

IN THE MATTER OF the *Architects Act*, R.S.O. 1990, c. A.26

AND IN THE MATTER OF the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22

AND IN THE MATTER OF a proceeding before the Registration Committee of the Ontario Association of Architects pursuant to Section 25 of the *Architects Act* to hear the proposal of the Registrar of the Association to refuse the application for a License and Certificate of Practice by **Adrian Worton** as set out in the Notice of Hearing dated June 7th, 2023 and to refuse the application for a License and Certificate of Practice by **Clifford Smith** as set out in the Notice of Hearing dated June 19th, 2023.

J. William Birdsell, Councillor (Chair)

)

)

Shirley Lee, Member

)

WEDNESDAY THE 8TH DAY OF
MAY, 2024

)

Julius Horvath, Member

)

Grant Worden, Counsel to the Tribunal

Adrian Worton

Clifford Smith

Jimmy Gangadin, Representing Mr. Worton
and Mr. Smith

Erin MacQuarrie, Counsel to the Association

DECISION AND ORDER OF THE REGISTRATION COMMITTEE

This matter coming on for hearing before the Registration Committee on this date via videoconference hosted by Arbitration Place, in which the Registrar served:

1. a Notice of Proposal, dated June 7, 2023 to refuse to issue a Licence or Certificate of Practice to Adrian Worton.
2. a Notice of Proposal, dated June 19, 2023 to refuse to issue a Licence or Certificate of Practice to Clifford Smith.


In the presence of the Registrar of the Association and of Mr. Worton and Mr. Smith, and hearing the evidence adduced:

THE REGISTRATION COMMITTEE having duly considered all the information placed before it with respect to the Applicants' applications for a Licence and Certificate of Practice **HEREWITH**

DIRECTS the Registrar to:

1. Issue to Mr. Worton a Licence and Certificate of Practice subject to the terms, conditions and limitations set out in Schedule "A;" and
2. Issue to Mr. Smith a Licence and Certificate of Practice subject to the terms, conditions and limitations set out in Schedule "A;" and

DATED AT TORONTO THIS 5th DAY OF JULY 2024.



J. William Birdsell, Councillor (Chair)

Shirley Lee, Member

Julius Horvath, Member

1. Issue to Mr. Worton a Licence and Certificate of Practice subject to the terms, conditions and limitations set out in Schedule "A;" and
2. Issue to Mr. Smith a Licence and Certificate of Practice subject to the terms, conditions and limitations set out in Schedule "A;" and

DATED AT TORONTO THIS 5th DAY OF JULY 2024.

J. William Birdsell, Councillor (Chair)

Shirley Lee

Shirley Lee, Member

Julius Horvath, Member

Appendix “A”
Applicants’ Terms, Conditions and Limitations

Terms, Conditions and Limitations of Licence

1. The Applicants may provide, and personally supervise and direct, architectural services for a building that:
 - a. as constructed, enlarged, or altered, is not more than three storeys in height and not more than 600 square meters in gross area and is used or intended for one or more of the following occupancies:
 - i. Residential;
 - ii. Business;
 - iii. Personal Services;
 - iv. Mercantile;
 - v. Industrial; or
 - vi. a restaurant designed to accommodate not more than 100 persons consuming food or drink;
 - b. is used or intended for residential occupancy, and contains one dwelling unit or two attached dwelling units, and, as constructed, enlarged, or altered, is not more than four storeys in height;
 - c. is used or intended for residential occupancy, that contains three or more attached dwelling units and as constructed, enlarged, or altered, is not more than four storeys in height and not more than 600 square meters in building area; or
 - d. is excepted by the *Architects Act*, s. 11(3).

2. The Applicants shall ensure that their limited scope of practice is clearly indicated to the public in a manner set out and approved by the Registrar¹ (e.g., website, letterhead, business cards, social media profile).
3. The Applicants may act as the prime consultant for the construction, enlargement, or alteration of any building. However, where the Applicants have agreed to arrange for the provision of architectural services to a member of the public beyond those permitted in Paragraph 1, they must engage a holder of a Certificate of Practice not subject to these Terms, Conditions, and Limitations.

