



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:

JOHN SALIKEN 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 two investigations and this consent order (the “Order”) are set out below.

A. Overview

- 1.2 The AIBC’s Investigations Committee (the “Committee”) conducted investigations into two separate professional conduct complaints involving John Saliken Architect AIBC. The first related to a residential project in Vancouver, BC (“Luma”), and a mixed-use project in New Westminster, BC, (“Premiere”) (together the “Projects” and the “First Complaint”). The second related to non-compliance with the AIBC’s Continuing Education System (“CES”) requirements for the period ending June 30, 2022 (the “Fifteenth Reporting Period” and the “Second Complaint”).
- 1.3 On February 10, 2023, the AIBC transitioned to the authority of the PGA which replaced the repealed *Architects Act*, R.S.B.C. 1996, c. 17 (the “*Act*”). While the former *Act* and the AIBC Bylaws (March 25, 2021) made under the *Act* are no longer in force, the *Architects Regulation* permits their continuance in cases where complaints and investigations were initiated before the transition, such as in this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 of the First Complaint and the Second Complaint, the Committee recommended that both matters proceed to discipline inquiry for determination of whether Mr. Saliken breached certain sections of the repealed *Act*, the AIBC Bylaws made under the *Act* and the applicable council rulings in the Code of Ethics and Professional Conduct of March 25, 2021 (the “Code of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 files were then referred to the newly-established PGA Investigation Committee, which followed the discipline process prescribed under the PGA and the current AIBC Bylaws.
- 1.7 The 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 files, the PGA Investigation Committee proposed this Order as a resolution to the matters.
- 1.9 Mr. Saliken was made aware of the transition issues related to this matter, including the professional standards that applied and the process issues including the referral to the PGA Investigation Committee.

B. John Saliken

- 1.10 Mr. Saliken was first registered as an architect with the AIBC on July 3, 2015, and has maintained his registration ever since.

- 1.11 Mr. Saliken practices architecture through SUVA Architecture Inc. (the “Firm”), a corporation that holds an AIBC Certificate of Practice issued on July 3, 2015.
- 1.12 Mr. Saliken is the sole shareholder of the Firm.

C. The Complaints

The First Complaint

- 1.13 In February 2022, the AIBC received a complaint about Mr. Saliken from an Architectural Technologist AIBC (respectively, the “Complaint” and the “Complainant”).
- 1.14 The Complainant alleged that Mr. Saliken retained them to provide sub-consultant drawing services on the Projects but failed to pay them for the services they provided. The Complainant also alleged that multiple requests made for payment were unanswered by Mr. Saliken.
- 1.15 The Complaint was provided to Mr. Saliken for his response, and the Committee initiated an investigation.

The Investigation/ Agreed Facts

- 1.16 The investigation involved a review of the material submitted by the Complainant and Mr. Saliken. Mr. Saliken also attended an interview with the Committee.
- 1.17 The facts in paragraphs 1.18 – 1.34 below are agreed to by Mr. Saliken and the PGA Investigation Committee and are based on materials reviewed during the investigation.
- 1.18 In February 2018, Mr. Saliken retained the Complainant for sub-consultant drawing services for the preparation of building permit and construction drawings for Luma.
- 1.19 Between February and September 2018, the Complainant provided services on the Luma project and issued seven invoices to Mr. Saliken for the work.
- 1.20 Mr. Saliken paid four invoices in full, paid one invoice partially, and did not pay two invoices.
- 1.21 Mr. Saliken stated that he did not pay the Complainant’s invoices because they included charges for additional services that were not properly documented and invoiced. He stated that he told the Complainant that they did not manage the Luma project properly, and that Mr. Saliken did not have knowledge of the additional charges and did not agree to the additional services.
- 1.22 In November 2018, the Complainant provided Mr. Saliken with detailed hourly reports and billing summaries in support of the additional services charged on Luma.
- 1.23 Mr. Saliken did not pay the Complainant the outstanding balance invoiced for the Luma project.
- 1.24 In March 2018, Mr. Saliken retained the Complainant for sub-consultant drawing services for the preparation of building permit and construction drawings for Premiere.

