



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:

MARY JOANN ZULUETA 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 This matter regarding Mary Joann Zulueta Architect AIBC began as a potential complaint with respect to the provision of architectural services to a proposed self-storage building located on Matrix Crescent, Kelowna, BC (the “Project”).
- 1.3 Following its review of Ms. Zulueta’s response to the potential complaint, the AIBC’s Investigations Committee (the “Committee”) initiated a complaint in accordance with AIBC Bylaw 37.16(c).
- 1.4 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10, 2023, the AIBC transitioned to the authority of the *Professional Governance Act*, (“PGA”), which replaced the repealed *Architects Act*, R.S.B.C. 1996, c. 17 (the “*Act*”). While the repealed *Act* and the AIBC Bylaws made under the *Act* are no longer in force, the *Architects Regulation* permits their continuance in cases where complaints and investigations were initiated before the transition, such as in this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.
- 1.5 Following its investigation, the Committee recommended the matter proceed to a disciplinary inquiry for consideration of whether Ms. Zulueta breached certain sections of the repealed *Act*, the former AIBC Bylaws, and the applicable council rulings in the Code of Ethics and Professional Conduct effective March 25, 2021 (the “Code of Ethics”).
- 1.6 Following this determination, the Committee exhausted its powers and function under the *Act*.
- 1.7 The file was then referred to the newly-established PGA Investigation Committee which followed the discipline process prescribed under the PGA and current AIBC Bylaws.
- 1.8 The PGA Investigation Committee has broader powers and functions than the previous Committee, including determining discipline resolutions that were not available under the *Act*.
- 1.9 Following its review of the file, the PGA Investigation Committee proposed this Order as a resolution to the matter.
- 1.10 Ms. Zulueta was made aware that this matter would be referred to the PGA Investigation Committee and follow the discipline process under the PGA and current AIBC Bylaws.

B. Mary Joann Zulueta

- 1.11 Ms. Zulueta was first registered as an architect with the AIBC on September 8, 2009. She resigned on December 13, 2011, and reinstated her status as a registered architect with the AIBC on July 3, 2015.
- 1.12 Ms. Zulueta practises architecture through Zulueta Architecture Ltd. (the “Firm”), a corporation. The Firm holds an AIBC certificate of practice issued on January 25, 2016. Ms. Zulueta is the only registered architect at the Firm and a 60% shareholder.

1.13 Ms. Zulueta's primary practice is in Alberta, where the Firm is located and she ordinarily resides.

C. The Information Request/Complaint

1.14 While investigating an illegal practice concern, the AIBC received drawings submitted to the City of Kelowna (the "City") dated December 2021, in support of a development permit ("DP") application for the Project.

1.15 The drawings indicated they had been prepared by a design and engineering firm (the "Design Firm"), whose name appeared on the title block. The Design Firm is located in Alberta and is not a registrant architectural firm holding a certificate of practice in BC. The submitted drawings had none of the indicia of an architect's authorship, such as a title block or seal and signature.

1.16 In May 2022, in the course of its investigation of the illegal practice inquiry, the AIBC contacted the Design Firm regarding its concerns. The Design Firm stated it had engaged Ms. Zulueta's Firm that oversaw all work related to the Project.

1.17 In July 2022, the Design Firm provided a copy of the Project's executed client-consultant agreement and indicated that the Design Firm had received approval from the Firm to release the contract. The Design Firm copied the Firm on the email to the AIBC attaching the contract.

1.18 The client-consultant agreement was dated August 23, 2021, and:

- a. had the fee for architectural services redacted;
- b. the consultant's scope of services stated as follows: preparation of architectural drawings under the direct supervision of architect; preparation of development permit drawings; preparation of building permit drawings/IFC drawings; signs and seal drawings, schedules; review of construction details; reply to construction questions; and sign off; and
- c. the terms and conditions included the clause: "if through no fault of the Consultant, the Design Services and the construction documents phase have not been completed within 4 months after the date of this Agreement, or for the remaining phase within 4 months after date of this Agreement, the amount and rates set forth shall be subject to review and equitable adjustment. Design and drafting under the direct guidance/supervision Zulueta Architecture."

