

CASE SUMMARY #9

MAINTAINING THE INTEGRITY OF THE PROFESSION

COMPLAINT REVIEW COMMITTEE

The Complaints Review Committee heard a case that provides a clear example of conduct that damages the integrity of the profession.

BACKGROUND AND FACTS

In this case, an architect from another province engaged in the practice of architecture in Alberta without being registered in Alberta. More specifically, the architect prepared plans, drawings and specifications for the design phase and construction phase of an institutional building and was, in fact, the primary architect. The architect registered in Alberta several years into the project.

The architect had included the work of another architect as a sub-consultant in the contract. When the sub-consultant architect was unable to carry out the work, the architect at first indicated to the client that he wanted to engage another sub-consultant and end his involvement. The architect then changed his mind and attempted to negotiate his continued involvement by way of completing the sub-consultant work. In the course of these negotiations, the architect effectively held the plans and drawings for ransom. The client had to take legal action and was significantly impacted by the architect's conduct and failure to facilitate the transition to another architect to complete the project.

FINDINGS OF THE PANEL

In defense, the architect argued that he did not have to register because he was "engaged in the practice of architecture in the course of being employed by a registered architect" pursuant to section 2(3) of the *Architects Act*.

The panel rejected this defense as the evidence was clear that the architect was the primary architect identified in the client contract and stamped and sealed the drawings.

The panel also rejected the architect's argument that the Association did not have jurisdiction over him because the alleged conduct took place several years before he became registered in Alberta. Past conduct of a registered architect is sanctionable by the Association regardless of whether they were registered architects at the time of the conduct.

With respect to the contract, the panel found that the architect was entitled to enter into negotiations with the client. However, once it was apparent that no agreement would be reached, the architect had a professional and ethical duty to facilitate the transition of the project to another architect. The architect not only failed to do this but his negotiation tactics were unacceptable. In effect, the architect attempted to hold the drawings for ransom and demanded various sums of money for their use. The panel found this conduct breached the code of ethics and damaged the integrity of the profession.

SANCTION

- ▶ A fine of \$20,000
- ▶ A payment of \$19,111 to the Association towards cost of the investigation and hearing
- ▶ Must take a course in practice management communications.

FINDINGS ON APPEAL TO COUNCIL

On appeal, the AAA Council upheld the Complaints Review Committee's decision and added more costs. Council ordered the architect to pay for 2/3 of the cost of the appeal, an amount of \$18,950.

FINDINGS ON APPEAL TO COURT

The architect appealed to the Alberta Court of Appeal which fully upheld Council's decision on both the findings and sanctions. The architect sought leave to appeal to the Supreme Court of Canada which was dismissed. The architect was subject to additional cost awards for each of his court challenges. In the end, the architect was subject to cost orders exceeding \$65,000.

COMMENTARY

This case emphasizes the ethical and professional obligations that are the hallmark of a self-regulating profession. The architect's conduct in negotiating with the client and failure to facilitate the transition to a new architect breached the following provisions of the Code of Ethics:

1. Integrity
An authorized entity must discharge, with honesty, courtesy and good faith, the duty that it owes to its client, to the public and to the profession.
2. Responsibility
An authorized entity must assist in maintaining the integrity of the profession.
3. Competence and quality of service
An authorized entity must:
 - a. Act in the best interest of its client,

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the Public/Client. Members and the Public should consult their own legal, income tax or financial advisors as to the application of the Architects Act and Regulations in specific circumstances.

