



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

SUMMARY OF AIBC DISCIPLINARY INQUIRY DECISION AND PENALTY ORDER

IN THE MATTER OF THE *ARCHITECTS ACT*

R.S.B.C. 1996 C. 17 AS AMENDED

- and -

IN THE MATTER OF IAN MCDOUGALL MAIBC AND MCDOUGALL ARCHITECT

Disciplinary Committee Council Members — Joan Hendriks MAIBC (Chair), Richard Peddie Ph.D. (LG Appointee) and Lynne Werker MAIBC

Inquiry Hearing Date: June 16, 2011

As a result of the August 2009 B.C. Court of Appeal decision in *Salway v. APEGBC*, AIBC Council decided in September 2009 to put the AIBC's Consensual Resolution process on hold. Until the *Architects Act* has been amended to explicitly allow the AIBC to resolve allegations of unprofessional conduct by way of consensual resolution or other alternative dispute resolution, all allegations of unprofessional conduct approved by AIBC Council by way of a notice of inquiry must be heard by a disciplinary committee at a disciplinary inquiry as prescribed by the *Architects Act*. AIBC Council is actively seeking suitable amendments to the legislation to authorize the resumption of modern, public interest dispute resolution where appropriate.

BACKGROUND CIRCUMSTANCES

The AIBC's Investigation Committee conducted an investigation into the circumstances surrounding the provision of architectural services for two projects located in Lake Country, British Columbia.

The Investigations Committee recommended that AIBC Council order a Disciplinary Inquiry for determination of whether Mr. Ian McDougall MAIBC and McDougall Architect (together, "Mr. McDougall") breached the *Architects Act*, the AIBC Bylaws (the "Bylaws") and Council rulings in the AIBC *Code of Ethics and Professional Conduct* ("*Code of Ethics*").

The Notice of Inquiry in this matter alleged that Mr. McDougall contravened the *Architects Act* and the relevant professional conduct bylaws by: failing to exercise direct knowledge and supervisory control over the architectural, field review and coordination services; failing to confirm the terms and conditions of engagement in a written client agreement with the client, executed prior to commencement of architectural services; failing to ensure that the engagement for architectural services was based upon and generally consistent with the Canadian Standard Form of Agreement Between Client and Architect, or other Council-approved agreement; failing to notify the client in writing whether professional liability insurance was held and under what terms; and failing to include in any proposal for architectural services or client-architect agreement, or otherwise, the statement that the proposal and client-architect agreement was in compliance with the "AIBC Bylaws, including Bylaw 28 (Professional Engagement) and Bylaw 34.16

(Tariff of Fees for Architectural Services); and *Code of Ethics*; and failing to add his signature and date to his seal as it was applied to Letters of Assurance.

The inquiry proceeded by way of a “Joint Submission” to the Disciplinary Committee, including an Agreed Statement of Facts, Liability Admission and Agreement as to Penalty.

SUMMARY OF FACTS

The Disciplinary Committee’s findings of fact are summarized as follows:

