



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:

KEVIN RYAN ARCHITECT AIBC

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

CONSENT ORDER

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

1.0 BACKGROUND AND AGREED FACTS

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

A. Overview

- 1.2 The AIBC received information that Kevin Ryan Architect AIBC had provided access to his professional digital seal and signature to a third party.
- 1.3 Following a review and consideration of the information, the Investigation Committee (the “Committee”) initiated a complaint, in accordance with AIBC Bylaw 6.12.
- 1.4 After considering the outcome of the investigation, the Committee proposed this Order as a resolution to the matter.

B. Kevin Ryan

- 1.5 Mr. Ryan was first registered as an architect with the AIBC on July 3, 1984, and has maintained his registration since that time.
- 1.6 Mr. Ryan practises architecture through BlueGreen Architecture Inc. (the “Firm”), a corporation that has held an AIBC Certificate of Practice since August 23, 2010.

C. The Complaint

- 1.7 In August 2023, the AIBC received information from Notarius Solutions Inc. (“Notarius”), a digital signature service provider for professionals that provides certification services to the AIBC for the issuance of digital signatures to architects AIBC. The information alleged that Mr. Ryan had provided access to his professional digital seal and signature and associated passwords and answer to security questions to his assistant (the “Complaint”).
- 1.8 The Complaint was opened, and the AIBC was named as the nominal complainant.
- 1.9 The Committee reviewed the Complaint and Mr. Ryan’s response material and decided to initiate an investigation into this matter pursuant to AIBC Bylaw 6.12 and assigned an investigator in accordance with the complaint and investigation processes in section 6 of the AIBC Bylaws.

D. The Investigation/Agreed Facts

- 1.10 The investigation involved a review of the information received from Notarius and Mr. Ryan’s response to the Complaint. Mr. Ryan also attended an interview with the investigator.
- 1.11 The investigation was conducted in accordance with the requirements and processes stipulated in the *PGA* and the AIBC Bylaws.

- 1.12 The facts in paragraphs 1.13 – 1.21 below are based on materials reviewed during the investigation and agreed to by Mr. Ryan and the Committee.
- 1.13 In response to the Complaint, Mr. Ryan detailed the steps he has taken to ensure the security of his personal identifiers, passwords, and confidential information related to his digital seal.
- 1.14 Mr. Ryan stated that he changed his password, ensuring it is only known to him, and that he will not share it with anyone. Additionally, he stated that he had updated the security questions and answers required to gain access to his Notarius account.
- 1.15 Mr. Ryan stated that he would ensure his current and future assistants would not have access to his digital seal or authorization to apply it to documents. He also stated that he had streamlined the sealing process to ensure a prompt response to sealing requests from Firm employees, and had asked his IT consultants to create a separate e-mail address for digital sealing purposes. Mr. Ryan further stated he sent an internal e-mail communication to all the Firm staff, informing them that he is the only person authorized to use his electronic seal at all times.
- 1.16 Mr. Ryan’s reply included copies of three e-mails to Firm staff confirming the steps stated above, as well as a copy of his correspondence to Notarius in response to their direct correspondence to him notifying him of the security breach.
- 1.17 Mr. Ryan acknowledged the importance of safeguarding the security and integrity of his digital seal, and associated information and stated that he was taking action to address the Complaint concerns and prevent potential issues in the future.
- 1.18 During his interview, Mr. Ryan stated he obtained his digital seal with Notarius a few years ago. He recalled that the application process involved completing a detailed application, responding to multiple inquiries, and submitting signature samples, as well as a review of Notarius’ terms of service and agreement to adhere to rules and regulations.
- 1.19 He stated that the reapplication process for a digital seal after his security breach was also extensive, with no shortcuts. Mr. Ryan could not recall any specific main security features outlined in Notarius’ terms of service, but affirmed his understanding of the general security requirements.
- 1.20 Mr. Ryan stated the reason he shared the secret question and password for his AIBC digital seal with his administrative assistant was a unique circumstance, and occurred only once. He provided access in August 2023 when he was scheduled to be on vacation and there was an urgency to seal documents. In doing so, he mistakenly breached his agreement with Notarius. Despite this, his administrative assistant was unable to utilize his AIBC digital seal.
- 1.21 Mr. Ryan acknowledged that the Complaint has taught him the importance of safeguarding the confidentiality of his AIBC digital seal and associated security details.
- 1.22 Following its review and consideration of the information from the investigation the Committee proposed this Order to Mr. Ryan as a resolution to the matter, pursuant to AIBC Bylaws 6.14.2 and 7.16.

