

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

Committee members:	John Scott, Architect AIBC (Chair); Sean F. Rodrigues, Architect AIBC; Barbara Brink, Lieutenant Governor Appointee to AIBC Council
Counsel for the Architectural Institute of British Columbia:	Menka Sull
Counsel for Brian Gee Architect AIBC and GL Architecture:	Karen L. Weslowski
Written submissions received:	July 31, 2023 (AIBC), September 8, 2023 (Gee), September 20, 2023 (AIBC in reply)
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I. INTRODUCTION

[1] Further to an order of the Council of the Architectural Institute of British Columbia (the “AIBC” or the “Institute”) under sections 46 and 48 of the *Architects Act*, RSBC 1996, c. 17, and a Notice of Inquiry issued on January 19, 2022 (the “Notice of Inquiry”) against Brian Gee Architect AIBC and his firm, GL Architecture (“GLA”), under Bylaws 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 on June 27-29, 2022 (the “Hearing”).

[2] The complaint that was the subject of the Hearing concerned the provision of architectural services by Mr. Gee and GLA further to the construction of a winery building for Lulu Island Wine Group (“Lulu”) at 2550 Boucherie Road, West Kelowna, BC (the “Project”). On February 7, 2015, Lulu entered into a CCDC-2 contract with a company called CPOS System Corp. (“CPOS”) for construction of the Project. On April 25, 2015, Lulu entered into a Service Fee and Proposal with GLA. To pay for the

construction, Lulu had taken out a loan with Farm Credit Canada (“FCC”). On or about March 23, 2016, after the Project had begun, the directors of Lulu were detained in China, and their daughter, Amy Chang, was left to manage Lulu. In this role, Ms. Chang took over management of the Project on behalf of Lulu.

[3] The allegations against Mr. Gee and GLA considered by the Committee at the Hearing were as follows:

1. Between April 2015 and July 2017, Mr. Gee offered to provide and did provide architectural services for [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, were entered into by David Lin on behalf of GL Architecture 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).
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, contrary to Bylaws 30.1 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, contrary to Bylaw 34.1 and council ruling (b).

[4] As of January 30, 2023, Mr. Gee resigned as a registered architect with the AIBC and closed GLA. He remains registered with the AIBC as a retired architect.¹

[5] Effective February 10, 2023, the *Architects 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 disciplinary committee for the Institute on and after the designation for the purpose of continuing the Hearing.

[6] On March 15, 2023, the Committee issued Reasons for Decision further to the Hearing (the “Reasons”). In the Reasons, the Committee made the following findings in respect of each of the 7 allegations:

1. ... 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;
2. ... Mr. Gee did not contravene section 65(1) of the Act or Bylaw 33.3;
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;
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;
5. ... Mr. Gee contravened Bylaw 30.1 and Bylaw 34.5 when he did not advise FCC of the change orders for the Project;
6. ... Mr. Gee contravened Bylaw 30.1 when he failed to complete field reviews for the Project with reasonable care and competence; and
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

¹ Under the *Architects Act*, retired architects were registered as “associates”. Under the PGA, retired architects are registered in the “Retired Architect” category of registrants.

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.

[7] Based on these findings, the Committee concluded that Mr. Gee had contravened the *Architects Act* and the Bylaws under section 50(1) of the *Architects Act*, and requested submissions from the parties on the Committee's authority to make one or more of the orders permitted under section 50(3) of the *Architects Act* and to direct costs further to the holding of the Hearing under section 51 of the *Architects Act*.

[8] In late April 2023, the Committee received word that Mr. Gee had retained counsel, and that counsel for the AIBC and counsel for Mr. Gee were communicating about a schedule for the delivery of submissions as requested by the Committee. On or about May 25, 2023, counsel for the AIBC advised the Committee that a schedule for the delivery of written submissions had been agreed, with the AIBC to provide its submissions by July 31, 2023, Mr. Gee to provide his submissions by August 21, 2023 and the AIBC to provide any reply submissions by August 30, 2023. Following receipt of the AIBC's submissions on July 31, 2023, an extension was granted for the delivery of Mr. Gee's submissions and the AIBC's reply submissions, and those were received by the Committee on, respectively, September 8, 2023 and September 20, 2023.

[9] As set out in its submissions, the AIBC seeks an order from the Committee that includes the following:

- (a) a reprimand;
- (b) a suspension of Mr. Gee's registration for a period of six months to take effect 14 days after the Committee makes its order;
- (c) a fine in the amount \$7,500, payable to the AIBC within 30 days after the Committee makes its order.

The AIBC also asks the Committee to direct Mr. Gee to pay costs to the AIBC in the amount of \$14,559.49, payable to the AIBC within 60 days of the direction for payment made by the Committee.

[10] In his submissions, Mr. Gee indicates he is prepared to agree to a reprimand, as well as a fine of \$750 and costs of \$750, both payable within 30 days of those being ordered or directed by the Committee.

[11] Having reviewed and considered all of the submissions received from the AIBC and Mr. Gee, the Committee now issues these reasons for decision respecting discipline and costs.

II. LAW

[12] Despite the AIBC's 2023 transition from the *Architects Act* to the PGA described in paragraph 5, the AIBC submits that the relevant statute for assessing penalty is the *Architects Act*, "as the Hearing was conducted pursuant to the [*Architects Act*]". The AIBC also points to section 127(1) and (2) of the PGA as empowering the Committee to "complete the penalty phase of these proceedings in accordance with the [*Architects Act*]". Mr. Gee agrees with the AIBC that "the relevant statute for assessing penalty is the [*Architects*] Act rather than the [PGA]".