Terms, Conditions and Limitations of Certificate of Practice

4. The Certificate of Practice shall be subject to the same Terms, Conditions, and Limitations as the licence.
5. The Applicants may provide architectural services to the public as a sole proprietor, in a partnership, or through a corporation, providing that the proprietor, partnership, or corporation holds a Certificate of Practice. The Certificate of Practice shall be subject to the limitations of Paragraph 1
6. The Applicants shall not directly or indirectly own or control more than 49% of the voting shares and value of all the shares of a corporation, or directly or indirectly hold more than 49% of the voting and financial interest of a partnership, to which a Certificate of Practice not subject to the Terms, Limitations, and Conditions of this policy has been issued under Section 146 or 157 of the *Architects Act*.

¹ Whatever title the Registrar selects should clearly convey the Applicants' limited scope of practice, e.g., "Architect (Limited Scope)", "Limited Scope Architect" or similar.

IN THE MATTER OF the *Architects Act*, R.S.O.
1990, c. A.26

AND IN THE MATTER OF the *Statutory Powers
Procedure Act*, R.S.O. 1990, c. S.22

AND IN THE MATTER OF a proceeding before
the Registration Committee of the Ontario
Association of Architects pursuant to Section 25
of the *Architects Act* to hear the proposal of the
Registrar of the Association to refuse the
application for a License and Certificate of
Practice by **Adrian Worton** as set out in the
Notice of Hearing dated June 7th, 2023 and to
refuse the application for a License and
Certificate of Practice by **Clifford Smith** as set
out in the Notice of Hearing dated June 19th,
2023.

J. William Birdsell, Councillor (Chair))

Shirley Lee, Member)

Julius Horvath, Member)

WEDNESDAY THE 8TH DAY OF
MAY, 2024

Grant Worden, Counsel to the Tribunal

Adrian Worton

Clifford Smith

Jimmy Gangadin, Representing Mr. Worton
and Mr. Smith

Erin MacQuarrie, Counsel to the Association

REASONS FOR THE DECISION AND ORDER OF THE REGISTRATION COMMITTEE

The Registration Committee of the Ontario Association of Architects (the “OAA”) met on this date via videoconference hosted by Arbitration Place, for the purpose of hearing the proposal of the Registrar of the Association to refuse to issue a licence and certificate of practice to Mr. Worton and Mr. Smith (together, the “Applicants”). Mr. Gangadin represented both Applicants, and at the outset of the proceeding advised the Committee, jointly with the Counsel for the Registrar, that the parties consented to the Applicants’ applications proceeding together, pursuant to section 9.1(1) of the *Statutory Powers Procedure Act*.

Facts

As described in greater detail below, each of the Applicants obtained a Licensed Technologist OAA designation from the OAA which they held until May 10, 2023, when their licences were voided upon the dissolution of the OAA’s former Licensed Technologist OAA Program.

There were two Agreed Statements of Facts (ASOF) submitted into evidence, one dated March 26, 2024 on behalf of Mr. Worton¹ and one dated April 23, 2024 on behalf of Mr. Smith.² The background facts set out in these Reasons for Decision reproduce and/or summarize relevant facts from the ASOFs, supplemented by additional evidence adduced at the hearing.

¹ Exhibit 4.

² Exhibit 2.

As described in greater detail below, each of the Applicants were educated and trained in architectural technology in Ontario and provided related services. In addition:

- a) Mr. Worton obtained a Licensed Technologist OAA designation from the OAA on September 22, 2011; and
- b) Mr. Smith obtained a Licensed Technologist OAA designation from the OAA in May 2015.

The OAA's Former Licensed Technologist OAA Program

In May 2003, the OAA founded a program for architectural technology college graduates which continued until May 2023. In 2003, the initial iteration of the technology program was created by the OAA in partnership with the Ontario Association of Certified Engineering Technicians and Technologists (the "OACETT"). Between 2003 and 2010, the technology program was administered by the Ontario Association for Applied Architectural Sciences (the "OAAAS"), a not-for-profit organization owned equally by the OAA and the OACETT. In 2011, the OAA assumed full ownership of the OAAAS. In 2022, the OAA brought the technology program in-house and administered it directly until May 2023.³

Applicants to the technology program were required to meet education, experience and examination requirements which included tendering documentation about their education, recording their experience hours, completing a qualifying examination, and participating in

³ Smith ASOF, paragraphs 8-11; Worton ASOF, paragraphs 9-12.