E. Relevant Professional Standards

- 1.23 Under the *PGA*, the Professional Standards in the AIBC Bylaws Schedule A: Code of Ethics and Professional Conduct (“Code of Ethics”) establish the underlying principles, values, standards and rules of behaviour for registrants. AIBC’s Bulletins supplement and provide specific information and guidance to registrants about the Professional Standards and practice expectations.
- 1.24 Professional Standards 8.2 and 8.6 in the Code of Ethics and the practice guidelines in AIBC Bulletin 60 are relevant to the Complaint about Mr. Ryan.
- 1.25 Professional Standards 8.2 and 8.6 (with commentary in italics) state:
- 8.2 Architects must have regard for any Practice Guidelines and commentary in the Code of Ethics in relation to use of the Seal.
- 8.6 Architects using an electronic Seal must securely maintain their Digital Certificate password.
- Whether a Seal is applied manually or electronically, the Architect with the responsibility for sealing the document must review and Seal the work personally and maintain the integrity of the Architect’s Seal.*
- 1.26 Paragraph 5.4 of AIBC Bulletin 60 states:

Requirements for Use of a Digital Certificate

...

- 5.4 Architects must not disclose any personal information enabling any other persons to use their digital certificates, including passwords, activation codes or verification codes used for identification purposes. Failure to comply with this obligation may result in the immediate revocation of the certificate.

2.0 ADMISSIONS

- 2.1 Considering the facts agreed to above, Mr. Ryan acknowledges and admits that he contravened Professional Standards 8.2 and 8.6 of the Code of Ethics by failing to securely maintain his Digital Certificate password.

3.0 PENALTY ORDER

- 3.1 The following penalty and terms have been agreed upon by Mr. Ryan and the AIBC:
- 3.1.1 A reprimand will be recorded against Kevin Ryan Architect AIBC;
- 3.1.2 Mr. Ryan is required to pay a fine in the amount of \$3,000 to the AIBC, within 30 days after this Order has been executed; and
- 3.1.3 Mr. Ryan 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. Ryan, if he is unable to complete the course by the prescribed date due to extenuating circumstances.

- 3.2 Mr. Ryan acknowledges and agrees that failure to complete the requirements in paragraphs 3.1.2 and 3.1.3 above or pay the costs in paragraph 4.1 within the time specified will result in his suspension from the AIBC register.
- 3.3 Mr. Ryan 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 his digital seal as required by his agreement with Notarius;
 - 3.3.2 Return his Certificate of Practice for BlueGreen Architecture Inc. to the AIBC;
 - 3.3.3 Return any project site signs which identify him and/or BlueGreen Architecture Inc.;
 - 3.3.4 Provide the AIBC with a letter of undertaking confirming that BlueGreen Architecture Inc. has:
 - a) concluded all architectural business operations under BlueGreen Architecture Inc.;
 - b) assigned, with client consent, any ongoing projects under his name to another architect or architectural firm holding a current Certificate of Practice. In this portion of the undertaking letter, Mr. Ryan is to provide the project owner's name, project name and location and the name of the architect or 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 and BlueGreen Architecture Inc.'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 *PGA* and the *Architects Regulation*, until such time as he has been returned to the AIBC register.
- 3.4 Mr. Ryan 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. Ryan agrees to pay costs for this consent order, fixed at an amount of \$2,000, 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. Ryan is an acknowledgement of the AIBC's partial costs resulting from the complaint, investigation, and discipline 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 Bylaw 8.5.8.
- 5.3 In the event Mr. Ryan 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.