1.19 Further investigation by AIBC staff revealed that the Design Firm submitted a second set of DP drawings to the City in April 2022. The submitted drawings had none of the indicia of an architect's authorship, such as title block or seal and signature. The City subsequently issued a DP for the Project in May 2022.

1.20 After a review of the above information, the matter was opened as a potential complaint pursuant to former AIBC Bylaw 37.2, and the AIBC informed Ms. Zulueta of its concerns, and requested her response.

- 1.21 In August 2022, the Committee considered Ms. Zulueta's response to the potential complaint. The Committee reviewed the materials and determined there was sufficient basis to initiate a complaint for investigation in accordance with former AIBC Bylaw 37.16(c).

D. The Investigation/Agreed Facts

- 1.22 The investigation involved a review of the Project material submitted to the City, Ms. Zulueta's response to the potential complaint through her legal counsel, information from the Design Firm, as well as her responses to subsequent questions asked by the Committee. Ms. Zulueta also attended an interview with the Committee.
- 1.23 The facts in paragraphs 1.24 – 1.40 below are based on materials reviewed during the investigation and agreed to by Ms. Zulueta and the PGA Investigation Committee.
- 1.24 In response to the potential complaint, legal counsel for Ms. Zulueta stated that she was not involved with, and did not have knowledge of, the drawings submitted to the City in December 2021, and April 2022, that were produced by professional engineers at the Design Firm for which Ms. Zulueta bore no responsibility.
- 1.25 The response stated that Ms. Zulueta's Firm was engaged to assist the Design Firm with the Project but was not overseeing all permitting processes, contrary to the Design Firm's statement. The response further stated that Ms. Zulueta and her Firm were not involved with, nor aware of, the application for the DP.
- 1.26 The response asserted that Ms. Zulueta worked with the Design Firm on a contract basis and was not in partnership with them, and as far as Ms. Zulueta was aware, the Design Firm does not practise architecture itself, which is why they retained her Firm's services. Ms. Zulueta's legal counsel stated that Ms. Zulueta intended to work with the Design Firm on the Project moving forward since an architect was legally required.
- 1.27 During her interview with the Committee, with her legal counsel present, Ms. Zulueta stated the Design Firm retained her Firm for design development and preparation of the DP and the building permit ("BP") drawings and Schedules for the Project. She had previously worked with the Design Firm on similar projects over the last four to five years, in which the Design Firm typically acted as the engineer as well as the owner's agent.
- 1.28 Ms. Zulueta stated that a specific Project schedule timeline for submitting the DP and BP drawings had not been set with the Design Firm and the four-month timeline in the client-consultant contract was a standard term.
- 1.29 In the interview, she stated that she was unaware the Design Firm had proceeded without her and submitted their own DP drawings to the City. She was not made aware of this until the AIBC contacted the Design Firm with the illegal practice inquiry in May 2022.
- 1.30 In response to the question of why she did not contact the AIBC when she learned of the Design Firm's unauthorized submissions to the City, Ms. Zulueta stated she expressed her concerns to the Design Firm, knowing that an architect was required. Ms. Zulueta later stated that since the AIBC

was already investigating the Design Firm, she assumed that she did not need to make a complaint as an investigation was already underway.