- 1.25 Between March 2018 and May 2019, the Complainant provided services on the Premiere project and issued nine invoices to Mr. Saliken for the work.
- 1.26 Mr. Saliken paid four invoices in full, paid one invoice partially, and did not pay four invoices.
- 1.27 The Complainant made multiple requests for payment to Mr. Saliken who did not pay the outstanding balance owing on the Premiere project.
- 1.28 Mr. Saliken admitted that his Firm has been paid by his client for both Projects.
- 1.29 As the investigation evolved, the Committee requested information from Mr. Saliken to better understand his response to why he had not made full payment to the Complainant. Mr. Saliken asked for extensions of time to respond. The extensions were granted, but he failed to substantially respond to the requests, and then stopped responding at all.
- 1.30 Over a period of nine months, multiple attempts were made by AIBC staff by telephone, voicemail, and email to follow up with Mr. Saliken, who did not respond.
- 1.31 Mr. Saliken attended his interview with the Committee and admitted that he was aware of his obligation to cooperate and respond to AIBC communications in a professional conduct matter and acknowledged that he had failed to do so.
- 1.32 Mr. Saliken acknowledged that he owed an outstanding balance to the Complainant for the Projects. He admitted he did not want to pay the outstanding balance owed on the Premiere project until he reached an agreement on the additional services charges made by the Complainant on the Luma project.
- 1.33 During the interview, Mr. Saliken explained why he was contesting the outstanding amounts owed to the Complainant. The Committee requested that he provide documents and information to support his reasons, which he agreed to do.
- 1.34 AIBC staff contacted Mr. Saliken via email and telephone on numerous occasions to follow up on the information that was requested at the interview. Mr. Saliken did not provide any further information, request an extension of time, or respond in any fashion.
- 1.35 Following the 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.
- 1.36 The matter, now in the discipline stage, was referred to the PGA Investigation Committee for consideration.
- 1.37 Following a review of the file, the PGA Investigation Committee proposed this Order as a resolution to the matter.

The Second Complaint

- 1.38 On October 31, 2022, the AIBC's Professional Services department submitted a complaint against Mr. Saliken for failing to comply with the CES requirements for the Fifteenth Reporting Period, in accordance with Bylaw 30.2 and AIBC Bulletin 80 (the "CES Complaint").
- 1.39 On November 28, 2022, Mr. Saliken was asked to provide a reply to the CES Complaint, and the Committee initiated an investigation.
- 1.40 The investigation involved a review of the material provided by the AIBC's Professional Services department and the response submitted by the Respondent.
- 1.41 The agreed facts in paragraphs 1.49 - 1.58 below are based on material reviewed during the investigation.

Background – AIBC Continuing Education

- 1.42 In 2001, architects and honorary members of the AIBC voted to adopt AIBC Bylaw 30.2 made under the *Act* ("Bylaw 30.2"), which became effective as of July 2001 and established the requirements for architects to undertake and report on continuing professional education.
- 1.43 AIBC Council thereafter formally adopted CES, which is administered by the AIBC's Professional Services department.
- 1.44 The requirements for CES are formalized in the AIBC Bylaws made under the *Act* and AIBC Bulletin 80. Typically, CES requirements follow a two-year reporting period, which runs from July 1 to June 30 of the second following year.
- 1.45 Bylaw 30.2 and AIBC Council Rules 6: Designation and Admission Qualifications for AIBC Associates established that CES requirements applied to registered architects and architectural technologists and, as of July 1, 2020, also included intern architects registered with the AIBC (together the "CES Participants").
- 1.46 For the Fifteenth Reporting Period, CES Participants were required to earn and report 36 learning units ("LUs"), including a minimum of 16 "Core" LUs, by June 30, 2022. Each LU represents one hour of eligible educational activity.
- 1.47 CES Participants who failed to earn and report the required LUs by the June 30, 2022, deadline, were issued an administrative fine mandated by AIBC council. For the Fifteenth Reporting Period, the fine amount for registered architects was \$1,019.00 plus 5% GST.
- 1.48 Non-compliant CES Participants received additional reminders to pay the administrative fine and earn and report deficient LUs before September 30, 2022, and were notified that if the fine was not received by that date, the fine would be increased and they could be subject to a complaint of unprofessional conduct.