[13] Subsections (1) and (2) of section 127 of the PGA provide as follows:

Transition – powers and duties in progress

127. (1) The officers and committees for a regulatory body may exercise any power and perform any duty under this Act that an officer holding the same title with, or a committee having the same mandate of, an affected body
- (a) began to exercise or to perform, but did not complete, before the reference date, or
 - (b) could have exercised with respect to a discipline matter referred to in Division 3 [Audits, Practice Reviews and Discipline] of Part 6 [Protection of the Public Interest With Respect to Professional Governance and Conduct] that is alleged to have existed or occurred, but was not investigated, before the reference date.
- (2) If a discipline committee for an affected body, or a committee of the former body with similar duties and powers, commenced a hearing before the reference date, that committee is deemed to be a discipline committee for the regulatory body for the purpose of continuing the hearing on and after the reference date.

[14] The Committee agrees that section 127 of the PGA (together with section 7(2) of the *Architects Regulation*) confirms its continuing jurisdiction over this matter. It is not

clear to the Committee, however, that section 127 identifies which statute, as between the *Architects Act* and the PGA, should be used for the purposes of assessing penalty in this matter. If there were a disagreement as to which statute should be used for that purpose, the Committee is of the view that disagreement would likely need to be decided under sections 35 and 36 of the *Interpretation Act*, RSBC 1996, c. 38. Although, in light of the agreement of the parties as to the applicability of the *Architects Act*, the Committee need not decide that issue. Further, in proceeding with its consideration of penalty and costs under the relevant provisions of the *Architects Act*, the Committee notes that the penalties addressed by the parties in their submissions are all available under the PGA, as are costs of the Hearing. The Committee does not see anything in the PGA that would otherwise reduce or mitigate those penalties in the amount or form sought.

[15] As regards the assessment of penalty, section 50(1) of the *Architects Act*, gives the Committee the authority to make one or more orders under section 50(3) following on its decision that Mr. Gee has contravened the *Architects Act* and Bylaws. Section 50(3) provides as follows:

- (3) The orders that may be made respecting a member, architectural firm, licensee or associate are as follows:
 - (a) reprimand of the member, architectural firm, licensee or associate or a member who is an officer, partner, shareholder or employee of the architectural firm;
 - (b) imposition of conditions on the certificate of practice of the member, architectural firm or licensee;
 - (c) suspension of the member, architectural firm, licensee or associate from practice for a specified period of time;
 - (d) removal of the name of the member, architectural firm, licensee or associate from the register;
 - (e) cancellation of the licence of the licensee or certificate of practice of the member, architectural firm or licensee;
 - (f) imposition of a fine on the member, architectural firm, licensee or associate, payable to the institute and not greater than \$10 000.

[16] In addition, section 50(5) and (6) of the *Architects Act* allow the Committee to make an order under section 50(3) conditional, such that the order only applies if the member² does not satisfy a condition set by the Committee.

[17] The parties are similarly in agreement on the framework to be applied in assessing an appropriate penalty following on the Disciplinary Reasons. Both the AIBC and Mr. Gee reference the factors that were considered for the purposes of determining an appropriate penalty in *Law Society of British Columbia v. Ogilvie* [1999] LSBC 17. These factors, which are commonly referred to as the “Ogilvie Factors”, have been applied in multiple matters by the Law Society of BC, and by other regulatory bodies in the Province. More specific to the assessment of an appropriate penalty in this matter, the parties note that the Ogilvie Factors have been reviewed in reasons for consent resolution agreements that the AIBC has concluded with members under section 51.1 of the *Architects Act*. In particular, the parties rely on the reasons in the December 1, 2017 *Consensual Resolution Agreement between Gregory H. Beck Architect AIBC and The Architectural Institute of British Columbia (“Beck”)*.

[18] Finally, in respect of the Committee’s authority to direct Mr. Gee to pay costs, section 51 of the *Architects Act* provides as follows:

Costs of disciplinary proceedings

51. (1) The disciplinary committee may direct that the costs of the disciplinary committee incurred in holding the inquiry, including fees paid on behalf of the disciplinary committee to lawyers and witnesses, are payable to the institute by the member, architectural firm, licensee or associate against whom the complaint was made, in the amount and within the time specified by the disciplinary committee.
- (2) The disciplinary committee may direct that the inquiry costs of the member, architectural firm, licensee or associate against whom the complaint was made, including fees paid on behalf of the member, architectural firm, licensee or associate to lawyers and witnesses, are payable by the institute to the member, architectural firm, licensee or associate against whom the complaint was made, in the amount and within the time specified by the disciplinary committee.

² As explained at paragraph 69 of the Reasons, the term “member” is synonymous with the term “architect” in the *Architects Act*. Under the PGA, a “member” is now referred to as a “registrant”. For consistency, the Committee continues to use the term “member” in these reasons both when referring to Mr. Gee and when referring more generally to architects registered with the AIBC.

- (3) The disciplinary committee may make a direction under subsection (1) or (2) without determining the amount payable.
- (4) If a direction is made under subsection (1) or (2) without determining the amount payable, the institute or the member, architectural firm, licensee or associate in whose favour an order of costs was made may apply to a registrar of the Supreme Court to determine the amount, and the certificate of the registrar determining the amount payable is enforceable as if it were an order of the court.
- (5) If a member, architectural firm, licensee or associate does not pay costs as required under subsection (1) or (4) within the time specified for their payment, the disciplinary committee may, without giving notice or holding a hearing, suspend the member, architectural firm, licensee or associate from practice until the costs are paid.

III. ANALYSIS

Assessing an appropriate penalty

[19] The parties each make submissions further to the following Ogilvie Factors as cited in the reasons for *Beck*:

- (a) the nature and gravity of the conduct proven;
- (b) the age and experience of the respondent;
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- (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;
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- (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.