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

The facts and terms of this Consent Order are acknowledged and agreed to by Kevin Ryan Architect AIBC and the Investigation Committee. The Order was signed on August 19, 2024.

SCHEDULE – REASONS FOR PENALTY

TO

CONSENT ORDER

BETWEEN

KEVIN RYAN ARCHITECT AIBC

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

1.0 REASONS FOR PENALTY

- 1.1 Kevin Ryan 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 Investigation Committee may, before the commencement of the discipline hearing, propose, in writing, to the person who is the subject of an investigation that an 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 Investigation Committee makes a final determination as to whether all terms of the consent order have been satisfied.
- 1.3 The role of a reviewing panel was discussed in *Law Society of BC v. Rai*, 2011 LSBC 2. In that case, a panel was considering an agreement between a lawyer and the regulator on agreed facts and disciplinary action. The panel conducted an analysis of its role in determining whether to accept the agreement as proposed. The discussion in that case is relevant to the AIBC's process. The panel stated:

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

[7] The Panel must be satisfied that the proposed admission on the substantive matter is appropriate. In most cases, this will not be a problem. The Panel must also be satisfied that the proposed disciplinary action is "acceptable". What does that mean? This Panel believes that a

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

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

[Emphasis added]

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

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

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

B. *Ogilvie* Factors

- 1.7 In determining an appropriate penalty, professional regulatory bodies in British Columbia 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 [or admitted];
 - (b) the age and experience of the respondent;
 - (c) the previous character of the respondent, including details of prior discipline;
 - (d) the impact upon the victim;
 - (e) the advantage gained, or to be gained, by the respondent;
 - (f) the number of times the offending conduct occurred;

- (g) whether the respondent has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances;
 - (h) the possibility of remediating or rehabilitating the respondent;
 - (i) the impact upon the respondent of criminal or other sanctions or penalties;
 - (j) the impact of the proposed penalty on the respondent;
 - (k) the need for specific and general deterrence;
 - (l) the need to ensure the public's confidence in the integrity of the profession; and
 - (m) the range of penalties in similar cases.
- 1.9 The *Ogilvie* Factors were subsequently consolidated and streamlined in the case of *Edward Dent (Re)*, 2016 LSBC 5. In that case, the hearing panel acknowledged that the *Ogilvie* Factors are not all applicable in every case and will overlap in many cases.
- 1.10 The panel in *Dent* consolidated the *Ogilvie* Factors into four broad categories:
- (a) Nature, gravity and consequences of conduct;
 - (b) Character and professional conduct record of the respondent;
 - (c) Acknowledgment of the misconduct and remedial action; and
 - (d) Public confidence in the profession, including public confidence in the disciplinary process.
- 1.11 Since the decision was issued in *Dent*, the consolidated framework (informed by the complete list from *Ogilvie*) has become the preferred approach in Law Society disciplinary proceedings. However, the jurisprudence acknowledges that the simplified approach may not be appropriate in every case. For example, the Law Society returned to the full *Ogilvie* analysis in a case that was “very difficult” [and] “unlike any previous discipline hearing”: *Sabota (Re)*, 2017 LSBC 18.
- 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. Ryan provided improper access to his professional digital seal and signature and associated passwords to his administrative assistant.
- 1.14 An architect's seal, whether in physical or digital form, is a representation to the public that the architect who applies a seal is taking responsibility for the document to which it is applied. The lawful and appropriate use of an architect's digital certificate is established in the AIBC Bylaws and reinforced in detail in AIBC Bulletin 60, which provides guidance on and establishes professional standards and rationale for the use of digital certificate technology to sign, seal, and deliver documents.
- 1.15 It is fundamental to the protection of the public that the architectural seal remains secure, ensuring it can be relied upon as accurate and untampered. The digital certificate serves as a security tag that identifies the sender and secures the document. Since the certificate is unique to the user (architect)

and is controlled through a secure password, it verifies that only the authorized user has signed and sealed the document.