The First Complaint

The Willows Project

- 1.1 In 2006, Mr. McDougall was contacted by Mr. Manu Chugh and Manu Chugh Architect Ltd. (together, the “Previous Architect”) to take over the Willows of Lake Country project, a 71-unit, three storey wood frame multi-family residential development located in Lake Country, B.C. (the “Willows Project”). In late November, early December, Mr. McDougall agreed and prepared a draft client-architect agreement, which was forwarded to the Previous Architect for the purposes of obtaining a signature from the client, Divergent Environments Inc. (the “Willows Client”).
- 1.2 On December 1, 2006, letters were prepared by the Previous Architect and Mr. McDougall, advising the District of Lake Country (the “District”) that as of the date of the letter, Mr. McDougall would be taking over as project architect for the Willows Project. Enclosed with Mr. McDougall’s letter were Schedules A, B-1, and B-2. The Schedule Bs were sealed for architectural, and the Schedule A was sealed to take responsibility for field review as the coordinating registered professional. Responsibilities relating to design on Schedule A were crossed out. The seals on the Letters of Assurance did not include a signature or date. On December 4, 2006, Mr. McDougall sent a letter to the Previous Architect enclosing the original documents for the Willows Project and requesting that the Previous Architect obtain the required signature from the Willows Client on the Schedule A and then forward the package to the District.
- 1.3 Mr. McDougall was under the impression that the Previous Architect had obtained the required signature on the Schedule A and forwarded it, along with the December 1 and 4 letters, and all other relevant Willows Project documentation, to the District. The District later confirmed in an e-mail to the AIBC that it did not have on file any letter from the Previous Architect withdrawing his services or the new Letters of Assurance from Mr. McDougall for the Willows Project. There was no indication that the Previous Architect obtained a signature from the Willows Client on the client-architect agreement proposed by Mr. McDougall and Mr. McDougall had no record of an executed agreement. Mr. McDougall acknowledged that he should have followed up with the Previous Architect to confirm that the District and Willows Client had received all notifications and documentation with respect to the Willows Project. However, Mr. McDougall was not advised by the Previous Architect that the documentation was not completed as the Previous Architect had said would be done. Mr. McDougall was paid for his services and assumed all was well. Mr. McDougall provided architectural services for the Willows Project from December 1, 2006, to March 2007, with no executed client-architect agreement.
- 1.4 A non-architect design consultant located in Kelowna, B.C. (the “Design Consultant”), was contracted by Mr. McDougall as his local representative for the Willows Project. According to Mr. McDougall, the Design Consultant conducted two site inspections when he was not available. During one of the inspections in February 2007, the Design Consultant introduced himself to the construction superintendent who was not, at that time, aware of the Design Consultant’s or Mr. McDougall’s involvement with the Willows Project.
- 1.5 Written communication, including a December 2006 memo and site review reports from January and February 2007, from HMS Structural Engineering (“HMS”), the structural engineering firm for the Willows Project, were sent to the Previous Architect and not Mr. McDougall, who was the Willows Project architect during this period.

- 1.6 On March 14, 2007, Mr. McDougall sent a letter to the District advising that he was no longer the architect for the Willows Project. This letter is the only document that the District confirms was on its file with respect to Mr. McDougall's involvement with the Willows Project.

The Second Complaint

The Emerald Pointe Project

- 1.7 During the course of the AIBC's investigation, concerns arose regarding the provision of architectural services by Mr. McDougall for the Emerald Pointe Woodland Park Estates project, a 79-unit, multi-family residential development located in Lake Country, B.C. (the "Emerald Pointe Project"). This project had also been taken over by Mr. McDougall from the Previous Architect.
- 1.8 Mr. McDougall sent a letter to the District, dated December 1, 2006, informing the Senior Building Official that as of December 1, 2006, he would be the architect for the Emerald Pointe Project. Enclosed were Schedules A, B-1 and B-2, all dated December 1, 2006. On the Schedule A, Mr. McDougall crossed out the references to design and undertook to coordinate the field reviews only. All of the schedules included Mr. McDougall's seal. However, the Schedule B-1 was the only schedule that included a seal with his signature and none of the seals were dated. No client-architect agreement was executed for these services.
- 1.9 The Design Consultant performed the bulk of the on-site field reviews and communication with the District and sub-consultants for the Emerald Pointe Project. A letter to the superintendent of the Emerald Pointe Project in late December 2006, addressing some design and building code issues uses the letterhead "[DESIGN CONSULTANT]/MCDUGALL ARCHITECT", and is signed by the Design Consultant and copied to Mr. McDougall.
- 1.10 In the minutes of a meeting that took place in early January 2007, the Design Consultant was referred to as the "architect of record for project". On or about January 11, 2007, the Design Consultant sent a letter, by fax, to the project manager with notes addressing those minutes with the clarification: "Architect of record will be McDougall Architect, Bragg Creek, Alta. We have been retained locally to be available as required and carry out inspections on Mr. McDougall's behalf."
- 1.11 During the period from December 19, 2006, to March 8, 2007, the building envelope consultant for the Emerald Pointe project copied its field review reports to both the Previous Architect and the Design Consultant. Mr. McDougall was not copied with this correspondence although he was the project architect during this period.
- 1.12 In a letter dated March 14, 2007, Mr. McDougall advised the District that he was no longer the architect for the Emerald Pointe Project. On or about February 12, 2007, the Previous Architect was reinstated to the AIBC register and resumed his position as the project architect on or about March 1, 2007.
- 1.13 However, on or about May 28, 2007, the Emerald Pointe Client requested final architectural Letters of Assurance from the Previous Architect and he was unable to provide them as he had not yet obtained a certificate of practice from the AIBC. As a result, on or about June 14, 2007, the client delivered a termination letter to the Previous Architect, and once again hired Mr. McDougall to continue and complete the architectural services for the Emerald Pointe Project.
- 1.14 On or about June 15, 2007, the Emerald Pointe Client and Mr. McDougall signed a client-architect agreement for the provision of architectural services for the completion of the project. The agreement did not include a statement that it was compliant with AIBC bylaws, and did not accompany any notification regarding Mr. McDougall's professional liability insurance status.
- 1.15 In a letter to the District, dated June 15, 2007, Mr. McDougall advised that as of the date of the letter, he was once again the architect for the Emerald Pointe Project. He also sent two other letters to the District, one on June 15, 2007, and a corrected version on June 20, 2007, which enclosed Schedules C-A and C-B for the