the OAA's Admission Course. Upon successful completion of the program, applicants received certification and were referred to the OAA's Office of the Registrar to apply for licensure as "Licensed Technologists OAA."⁴

The Licensed Technologist OAA licensing structure was created by the OAA in 2010 via Council policy.⁵ That policy purported to do certain things, including:

- a) Authorizing the Registrar to issue licences to Licensed Technologists OAA pursuant to subsection 13(1) of the *Act*;
- b) Exempting Licensed Technologists OAA from the required academic and experience requirements set out in the *General Regulation*, RRO 1990, Reg 27, made under the *Act* (the "*Regulation*");
- c) Specifying terms, conditions, and limitations to be placed on both the licence and certificate of practice of Licensed Technologists OAA, restricting their scope of practice;
- d) Authorizing Licensed Technologists OAA to engage in certain specified acts within the practice of architecture, including to provide, personally supervise and direct architectural services for a building that:
 - a. as constructed, enlarged, or altered, is not more than three storeys in height and not more than 600 square metres in gross area and is used or intended for one or more of the following occupancies: 1. Residential; 2. Business; 3. Personal services; 4. Mercantile; 5. Industrial; or 6. a restaurant designed to accommodate not more than 100 persons consuming food or drink;

⁴ Smith ASOF, paragraphs 12-13; Worton ASOF, paragraphs 13-14.

⁵ Smith ASOF, Tab G; Worton ASOF, Tab G.

- b. is used or intended for residential occupancy, and contains one dwelling unit or two attached dwelling units, and, as constructed, enlarged, or altered, is not more than four storeys in height;
 - c. is used or intended for residential occupancy, which contains three or more attached dwelling units and as constructed, enlarged, or altered, is not more than four storeys in height and not more than six hundred square metres in building area;
 - d. is excepted by section 11(3) of the *Act*; and
- e) Authorizing Licensed Technologists OAA to apply for a certificate of practice subject to the same terms, conditions, and limitations as the licence and in accordance with the following:
- a. The Licensed Technologist OAA may provide architectural services to the public as a sole proprietor, in a partnership, or through a corporation, providing that the proprietor, partnership, or corporation holds a certificate of practice. The certificate of practice shall be subject to the limitations of the licence.
 - b. The Licensed Technologist OAA shall not directly or indirectly own or control more than 49% of the voting shares and value of all the shares of a corporation, or directly or indirectly hold more than 49% of the voting and financial interest of a partnership, to which a certificate of practice not subject to the terms, conditions, and limitations of this policy has been issued under sections 14 or 15 of the *Act*.⁶

⁶ Smith ASOF, paragraphs 14-15; Worton ASOF, paragraphs 15-16.

Dissolution of the Licensed Technologist OAA Program

In December 2022, the Association of Architectural Technologists of Ontario (the “AATO”) brought an application to the Ontario Superior Court of Justice for an injunction challenging the OAA’s authority to issue licences and certificates of practice to individuals under the Council policy. In particular, the AATO asserted that the OAA’s authority to issue licences and certificates of practice was limited to the powers set out in the *Act* and *Regulation* and could not be expanded by policy.⁷

On May 10, 2023, the Ontario Superior Court ordered on consent, among other things, that:

- a) the OAA has no lawful authority to issue licences or certificates of practice based on the policy or similar policy not set out in a regulation under the *Act*, including the licences and certificates of practice described as “Licensed Technologist OAA” or “Licensed Architectural Technologist OAA;”
- b) any licences or certificates of practice issued by the OAA based on the policy or similar policy not set out in a regulation under the *Act*, including the licences and certificates of practice described as “Licensed Technologist OAA” or “Licensed Architectural Technologist OAA,” are void *ab initio* and of no force and effect; and
- c) the OAA is prohibited from issuing licences or certificates of practice based on the policy or similar policy not set out in a regulation under the *Act*, including the licences and certificates of practice described as “Licensed Technologist OAA” or “Licensed Architectural Technologist OAA.”⁸

⁷ Smith ASOF, paragraphs 17-18; Worton ASOF, paragraphs 18-19.

⁸ Smith ASOF, paragraph 19; Worton ASOF, paragraph 20.

