



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 WILLIAM R. EVANS MAIBC AND

RUSSCHER AND EVANS, ARCHITECTS

Disciplinary Committee Council Members — Barry Weih (Chair), Tim Spiegel, PQS, MRICS (LG Appointee) and Veronica Gillies MAIBC

Inquiry Hearing Date: March 28, 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 a project located in Langley, British Columbia.

The Investigations Committee recommended that AIBC Council order a Disciplinary Inquiry for determination of whether Mr. William Evans MAIBC and Russcher and Evans, (together, "Mr. Evans") breached 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. Evans contravened the relevant professional conduct bylaws by: failing to undertake to perform professional services only when qualified; and failing to take into account all applicable federal, provincial and municipal building laws and regulations.

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 Complaint

- 1.1 In mid-April 2008, Mr. Evans provided a fee proposal for the Langley Minor Fieldhouse project, a three-storey, 320.5 m² fieldhouse located in Langley, B.C. (the "Project") to the Langley Minor Football Association ("LMFA" or the "Client") offering to provide full architectural services. The proposal also stated that Mr. Evans' would coordinate the hiring of other consultants once the preliminary building design had been decided upon. These were to include consultants for soils, structural, mechanical, electrical, and civil engineering. The LMFA accepted and signed the fee proposal in May 2008, and asked Mr. Evans to proceed with the Project.
- 1.2 The building was to be used solely by the LMFA, with the exception of a handicapped washroom available for public use. Mr. Evans had experience with this type of building as he had worked on three other fieldhouses in the City in the previous eight years. Mr. Evans described some of the various systems required for the Project as relatively simple. The heating consisted of hot water in-floor heating that would supply heat to both floors through floor and ceiling ventilation, with some electric heaters to be used where needed. The ventilation had been discussed with a local company, Corona Gas, and consisted of exhaust systems for all rooms. The plumbing was limited to sinks and toilets, with no showers in the building. Mr. Evans assumed that the City would accept a schematic piping layout from the trade doing the work at a later date.
- 1.3 As Mr. Evans viewed the mechanical systems to be "simple", he advised the Client that he could include them on the architectural drawings. He prepared the architectural drawings, as well as one electrical drawing showing switches, outlets, lighting, emergency lighting and fire alarm pull stations.
- 1.4 During the design process, the LMFA informed Mr. Evans that it had an electrical consulting engineer that would donate its services. Mr. Evans was under the impression that since that consultant would be providing technical back-up, Mr. Evans could sign for the electrical assurance on Schedules submitted to the City. Mr. Evans was also under the impression that since the fire suppression design was to be completed by a sub-contractor, the appropriate design engineer would later provide the applicable Schedules.
- 1.5 In July 2009, Neale Engineering Ltd. submitted Schedules B-1 and B-2 to the City for the structural components of the Project. The Engineering firm's invoice to LMFA stated that "a Schedule C-B will be issued after Neale Engineering has completed and approved all necessary or required inspections". In mid-November 2009, Mr. Evans submitted sealed building permit drawings along with Schedules A, B-1, B-2, and C-A to the City for a building permit application.
- 1.6 On Schedules B-1 and B-2, Mr. Evans had applied his seal and initials to give assurances for the architectural component as well as certain non-architectural components: mechanical, plumbing, fire suppression systems, and electrical. Mr. Evans states that, at the time of submission, there was no staff available to speak with him, so he was unable to explain to the City his reasons for signing for engineering portions of the Letters of Assurance. In addition, Schedules B-1 and B-2, as submitted, were not initialled by Mr. Evans as the Certified Registered Professional, despite the submitted Schedule A which identified him as such. Furthermore, Mr. Evans did not cross out the disciplines on the Schedule B-2 for which he was not providing assurances.
- 1.7 Schedule C-A was signed and submitted by Mr. Evans in error. It was submitted on the same day as building permit application and Schedule A submission. The Schedule C-A is supposed to be submitted after completion of the project, but before issuance of the occupancy permit, to provide assurance that the Coordinating Registered Professional has completed what he or she undertook to perform on Schedule A and the related assurances on the Schedule C-A itself.