- 1.31 She stated that she subsequently reviewed the Design Firm's drawings and added modifications. In July 2022, she finalized the Project DP drawings and in August 2022, completed the BP drawings which she provided to the Design Firm for submission.
- 1.32 She also stated the Design Firm was mistaken in their response to the AIBC's illegal practice inquiry in stating that she oversaw all aspects of the Project.
- 1.33 During her interview, when asked about her past working relationship with the Design Firm on projects, Ms. Zulueta stated that she seeks permission from the Design Firm before site visits and has never visited a site without the Design Firm's engineer present. She is also not involved in change orders, certificates of payment, or substantive performance tasks, which are handled by the Design Firm. She stated that in the future, she plans to emphasize to the Design Firm the importance of complying with regulatory requirements.
- 1.34 Ms. Zulueta noted the current state of the Project was that the Design Firm submitted a footing and foundation set to the City but not the full BP drawings, since the Project was put on hold due to the client's financial issues.
- 1.35 In response to the Committee's information request, Ms. Zulueta's legal counsel stated that the Design Firm was supervising the Project and that Ms. Zulueta's Firm only provided architectural services and was not involved in payment certification or contract administration, which was beyond the scope of contracted services.
- 1.36 Ms. Zulueta's legal counsel also provided copies of sealed DP and BP drawings for the Project, dated August 16, and 17, 2022, respectively, as well as a copy of the invoice for services dated August 18, 2022, for \$3,500 + GST. The invoice described the charges for "Architectural Services code review, sign and seal drawings, schedules 100% billing."
- 1.37 In support of Ms. Zulueta's oversight and involvement of the Project, legal counsel for the Design Firm provided email correspondence between the Design Firm and Ms. Zulueta, dated between July 18, 2022, and August 17, 2022. These were comprised of the following email communications:
 - a. July 18, 2022 – Design Firm providing the BP architectural set of drawings for Ms. Zulueta's review.
 - b. July 19, 2022 – Ms. Zulueta's reply stating she would take a look, and that 'specially for this job [that] we should include my title block on the drawings.'
 - c. July 20, 2022 – Design Firm informing Ms. Zulueta that they had an internal meeting and would include her logo on all their projects moving forward, and this would occur before the documents were sealed. In a subsequent email of the same day the Design Firm asked Ms. Zulueta to provide a copy of the logo she wanted inserted into the drawings, which Ms. Zulueta provided.

- d. July 21 - 25, 2022 – five exchanges with questions and comments about the scope of the Project to be shown on the submission, and other concerns relating to the drawings.
 - e. August 3, 2022 – Ms. Zulueta stating that she forgot to ask about the status of the DP, and whether the DP had been released, and who was the permit applicant.
 - f. August 8, 2022 – Design Firm email to Ms. Zulueta stating “To ensure that we have documentation in our files, and to ensure that [the City] has a digital set of DP drawings that align with the “April 29, 2022” submission, can you please send us over the digital set of arch DP’s for [the City] dated April 29, 2022. We want to ensure, that went [sic] [the City] gets that hand sealed set, that it aligns with the digital they have as well.”
 - g. August 8, 2022 - Ms. Zulueta’s reply stating that “I won’t be sending/issuing drawings at this point. And when I work on this job, we will have to follow AIBC’s regulations.”
 - h. August 8, 2022 – Design Firm responds stating “Just trying to get on the same page here. So you’re not going to physical stamp any of the sets and send them either? For some reason I thought you had sent them already?”
 - i. August 9, 2022 – Ms. Zulueta asked for a link to the CAD drawings and asked to know if there were any upcoming submission with the City.
 - j. August 9, 2022 - In reply the Design Firm stated they used Revit and for submissions they were hoping to get her seal on the DP set and re-issue them to the City to be compliant with AIBC’s requirements. The email stated they knew she had “reviewed the BP set” and provided comments which they were incorporating and would get back to her.
 - k. August 11, 2022 – Ms. Zulueta stated that she would request to send an undated sealed DP drawings set and would seal it on the date she “finished the review.”
 - l. August 11, 2022 – Design Firm reminded Ms. Zulueta that since she was also the coordinating registered professional, she would be required to initial other Schedules and attached Schedule B.
 - m. August 12, 20022 – Ms. Zulueta sent sealed and signed Schedules A, B, and D, to the Design Firm.
 - n. August 17, 2022 – Ms. Zulueta sent sealed and signed BP drawings.
- 1.38 Ms. Zulueta’s legal counsel was provided with the emails received from the Design Firm and stated that Ms. Zulueta had no additional documents to support her direct supervision and control of the Project but noted that telephone conversations occurred in addition to the email correspondence provided.
- 1.39 The Committee asked Ms. Zulueta’s legal counsel for an unredacted copy of the August 2021 agreement, and for clarification on the services that remained outstanding under the client-architect agreement which had not been included in the invoice Ms. Zulueta’s Firm had submitted. In response, Ms. Zulueta’s legal counsel stated it was the intention of the parties to negotiate and agree