[20] Mr. Gee has also provided submissions in relation to the following additional Ogilvie Factors cited in *Beck*³:

- (c) the previous character of the respondent, including details of prior discipline;
- (h) the possibility of remediating or rehabilitating the respondent; [and]
- (i) the impact upon the respondent of criminal or other sanctions or penalties[.]

[21] As noted in the *Beck* reasons, not all of the Ogilvie Factors come into play in all cases, and it is for the parties to identify the factors they see as relevant and deserving of weight. Then, in assessing an appropriate penalty, the Committee considers which factors are aggravating and which are mitigating. Aggravating factors weigh in favour of granting a more significant penalty. Mitigating factors weigh against the granting of such a penalty. The Committee also decides which of the factors it has considered are more important to its assessment of an appropriate penalty.

(a) The nature and gravity of the conduct proven

[22] The Committee considers this factor to be of particular importance to the assessment of an appropriate penalty, given its relevance to the consideration of a number of the other Ogilvie Factors.

[23] The AIBC submits that the conduct proven in the course of the Hearing is serious in nature, extending over a period of years and impacting multiple aspects of the Project. Mr. Gee agrees that some of the proven conduct is of a serious nature. However, he asserts that it is “not of the most serious nature given the limited harm and lack of intent”.

[24] The Committee is of the view that the proven conduct is serious. Offering and providing architectural services without a certificate of practice and entering into agreements with clients that do not include written confirmation of professional liability insurance and the Bylaw compliance notifications are not simply technical violations. These requirements are fundamental to the representation of professionalism and

³ The *Beck* reasons identify one further Ogilvie Factor: “(j) the impact of the proposed penalty on the respondent”. The parties have not addressed this factor in their submissions.

public protection that comes with registration. As noted in the consensual resolution agreement in *Trio Architectural Design Inc. and Brian Hanna Architect AIBC and The Architectural Institute of British Columbia* (“Hanna”), which the AIBC has put before the Committee as a comparable case in respect of penalty,

The necessary bylaw compliance notifications in a proposal for architectural services and/or client architect agreement is a client communication and consumer protection expectation that reinforces the architect’s professional obligation.

[25] The failure of Mr. Gee to include these notifications in the contractual documentation is all the more significant in a context where the Committee has found that he breached standards integral to an architect’s role as coordinating registered professional for a project. Despite the requirements in the AIBC Bylaws to conduct himself in a professional manner and to perform the necessary general review before certifying construction performance and payments further to that performance, Mr. Gee failed to advise FCC, the financier for the Project, of substantial change orders when preparing certificates of payment that he provided to FCC or knew would be provided to FCC. At the same time, the number of field reviews conducted by GLA was not sufficient to support the certificates of payment that were issued by Mr. Gee and GLA for the Project, and the field reviews that were conducted were not conducted with reasonable care and competence. Finally, the Committee found that field review reports prepared by Mr. Gee and GLA were brief and superficial, and therefore, inadequate to identify the specific work undertaken by the contractor, and whether or not that work had been completed in conformance with the contract documents.

[26] The Committee considers the seriousness of the proven conduct to be an aggravating factor that weighs in favour of granting a more significant penalty.

(b) The age and experience of the respondent

[27] Mr. Gee was initially registered as an architect with the AIBC in 1996. He gave up his registration for a period of approximately 3 years starting in 1998, but thereafter, was continuously registered with the AIBC from February 6, 2001 until his retirement on

January 30, 2023. At the time of making his submissions on penalty, Mr. Gee was 63 years old.

[28] As noted in the AIBC's submissions, at the time when he began to work on the Project in April 2015, Mr. Gee had been registered as an architect with the AIBC for approximately 16 years in total and over 14 years since he had returned to registration in early 2001. He was not a new member, and as such, was expected to have known and understood his professional responsibilities, including the requirements of the *Architects Act* and the Bylaws that he has been found to have contravened in the Reasons.

[29] The Committee considers this to be an aggravating factor.

(c) The previous character of the respondent, including details of prior discipline

[30] Mr. Gee notes in his submissions that, prior to this matter, he had no prior professional conduct record with the AIBC. Mr. Gee asserts that this is a mitigating factor, and the Committee agrees.

(d) The impact upon the victim

[31] The AIBC argues that there was a financial impact on Ms. Chang as a result of the failure of Mr. Gee and GLA to conduct appropriate field reviews or properly identify and account for change orders before issuing certificates of payment for the Project. The AIBC says that the failures of Mr. Gee and GLA "resulted in actual financial harm to Ms. Chang" (or, more accurately, Lulu), as

[s]he made two lump sum payments totalling \$700,000 for change orders to CPOS, spent an additional \$1,000,000 to repair deficiencies (including \$500,000 on fixing the roof) and was sued by CPOS for over \$1,000,000.

[32] In response, Mr. Gee "acknowledges that inadequate field reviews can result in unnecessary costs and delays and a loss of public confidence in the profession", but submits that his field reviews were not inadequate and does not admit any resulting impacts on Ms. Chang or Lulu.

[33] The Committee is of the view that Mr. Gee's conduct did give rise to significant impacts for Lulu and other parties to the Project. First, the failure of Mr. Gee and GLA to obtain a practice certificate and to utilize contractual documentation that complied with AIBC requirements meant that Lulu entered into an agreement for architectural services without fully understanding the protections for Lulu and the obligations of Mr. Gee and GLA in regard to those services. In addition, the failure of Mr. Gee to fulfill his obligations as the coordinating registered professional and payment certifier for the Project meant that his client, Lulu, and the financier, FCC, were not adequately advised of the progress of the Project, including what work remained to be completed, and what portion of the work (whether completed or not) might involve either change orders or deficiencies. The implication of this inadequate reporting, is that FCC was advancing money for the Project when it may not have been prudent for it to have been doing so. More importantly, Lulu was left not knowing whether it should have been paying for change orders claimed by CPOS and for deficiencies that in some cases it had to uncover itself. As the AIBC notes in its submissions, Ms. Chang gave evidence that Lulu spent over \$1,000,000 to fix the various Project deficiencies, including around \$500,000 to redo the roof of the winery. Not surprisingly, the relationship between Lulu and CPOS broke down, and CPOS sued Lulu, with Lulu then filing a counterclaim against GLA. If Mr. Gee and GLA had conducted appropriate field reviews or properly identified and accounted for change orders before issuing certificates of payment for the Project, all of this might have been avoided.