- 1.8 Subsequent to the initiation of this complaint, the Project was revised from three to two storeys, as the announcer's booth became a mezzanine. Therefore, new drawings were submitted to the City in May 2010 along with new Letters of Assurance from Mr. Evans, the electrical engineer and the mechanical engineer. On the new Schedules B-1 and B-2 submitted by Mr. Evans, he signed only for architectural matters. Mr. Evans did not retrieve the original Schedules from the City.
- 1.9 The Project as originally planned never proceeded to construction. The LMFA ultimately decided to direct their funds to refurbishing the existing stadium and field at McLeod Athletic Park in the Township of Langley. The LMFA hired another architectural firm to assist with updating the stadium, a project that is under way.

DECISION

AIBC Bylaws 30.3 and 33.4, and the relevant Council rulings state:

Bylaw 30.3 An architect shall undertake to perform professional services only when qualified, together with those whom the architect may engage as consultants, by education, training and experience in the specific areas involved.

- a) An architect shall limit professional practice to areas of personal competence or shall engage others (including staff) who are competent in supplementary areas.
- b) Where so governed under Provincial statute, other professionals must be engaged to practise their professions.
- c) An architect is authorized to undertake architectural services for any project, but must recognize personal and professional limitations and must refrain from rendering service in those areas until such limitations are overcome.
- d) An architect must be able to manage and coordinate the provision of other design professionals' services competently, whether the other professionals are engaged by the architect or the client.

Bylaw 33.4 In practising architecture, an architect shall take into account all applicable federal, provincial and municipal building laws and regulations and an architect may rely on the advice of other professionals and other qualified persons as to the intent and meaning of such regulations.

- a) This Bylaw recognizes the increasing complexity of laws and regulations applicable to the practice of architecture. This Bylaw is complementary to 33.1 in that compliance is mandatory but permits the architect to rely on the advice of others qualified by education, experience or training to provide interpretation.
- b) In relying on the advice of others, it is incumbent on the architect to determine that such persons have the requisite credentials and responsibilities for providing that advice; to brief such persons properly relating to issues on which advice is sought; and to confirm such advice in writing.

PENALTY ORDER

Upon due deliberation of the admissions, facts, oral and written submissions, and upon consideration of Section 50 (3) and 51 of the *Architects Act*, the Committee imposes the following penalties, by way of this order, against Mr. William Evans MAIBC:

1. A reprimand to be recorded against Mr. Evans MAIBC;

2. A fine in the amount of two thousand dollars (\$2,000.00) payable to the AIBC, within 30 days after issuance of the Disciplinary Committee's decision and penalty order in this matter;
3. Payment of costs of the Disciplinary Inquiry fixed at one thousand dollars (\$1,000.00) payable to the AIBC, within 30 days after issuance of the Disciplinary Committee's decision and penalty order in this matter;
4. Completion of the AIBC courses *Building Code II* and *Construction Administration* no later than December 2011 as a condition of the certificate of practice of Russcher and Evans, Architects; and
5. Submit to an AIBC Oral Conduct Review, within 90 days after completion of the required courses, as a condition of the certificate of practice of Russcher and Evans, Architects.