Emerald Pointe Project. The Schedules C-A and C-B, dated June 15, 2007, were submitted to the District based on Mr. McDougall's work since December 1, 2006. The seals on the Schedules were not signed or dated.

DECISION

AIBC Bylaws 34.1 and 34.10 and the relevant Council rulings state:

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

- (a) An architect's site or auxiliary office for a specific project is a convenient extension of the base office for a single project and is not itself permitted to offer or to provide independent architectural services to the public.

The public is entitled to expect that the services offered and provided by an architect's office, including a branch or secondary office, are supervised and controlled by an architect.

...

Bylaw 34.10 **Except in an approved competition, an architect shall provide no form of service until retained and in receipt of the client's instructions.**

...

- (d) An architect must confirm the terms and conditions of engagement, in a written agreement with the client, executed prior to the architect's commencing work, on any commission. (*cf. Bylaw 28 and related commentary in this Code of Ethics, and Bulletin 67*)
- (e) Before entering into an agreement to provide architectural services, a Certificate of Practice holder must notify the client in writing whether or not professional liability insurance is held and under what terms. (*cf. Bulletin 66*)
- (f) Each (i) proposal for architectural services, and (ii) client-architect agreement (contract), must contain the statement that it "is in compliance with the AIBC Bylaws, including especially (but not limited to) Bylaw 28: Professional Engagement and Bylaw 34.16; the Tariff of Fees for Architectural Services; and the Code of Ethics." (*cf. Bulletin 67*)

Architects Act Section 77 (1) and AIBC Bylaw 34.2 and the relevant Council ruling states:

Architect's seal

- 77** (1) An architect must apply a seal, with signature and date, to letters of assurance, certificates, drawings and specifications prepared by or under the architect's supervision, direction or control if the architect practises architecture
- (a) as a member of the institute holding a certificate of practice,
- (b) as a sole proprietor or partner of an architectural firm, or
- (c) on behalf of an architectural corporation as a continuing employee or shareholder of the corporation.

...

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

- (a) An architect's professional seal is to be applied only by that architect and is to be used only on documents prepared by the architect personally or by other persons under the architect's supervision, direction and control.

After due consideration of the Joint Submission material and related oral submissions, and pursuant to Section 50(1) of the *Architects Act*, the Committee finds that Ian McDougall MAIBC has contravened Section 77(1) of the *Architects Act* and the AIBC Bylaws 34.1, 34.10 and 34.2. Specifically, he contravened AIBC Bylaw 34.1 and acted unprofessionally by failing to ensure he had direct knowledge and supervisory control of the services for the Willows Project and the Emerald Pointe Project.

Mr. McDougall contravened AIBC Bylaw 34.10 (d), (e) and (f) by providing architectural services for the Willows Project and the Emerald Pointe Project prior to confirming the terms and conditions of engagement in a written agreement with his clients; failing to notify clients in writing whether professional liability insurance was held and on what terms; and failing to include the statement that his proposal and client-architect agreement were in compliance with "AIBC Bylaws, including Bylaw 28 and Bylaw 34.16; and the *Code of Ethics*".

