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:**

ROBERT GARVEY 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 Between November 2022 and March 2023, the AIBC's Investigations Committee (the "Committee) conducted an investigation, into a complaint about Robert Garvey Architect AIBC concerning the provision of architectural services for a mixed-use residential and commercial project in Saanich, BC (the "Project").

1.3 On February 10, 2023, the AIBC transitioned to the authority of the *Professional Governance Act,* ("PGA") which replaced the repealed *Architects Act*, R.S.B.C. 1996, c. 17 (the "Act"). While the former *Act* and the AIBC Bylaws (March 25, 2021) made under the Act are no longer in force, the *Architects Regulation* permits their continuance in cases where complaints and investigations were initiated before the transition, such as in this matter.

1.4 Following its investigation, the Committee recommended the matter proceed to a disciplinary inquiry for consideration 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").

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 that 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. Robert Garvey

1.9 Mr. Garvey was first registered as an Architect with the AIBC on November 28, 2018, and has maintained his registration since that time.

1.10 Mr. Garvey practices architecture in British Columbia through Robert J. S. Garvey, Architect (the "Firm"), a sole proprietorship that holds an AIBC certificate of practice issued on November 28, 2018.

1.11 Mr. Garvey's primary practice is in Manitoba, where he ordinarily resides. In Manitoba, Mr. Garvey practices through Architecture 77 Inc. ("Architecture 77"), a corporation.

## C. The Complaint

1.12 In November 2022, the AIBC received a complaint about Mr. Garvey from a member of Saanich's Advisory Design Panel (the "Complainant").

1.13 The Complainant alleged that the architectural drawings submitted to the Saanich Advisory Design Panel displayed the title block of the developer, and Mr. Garvey was listed as a consultant (the "Complaint").

1.14 Additionally, the Complaint alleged that neither the digital nor the hard copy drawings were sealed.

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

## D. The Investigation/Agreed Facts

1.16 The investigation involved a review of the material submitted by the Complainant and Mr. Garvey, including his response to questions asked by the Committee. Mr. Garvey also attended an interview with the Committee.

1.17 The facts in paragraphs 1.18 – 1.32 below are agreed to by Mr. Garvey and the *PGA* Investigation Committee, and are based on materials reviewed during the investigation.

1.18 Mr. Garvey provides architectural services to one client, a multi-provincial residential developer (the "Developer"), on a standing order basis.

1.19 The majority of the Developer's work is located in Manitoba and Ontario, where Mr. Garvey practices through Architecture 77. His office is in the same building as the Developer.

1.20 In British Columbia Mr. Garvey practices through the Firm.

1.21 The Developer retained Mr. Garvey to work on the Project, a multi-unit, multi-storey mixed-use residential and commercial development, that was designed to be a pair of five and six-storey buildings, standing on top of an underground parkade, which occupies most of the buildable area of the site.

1.22 In early November 2022, the Project's rezoning and development permit application was presented to the Saanich Advisory Design Panel.

1.23 The Project drawings submitted in support of the permit application:

a. did not display an architect's seal;

b. indicated they were designed by a person with the initials "J.P.M." and drawn by "D.D./A.M.";

c. the checked by section was left blank;

d. the title block had the logo and name of the Developer; and

e. Mr. Garvey and the Firm were identified as the "Consultant".

1.24 In response to the Complaint, Mr. Garvey stated that it was his preference not to seal schematic design drawings since they are not contract documents. He further stated that if the local authority asks for sealed documents at the development application stage, he provides them.

1.25 During his interview, Mr. Garvey's stated that the Project's lead designer and draftsperson are employees of the Developer. He also stated that he supervised, directed, controlled, and reviewed their work and much of the work is done directly in person at the office.

1.26 Mr. Garvey further stated his oversight of work carried out by others consisted of reviewing drawings, providing direction on the requirements of the Developer's planning department, checking zoning requirements, and reviewing aesthetics and building code compliance as necessary. He also provided correspondence with the Developer's staff to demonstrate his involvement and oversight of the Project.