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 concludes that the penalties ordered are appropriate insofar as they optimally reconcile the various factors to be considered in determining penalty for misconduct of this nature. In arriving at its decision, the Committee was, at all times, guided by its overarching mandate to uphold and safeguard the public interest through maintaining and promoting appropriate professional standards in its members.
2. In the course of its deliberations, the Committee reflected on the following considerations as set out in *Law Society of British Columbia v. Ogilvie* [1999] LSBC 17:
 - a) the nature and gravity of the conduct proven;
 - b) the age and experience of the member;
 - c) the previous character of the member, including details of prior discipline;
 - d) the impact upon the victim;
 - e) the advantage gained, or to be gained, by the member;
 - f) the number of times the offending conduct occurred;
 - g) whether the member 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 member;
 - i) the impact on the member of criminal or other sanctions or penalties;
 - j) the impact of the proposed penalty on the member;
 - 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 imposed in similar cases.[emphasis added to original]

a) The nature and gravity of the conduct

A fundamental component of professionalism is understanding the limits and boundaries of one's expertise and qualification. The public has a right to expect that architects will not tender work that is beyond their scope of professional training and competence. Mr. Evans displayed a poor appreciation of the boundaries between the practices of engineering and architecture and he did not exhibit an appropriate understanding of the application of the Schedules in the BC Building Code. As such, we have concluded that the Member's misconduct was of a moderately serious nature.

b) The age and experience of the member

The Committee recognizes the member's experience and seniority as an architect, having practiced in British Columbia as a member of the AIBC since 1977. Recent projects of the Member were brought to the attention of the Committee which evidenced an active practice with projects similar to that which formed the subject of this inquiry. Given the member's significant experience in the practice of Architecture in BC, the Committee found it difficult to accept Mr. Evans' explanations for his errors in judgment. The Committee expected a higher level of professionalism from a member with Mr. Evans seniority.

c) The previous character of the member, including details of prior discipline

In forming its decision as to penalty, the Committee was concerned by the Member's previous disciplinary professional conduct record involving similar incidents. On two previous occasions within the last 10 years, the Member was found to have fallen into noncompliance with the *Architects Act* and the AIBC Bylaws. On the first occasion in 2003, the Member was delinquent in his reporting requirements relative to the AIBC's mandatory Continuing Education System. More significantly, on the second occasion, also in 2003, the Member was found to have acted in a way that permitted a person not entitled to practice architecture to practice architecture contrary to section 65 of the *Architects Act*; failed to perform architectural services in accordance with the applicable Tariff of Fees for Architectural Services contrary to Bylaw 34.16; failed to report to the AIBC violations of the *Architects Act* contrary to Bylaw 32.5, and provided services pursuant to an agreement that was not based upon or generally consistent with the most recent edition of the Canadian Standard Form of Agreement between Client and Architect. The Member was reprimanded, paid a \$1000 fine and was ordered to complete the AIBC *Ethics, Act and Bylaw* course.

d) The impact upon the victim

Given that the Fieldhouse Project which is the subject of the complaint, did not go forward as proposed, there was no measurable harm done to the client. Nonetheless, the Committee takes this matter seriously in implementing the AIBC's mandate to ensure that architects are serving the public in a professional manner by properly completing Letters of Assurance, abiding by Building Code requirements, and only providing services that fall within an architect's scope of practice. In particular, building officials must be able to rely upon the assurances provided by registered professionals. The engineering profession expects members of the architectural profession to stay within the bounds of their professional scope of service.

e) The advantage gained, or to be gained, by the member

The misconduct in this case was not a situation where Mr. Evans stood to gain substantially. The possible or hypothetical advantages, such as an expedited building permit application process or reduced consulting costs, were not in fact realized in this case.

f) The number of times the offending conduct occurred

This is the first instance of a disciplinary process against Mr. Evans regarding conduct of this specific nature, and this proposed fieldhouse is the only Project the AIBC has been made aware of for which he has incorrectly submitted Letters of Assurance.

g) Whether the member has acknowledged the misconduct and taken steps to disclose and redress the wrong and the presence or absence of other mitigating circumstances

The Committee considered it important that, Mr. Evans has acknowledged his misconduct. Throughout the investigation, he has been cooperative and forthcoming with information.