upon a further price for services beyond preparing drawings. The invoice issued to date referenced 100% billing for the scope of work performed at that time.

- 1.40 Ms. Zulueta's legal counsel also provided an unredacted copy of the August 23, 2021, client-consultant agreement with the Design Firm that revealed the total fee for the Project was in the amount of \$3,500.
- 1.41 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*.
- 1.42 The matter, now in the discipline stage, was referred to the PGA Investigation Committee for consideration.
- 1.43 Following a review of the file, the PGA Investigation Committee proposed this Order as a resolution to the matter.

E. Relevant Professional Standards

- 1.44 Under the former *Act*, the AIBC Bylaws established the underlying principles, values, standards and rules of behaviour for Registrants.
- 1.45 AIBC Bylaws 30.1, 32.3, 32.5, 33.3, and 34.1 are relevant to the complaint about Ms. Zulueta.
- 1.46 The relevant AIBC Bylaws in the Code of Ethics state:

Bylaw 30.1 In practising architecture, an architect shall act with reasonable care and competence, and shall apply the knowledge, skill and judgment, which are ordinarily applied by architects currently practising in the province of British Columbia.

Bylaw 32.3 An architect who, in the provision of services, becomes aware of an action taken by the architect's employer or client, against the architect's advice, which violates legal requirements, must not condone or be complicit in such a situation. An architect in such a situation must take all reasonable steps to convince such an employer or client to comply with the legal requirements. The architect shall:

- (i) refuse to consent to the action; and, if the action is not rectified in a timely manner, then
- (ii) report the action to the authority having jurisdiction and, if the authority confirms the violation and the action is not rectified in a timely manner, then
- (iii) terminate services on the project.

Bylaw 32.5 An architect must promptly notify the AIBC in writing in any of the following circumstances:

- (a) Having reasonable grounds to believe that a non-AIBC registrant has illegally practised or offered to practise the profession of architecture, or otherwise violated the Architects Act;

Bylaw 33.3 An architect shall comply with the Architects Act of British Columbia, the Bylaws under the Architects Act, and Council rulings.

Council of the Institute keeps architects and other registrants informed of all changes to the Architects Act and Bylaws and regularly publishes rulings and advice to assist members in their understanding of interpretations and policy. It is incumbent on registrants to read such material and to keep it on hand for reference when needed.

- (a) An architect must not directly or indirectly condone or encourage contravention of the Architects Act, Bylaws and council rulings by others.

The Architects Act, Bylaws and council rulings provide the foundation for the regulation of the profession of architecture in BC, on behalf of the public. The Bylaws and council rulings found in this Code of Ethics and Professional Conduct establish the core standards of competency and ethics for architect and other registrants.

Architects and other registrants may be asked to participate in any number of scenarios that intersect with requirements in the Architects Act, Bylaws or council rulings. This may include "illegal practice": The practising of the profession or architecture, by action or representation, by non-architects. Council ruling (a) serves as a reminder that it is unprofessional conduct to participate in any way with illegal practice.

Refer to Bulletin 65.

Bylaw 34.1 Each office maintained for offering architectural services to the public shall have an architect who has direct knowledge and supervisory control of the services.