1.27 During his interview, Mr. Garvey admitted that he should have sealed the Project drawings that were submitted and that he is now aware of this requirement.

1.28 He also stated that he did not look closely at the title blocks of the latest set of drawings and failed to notice that the 'checked by' field was left blank.

1.29 In the course of the investigation Mr. Garvey also admitted that when he sealed drawings in British Columbia, he did so with a digital imprint of his rubber stamp that was saved on his computer, to which he added the date.

1.30 After the interview with the Committee, Mr. Garvey purchased a Notarius digital seal to use for projects located in British Columbia.

1.31 The investigation revealed that Mr. Garvey provided architectural services on the Project without a client-architect agreement executed by the parties.

1.32 Mr. Garvey acknowledged he did not have a client-architect agreement for the Project. He stated that Architecture 77 and the Firm have an informal agreement with the Developer, but since this issue has been brought to his attention, he and the Developer are working towards formalizing their arrangement and correcting this oversight.

1.33 Following its review of the material gathered during the investigation, the Committee determined to refer this matter to discipline, effectively exhausting its powers and function under the *Act*.

1.34 The matter, now in the discipline stage, was referred to the *PGA* Investigation Committee for consideration.

1.35 Following a review of the file, the PGA Investigation Committee proposed this Order as a resolution to the matter.

## E. Relevant Professional Standards

1.36 Under the former *Act* the AIBC Bylaws established the underlying principles, values, standards and rules of behaviour for Registrants. These Bylaws were supplemented by council rulings which were binding rules that elaborated on the Bylaws' fundamental statements.

1.37 AIBC's Bulletins provide specific information and guidance to Registrants about the professional standards and practice expectations related to the standards for the profession.

1.38 Section 77 of the Act, AIBC Bylaws 28.0, 28.1, 34.2, and the practice information in AIBC Bulletins 60 and 61 are relevant to the complaint about Mr. Garvey.

1.39 Section 77 of the *Act* states:

**Architect's seal**

77 (1) An architect must apply a seal, with signature and date, to letters of assurance, certificates, drawings and specifications prepared by or under the architect's supervision, direction or control if the architect practices architecture

(a) as a member of the institute holding a current certificate of practice,

(b) as a sole proprietor or partner of an architectural firm, or

(c) on behalf of an architectural corporation as a continuing employee or shareholder of the corporation.

1.40 The relevant AIBC Bylaws and associated council rulings in the Code of Ethics state:

**Bylaw 28.0** An Architect is not permitted to provide architectural services to a client until the following conditions are satisfied:

(a) All terms and conditions of engagement have been confirmed in a written architectural services contract with the client, executed by the parties; and

(b) The client has been advised in writing:

i. whether professional liability insurance is in place in relation to the architectural services to be provided for the commission;

ii. that the professional liability insurance policy in (i) is available for review by the client upon request; and

iii. that the contract "is in compliance with AIBC Bylaws, including the Code of Ethics and Professional Conduct."

**Bylaw 28.1** The architectural services contract required under Bylaw 28.0 must be a standard form contract approved by council, or be based upon and substantially conforming in all material respects to such standard contract in relation to services, responsibilities and general conditions.

**Bylaw 34.2** An Architect shall seal the architect's work in accordance with the requirements of the Architects Act of British Columbia and the Bylaws and Council rulings.

1.41 Practice information relevant to the professional standards articulated in AIBC Bulletin 60 states:

**1.0 Background and Authority**

…

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

1.42 Practice information relevant to the professional standards articulated in AIBC Bulletin 61 states:

**2.0 Definition of seal**

2.1 "Seal" is the word used in the Architects Act and AIBC documents. It is used to refer to either the traditional embossed seal or the inked 'stamp', as well as the use of an electronic seal (see AIBC Bulletin 60). Descriptions in this bulletin relating to "sealing" documents are shorthand and include the expectation, discussed in more detail below, that the application of an architect's seal will include the architect's signature and date.