As a result of the above-noted order, the Licensed Technologist OAA designations and certificate of practices held by the Applicants were voided on May 10, 2023.⁹

Mr. Worton's Application for a Licence and a Certificate of Practice

On or about May 18, 2023, the Registrar of the OAA (the "Registrar") received from Mr. Worton an application to be licensed as an Architect under section 13 of the *Act*. On or about May 25, 2023, the Registrar received from Mr. Worton an application for a certificate of practice for his corporation, Daymark Designs Incorporated.¹⁰

The applications demonstrate that Mr. Worton was educated and trained in architectural technology in Ontario. Among other things he:

- a) graduated from the 3-year Architectural Technology Program at [REDACTED] in 2005;
- b) completed sufficient hours for admission to the Technologist Ontario Association for Applied Architectural Sciences ("OAAAS") category on August 5, 2009;
- c) completed the required continuing education units for Cycle 2010/11;
- d) gained over 8,000 hours of work experience in the specified categories under the responsible control or personal supervision and direction of an architect, as demonstrated by his OAAAS Experience Record;
- e) 1,880 of the above hours were accumulated while registered in the Technologist OAAAS category;

⁹ Smith ASOF, paragraph 20; Worton ASOF, paragraph 21.

¹⁰ Worton ASOF, para. 3.

- f) 940 of the above hours were gained in Ontario within the last three years prior to applying for licensure and were under the personal supervision and direction of a person licensed to engage in the practice of architecture in Ontario;
- g) Attended and completed the OAA Admission Course in May 2011;
- h) Passed the Licensed Technologist OAA Examination on July 6, 2011;
- i) Was issued a License as Licensed Technologist OAA with terms, conditions, and limitations by the Ontario Association of Architects on September 22, 2011;
- j) Was issued a Certificate of Practice for Daymark Design Incorporated with terms, conditions, and limitations by the Ontario Association of Architects on February 29th, 2016, to practice architecture as a corporation;
- k) Worked as Architectural Technologist at [REDACTED] . from May 2005 to January 2007;
- l) Worked as Project Manager and Architectural Technologist at [REDACTED] [REDACTED] . from January 2007 to January 2008;
- m) Worked as Project Manager and Architectural Technologist at [REDACTED] [REDACTED] from January 2008 to February 2010;
- n) Worked as Technical Leader, Project Coordinator, and Architectural Technologist at [REDACTED] from February 2010 to February 2012 and September 2013 to January 2016; and
- o) Has worked as President/Director of [REDACTED] since January 2016.¹¹

¹¹ Worton ASOF, para. 1.

On or about June 7, 2023, the Registrar proposed to refuse Mr. Worton's application for a licence pursuant to section 25(1)(a) of the *Act*.¹²

As explained in the Registrar's Notice of Proposal and Reasons for Decision,¹³ the Registrar determined that Mr. Worton had completed the Admission Course offered by the OAA, but the Registrar determined that the Applicant has not met the requisite educational, experience and examination requirements. Specifically, the Registrar determined that Mr. Worton had not:

- a) completed a degree in architecture from a post-secondary institution, or completed the Royal Architecture Institute Syllabus;
- b) received a Certificate of Certification issued by the Canadian Architectural Certification Board;
- c) successfully completed one of the following:
 - a. the Examination for Architects in Canada published by the OAA;
 - b. the Architect Registration Examination of the National Council of Architectural Certification Boards;
 - c. any combination of the components of the Examination for Architects in Canada published by the OAA and of the Architect Registration Examination of the National Council of Architectural Registration Boards that, considered as a whole, is considered equivalent to one of those examinations, as approved by the Council;

¹² Worton ASOF, paragraph 5.

¹³ Worton ASOF, Tab D.

- d) completed a total of 3,720 hours of experience that meets the requirements of the Intern Architect Program published by the OAA, which must include:
- a. at least 940 hours of experience in Ontario under the personal supervision and direction of a person licensed to engage in the practice of architecture in Ontario, which must be completed within the three years before the date on which the person applies for the licence, and
 - b. at least 2,780 additional hours of experience under the personal supervision and direction of a person authorized to engage in the practice of architecture.¹⁴

With respect to the application for a certificate of practice, the Registrar determined that the primary function of Daymark Designs Incorporated is to engage in the practice of architecture. However, the ownership and control of the corporation is not held nor directed by a member of the Ontario Association of Architects, or a member of the Association of Professional Engineers of Ontario as required for the issuance of a certificate of practice to a corporation. The Registrar noted that Mr. Worton currently meets the requirements set out at s. 34(a)(i) of the *Act* to be insured against professional liability by an insurance corporation referred to in subsection 2(5) of the *Act*.