2.0 ADMISSIONS

2.1 Considering the facts agreed to above, Ms. Zulueta acknowledges and admits that she contravened:

2.1.1 AIBC Bylaw 30.1 and 33.3 by failing to exercise reasonable care and competence and apply the knowledge, skill and judgment which is ordinarily applied by architects currently providing architectural services when she signed letters of assurance with respect to documents she did not prepare and were not in accordance with the BC Building Code, provided services for a fee that was inadequate to provide minimum scope of services, and facilitated the illegal practice of architecture;

2.1.2 AIBC Bylaw 32.3 and 33.3 when she failed to notify the local authority after she learned that the Design Firm had engaged in the illegal practice of architecture when it submitted drawings on two occasions for a project that required an architect;

- 2.1.3 AIBC Bylaw 32.5(a) and 33.3 when she failed to notify the AIBC in writing, or at all, when she learned that the Design Firm had illegally practised the profession of architecture; and
- 2.1.4 AIBC Bylaw 34.1 by failing to have direct knowledge and supervisory control of the services for the Project when she reviewed the construction drawings, when in fact she was required to directly supervise the preparation of the drawings.

3.0 PENALTY ORDER

- 3.1 The following penalty and terms have been agreed upon by Ms. Zulueta and the AIBC:
 - 3.1.1 A reprimand will be recorded against Mary Joann Zulueta Architect AIBC;
 - 3.1.2 Ms. Zulueta is required to pay a fine in the amount of \$5,000 to the AIBC, within 30 days after this Order has been executed; and
 - 3.1.3 Ms. Zulueta is required to attend and complete the AIBC's "Professional Practice Standards and Ethics" online course at her 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 Ms. Zulueta, if she is unable to complete the course by the prescribed date due to extenuating circumstances.
- 3.2 Ms. Zulueta 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 her suspension from the AIBC register.
- 3.3 Ms. Zulueta acknowledges and agrees that if she is suspended from the register for failure to complete any of the requirements of this Order, she must do the following within 10 days of being advised in writing by the AIBC of her suspension from the register:
 - 3.3.1 Return her professional seal to the AIBC, and if applicable, her digital seal as required by her agreement with Notarius, the Canadian company authorized to issue digital seals to British Columbia architects;
 - 3.3.2 Return her certificate of practice for Zulueta Architecture Ltd. to the AIBC;
 - 3.3.3 Return any project site signs which identify her and/or Zulueta Architecture Ltd.;
 - 3.3.4 Provide the AIBC with a letter of undertaking confirming that she has:
 - a) concluded all architectural business operations under Zulueta Architecture Ltd.;
 - b) assigned, with client consent, any ongoing projects under her name to another architect or architectural firm holding a current certificate of practice. In this portion of the undertaking letter, Ms. Zulueta 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 her and Zulueta Architecture Ltd.'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 she will not refer to herself as an architect and that she will not practise architecture or offer to provide architectural services as defined by the PGA and the *Architects Regulation*, until such time as she has been returned to the AIBC register.

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

4.0 COSTS

4.1 Ms. Zulueta agrees to pay costs for this consent order, fixed at an amount of \$3,000, 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 Ms. Zulueta 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 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 Ms. Zulueta 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.

Ms. Zulueta acknowledges that she 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 Mary Joann Zulueta Architect AIBC and the Investigation Committee. The Order was signed on January 17, 2025.

SCHEDULE – REASONS FOR PENALTY

TO

CONSENT ORDER

BETWEEN

MARY JOANN ZULUETA ARCHITECT AIBC

AND

THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

1.0 REASONS FOR PENALTY

- 1.1 Mary Joann Zulueta 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 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 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 In May 2022, when Ms. Zulueta learned that the Design Firm had submitted two versions of the DP drawings for the Project to the City, once in December 2021, and again in April 2022, without her knowledge on a building that she knew required the services of an architect, she was aware that the Design Firm had engaged in the illegal practice of architecture. Despite this, she failed to notify the AIBC as required by her regulatory obligations and also failed to notify the local authority.
- 1.14 It is an architect's ethical obligation to report an apparent contravention of the *Architects Act* and the AIBC Bylaw requirement to the AIBC, in the public interest including and not condone or encourage the illegal practice of architecture by others. This misconduct is moderately serious.
- 1.15 Additionally, the title block on the two sets of DP drawings contained the Design Firm's name instead of Ms. Zulueta's Firm name, which may have caused public confusion since it suggests that the Design Firm was legally entitled to provide architectural services. This is an aggravating factor.