- 1.16 AIBC Bulletin 60, states that only architects with current access rights to the technology and a secure password can apply their digital certificate to a document. Architects must not disclose any personal information enabling any other persons to use their digital certificates, including passwords, activation codes, or verification codes for identification purposes.
- 1.17 Mr. Ryan did not adhere to the Professional Standards, consider the supplementary information in Bulletin 60, or follow the terms in his agreement with Notarius when he disclosed personal information enabling other persons to access his digital certificate, including passwords, activation codes or verification codes used for identification purposes.
- 1.18 Despite this breach, his administrative assistant was unable to apply his digital seal to any documents. This mitigating circumstance makes the misconduct in this case reasonably serious.

(b) Character and professional conduct record of the respondent

- 1.19 Mr. Ryan is 73 years old. He has been registered as an architect with the AIBC for approximately 40 years and is a senior member of the profession.
- 1.20 Mr. Ryan does not have a professional conduct record with the AIBC.
- 1.21 The absence of a discipline record for Mr. Ryan over a period of 40 years is a mitigating factor.

(c) Acknowledgement of the misconduct and remedial action

- 1.22 Mr. Ryan has been cooperative and candid in the course of the investigation and forthcoming with information.
- 1.23 After the Complaint was brought to Mr. Ryan's attention, he acknowledged the importance of safeguarding the confidentiality of his AIBC digital seal and associated security details. He has taken steps to establish new protocols at his Firm to prevent a similar incident from occurring in the future.
- 1.24 Mr. Ryan's participation in the Order process also indicates that he has acknowledged his misconduct and suggests that the concerns arising in this matter have been brought to his attention in a meaningful way. His acknowledgment and participation in the Order process are mitigating factors.

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

- 1.25 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.
- 1.26 'Specific deterrence' means deterring Mr. Ryan from repeating the conduct in question. In this case, Mr. Ryan 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 Mr. Ryan from non-compliance in the future.

- 1.27 ‘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 as well as the contractual obligations and responsibilities in holding a digital seal.
- 1.28 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.
- 1.29 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 files which are most similar to the one at hand are summarized below.
- 1.30 In File 22.04, a senior architect directed or allowed people at his firms to apply his digital seal and signature on documents submitted to authorities having jurisdiction, for a period of six years. By disclosing personal information and passwords associated with his digital seal, he did not comply with the AIBC’s professional standards or the terms of his agreement with Notarius. His misconduct misled the public and local authorities into believing his seal was applied by him. The complaint was resolved by consensual resolution agreement with the following penalty: a reprimand, penalty in the amount of \$5,000, and completion of the AIBC’s ‘Ethics, Act and Bylaws’ course.
- 1.31 In File 04.17, the architect provided pre-sealed Schedules B-1 and B-2 to a third party that signed and submitted them to the authority having jurisdiction on behalf of the architect. The architect acknowledged that by providing pre-sealed Schedules B-1 and B-2 and authorizing a third party to sign them on his behalf, he failed to properly use his seal “on documents prepared by the architect personally or by other persons under the architect’s supervision, direction and control”, acting unprofessionally and in breach of AIBC Bylaw 34.2. The complaint was resolved by consensual resolution agreement with the following penalty: a reprimand, a penalty in the amount of \$2,000, and attend an oral conduct review.
- 1.32 It is submitted that Mr. Ryan’s misconduct is not as egregious as that in File 22.04 where the architect’s digital seal was applied by other people on multiple occasions over a period of six years. In comparison, although Mr. Ryan’s provided his password and other confidential information related to his digital seal to his administrative assistant for application, she was not able to apply it to any document that was submitted for reliance. In light of this distinction, the lower penalty terms are suitable for his matter.
- 1.33 As noted in *Peet* above, there will rarely, if ever, be only one single appropriate outcome in a professional disciplinary file.

- 1.34 Mr. Ryan 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.

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

The facts and terms of this Schedule – Reasons for Penalty to Consent Order are acknowledged and agreed to by Kevin Ryan 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.