Mr. Smith's Application for a License and a Certificate of Practice

On or about May 19, 2023, the Registrar received from Mr. Smith an application to be licenced as an Architect and an application for a certificate of practice for Mr. Smith and his

¹⁴ Worton ASOF, paragraph 6; Tab D.

corporation, Cliff G. Smith. Mr. Smith submitted revised applications for a licence and certificate of practice on or about June 13, 2023, and a further revised application for licence on or about June 14, 2023. The revised applications corrected minor errors in the first applications but otherwise included the same information.¹⁵

The application demonstrates that Mr. Smith was educated and trained in architectural technology in Ontario. Among other things he:

- a) graduated from the 3 - year Architectural Technology Program at Loyalist College in 1994;
- b) completed sufficient hours for admission to the Technologist OAAAS category on July 8, 2009;
- c) completed the required continuing education units for Cycle 2010/11 and 2012/14;
- d) gained 7200 hours of work experience in the specified categories under the responsible control or personal supervision and direction of an architect;
- e) 1880 of the above hours were accumulated while registered in the Technologist OAAAS category;
- f) 940 of the above hours were gained in Ontario within the last three years prior to applying for licensure and were under the personal supervision and direction of a person licensed to engage in the practice of architecture in Ontario;
- g) completed the OAA Admission Course in May 2015;
- h) passed the Licensed Technologist OAA examination on June 19, 2015;

¹⁵ Smith ASOF, paragraphs 2-3.

- i) received a Licensed Technologist OAA Certificate on November 12, 2015 that was cancelled on April 11, 2017 for non-payment, which cancelation was rescinded on April 25, 2017;
- j) received a Licensed Technologist Certificate of Practice on February 21, 2017 that was cancelled on April 11, 2017 for non-payment, which cancelation was rescinded on April 25, 2017;
- k) from 1988-1991 was 1st Class Private – Light Infantry Division at Hastings and Prince Edward Regiment, Belleville, Ontario;
- l) from 1991-1994 was Line Cook / Breakfast Cook / Prep Cook at [REDACTED], Ontario;
- m) from 1994-1998 was Principal – Residential Plan Designer at [REDACTED];
- n) from 1995-1997 was Architectural & Structural Designer at [REDACTED];
- o) from 1995-1998 was Architectural & Structural Designer at [REDACTED];
- p) from 1997 to Present was and is a Sr Architectural Designer / Project Manager at [REDACTED] – Design Build Firm;
- r) attended Loyalist College in Belleville, Ontario for Continuing Education – Estimating level 1, 2, and 3 from 2000-2001;
- s) attended Ted Rogers School of Business for Continuing Education – Greenspace Development in 2021.
- t) has been a member of Association of Architectural Technologists of Ontario (AATO) since 1995;
- u) has been a member of Ontario Association of Certified Engineering Technicians and Technologists (OACETT) since 2008;

- v) received Ministry of Municipal Housing – MMAH BCIN Certification 28137 – Legal/Small/Large Buildings;
- w) has been a member of Hockey Canada – National Coach Certification Program (NCCP) since 2018;
- x) is familiar with CAD and 3D design software AutoCAD 2024 / Autodesk Revit / SketchUp / Adobe Photoshop; and
- y) is familiar with Production software Microsoft Word, Excel and Projects scheduling programs.¹⁶

On or about June 19, 2023, the Registrar proposed to refuse Mr. Smith’s application for a licence pursuant to section 25(1)(a) of the *Act*.¹⁷

As explained in the Registrar’s Notice of Proposal and Reasons for Decision,¹⁸ the Registrar determined that the Applicant had completed the Admission Course offered by the OAA, but had not met the requisite educational, experience and examination requirements.

Specifically, the Registrar determined that Mr. Smith had not:

- a) completed a degree in architecture from a post-secondary institution, or completed the Royal Architecture Institute Syllabus;
- b) received a Certificate of Certification issued by the Canadian Architectural Certification Board;
- c) successfully completed one of the following:

¹⁶ Smith ASOF, paragraph 1.