[34] In the Committee's view, this is an aggravating factor.

(e) The advantage gained, or to be gained, by the respondent

[35] The AIBC says that Mr. Gee and GLA "stood to gain financially from their conduct on [the] Project to the detriment of Ms. Chang and Lulu", and while Mr. Gee "should have been a neutral third party for the Project", he just provided "a rubber stamp on work done by CPOS".

[36] Mr. Gee admits that he benefitted from being able to secure the Project work without having a certificate of practice. Otherwise, Mr. Gee submits that he “did not significantly benefit” from any of the more serious misconduct found by the Committee.

[37] In the Committee’s view, a member gains an advantage when he or she contracts to carry out the professional obligations of an architect and then fails to fulfill those obligations. In the April 25, 2015 Service Fee and Proposal between Lulu and GLA, Mr. Gee and GLA contracted with Lulu to “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”, and to “[p]rovide site review reports to [the] owner, contractor and city officials as required”. Nevertheless, and despite being paid in full further to the contract with Lulu, Mr. Gee failed to conduct field reviews when needed. Additionally, when field reviews were conducted, they were not performed in a manner that was adequate either for the proper identification and confirmation of change orders and deficiencies, or for the issuing of accurate certificates of payment. Further, the field reports for those field reviews were brief and superficial.

[38] The Committee finds this to be an aggravating factor.

(f) The number of times the offending conduct occurred

[39] In his submissions, Mr. Gee comments that “[t]he project licensing breach and Service Fee and Proposal breach can be seen as single events, while the change order and field review breaches occurred over the course of the Project.”

[40] The Committee sees the repeated “change order and field review breaches ... over the course of the Project” as reason for increased concern regarding Mr. Gee’s conduct. Therefore, the Committee views this as an aggravating factor.

- (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

[41] The AIBC submits that Mr. Gee has failed to acknowledge his misconduct, and instead, during the investigation of the Complaint, attacked Ms. Chang's credibility and made unfounded allegations of bias against the AIBC's investigator. The AIBC also says that, in its consideration of an appropriate penalty, the Committee should take into account Mr. Gee's failure to participate in the AIBC's disciplinary process leading up to and during the Hearing.

[42] In his submissions, Mr. Gee acknowledges the Committee's findings in respect of Allegations 1 and 3 concerning the provision of architectural services for the Project when neither he nor GLA held a certificate of practice, the failure to include the required notices concerning professional liability insurance and compliance with the AIBC Bylaws in GLA's Service Fee and Proposal with Lulu and CPOS, and allowing Mr. Lin, who was not an AIBC registered architect, to sign GLA's Service Fee and Proposal with Lulu. At the same time, however, he states his disagreement with the Committee's findings in respect of Allegations 4, 5, 6 and 7 concerning the failure to notify FCC of change orders, failing to complete field reviews with reasonable care and competence, and failing to provide adequate supervision, direction and control of architectural services provided on the Project further to GLA's Service and Fee Proposal with Lulu. Mr. Gee indicates an intention to appeal the findings in respect of Allegations 4, 5, 6 and 7.

[43] The Committee finds Mr. Gee's failure to acknowledge the Committee's findings in respect of Allegations 4, 5, 6 and 7 concerning. Those findings involve the failure to adhere with fundamental standards of professionalism in the practice of architecture. Those standards protect the public and preserve the integrity of the profession. As described in the Reasons, the Committee's findings were made based on the evidence presented at the Hearing. Mr. Gee had the opportunity to appear at the Hearing to contest that evidence. However, as he concedes in his submissions, he made the decision not to participate in the Hearing. While Mr. Gee says he made that decision

“having lost faith in the Investigation”, the Hearing also offered him the chance to challenge any concerns he had with the investigation.

[44] In the Committee’s view, this is an aggravating factor.

(h) The possibility of remediating or rehabilitating the respondent

[45] The AIBC does not address this factor in its submissions. Mr. Gee notes his retirement from practice, asserting that, as a result of that retirement, “[t]his is a non-factor.”

[46] As is explained below in the discussion regarding specific and general deterrence, the fact that Mr. Gee’s is now a retired architect affects the scope of penalties that are potentially applicable in this matter.

(i) The impact upon the respondent of criminal or other sanctions or penalties

[47] This is the third of the Ogilvie Factors that Mr. Gee commented on, but the AIBC did not include in its submissions. Mr. Gee advises that he had to defend himself in a civil proceeding concerning the Project and the matters described in the Complaint. Mr. Gee asserts that it is enough for him to have “faced legal consequences” for this to be considered a mitigating factor. However, the Committee does not agree. Mr. Gee’s submission does not indicate that this litigation gave rise to any “sanctions or penalties” that impacted Mr. Gee. Further, as noted above, Mr. Gee’s failure to conduct appropriate field reviews and properly identify and account for change orders before issuing certificates of payment for the Project at least made the prospect of litigation more likely. Consequently, the Committee does not see this as either a mitigating factor or an aggravating factor.

(k) The need for specific and general deterrence

[48] The consensual resolution agreement in *Hanna* includes a good description of the meaning and purpose of “specific deterrence” and “general deterrence”:

Specific deterrence' means deterring the respondent from repeating the conduct in question.