Mr. McDougall contravened the *Architects Act*, Section 77 and AIBC Bylaw 34.2 and acted unprofessionally by failing to sign and date his seal on the Letters of Assurance he prepared for the Willows Project and the Emerald Pointe Project.

PENALTY ORDER

The Committee received and reviewed the "Agreement as to Penalty" within the Joint Submission. After due deliberation following the Inquiry, the Committee imposes the following penalties, by way of this order, against Mr. McDougall MAIBC and McDougall Architect:

1. A reprimand to be recorded against Mr. McDougall MAIBC;
2. A fine in the amount of three thousand dollars (\$3,000.00) payable to the AIBC within 60 days after issuance of the Disciplinary Committee's decision and penalty order in this matter;
3. Completion of the AIBC *Ethics, Act and Bylaws* course no later than December 2011, as a condition of the certificate of practice of McDougall Architect; and
4. Notice of the AIBC Disciplinary Decision and Penalty Order in this matter, in a form established by the AIBC, will be published in keeping with the AIBC's publication guidelines, including web site publication and distribution to members and associates of the AIBC.

REASONS FOR PENALTY ORDER

The above orders were made for the following reasons:

1. The Disciplinary Committee is of the view that the allegations and admissions made by Mr. McDougall are of moderate gravity in all the circumstances of the file and when viewed in relation to the spectrum of professional conduct expected of an AIBC member.

2. The Committee took into account that Mr. McDougall has acknowledged the errors, both during the investigation and after charges were confirmed. Mr. McDougall has been fully cooperative throughout this process and interested in a timely resolution.
3. There appears to have been no advantage gained by Mr. McDougall in this matter.
4. The Committee is not specifically concerned with respect to rehabilitation of Mr. McDougall in terms of these Bylaws being ignored in the future, and expects that the experience of the complaint, investigation and inquiry will ensure improved practice. Mr. McDougall is an experienced architect. This was the first instance of any disciplinary inquiry or unprofessional conduct admission by Mr. McDougall.
5. The Committee acknowledges that Mr. McDougall contacted the AIBC regarding project takeover prior to taking over the first project. Mr. McDougall was aware that this situation can be fraught with risk, and he took steps to inform himself and follow proper process. Nevertheless, by assuming the roles of architect and Coordinating Registered Professional for these projects Mr. McDougall must also accept the entire responsibility for the administration of the projects, including ensuring that a proper client-architect agreement is in place, that all parties involved with the project are notified of the project takeover, and that coordination and supervision are of no lesser quality than that provided for an 'original' full commission. Failing to ensure that the authority having jurisdiction knows the identity of the architect at all times during a project's lifespan creates confusion and risk.
6. The Committee recognizes as further mitigation that the previous architect, Mr. Manu Chugh, had not provided an adequate level of architectural service on the projects and apparently did not forward the documentation to the District that Mr. McDougall had expected. In fact, Mr. Chugh was found to have acted unprofessionally in regards to these projects, and a Disciplinary Decision and Penalty Order has been previously published (refer to Disciplinary Inquiry Decision published January 2010). These circumstances complicated Mr. McDougall's commission. Again, however, an architect is expected to exercise diligence in regards to project takeover and communications.
7. The Committee recognizes that working from another province on a B.C. project can pose challenges with respect to supervision and coordination. However, the standards expected of an MAIBC are the same regardless of geographic location. There should be no confusion as to which architect or architectural firm is providing architectural services, and no confusion as to communication and coordination among architect, authority and sub-consultants. In addition to the contractual obligation and those reinforced by signing and sealing the Letters of Assurance, there is an overarching ethical and practice obligation to provide sufficient communication, supervision and coordination, especially in unusual project circumstances.

The Disciplinary Inquiry Decision and Penalty Order is dated September 9, 2011.

For further information, or to view the full Disciplinary Inquiry Decision and Penalty Order, please contact Jackie Buchan, Paralegal, Illegal Practice and Professional Conduct Coordinator at jbuchan@aibc.ca.