¹⁷ Smith ASOF, paragraph 4.

¹⁸ Smith ASOF, Tab D.

- a. the Examination for Architects in Canada published by the OAA;
 - b. the Architect Registration Examination of the National Council of Architectural Certification Boards;
 - c. any combination of the components of the Examination for Architects in Canada published by the OAA and of the Architect Registration Examination of the National Council of Architectural Registration Boards that, considered as a whole, is considered equivalent to one of those examinations, as approved by the Council;
- d) completed a total of 3,720 hours of experience that meets the requirements of the Intern Architect Program published by the OAA, which must include:
- a. at least 940 hours of experience in Ontario under the personal supervision and direction of a person licensed to engage in the practice of architecture in Ontario, which must be completed within the three years before the date on which the person applies for the licence, and
 - b. at least 2,780 additional hours of experience under the personal supervision and direction of a person authorized to engage in the practice of architecture.¹⁹

With respect to the application for a certificate of practice, the Registrar determined that the primary function of Cliff G. Smith is to engage in the practice of architecture. However, the ownership and control of the corporation is not held nor directed by a member of the Ontario Association of Architects, or a member of the Association of Professional Engineers of Ontario as required for the issuance of a certificate of practice to a corporation. The

¹⁹ Smith ASOF, paragraph 5.

Registrar noted that Mr. Smith currently meets the requirements set out at s. 34(a)(i) of the *Act* to be insured against professional liability by an insurance corporation referred to in subsection 2(5) of the *Act*.

Additional Evidence Adduced by Mr. Worton at the Hearing

In addition to the information in the ASOF, the Committee heard evidence from Mr. Worton at the hearing.

Mr. Worton testified about his education, certifications and accreditations, including obtaining a 3-year Advanced Diploma in Architectural Technology from Fanshawe College of Applied Arts and Technology in 2005, completing the Ontario Building Code Certification Examinations for Designer Legal, House and Small Buildings in 2006, obtaining his Licensed Technologist OAA designation in July 2011, and since then fulfilling mandatory continuing education requirements and attending the OAA conference. He also shared with the Committee examples of his work and testified about his work experience with [REDACTED] [REDACTED] where he gained experience working in higher education projects; [REDACTED] where he worked on single family residential, institutional, commercial, assembly and hospitality projects; [REDACTED] [REDACTED] where he assisted on projects ranging from recreational, commercial, industrial and retail typologies, acting in a Project Captain / Manager role; [REDACTED], where he held the role of Technical Leader / Project Coordinator and Architectural Technologist and worked on notable public projects such as the [REDACTED]; [REDACTED] [REDACTED] where he worked as a Project Manager on a wide range of institutional

projects including fire stations and public works; and for [REDACTED] where he focussed on designing high performance, sustainable, modern single family residences.

Additional Evidence Adduced by Mr. Smith at the Hearing

In addition to the information in the ASOF, Mr. Smith testified about his education, certifications and accreditations including completing a 3-year Architectural Technologist program at Loyalist College in 1995, completing the Ontario Building Code Certification Examinations for Designer Legal, House and Small Buildings in 2006 and obtaining his Licensed Technologist OAA designation in June 2015. He also shared with the Committee examples of his work and testified and testified about his 32 years of work experience across the country from Burnaby, British Columbia to Moncton, Nova Scotia as Residential Plan Designer at [REDACTED]; Architectural and Structural Designer at [REDACTED] [REDACTED] . and [REDACTED]; and Senior Architectural Designer and Project Manager for [REDACTED].

THE PARTIES' SUBMISSIONS

The Committee heard submissions from counsel for the Registrar on the scope of the Committee's exemption powers, and from Mr. Gangadin on behalf of Mr. Worton and Mr. Smith as to why the Committee should exercise its discretion to exempt them from the relevant licensing requirements.

The Association's Submissions

At the outset of her submissions, counsel for the Association described the provisions of the *Architects Act* that set out the academic, experience and examination requirements for a person to be licenced as an architect and a corporation to be issued a certificate of practice. She noted that section 25(8) of the *Act* provides that the Committee may exempt any of the licensing requirements set out in the *Act* and *Regulation* if it concludes that it is appropriate to do so.