* * * *

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.

[49] Asserting that the conduct of Mr. Gee at issue in this matter represents “a marked disregard for professional standards that merits significant denunciation”, the AIBC says that both specific and general deterrence are needed in this case. Specific deterrence to deter Mr. Gee from repeating the conduct in question, and general deterrence to “promote reduction of similar improper conduct” in the profession. The AIBC also decries Mr. Gee’s non-compliance over the course of the disciplinary process, saying that behavior “does not instill confidence in the architecture industry, is not in the public interest and is far from what is expected or required from a registered architect”.

[50] Mr. Gee submits there can be no specific deterrence because he is “retired from practice”. He says the penalty he has proposed is “substantial enough to provide general deterrence to other architects”.

[51] The AIBC has provided no explanation as to how or why specific deterrence might apply in this case. As noted, Mr. Gee is a retired architect. In fact, he has now been a retired architect for a year. More than that, in his submissions, Mr. Gee asserts that he is “retired from practice”. Given Mr. Gee is no longer a registered architect, he can now only engage in architectural practice under the supervision of a registered architect. The Committee understands this to be the same as for any member of the general public. At least as circumstances now stand, the Committee sees no possibility of Mr. Gee repeating the conduct at issue in this matter. Accordingly, the Committee agrees that there is currently no basis for specific deterrence in this case.

[52] On the other hand, the Committee perceives a clear need for general deterrence. As noted above, the Committee views the conduct at issue in this matter as serious. It is important for all members of the AIBC to understand that engaging in conduct of this nature will entail significant consequences.

[53] As such, at least in respect of general deterrence, the Committee sees this as an aggravating factor.

(l) The need to ensure the public's confidence in the integrity of the profession

[54] Beyond his comments on general deterrence as set out above, Mr. Gee provides a separate submission on the need to ensure public confidence in the integrity of the architectural profession, stating simply that his proposed penalties “will enhance the public’s confidence in the integrity of the profession in a number of ways”. Mr. Gee does not explain the ways in which he expects his proposed penalties will have this effect. He does, however, comment that “The public has the right to expect that a professional architect will be familiar with the requirements of the Act and AIBC Bylaws and will comply with these requirements.”

[55] The Committee agrees with this comment from Mr. Gee as to the expectations of the public. If a member fails to meet those expectations, the AIBC must take appropriate action to correct that failure in order to ensure public confidence in the profession.

[56] While the Committee see this as an aggravating factor in a case where it has found Mr. Gee’s conduct to be serious in nature, it also acknowledges that this factor largely overlaps with the need for general deterrence as described above.

(m) The range of penalties in similar cases

[57] The consideration of penalties that have been applied in similar cases is a means of assessing what action a decision maker might reasonably take in the case before it. Penalties in similar cases are helpful to establish a range of sanctions by which to assess the current matter.

[58] The AIBC points to three prior AIBC consensual resolution agreements and two consent orders made by the Discipline Resolution Panel of the Association of Professional Engineers and Geoscientists of the Province of British Columbia (the “EGBC”) as being instructive in this matter. The AIBC consensual resolution agreements are *Beck, Farzin Yadegari Architect AIBC* and *The Architectural Institute of*

British Columbia (“Yadegari”), and *Hanna*. The EGBC consent orders are *In the Matter of Theodore (Ted) Sorensen, P. Eng., Engineers and Geoscientists BC File No T22-004* (“Sorensen”) and *In the Matter of Johann G. Duerichen, P. Eng., Engineers and Geoscientists BC File No T19-039 and T21-35* (“Duerichen”).

[59] In response, Mr. Gee does not put forward any similar cases. However, he does criticize the AIBC’s reliance on *Hanna* and the EGBC consent orders.

[60] The admitted conduct in *Beck* is similar to the Committee’s findings against Mr. Gee in respect of allegations 1, 3 and 7. In *Beck*, the member, Mr. Beck, and his firm provided architectural services when they did not have a valid certificate of practice, similar to Mr. Gee and GLA. Like Mr. Gee, Mr. Beck also failed to maintain “direct knowledge and supervisory control of” architectural services. In addition, the contractual documentation for architectural services used in *Beck* did not include notice as to professional liability insurance and the required clauses on compliance with the AIBC Bylaws, which is what the Committee found in respect of Mr. Gee and GLA.

[61] The Committee is of the view that the seriousness of the similar conduct in *Beck* is roughly analogous, with certain aspects of the conduct being more serious and other aspects being less serious. For example, *Beck*, involved two complaints in respect of three different projects that were ongoing at different times over a period of 17 years, whereas, in this matter, Mr. Gee was found to have provided architectural services without a certificate or practice only for the Project and over a period of just two years. On the other hand, the failure to maintain “direct knowledge and supervisory control of” architectural services in *Beck* involved an individual, who was a registered architect in Alberta but not BC, sealing a site visit report for a BC project with an Alberta seal, whereas Mr. Gee allowed Mr. Lin, who was not a registered architect in BC or anywhere else, to sign the Service Fee and Proposal between GLA and Lulu. As was observed in *Beck*, given the individual who sealed the site visit report was a registered architect in

Alberta, “the lack of supervision may be less egregious than situations in which a non-architect is providing services”.⁴

[62] Of more significance to the Committee, *Beck* does not involve any conduct similar to the Committee’s findings in respect of allegations 4, 5 and 6 against Mr. Gee. As such, the scope of conduct underlying the penalties in *Beck* is much narrower, and in that respect, much less serious. Nevertheless, the penalties in *Beck* included a reprimand, a fine of \$4,500 to be paid within 30 days of the approval of the consent resolution agreement, and completion of the AIBC course “Ethics Act and Bylaws”.