- 1.49 The CES Complaint stated that:
- a. All AIBC registrants received regular updates and reminders about approaching CES deadlines from the Institute. In particular, during the last year of the Fifteenth Reporting Period, the AIBC regularly communicated with CES Participants regarding the approaching CES deadline.
 - b. Beginning in July 2021, eight reminders were published on the AIBC's website and distributed to CES Participants through the AIBC newsletter, *AIBC Connected*.
 - c. Two broadcasts were sent to all CES Participants with the CES deadline reminder on February 10, 2022, and June 16, 2022. A separate broadcast was also sent to all non-compliant CES Participants on March 17, 2022.
 - d. On May 30, 2022, a further targeted *AIBC Notice* was sent to all CES Participants one month before the deadline.
 - e. Further personalized email messages were sent to all non-compliant CES Participants from the AIBC's Professional Services department on September 16 and September 22, 2022.
 - f. Mr. Saliken did not report the requisite LUs (36 LUs, including a minimum of 16 Core LUs) prior to the June 30, 2022, deadline.
 - g. On August 18, 2022, Mr. Saliken was issued the administrative fine because he was not CES compliant by the June 30, 2022, deadline.
 - h. Mr. Saliken was informed that he was required to earn and report all outstanding LUs and pay the administrative fine by September 30, 2022, to avoid incurring an increased fine and potentially further penalty through the professional conduct process.
- 1.50 Mr. Saliken remained non-compliant on September 30, 2022.
- 1.51 On November 28, 2022, Mr. Saliken was provided with notice of the CES Complaint and asked to respond by December 12, 2022.
- 1.52 On December 14, 2022, AIBC staff left a voicemail for Mr. Saliken, and also sent an email reminding him to provide a response to the formal complaint letter by December 23, 2022.
- 1.53 Mr. Saliken did not respond.
- 1.54 On January 13, 2023, the AIBC sent Mr. Saliken correspondence by email and express post, requesting him to provide a response by January 27, 2023.
- 1.55 On January 30, 2023, the AIBC sent an email to Mr. Saliken reminding him that he had not provided a response.
- 1.56 On February 8, 2023, AIBC staff telephoned and emailed Mr. Saliken again.
- 1.57 Mr. Saliken did not provide a reply.

- 1.58 Mr. Saliken had not reported the outstanding LUs, and had not paid the increased \$1,337.44 CES non-compliance administrative fine at the time the Committee reviewed the investigation material.
- 1.59 On February 21, 2023, the Committee referred this matter to discipline, and in doing so exhausted its powers and function under the *Act*. A notice of inquiry has not been issued.
- 1.60 The matter, now in the discipline stage, was referred to the PGA Investigation Committee for consideration.
- 1.61 Following its review of the file, the PGA Investigation Committee proposed this Order as a resolution to the matter.

D. Relevant Professional Standards

- 1.62 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.
- 1.63 AIBC's Bulletins provide specific information and guidance to registrants about the professional standards and practice expectations related to the standards for the profession.
- 1.64 AIBC Bylaws 34.5.1(a), 34.5.1(c), 34.15 and council ruling (a), and 34.15 and council ruling (b) in the Code of Ethics are relevant to the First Complaint.
- 1.65 The relevant AIBC Bylaws and associated council rulings in the Code of Ethics state:

Bylaw 34.5.1 An architect must:

- (a) respond promptly to any AIBC communication requiring a mandatory response;
- ...
- (c) cooperate fully with the AIBC in a professional conduct matter at whatever stage, including attending in person upon request, summons or notification by the investigations committee, consensual resolution review panel, or disciplinary committee.

Bylaw 34.15 An architect receiving monies for services provided by others shall not use such monies for the architect's own purposes, and shall distribute them promptly to those so entitled.

- (a) This Bylaw requires an architect to fulfil the expectation that funds received by an architect on behalf of others will be properly managed.
- (b) Receiving monies for services provided by others would include fees or disbursements invoiced to a client for project-related services, provided under contract to the architect by subconsultants and suppliers. This provision does not apply to employees of the architect.

1.66 AIBC Bylaw 30.2 and council rules in AIBC Bulletin 80 are relevant to the Second Complaint.

1.67 Bylaw 30.2 states:

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

Refer to Bulletin 80 for council rules relating to compliance.

1.68 The relevant sections of AIBC Bulletin 80 with accompanying council rules state:

2.1 CES Participants are designated as architects and architectural technologists registered with the AIBC. As of July 1, 2020, and thereafter, the CES Participants category includes Intern Architects AIBC. All CES Participants must satisfy the requirements of the mandatory CES as per Bylaw 30.2. **Rule 1**

...

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

CES Obligations

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

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

...

6.0 Consequences for CES Bylaw Non-Compliance and Authority

6.1 CES Participants will be deemed non-compliant should they fail to meet their CES obligations, as set out in these rules, namely CES Rule 12 and 13.