…

**4.0 Practical Use of a Seal**

…

**Documents and Instruments of Service that Must be Sealed**

4.2 Section 77(1) of the Architects Act establishes the documents that require the application of a seal by the architect who prepared them or who provided supervision, direction or control of their preparation. **Note that it is not relevant to an architect's statutory and professional conduct obligations whether an authority (or client) has a seal requirement or expectation that differs from the obligations outlined below**. For example, it is not acceptable to dispense with the sealing requirements merely because, for example, a particular authority does not require development permit drawings to be sealed, whether that "requirement" derives from advice, policy or customary practice. The proper use of an architect's seal is a matter for the Architects Act and AIBC professional standards such as Bylaw 34.2, Council rulings thereto and this bulletin, not expectations established by local governments, clients or third parties.

4.3 The following document must be sealed:

…

Drawings

All drawings issued by an architect for approval by an authority or for reliance by a client or third party, including the general public, must be sealed. This includes drawings submitted for rezoning, development permit (including such processes as "development permission", "preliminary plan approval", etc.), design panel review, community presentation, building permit, tender, construction (working) drawings, addenda and drawings accompanying change orders, change directives and site instructions. Drawings submitted for amendments to applications must also be sealed.

The requirement for sealing "drawings" under the *Architects Act* is not limited to building permit drawings. The requirement for sealing drawings is not defined by the BC *Building Code* or an authority's practice, expectations or guidelines.

## 2.0 ADMISSIONS

2.1 Considering the facts agreed to above, Mr. Garvey acknowledges and admits that he contravened:

2.1.1.1 section 77(1) of the *Act* and the professional standard in AIBC Bylaw 34.2, as supplemented in AIBC Bulletin 61, by failing to seal the architectural drawings issued for rezoning and development for the Project submitted to the Saanich Advisory Design Panel;

2.1.1.2 the professional standard in AIBC Bylaw 34.2, as supplemented in AIBC Bulletins 60 and 61, when he applied an electronic image of his seal to drawings for the Project; and

2.1.1.3 AIBC Bylaws 28.0 and 28.1 by providing architectural services on the Project prior to entering into a written agreement for services executed by both parties.

## 3.0 PENALTY ORDER

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

3.1.1 A reprimand will be recorded against Robert Garvey Architect AIBC;

3.1.2 Mr. Garvey is required to pay a fine in the amount of $3,500 to the AIBC, within 30 days after this Order has been executed; and

3.1.3 Mr. Garvey is required to attend and complete the AIBC's "Professional Practice Standards and Ethics" online course at his expense, within 90 days after this Order has been executed. The Director of Professional Conduct and Illegal Practice is authorized to provide a reasonable extension, upon request by Mr. Garvey, if he is unable to complete the course by the prescribed date due to extenuating circumstances.

3.2 Mr. Garvey acknowledges and agrees that failure to complete the requirement in paragraphs 3.1.2 or 3.1.3 above within the time specified will result in his suspension from the register of the AIBC.

3.3 Mr. Garvey acknowledges and agrees that if he is suspended from the register for failure to complete any of the requirements of this Order, he must do the following within 10 days of being advised in writing by the AIBC of his suspension from the register:

3.3.1 Return his professional seal to the AIBC, and if applicable, his digital seal as required by his agreement with Notarius, the Canadian company authorized to issue digital seals to British Columbia architects;

3.3.2 Return the Firm's certificate of practice to the AIBC;

3.3.3 Remove any project site signs under his or the Firm's name; and

3.3.4 Provide the AIBC with a letter of undertaking confirming that he and the Firm have:

a) concluded all architectural business operations under his or the Firm's name;

b) assigned, with client consent, any ongoing projects under his or the Firm's name to another architectural firm holding a current certificate of practice. In this portion of the undertaking letter, Mr. Garvey is to provide the project owner's name, project name and location and the name of the architectural firm assuming responsibility for the project. This list must include all projects undertaken which are not completed;

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

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

3.4 Mr. Garvey acknowledges and agrees that if he is suspended from the register for failure to complete the requirements of this Order, or if he resigns from the register prior to completing all requirements, he may not apply for reinstatement until he has done so. Upon completion of all outstanding requirements, he may apply for reinstatement and will be subject to all applicable fees and requirements for reinstatement.