[63] Like *Beck*, *Yadeghari* also involved two complaints. In the first complaint, a Schedule C-B (Assurance of Professional Field Review) was submitted to the municipal authority even though a required railing for the main stairway had not yet been installed. In the second complaint, the member provided architectural drawings that were submitted to a different municipal authority even though they had not been signed or sealed. While the member in *Yadeghari* was found to have breached some of the same Bylaw provisions as Mr. Gee, including Bylaws 30.1⁵ and 34.5⁶, there were other Bylaws breached that are not at issue in this matter, and overall, the nature of the conduct is different. The Committee does not find *Yadeghari* to be particularly helpful to the assessment of an appropriate penalty for Mr. Gee.

[64] The facts in *Hanna* are more comparable. The member, Mr. Hanna, was working together with a Mr. Hall who was a drafter and a designer but not a member of the AIBC or a registrant architect in any other jurisdiction. Hanna and Hall worked through a firm called Trio Architectural Design Inc. (“Trio”). Mr. Hall prepared and submitted a proposal from Trio for improvements to a pub. The client dealt exclusively with Mr. Hall in relation to the architectural services for the project. Aspects of those services were not properly

⁴ *Beck*, “Reasons for Penalty” at para. 1.12.

⁵ “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.”

⁶ “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.”

performed. This included the submission of drawings for the project to the municipal authority without Mr. Hanna's seal on them.

[65] Similar to this matter, the contractual documentation provided to the client in *Hanna* did not include required notice as to professional liability insurance and clauses on compliance with the AIBC Bylaws. In addition, Mr. Hanna admitted that he failed to keep the client reasonably informed during the course of the project and demonstrate adequate supervision, direction or control of the architectural services provided by Trio. He also admitted that he failed to apply his architect's seal to the drawings that were submitted to the municipal authority. The penalties in *Hanna* included a reprimand, a fine of \$5,500 to be paid within 30 days of the approval of the consent resolution agreement, completion of the AIBC course "Ethics Act and Bylaws" and attendance at an Oral Conduct Review.

[66] The Committee notes that prior to *Hanna*, Mr. Hanna had three prior discipline findings against him. Two of those involved issues with continuing education requirements, but one concerned a prior instance where Mr. Hanna had failed to properly supervise Mr. Hall in the provision of architectural services. Aside from this factor, the Committee considers Mr. Gee's conduct to be more serious than the conduct that was at issue in *Hanna*, particularly given Mr. Gee's repeated failure to conduct adequate field reviews and to issue accurate certificates, and considering the Project was much larger (as the AIBC points out in its reply submissions, the fee proposal in *Hanna* was valued at \$10,000 whereas the fee agreement in this matter was for \$43,200) and was ongoing for a longer period of time.

[67] The Committee reviewed the *Sorensen* and *Duerinchen* consent orders from the EGBC, but did not find them to be of assistance in the assessment of an appropriate penalty in this matter.

[68] In *Sorensen*, the firm of the engineer registrant, Mr. Sorensen, took on the structural design of a building even though the person who would be acting as engineer of record lacked the training and ability to complete that design. The result was a building that was not designed according to applicable standards or using an adequate

design process, and that was defective. It was agreed that the existence of defects in the building demonstrated Mr. Sorensen's incompetence.

[69] In *Duerinchen*, reviews of the structural design for a residence and a retail store were not conducted by an engineer with appropriate experience in designing structures of a similar type. In addition, the engineer registrant, Mr. Duerinchen, signed and sealed documents and drawings when he did not have the training or experience to do so and when he had not conducted or supervised the necessary field reviews or ensured they were conducted by an appropriately qualified professional. Some of the documents prepared by Mr. Duerinchen also lacked necessary information or were not supported by proper investigations or calculations. Finally, Mr. Duerinchen engaged in an aspect of engineering practice when prohibited from doing so by an interim order.

[70] The issues in respect of competency, qualification, adequate training and ability, and practicing contrary to an interim order that arose in *Sorensen* and *Duerinchen* do not feature in this matter. As such, the conduct at issue in those cases is much more serious, and the penalties (which included, for Mr. Sorensen, cancellation with no return to practice for 18 months and, for Mr. Duerinchen, cancellation with no return for two years and a fine of \$25,000) are not instructive.

Appropriate penalty

[71] As noted above, the AIBC seeks an order from the Committee that includes a reprimand, a suspension of Mr. Gee's registration for a period of six months, and a fine in the amount \$7,500, payable to the AIBC within 30 days after the Committee makes its order. In response, Mr. Gee proposes a reprimand and a fine of \$750.

[72] In reviewing the Ogilvie factors the Committee has found that the proven conduct by Mr. Gee is serious. While Mr. Gee did not have a discipline history prior to this matter, he was an experienced member at the time the proven conduct occurred, and so, he should have been aware that what he was doing was in violation of multiple provisions of the *Architects Act* and the Bylaws. Those violations were repeated over the course of the Project. Mr. Gee gained an advantage when he contracted to carry out

the professional obligations of an architect and then failed to fulfill those obligations. At the same time, there were significant impacts for his client. Lulu spent over \$1,000,000 to fix the various Project deficiencies, including around \$500,000 to redo the roof of the winery. Lulu and CPOS became embroiled in litigation concerning the Project.

[73] Further, Mr. Gee has not fully acknowledged his conduct. Indeed, in his submissions he expresses his disagreement with the Committee's findings concerning his failure to notify FCC of change orders, his failure to complete field reviews with reasonable care and competence, and his failure to provide adequate supervision, direction and control of the architectural services provided on the Project.

[74] Given that Mr. Gee is a retired architect, and has indicated that he is "retired from practice", at present, the Committee does not see any potential for remediation or application for specific deterrence. However, given the serious nature of the conduct involved, the Committee has identified a need for general deterrence and a need to ensure continuing public confidence in the profession.