6.2 A non-compliant CES Participant will be required to pay an AIBC council-mandated fine, as set out in Bulletin 1, and to earn and report the deficient LUs no later than September 30 after the end of the reporting period. **Rule 27**

6.3 Should a CES Participant remain non-compliant beyond September 30, a complaint of unprofessional conduct against the member will be made to the director of professional conduct. This may result in disciplinary action, to and including suspension and/or removal from the register **Rule 28**

2.0 ADMISSIONS

The First Complaint

- 2.1 Considering the facts agreed to above, Mr. Saliken acknowledges and admits that he contravened:
- 2.1.1 AIBC Bylaw 34.15 and council rulings (a) and (b) in the Code of Ethics by failing to pay the Complainant, without justification, in full the monies received from clients for subcontracted drafting services for the Projects, despite multiple requests for payment; and
 - 2.1.2 AIBC Bylaws 34.5.1(a) and 34.5.1(c) in the Code of Ethics by failing to respond to AIBC communications when he was aware of his obligations to cooperate and respond to AIBC communications in a professional conduct matter.

The Second Complaint

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

3.0 PENALTY ORDER

- 3.1 The following penalty and terms have been agreed upon by Mr. Saliken and the AIBC:
- 3.1.1 A reprimand will be recorded against John Saliken Architect AIBC;
 - 3.1.2 Mr. Saliken is required to report the outstanding LUs within 90 days after this Order has been executed;
 - 3.1.3 Mr. Saliken must pay the council-mandated fine in the amount of \$1,337.44 to the AIBC within 90 days after this Order has been executed;
 - 3.1.4 Mr. Saliken is required to pay a fine in the amount of \$5,000 to the AIBC, within 90 days after this Order has been executed;
 - 3.1.5 Mr. Saliken is required to attend a conduct review with a panel from the AIBC Conduct Review Committee at a mutually agreed upon time, within 90 days after the execution of this Order (subject to extension of time agreed to by the Director of Professional Conduct and Illegal Practice and the Respondent if a conduct review panel cannot be convened within this time period) to:
 - 3.1.5.1 provide information and answer questions related to the matters that gave rise to the contraventions in this Order;
 - 3.1.5.2 discuss how to prevent the conduct that gave rise to the complaints from being repeated; and
 - 3.1.5.3 demonstrate that he has improved his practice in order to avoid similar issues from occurring, as determined by the panel's direction,

following which, the panel will prepare a written report for the Committee specifying whether he has understood and learned from the review and improved his practice.

- 3.1.6 If not already completed prior to March 31, 2024, Mr. Saliken 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, and provide a certificate of completion. The Director of Professional Conduct and Illegal Practice is authorized to provide a reasonable extension, upon request by Mr. Saliken, if he is unable to complete the course by the prescribed date due to extenuating circumstances.
- 3.2 Mr. Saliken acknowledges and agrees that failure to complete the requirement in paragraphs 3.1.2, 3.1.3, 3.1.4 or 3.1.5, 3.1.6, above within the time specified will result in his suspension from the register of the AIBC.
- 3.3 Mr. Saliken acknowledges that the Committee may initiate a new complaint based on the report that is prepared following the action in paragraph 3.1.5.
- 3.4 Mr. Saliken 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 return any project site signs under the Firm name to the AIBC: and
 - 3.3.4 provide the AIBC with a letter of undertaking confirming that he has:
 - a) concluded all architectural business operations under his Firm name;
 - 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. Saliken 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 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;
 - d) removed project site signs; and
 - e) 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 *Professional*

Governance Act and the *Architects Regulation*, until such time as he has been returned to the AIBC register.

- 3.5 Mr. Saliken 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 is not entitled to apply for reinstatement until he has done so. Upon completion of all outstanding requirements, he agrees that he is permitted to apply for reinstatement and will be subject to all applicable Fees and requirements for reinstatement.

4.0 COSTS

- 4.1 Mr. Saliken agrees to pay Costs for this consent order, fixed at an amount of \$2,500, payable to the AIBC within 90 days after this Order has been executed.
- 4.2 The parties acknowledge that Costs are not intended as a punitive measure reflecting the conduct that is the subject of this Order. The assessment of Costs payable by Mr. Saliken 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 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. Saliken is suspended from the register for non-compliance with this Order, the AIBC will notify the public, registrants, and other interested parties where appropriate pursuant to current AIBC Bylaw 8.5.7.