## 4.0 COSTS

4.1 Mr. Garvey agrees to pay costs for this consent order, fixed at an amount of $2,500, payable to the AIBC within 30 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 Mr. Garvey is an acknowledgement of the AIBC's partial costs resulting from the consent order process, and is separate from the agreed-upon penalty.

4.3 The parties have referred to the 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.

5.3 In the event the Mr. Garvey is suspended from the register for non-compliance with this Order, the AIBC will notify the public, registrants, and other interested parties where appropriate.

## 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.**

Robert Garvey 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.

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*The facts and terms of this Consent Order are acknowledged and agreed to by Robert Garvey Architect AIBC and the Investigation Committee. The Order was signed on April 19, 2024.*

## SCHEDULE – REASONS FOR PENALTY

## TO

## CONSENT ORDER

## BETWEEN

ROBERT GARVEY ARCHITECT AIBC

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

## 1.0 REASONS FOR PENALTY

1.1 Robert Garvey Architect AIBC 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 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. <u>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</u>.
>
> [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": *Sahota (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 Mr. Garvey provided architectural services on the Project without a client-architect agreement in place. This meant that the required compliance and professional liability statement clauses were not conveyed to the client. The fact that the client in this case was the Firm's sole client does not lessen this requirement.

1.14 This conduct is serious in nature. The AIBC Bylaws clearly express the requirement for a client-architect agreement and the AIBC, the profession, and the public, expect compliance with this requirement.

1.15 There is considerable risk in proceeding without a formal client-architect agreement, regardless of whether the architect and client have a pre-existing relationship.

1.16 There are two issues with the use of Mr. Garvey's seal. First, his failure to seal the development permit drawings submitted to the advisory design panel; and second, the application of an electronic image of his seal to drawings and documents for his projects in British Columbia. These matters are more serious.

1.17 An architect's seal is a representation to the public that an architect has prepared or supervised the preparation of the document it is applied to, and is responsible for the contents. It is only to be applied in the manner prescribed. Misuse of an architect's seal undermines the important purpose it serves and lessens public confidence in the architectural profession.

1.18 Mr. Garvey was required to apply his seal in the acceptable/prescribed manner: through its physical application, or through the approved secure digital seal software. The use of an image of a seal, even with the correct date, is not permissible. It undermines the responsibility an architect assumes by applying their seal, and creates an avoidable risk of seal-tampering or unchecked modifications to the underlying document.

1.19 Overall, the misconduct in this case is moderately serious.

**(b) Character and professional conduct record of the respondent**

1.20 Mr. Garvey is 54 years old. He has been registered as an architect with the AIBC since November 28, 2018.

1.21 Mr. Garvey does not have a professional conduct record with the AIBC, which is a neutral factor.

**(c) Acknowledgement of the misconduct and remedial action**

1.22 Mr. Garvey has been cooperative and candid in the course of the investigation. He admitted to: providing architectural services on the Project prior to entering into a written agreement executed by both parties in a form compliant with AIBC Bylaws; failing to seal the architectural drawings issued for rezoning and development for the Project; and applying an electronic image of his seal to drawings for his projects in British Columbia.

1.23 Once the complaint was brought to Mr. Garvey's attention, he acknowledged his errors and started formalizing a written client-architect agreement with the Developer and took prompt steps to review and modify the process by which he applies his seal, including acquiring a Notarius digital seal.

1.24 Mr. Garvey's admissions indicate that he has acknowledged his misconduct. This acknowledgment suggests that the concerns arising in this matter have been brought to his attention in a meaningful way.