[75] The AIBC asserts, and Mr. Gee accepts, that a reprimand should be recorded against him. The Committee agrees.

[76] Following on its review of the Ogilvie factors, the Committee does not find that Mr. Gee's proposed fine of \$750 is reasonable. In particular, the Committee does not see this amount as commensurate with the seriousness of the proven conduct in this matter. The amount is also not sufficient to provide the necessary general deterrence or to ensure continuing public confidence in the profession. Put another way, the Committee is of the view that a fine of this amount would not satisfy the AIBC's public protection mandate.

[77] The Committee agrees that the fine amount proposed by the AIBC is appropriate. As noted, the Committee finds that the conduct in this matter is more serious than what occurred in *Beck* and *Hanna*. The fines in those consensual resolution agreements were \$4,500 and \$5,500 respectively. The Committee finds that a fine of \$7,500 is appropriate here.

[78] The AIBC has asked that this fine be payable within 30 days of the Committee making its order. Mr. Gee had agreed to pay a fine within the same period, but that was in relation to his proposed amount of \$750. Given the amount that the Committee has ordered, and taking into account the fact that Mr. Gee is a retired architect, the Committee orders that the full amount of the \$7,500 fine is payable within 60 days of the date of these reasons.

[79] Finally, with reference to *Beck, Hanna, Sorensen* and *Duerinchen*, the AIBC has asserted that a suspension for a period of six months is warranted to denounce Mr. Gee's conduct. The AIBC's position is that this suspension should commence 14 days after the Committee makes its order on penalty. However, the AIBC does not explain what purpose a suspension would serve when Mr. Gee remains a retired architect, and as such, is already precluded from engaging in the reserved practice for architects. Indeed, in considering the current Bylaw 7.39, the Committee does not see that a suspension would have any meaningful impact on Mr. Gee given his current registration status.

[80] As stated above, with Mr. Gee unable to practice there is no ability to prevent him repeating the proven conduct, and so a suspension cannot be justified on the basis of specific deterrence. By the same token, the Committee does not see how suspending Mr. Gee at this time, when it will have no meaningful impact on him, might advance the objects of general deterrence.

[81] The Committee is aware of cases where retired or former registrants in other professions have received suspensions that apply following reinstatement or the return to a registration status that permits practice. However, the Committee has not received any submissions as to whether that might be available or appropriate here, and so, it is not able to make such an order.

[82] As such, taking into account the discussion of the Ogilvie factors, the Committee orders that Mr. Gee

- (a) have a reprimand recorded against him, and

- (b) pay a fine in the amount of \$7,500 within 60 days of the date of these reasons.

COSTS

[83] The AIBC is seeking costs and disbursements totalling \$14,559.49. It has calculated this amount in a Bill of Costs that has been prepared according to the Tariff found in Schedule B of the *Supreme Court Civil Rules*⁷, and using the \$110 Scale B Unit value that applies when calculating the costs for matters of ordinary difficulty.

[84] The AIBC justifies this approach to the calculation of its costs claim on two bases. First, the AIBC notes that under subsections (1), (3) and (4) of Section 51 of the *Architects Act*, the Committee may direct a member to pay the costs incurred by the Committee in holding an inquiry without determining the amount payable, leaving the AIBC to apply to a Registrar of the BC Supreme Court to determine that amount. The AIBC asserts that the potential for the costs of an inquiry to be determined by a Registrar of the Supreme Court suggests that, when the costs of an inquiry are determined by the Committee, it should be done in a manner similar to how costs are determined in the Supreme Court under the Civil Rules. Second, the AIBC cites *Shpak v. Institute of Chartered Accountants of British Columbia*, 2003 BCCA 149 ("*Shpak*"), for the proposition that "when the legislature refers to 'costs' in statutes, it intends that tribunals apply principles that courts apply when awarding and quantifying costs in civil proceedings, unless a statute says otherwise."

[85] The AIBC further supports its approach to the calculation of costs for this matter by referring to provisions of the AIBC's Consensual Resolution Guidelines dated January 2019 and its Costs Administration Guidelines which are Schedule S of the current Bylaws under the PGA. The AIBC cites the following from paragraph 1.1 of the Consensual Resolution Guidelines:

1.1 It is the AIBC's position that costs in a disciplinary matter, including consensual resolution, are not ordered as a punitive measure but are agreed to or ordered independently from any sanction imposed. The foundation and principles supporting

⁷ B.C. Reg. 168/2009 (the "Civil Rules").

these Guidelines are drawn from several sources including the BC Supreme Court Rules Appendix B – Party and Party Costs, precedents related to costs decisions in administrative matters; and the handling of disciplinary costs by other self-regulating professions...

From the Costs Administration Guidelines, the AIBC notes the following:

1.3 Costs are not intended to address the conduct that is the subject of the discipline process. Instead, Costs are agreed to as a partial recovery of staff, administrative and other AIBC costs related to the investigation of a matter pursuant to Section 66 of the PGA, negotiation and preparation of an agreement pursuant to Sections 72, 73 or 74 of the PGA, preparation for and conduct of Discipline Hearings pursuant to Section 75 of the PGA and Publication processes.

* * * *

3.3. For the purposes of calculating Costs with respect to a Discipline Hearing, recoverable Costs are costs incurred from the time that the Citation is issued pursuant to Section 66(1)(d) or 72(3) of the PGA until the matter is resolved by agreement pursuant to Sections 72, 73 or 74 of the PGA, or conclusion of a Proceeding pursuant to Section 75 of the PGA.

3.4 In determining Costs the Respondent must pay, the Discipline Hearing Panel considers whether AIBC proved all the charges set out in the Citation to the requisite standard, and if so, the seriousness of the charges which were not proven relative to those which were proven.