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. Saliken 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 John Saliken Architect AIBC and the PGA Investigation Committee. The Order was signed on September 20, 2024.

SCHEDULE – REASONS FOR PENALTY

TO

CONSENT ORDER

BETWEEN

JOHN SALIKEN ARCHITECT AIBC

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

1.0 REASONS FOR PENALTY

- 1.1 John Saliken 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 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 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 discipline 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 remedying 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

The First Complaint

- 1.13 A registrant's obligation under the Bylaw requires that monies received for services provided by others are to be distributed promptly and not be used for the registrant's own purposes.
- 1.14 In this case, Mr. Saliken retained the Complainant to provide sub-consulting services on the Projects, which they did in fact provide. His failure to pay the Complainant for their services in full, after he received payment in full for the Projects from his clients, amounts to unprofessional conduct.
- 1.15 If Mr. Saliken had concerns with the additional amounts noted on the Complainant's invoices for the Luma project, he ought to have engaged in discussions with the Complainant to resolve the matter instead of withholding payment on both Projects.
- 1.16 His admission that he was withholding payment on the invoices issued on the Premier project, with which he had no concerns, is egregious conduct.
- 1.17 Overall, this misconduct is reasonably serious.

- 1.18 With respect to his participation and engagement in the investigation, it is a routine practice in the professional conduct process that parties are asked to provide information or clarification as the investigation progresses.
- 1.19 After the initial response to the complaint, and the Committee's requests for information in the early stages of the investigation, Mr. Saliken did not fully cooperate with the professional conduct investigation. He did attend his interview, and acknowledged he had not been participating, or responding, to the Committee's communications.
- 1.20 At his interview he provided the Committee with his reasons for withholding payment and agreed to provide documents in support of his position, as well as to the outstanding requests from the Committee. Following the interview, Mr. Saliken failed to respond substantively, or at all, to the Committee with respect to either.
- 1.21 In order to conduct a complete and proper professional conduct investigations, registrants are expected to cooperate and assist the AIBC in its investigative role by responding to communications. This enables the Committee to adequately conduct its investigation and ensure it has the information necessary to make an informed decision on the complaint.
- 1.22 Mr. Saliken's misconduct with respect to this matter is serious.

The Second Complaint

- 1.23 The AIBC's CES program, which has been in place since 2001, is a foundational professional practice expectation. It is explicitly referenced in the declaration that every person seeking registration as an architect must subscribe to.
- 1.24 The importance of continuing education requirements in the regulated professions, and the need for compliance with them, was discussed by the Supreme Court of Canada in the case of *Green v. Law Society of Manitoba*, 2017 SCC 20.
- 1.25 In *Green*, a lawyer was challenging his suspension for non-compliance with the Law Society's mandatory continuing education requirements. He was unsuccessful. On behalf of the majority of the Court, Justice Wagner (as he then was) stated:

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

...

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

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

(b) Character and professional conduct record of the respondent

- 1.33 Mr. Saliken is 51 years old. He has been registered as an architect with the AIBC since July 3, 2015.
- 1.34 Mr. Saliken practises architecture through SUVA Architecture Inc. a corporation that holds an AIBC certificate of practice issued on July 3, 2015.
- 1.35 Mr. Saliken has a professional conduct record with the AIBC, which is an aggravating factor.
- 1.36 In File 22.02 Mr. Saliken acknowledged and admitted that he contravened section 77 (1) of the *Act*, AIBC Bylaw 34.2, and the professional standards in AIBC Bulletins 60 and 61, when he applied, or allowed to be applied, a PDF image of his seal to drawings for a project that were submitted to a local authority. The penalty order was a reprimand, fine in the amount of \$2,000, and completing the Professional Conduct and Ethics course. Mr. Saliken has satisfied all penalty terms in File 22.02.

(c) Acknowledgement of the misconduct and remedial action

- 1.37 Mr. Saliken has not been fully cooperative and forthcoming in the course of the investigation. His participation in the First Complaint was limited, and he failed to respond at all in the Second Complaint.
- 1.38 However, Mr. Saliken's participation in the complaint resolution process and his admissions indicate that he has acknowledged his misconduct and his understanding that he must become familiar with and follow his regulatory obligations as a registrant of the profession.