1.25 Both his acknowledgment and remedial actions are mitigating factors.

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

1.26 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.

1.27 'Specific deterrence' means deterring the respondent from repeating the conduct in question. In this case, Mr. Garvey has engaged in a meaningful exchange with the AIBC to gain an understanding of the issues resulting in this Order; and the parties are of the view that the combination of the investigation and discipline process, and the penalty, should deter the Respondent from non-compliance in the future.

1.28 'General deterrence' is a sentencing objective promoting reduction of improper conduct in the community by the example, message, or influence established by the penalty in the present matter. The proposed penalties in this Order will serve to caution and remind registrants of the importance of compliance with the PGA and the current AIBC Bylaws.

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

1.30 While no two files are identical, the following AIBC precedent demonstrates the penalties and sanctions that have been imposed in a file where similar conduct was at issue. The file which is most similar to the one at hand is summarized below.

*Seal issues*

1.31 In File 20.03, the architect failed to apply his seal to drawings that were prepared by him or under his supervision, and such drawings were issued for a DP application. An additional charge included the architect's failure to attend a formal presentation before the City of Victoria Design Panel and permitting a staff member, who was not an architect, to make a presentation in his absence. The complaint was resolved by consensual resolution agreement with the following penalty: a reprimand, $2,000 fine, and completion of the AIBC's 'Ethics, Act, and Bylaws' course.

1.32 In File 22.02, the architect applied or allowed to be applied a pdf image of his seal to drawings for a project submitted to the authority having jurisdiction. The architect did not have a prior professional conduct record, acknowledged the contravention and was cooperative during the investigation. The complaint was resolved by consensual resolution agreement with the following penalty: a reprimand, $2,000 fine, and completion of the AIBC's 'Ethics, Act, and Bylaws' course.

*Providing Services Without a Client-Architect Contract*

1.33 In File 20.19, the architect provided architectural services prior to being retained though a proper written agreement executed prior to commencing services; failed to provide written notification to the client as to whether or not professional liability insurance was held and under what terms; and failed to provide the required compliance statement about AIBC Bylaws. The architect did not have a previous professional conduct record, acknowledged his failure, and was cooperative and candid in the course of the investigation. The complaint was resolved by consensual resolution agreement with the following penalty: a reprimand, and $1,000 fine.

1.34 In File 18.02, the architect provided architectural services without having confirmed the terms and conditions of engagement in a written client-architect agreement; applied his seal to drawings bearing the title block of an entity that does not hold a certificate of practice; failed to apply his seal with the correct date to drawings that were revised by him or under his supervision, direction and control; and applied, or allowed to be applied, an image of his seal to drawings prepared by him or under his supervision, direction or control. The complaint was resolved by consensual resolution agreement with the following penalty: a reprimand, $2,500, fine, and completion of the AIBC's 'Ethics, Act and Bylaws' course.

1.35 In File 08.17, the architect provided architectural services without executing a written client-architect agreement and failed to apply his seal on development permit drawings submitted for purposes of obtaining a permit. The architect acknowledged he was unaware that the bylaws applied to drawings and submissions prior to the building permit stage. The complaint was resolved at an inquiry and the discipline committee imposed the following penalty: a reprimand, a $2,000 fine, and completion of the AIBC's 'Ethics, Act, and Bylaws' course.

1.36 Mr. Garvey's conduct warrants a higher penalty than that imposed in files 20.19, 18.02 and 08.17, in which cases each architect provided architectural services on a single project without a client-architect contract. Whereas in this case, Mr. Garvey admitted that he did not have a client-architect contract in place for the Project, but also that he had been providing architectural services to his sole client on an informal arrangement.

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

1.38 Mr. Garvey and the AIBC submit that, based on the case 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.**

Robert Garvey 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.

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*The facts and terms of this Schedule – Reasons for Penalty to Consent Order are acknowledged and agreed to by Robert Garvey 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.*