[86] Mr. Gee does not criticize the AIBC's approach to the calculation of costs. Rather, he submits that the costs award sought by the AIBC is "unnecessarily punitive" noting that it is "nearly double" the fine proposed by the AIBC. His position is that the costs order should be more in line with the costs that were agreed to in *Beck* and *Hanna*. He says that he "will accept" an award of costs in the amount of \$750, payable within 30 days after that award is made.

[87] Additionally, both parties have made submissions regarding *Jinnah v. Alberta Dental Association and College*, a 2022 decision of the Alberta Court of appeal ("*Jinnah*")⁸. In *Jinnah*, the Court found a cost award of \$37,500 to be "so large that [it], in effect, became the primary sanction"⁹. Further, the Court held that, absent four exceptions, a professional regulator should bear most if not all costs associated with its self regulation processes. The four exceptions identified by the court were when the

⁸ 2022 ABCA 336.

⁹ *Jinnah*, at para. 125

member commits serious unprofessional conduct, is a serial offender, has failed to cooperate with investigators or has engaged in hearing misconduct.

[88] In support of his position on costs, Mr. Gee says that none of those exceptions apply to him. He says, “[h]e cooperated with the Investigation Committee and, while he regretfully failed to attend the Hearing, this did not result in increased costs for the AIBC since his failure to attend likely shortened the Hearing.”

[89] The AIBC observes that *Jinnah* had not been followed by the courts in BC, and is not the law in this province. It also notes that *Jinnah* has not been consistently followed in Alberta, with a panel of the Law Society of Alberta finding in one decision¹⁰ that *Jinnah* only applied to the cost regime under Alberta’s *Health Professions Act*. While the AIBC maintains that the approach to costs in this matter is found in *Shpak*, it says that, even if *Jinnah* were held to apply in BC, it should not have to bear most of the costs associated with the Hearing, as Mr. Gee did commit “serious unprofessional conduct” and Mr. Gee’s conduct leading up to and at the Hearing was entirely inappropriate.

[90] The Committee declines to follow *Jinnah* in determining a costs award in this matter. First, the *Jinnah* decision is distinguishable on its facts. In *Jinnah*, there was no finding of misconduct in relation to Dr. Jinnah’s practice of her profession. In fact, the only misconduct finding was that part of an email Dr. Jinnah sent to her patient had obstructed the complaint process. Further, the only penalty for Dr. Jinnah was a reprimand. This stands in stark contrast to this matter, where the Committee has found that, in his practice of the architectural profession, Mr. Gee has violated multiple provisions of the *Architects Act* and the Bylaws. Second, for the reasons raised by the AIBC as described above, the Committee is not convinced that the reasoning in *Jinnah* is applicable in BC.

[91] Given the AIBC proved all but one of the allegations made against Mr. Gee, and given the Committee’s finding that conduct underlying those allegations was serious,

¹⁰ Law Society of Alberta v Beaver, 2023 ABLS 4

the Committee is of the view that an award of costs is appropriate in this case. The Committee also agrees with the AIBC's approach to assessment of those costs.

[92] The Committee does not accept Mr. Gee's contention that, because he did not attend the Hearing, he should be relieved of paying anything other than a nominal amount of costs. It was appropriate for the AIBC to pursue a hearing in this case given the serious nature of the conduct at issue and Mr. Gee's refusal to admit that conduct. As noted in the Reasons, a pre-hearing conference took place before the Committee on May 13, 2022 for the purpose of considering requests for orders relating to the exchange of documents and lists of witnesses. This was a reasonable step, even though Mr. Gee did not end up attending. On June 27, 2022, at the start of the Hearing, the Committee also needed to hear from counsel for the AIBC regarding Mr. Gee not being present and his request for a 30-day adjournment. As detailed in the Reasons, the Committee decided both not to grant an adjournment and to proceed with the Hearing as scheduled. The Hearing was diligently prosecuted: each of the witnesses called by the AIBC provided relevant evidence, and hearing time was not wasted.

[93] The Committee does not agree with Mr. Gee's submission that the cost award sought by AIBC is "unnecessarily punitive". It also sees no reasonable basis for Mr. Gee's suggestion that an appropriate award should be more in line with the costs of \$1,000 that were agreed to in *Beck* and *Hanna*. Plainly, that amount was the result of a consent arrangement in both cases that precluded the need for the AIBC to proceed with and incur the cost of a Hearing.

[94] To the contrary, the Committee finds the costs and expenses claimed in the Bill of Costs submitted by the AIBC to be reasonable in the circumstances. The Committee is satisfied that the amount of units claimed for the identified steps in the proceeding are reasonable and rationally connected to the length of time and difficulty involved in conducting those steps. The Committee also finds that the claimed expenses are reasonable and were reasonably incurred for the preparation and conduct of the Hearing.

[95] Accordingly, the Committee directs that Mr. Gee pay costs in the amount of \$14,559.49. For the same reasons as set out above concerning the deadline for payment of the fine, the Committee orders that Mr. Gee pay the full amount of the \$14,559.49 cost award to the AIBC within 60 days of the date of these reasons.

SUMMARY

[96] For the reasons set out above, the Committee orders that Mr. Gee

- (a) have a reprimand recorded against him, and
- (b) pay to the AIBC a fine in the amount of \$7,500 within 60 days of the date of these reasons.

[97] Further, the Committee directs that Mr. Gee pay the AIBC costs in the amount of \$14,559.49 within 60 days of the date of these reasons.

Dated at Vancouver, British Columbia this 8th day of February, 2024.

Disciplinary Committee


John Scott, Architect AIBC (Chair)

FEB. 8, 2024
Date


Sean F. Rodrigues, Architect AIBC

February 8, 2024

Date


Barbara Brink, Lieutenant Governor Appointee to AIBC Council

February 8, 2024

Date