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

- 1.39 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 members in the public interest, and whether the proposed disciplinary action is appropriate when compared to similar cases
- 1.40 'Specific deterrence' means deterring the respondent from repeating the conduct in question. In light of Mr. Saliken's conduct displayed in the two complaints leading to this Order, and his recent professional conduct record, a period of suspension would typically be an appropriate sanction in the context of principles of progressive discipline. While a suspension is considered to be a more severe form of sanction, the Committee considered a suspension would be less effective in Mr. Saliken's circumstances, because it would not address the underlying issue of his non-responsiveness that is at the heart of the complaints in this Order. The conduct review is considered a more proportional, targeted remedy.
- 1.41 '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 AIBC Bylaws. The penalties communicate that there are grave consequences for ignoring professional obligations owed to clients, colleagues, and the regulator.
- 1.42 The public has the right to expect that registrants will know and comply with all applicable professional standards and demonstrate that they have undertaken educational programming to remain current in accordance with established deadlines and procedures. The public also has the right to expect that the AIBC will address instances of misconduct by its registrants through a process that is fair, proportionate, and consistent.
- 1.43 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.

Precedents relevant to the First Complaint

- 1.44 In joint Files 7.07 and 08.27, the architect engaged in the practice of architecture without a certificate of practice on two projects, failed to distribute monies to a subconsultant, failed to notify the authority having jurisdiction and other professionals on the projects that he was suspended, and

sealed documents with the seal from another jurisdiction. The complaint was resolved at a discipline inquiry with the following penalty, a reprimand, nine-month suspension, fine in the amount of \$7,000, and an oral conduct review if reinstated.

- 1.45 In File 99.10, the respondent failed to pay monies to a subconsultant. The matter was resolved by discipline inquiry with a reprimand and a fine in the amount of \$800.
- 1.46 In File 08.07, the architect provided architectural services without having confirmed the terms and conditions of engagement in a written client-architect agreement, failed to cooperate with the AIBC investigation of the complaint, and failed to respond promptly or at all to requests for information. The architect had a prior professional conduct record and there were concerns he had not reviewed the procedures sufficiently to ensure compliance with his professional obligations. The penalty order was a reprimand, fine in the amount of \$2,000, and an oral conduct review.
- 1.47 In File 94.19, the finding at the disciplinary inquiry was a failure to cooperate, and the respondent was suspended for 12 months.
- 1.48 Files 7.07 and 08.27, while informative, include additional serious contraventions that include providing architectural services without a certificate of practice and inappropriate application of seal which are not at issue in Mr. Saliken's case.
- 1.49 File 08.07, in which the respondent has a previous conduct record and relates to a failure to respond to the AIBC is most similar to Mr. Saliken's case, although it is more than 15 years old.
- 1.50 While the above files provide guidance on how the AIBC has previously dealt with similar conduct to the case at hand, it is of note that all the precedents are over 15 years old and professional regulation has undergone significant modernization in the last ten years. The basis for diverging from earlier decisions includes changing policies of government focused on a regulator acting in the public interest and changes to AIBC's legislative requirements and powers that have increased penalties.
- 1.51 A period of suspension in this case does not ensure that Mr. Saliken has learned how he may have prevented the misconduct, and does not serve the public interest as does the opportunity for him to consider corrective measures with a panel of his peers through a conduct review.
- 1.52 It is submitted that the proposed penalty is in keeping with changing expectations of the public which may stems from evolving contemporary societal values and expectations, and the conduct review will provide Mr. Saliken with the opportunity to better improve his practice and help him meet his regulatory obligations.

The Second Complaint

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

- a. First breach: reprimand (see, for example, AIBC File 21.14.01, where the registrant who was not CES compliant for the first time received a reprimand);
 - b. Second breach: reprimand and fine (see, for example, AIBC File 21.06.18, where the registrant who was not CES compliant for the second time received a reprimand and a \$1,000 fine); and
 - c. Third breach: reprimand and increased fine (see, for example, AIBC File 15.03, a grouped file of non-compliant CES participants from the Eleventh Reporting Period, where a registrant who was not CES compliant for the third time received a reprimand and an increased fine in the amount of \$1,500).
- 1.54 As noted in *Peet* above, there will rarely, if ever, be only one single appropriate outcome in a professional disciplinary file.
- 1.55 Overall, Mr. Saliken's misconduct and admissions are of a reasonably serious nature and merit a penalty with a focus on deterrence and rehabilitation that also takes account of his previous discipline record.
- 1.56 Mr. Saliken and the AIBC submit that, based on the cases 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.

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. Saliken 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 John Saliken Architect AIBC and the PGA Investigation Committee.

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