itself is, not whether it would have imposed exactly the same disciplinary action, but rather, “Is the proposed disciplinary action within the range of a fair and reasonable disciplinary action?”

[8] This approach... protects the public by ensuring that the proposed disciplinary action is within the range of fair and reasonable disciplinary actions. In other words, a degree of deference should be given to the parties to craft a disciplinary action. However, if the disciplinary action is outside of the range of what is fair and reasonable in the circumstances, then the Panel should reject the proposed disciplinary action in the public interest.

[Emphasis added]

- 1.4 As stated above in *Rai*, it is important to note that there will be a *range* of fair and reasonable outcomes in any particular file. The complexity of sentencing does not admit to only one appropriate outcome.
- 1.5 This principle was well-articulated in the case of *Peet v. The Law Society of Saskatchewan*, 2014 SKCA 109 where the Chief Justice wrote for a unanimous panel of the Court of Appeal:

[84] All of this is significant because sentencing of any sort, including sentencing for professional misconduct, is a difficult business. There is no single “right answer”. This is so because the sentencing authority must consider, balance, and reconcile a number of different considerations...

- 1.6 The parties submit that the penalty proposed in this case appropriately balances the mitigating and aggravating factors, and is consistent with previous decisions and the public interest in professional disciplinary matters.

B. Ogilvie Factors

- 1.7 In determining an appropriate penalty, professional regulatory bodies in B.C. have often referred to the factors considered in the case of *Law Society of British Columbia v. Ogilvie* [1999] LSBC 17 (known as the “*Ogilvie* Factors”).
- 1.8 This involves an assessment of whether the *Ogilvie* Factors apply and if so, whether they are aggravating or mitigating. The *Ogilvie* Factors include the following:
 - (a) the nature and gravity of the conduct proven;
 - (b) the age and experience of the respondent;
 - (c) the previous character of the respondent, including details of prior discipline;
 - (d) the impact upon the victim;
 - (e) the advantage gained, or to be gained, by the respondent;
 - (f) the number of times the offending conduct occurred;

- (g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
 - (h) the possibility of remediating or rehabilitating the respondent;
 - (i) the impact upon the respondent of criminal or other sanctions or penalties;
 - (j) the impact of the proposed penalty on the respondent;
 - (k) the need for specific and general deterrence;
 - (l) the need to ensure the public's confidence in the integrity of the profession; and
 - (m) the range of penalties in similar cases.
- 1.9 The *Ogilvie* Factors were subsequently consolidated and streamlined in the case of *Edward Dent (Re)*, 2016 LSBC 5. In that case, the hearing panel acknowledged that the *Ogilvie* Factors are not all applicable in every case and will overlap in many cases.
- 1.10 The panel in *Dent* consolidated the *Ogilvie* Factors into four broad categories:
- (a) Nature, gravity and consequences of conduct;
 - (b) Character and professional conduct record of the respondent;
 - (c) Acknowledgment of the misconduct and remedial action; and
 - (d) Public confidence in the profession, including public confidence in the disciplinary process.
- 1.11 Since the decision was issued in *Dent*, the consolidated framework (informed by the complete list from *Ogilvie*) has become the preferred approach in Law Society disciplinary proceedings. However, the jurisprudence acknowledges that the simplified approach may not be appropriate in every case. For example, the Law Society returned to the full *Ogilvie* analysis in a case that was “very difficult” [and] “unlike any previous discipline hearing”: *Sabota (Re)*, 2017 LSBC 18. The AIBC has also employed it in a recent case that was novel and complex.
- 1.12 The parties agree that the consolidated *Ogilvie* Factors are appropriate in this case. They are reviewed in detail below.
- (a) The nature, gravity and consequences of the conduct**
- 1.13 The AIBC's CES program, which has been in place since 2001, is a foundational professional practice expectation. It is explicitly referenced in the declaration that every person seeking registration as an architect must subscribe to.
- 1.14 The importance of continuing education requirements in the regulated professions, and the need for compliance with them, was discussed by the Supreme Court of Canada in the case of *Green v. Law Society of Manitoba*, 2017 SCC 20.
- 1.15 In *Green*, a lawyer was challenging his suspension for non-compliance with the Law Society's mandatory continuing education requirements. He was unsuccessful. On behalf of the majority of the Court, Justice Wagner (as he then was) stated:

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

...