- 1.16 In August 2022, upon commencing work on the Project, Ms. Zulueta reviewed the drawings that the Design Firm had prepared and submitted to the City. In conducting a review, Ms. Zulueta demonstrated that she was not the author of the design. There was also insufficient evidence of supervision, oversight, and control to convey the design intent.
- 1.17 By signing Schedule B, Ms. Zulueta provided assurance that the design of the architectural components of the plans were prepared by her and in accordance with the BC Building Code, when in fact she did not prepare the drawings or supervise their preparation, but only reviewed them. Overall, this is serious conduct.
- 1.18 Since the Design Firm had prepared and submitted the drawings to the City on two separate occasions, without Ms. Zulueta's involvement, she was not involved in their preparation and could not have provided direct supervision and instructed the Design Firm. Accordingly, when Ms. Zulueta was included in the Project, her involvement was in 'reviewing' the Project drawings. This was inadequate and not in keeping with the scope of services identified in the client-architect agreement which required preparation of the drawings under her direct supervision. This is reasonably serious conduct.
- 1.19 In light of the scope of work that was contracted in the client-architect agreement for the Project, the fee amount stated was insufficient to provide even minimum services under the *Act*. This is also reasonably serious conduct.
- 1.20 The public is entitled to expect that services offered and provided by an architect's office are supervised and controlled by an architect who is following their professional obligations.

(b) Character and professional conduct record of the respondent

- 1.21 Ms. Zulueta is 53 years old. She is an experienced practitioner having been registered as an architect with the AIBC since September 2009. Although she resigned in December 2011, she reinstated her registration with the AIBC in July 2015.
- 1.22 Ms. Zulueta does not have a professional conduct record with the AIBC, which is a neutral factor.

(c) Acknowledgement of the misconduct and remedial action

- 1.23 After the complaint was brought to Ms. Zulueta's attention, she stated she was not involved with, and had no knowledge of, the DP drawings that had been submitted to the City as those were produced and submitted by the Design Firm, and accordingly she bore no responsibility.
- 1.24 In the course of the complaint and investigation, Ms. Zulueta subsequently made statements to the Design Firm, instructing them that her title block be included in the drawings and the need to follow AIBC regulations for this Project. This suggests that she now appears to understand that she is required to follow her professional obligations when providing architectural services in BC.
- 1.25 Ms. Zulueta's participation in the discipline resolution process indicates that she has acknowledged her misconduct. This acknowledgment suggests that the concerns arising in this matter have been brought to her attention in a meaningful way.

1.26 This acknowledgment and participation in the Order process are mitigating factors.

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

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

1.28 'Specific deterrence' means deterring the respondent from repeating the conduct in question. In this case, Ms. Zulueta's engagement in the conduct, investigation, and discipline process, and being reminded and alerted to the professional standards that need to be followed, have provided an understanding of the issues resulting in this Order. The parties are of the view that the combination of her participation in the conduct, investigation, and discipline process, and the penalty, should deter Ms. Zulueta from non-compliance in the future.

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

1.30 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.

1.31 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.

Care and Competence

1.32 In File 21.27, the architect failed to exercise the care and competence expected of an architect in British Columbia when he used documentation prepared by the original architectural firm, without their authorization, in support of his rezoning application for a project; and failed to apply his seal, signature and date to the project's rezoning application which he submitted to the local authority. Additionally, the architect failed to provide any project credit to the original architectural firm in the material which he submitted to the local authority in support of the Project's rezoning application. The architect did not have a previous professional conduct record, acknowledged his errors, 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, \$5,000 fine, and completion of the AIBC's 'Ethics, Act and Bylaws' course.