The Committee did not consider the relatively small scale of the project to be a mitigating circumstance. The fact that subsequent to the submission of the Letters of Assurance that had been filled out and submitted incorrectly, the project was revised and new drawings were submitted to the City in May 2010 with new Schedules from Mr. Evans, the electrical engineer and the mechanical engineer was considered to be a mitigating factor.

h) The possibility of remediating or rehabilitating the member

The Committee believes that participation in this AIBC investigation process, as well as the completion of AIBC courses *Building Code II* and *Construction Administration* should refresh and alert Mr. Evans to the requirements of proper attention to Letters of Assurance as a fundamental aspect of architectural practice in British Columbia. It is the Committee's view that the additional step of having Mr. Evans sit an Oral Review by his peers will contribute to a low likelihood of any recurrence of these circumstances.

i) The impact on the member of criminal or other sanctions or penalties

The Committee notes that aside from any result of this disciplinary hearing, Mr. Evans advises that no other regulatory or legal sanctions have arisen as a result of this incident.

j) The impact of the proposed penalty on the member

The committee has determined that the impact of the penalty order on the member is commensurate with the seriousness of the circumstance.

k) The need for specific and general deterrence

'Specific deterrence' is one of the objectives of the penalty order recommended by the Committee. This means deterring the member from repeating the conduct in question. In this case, the Committee is confident that the combination of the reprimand, fine, payment of inquiry costs, completion of AIBC courses *Building Code II* and *Construction Administration*, and Oral Review panel will help ensure that Mr. Evans will submit future Letters of Assurance with diligence and caution.

'General deterrence' is also one of the objectives of the penalty order recommended by the Committee. This is a sentencing objective that promotes reduction of improper conduct in the community by the example, message or influence established by the penalty in the present matter. In the opinion of the Committee, the ordered penalties will serve to educate and caution other architects in B.C. that Letters of Assurance must be completed with diligence prior to submission to authorities having jurisdiction and that they must limit their scope of practice to architecture as defined by the *Architects Act*, regardless of the scale or complexity of a project.

l) The need to ensure the public's confidence in the integrity of the profession

One of the objectives of the penalty, particularly publication, is to enhance the public's confidence in the integrity of the profession. The public has the right to expect that a professional architect will properly submit Letters of Assurance for projects and will restrict the provision of services to those for which they are registered and qualified. The AIBC's investigation and the outcome of this matter demonstrate the Institute's commitment to maintaining the integrity of the profession and to not condoning any practice of architecture that extends, or purports to extend, into the realm of engineering or other professions.

In addition, this matter is being resolved through a statutorily-mandated disciplinary inquiry, which is a public proceeding. More importantly, this decision will be published and made available to members and associates and the general public, in accordance with the AIBC Rules for the Professional Conduct Process, and Guidelines.

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

architects and associates acts as a further deterrent and as an educational message with respect to ethical and professional conduct matters.

While misconduct by architects rarely attracts the kind of public and media attention seen by other regulated professions, architects' behaviour must still satisfy the reasonable expectations of the public and must maintain public confidence and respect. The ordered penalties strive to balance the circumstances of the case and the recognition that public confidence in the competency of the profession must be upheld.

m) The range of penalties imposed in similar cases

In determining the Penalty Order, the Committee reviewed and considered four AIBC precedents, which demonstrate the penalties and sanctions that have been imposed in similar circumstances.

The Committee finds that taking into consideration the circumstances of the above penalty decisions, the penalty ordered against Mr. Evans is fair and reasonable, and in the range of sanctions that have been imposed for similar conduct in the past.

Payment of costs, fixed here at one thousand dollars (\$1,000.00), is submitted as appropriate pursuant to s.51 of the *Architects Act*, in order to cover some of the expenses incurred by the AIBC in holding this statutorily mandated disciplinary hearing.

SUMMARY

The Disciplinary Committee has given due consideration to all the above mentioned considerations, and concludes that the penalty imposed on Mr. Evans is consistent with well-established principles as well as the public interest in professional disciplinary matters.

The Disciplinary Inquiry Decision and Penalty Order is dated September 23, 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.