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

- 1.16 Similar reasoning applies to the AIBC and its CES program.
- 1.17 The AIBC's Professional Services department devotes extensive time and effort to communicating with CES Participants to promote compliance. A CES Participant who was non-compliant during the Fifteenth Reporting Period would have received no less than **fifteen** separate communications reminding them of the need to earn and report their LUs and pay the council-mandated fine.
- 1.18 CES has been a requirement for all architects in British Columbia for almost 20 years. This requirement is thoroughly communicated to registrants. It is foundational to the public's confidence in the profession. There is simply no excuse for non-compliance. For the public to have confidence in the profession and in the AIBC's ability to regulate the profession, timely and complete compliance is required.
- 1.19 Correspondingly, as stated in Green, non-compliance must have consequences. The AIBC, through the council rules established in AIBC Bulletin 80, has established a framework whereby the consequences escalate depending on the type of non-compliance. In a typical reporting period, CES Participants who fail to meet the June 30 deadline receive a fine and a three-month extension to achieve compliance. If either of those requirements is not fulfilled, a professional conduct investigation follows.
- 1.20 In this case, the Respondent was not LU compliant by the deadline and was assessed a fine. At the time of signing this Order, the Respondent became LU compliant and has paid the increased council-mandated fine.
- 1.21 By comparison to other CES non-compliance cases, this misconduct is modest.
- 1.22 Each of the CES rules, including the reporting requirements, represents a clear standard for the profession. The Respondent's non-compliance following numerous reminders is unacceptable and merits regulatory sanction.

(b) Character and professional conduct record of the respondent

- 1.23 The Respondent is 69 years old. He has been registered as an architect for 17 years and has participated in previous reporting periods.

1.24 The Respondent does not have a prior professional conduct record with the AIBC.

(c) Acknowledgement of the misconduct and remedial action

1.25 Upon notification of the CES Complaint, the Respondent apologized for his delayed response and reported the outstanding LUs.

1.26 By entering into this Order, the Respondent has acknowledged that he has committed a disciplinary violation, which is a mitigating factor.

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

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

1.28 'Specific deterrence' means deterring the respondent from repeating the conduct in question. In this case, the Respondent and the AIBC are of the view that the combination of the investigation and discipline process, and a reprimand, should deter the Respondent from non-compliance with future CES requirements.

1.29 'General deterrence' is a sentencing objective promoting reduction of improper conduct in the community by the example, message or influence established by the penalty in the present matter. General deterrence is important for CES files. The CES requirements apply to all architects, intern architects and architectural technologists registered in British Columbia. The CES rules are not mere suggestions. There is simply no excuse for non-compliance, and responding to non-compliance absorbs significant AIBC time and resources. The profession must understand that non-compliance will result in sanctions, and repeat non-compliance will result in increasingly serious sanctions.

1.30 The public has the right to expect that architects, intern architects and architectural technologists registered with the AIBC will know and comply with all applicable professional standards and demonstrate that they have undertaken educational programming to remain current in accordance with established deadlines and procedures. The public also has the right to expect that the AIBC will address instances of misconduct by its registrants through a process that is fair, proportionate and consistent.

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

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

- Second breach: reprimand and fine (see, for example, AIBC file 18.18, where the registrant who was not CES compliant for the second time received a reprimand and a \$1,000 fine); and
- Third breach: reprimand and increased fine (see, for example, AIBC file 15.03, a grouped file of non-compliant CES participants from the Eleventh Reporting Period, where a registrant who was not CES compliant for the third time received a reprimand and an increased fine in the amount of \$1,500).

1.32 The Respondent and the AIBC submit that, based on the penalty review above, and upon a careful review of the consolidated *Ogilvie* Factors, the proposed penalty is fair and consistent with the range of sanctions that have been imposed for similar conduct in the past.

2.0 PUBLICATION

- 2.1 This Order will be published as required by the *PGA* and the current AIBC Bylaws, including website publication, distribution to registrants of the AIBC, and inclusion on the register.
- 2.2 Publication helps fulfill the important transparency expectation that the public has of professional regulators and enhances the public's confidence in the integrity of the profession as a self-regulated entity. Publication to registrants acts as a further deterrent and as an educational message with respect to ethical and professional conduct matters.

3.0 ACKNOWLEDGEMENT

This Schedule may be executed and delivered in one or more counterparts, whether by facsimile transmission or other electronic means, with the same effect as if all parties had signed and delivered the same document and all counterparts.

Philip Street acknowledges that he has been given adequate opportunity to seek legal or other professional advice with respect to the negotiation, execution and consequences of this Schedule and has taken such advice or freely elected not to do so.

The facts and terms of this Schedule – Reasons for Penalty to Consent Order are acknowledged and agreed to by Philip Street Architect AIBC and the Investigation Committee.

For further information on the AIBC's discipline process, please contact the Professional Conduct and Illegal Practice department at complaints@aibc.ca.