- 1.33 In File 20.14, the respondent submitted several documents to a local authority on multiple projects that failed to accurately calculate measurements, classify proper limits of the architect's responsibility, and identify the occupant load. In addition, the respondent relied on the local authority to identify these issues for correction. In addition, the architect was charged with failing to provide adequate supervision, direction, or control with respect to architectural services provided on several projects; as well as submitting Schedule C-B to the local authority knowing that the fire alarm verification had not been completed. The architect was a relatively new registrant and had no previous conduct history. The matter was concluded by way of a consensual resolution agreement with the following penalty: a reprimand, fine in the amount of \$8,500, and completion of the AIBC's 'Ethics, Act and Bylaws' course and the BC Building Course.

Failure to notify the local authority and to report to the AIBC, knowledge of illegal practice of architecture

- 1.34 In File 10.12, the respondent entered into a client-architect agreement to provide architectural services for a project with knowledge that the client had prepared and submitted a development permit application to the local authority without using the services of an architect. Additional charges included providing architectural services while the development permit application was under review and failing to report to the AIBC the preparation and submission of the development permit drawings. The respondent was an experienced architect with no prior professional conduct record. The matter was concluded by way of a consensual resolution agreement with the following penalty: a reprimand, fine in the amount of \$2,000, an oral conduct review, and completion of the AIBC's 'Ethics, Act and Bylaws' course and the BC Building Course
- 1.35 In File 08.17, the respondent failed to notify the AIBC of the illegal practice of architecture by a non-architect specifically on development permit drawings. In addition, the respondent provided architectural services without having an executed client-architect agreement in place and failed to apply his seal to drawings submitted to the local authority. The matter went to a discipline hearing and the penalty imposed was a reprimand, fine in the amount of \$2,000, and completion of AIBC's 'Ethics, Act and Bylaws' course.

Failure to have direct knowledge and supervisory control of services

- 1.36 In File 22.03, the architect failed to adequately supervise, direct, or control the services of a project, as demonstrated by staff at the design firm who made official submissions to an authority having jurisdiction without his direct knowledge. Additionally, the architect did not insert the date on the seal that he applied to the project drawings submitted to the authority having jurisdiction; and did not apply his seal with signature and date to other materials submitted to the authority having jurisdiction, in support of the revised DP and rezoning application for the project. The architect did not have a previous professional conduct record, acknowledged his errors, 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 \$4,000 fine, and completion of the AIBC's 'Ethics, Act and Bylaws' course.
- 1.37 In File 20.18, the architect failed to provide adequate supervision, direction and control of staff providing architectural services on a project. The architect permitted staff to prepare the fee

proposal and also did not provide written notice to a previously engaged architect that they had been approached by the same client on the same project. The matter was resolved by consensual resolution with agreement with the following penalty: a reprimand, fine in the amount of \$5,000, completion of the AIBC's 'Ethics, Act and Bylaws' course plus costs and publication.

- 1.38 Based on a review of all the above precedent cases, as well as the multiple breaches that arose out of the events that occurred in Ms. Zulueta's case, it is submitted that the penalty is fair and reasonably within the range of sanctions that have been imposed for similar conduct in the past.
- 1.39 The penalty also takes into consideration that Ms. Zulueta has no prior professional conduct history, and although there are multiple breaches, they arose out of her conduct in relation to a single project.
- 1.40 As noted in *Peet* above, there will rarely, if ever, be only one single appropriate outcome in a professional disciplinary file.
- 1.41 Ms. Zulueta and the AIBC submit that, based on the cases above, and upon 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.

Ms. Zulueta acknowledges that she 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 Mary Joann Zulueta Architect AIBC and the Investigation Committee. The Order was signed on January 17, 2025.

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