Counsel for the Association reviewed two decisions of the Health Professions Appeal and Review Board²⁰ which speak to the ability of registration committees to exempt licensing requirements, and the factors committees should consider in exercising their exemption powers. She noted that while the cases were neither factually similar to the Applicant's circumstances nor binding on the panel, they offered principles articulated by other registration committees which the Committee might find useful. First, Counsel for the Association observed that the onus is always on an applicant to meet the registration requirements and does not rest with the regulator to prove they do not. Second, she submitted that in granting a license, the relevant regulator is verifying to the public that the individual has demonstrated that they meet the standards of the profession as set by the college.²¹ Counsel for the Association submitted that exemptions can and should be granted – and there are no requirements that have been flagged in the Act or Regulation as non-exemptible – but only if they are appropriate. Third, Counsel for the Association noted that

²⁰ *Keen v College of Registered Psychotherapists and Registered Mental Health Therapists of Ontario*, 2021 CanLII 108446 (ON HPARB); *CLC v College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario*, 2019 CanLII 24916 (ON HPARB)

²¹ *Keen*, para. 49. See also *CLC*, paras. 26-27, 52.

exemptions are warranted where an applicant meets the spirit of a registration requirement though not the specific requirement itself.²² She submitted that to grant an exemption the Committee will want some evidence that the intent, the pith, and substance of the legislative and regulatory requirements have been met, albeit in an alternative way.

Counsel for the Association also briefly reviewed two previous decisions of the Committee which she noted are not binding on this panel. In one, a Decision and Order dated November 2, 2023, the Committee concluded that it was not prepared to exempt the relevant licensing requirements based on the information the applicant had proffered and the Committee's interpretation of section 25(8) of the *Act*.²³ In another, a Decision and Order dated February 29, 2024, the Committee determined that section 25(8) of the *Act* permitted it to grant an exemption and order with terms, conditions, and limitations and decided that the Applicants had met the spirit and intention of the educational and training requirements. The Committee in that case exercised its power to grant an exemption and order with terms, conditions, and limitations that were substantially similar to the terms, conditions, and limitations under the Licensed Technologist OAA Licence. The Committee directed the Registrar to come up with a title that satisfactorily communicated to the public the limitation that the Registration Committee was imposing on these licences.²⁴

Finally, counsel for the Association noted that the OAA has been working to implement a legislative solution to the dissolution of the Licensed Technologist OAA program and that, while the proposed amendments to the *Act* have been passed by the Legislature, they have

²² *Keen*, para. 56.

²³ Decision and Order of the Registration Committee and Reasons for Decision dated November 2, 2023 (redacted)

²⁴ Decision and Order of the Registration Committee and Reasons for Decision dated February 29, 2024 (redacted)

not yet been implemented, meaning they do not yet have the force of law.

The Applicants' Submissions

Mr. Gangadin for the Applicants emphasized that both Mr. Worton and Mr. Smith had met all the OAA requirements to be licenced as technologists and had been in good standing when they lost their ability to practice due to a challenge from a third-party group and through no fault of their own.

Mr. Gangadin observed that each Applicant had in excess of 8,000 hours of architectural experience, far exceeding the 3,720 hours required under the *Regulation*. Mr. Gangadin also submitted that the Applicants' years of industry experience should be considered in determining whether to exempt each of them from the academic and examination requirements for licensure. He also submitted that each Applicant had demonstrated their competency and integrity through their testimony, and that neither of them had ever exceeded the limits of their licence or faced disciplinary sanctions.

Mr. Gangadin asked the Committee to grant to the Applicants licenses with terms, conditions, and limitations identical to those imposed on the Applicants in the Decision and Order of the Registration Committee and Reasons for Decision dated February 29, 2024.

ANALYSIS

The Committee has carefully considered the Applicants' evidence, including their testimony, the ASOFs and their and the Association's submissions. In the Committee's view, their circumstances are similar to other applicants who have recently been granted limited licenses by the Registration Committee. The Committee is satisfied that it is appropriate to exempt the Applicants from the experience, academic and examination requirements set out in the *Regulation* and to direct the Registrar to issue to each of them a licence and certificate of practice subject to the terms, conditions and limitations set out in **Schedule "A."**

As a preliminary matter, the Committee agrees with the interpretation of section 25(8) of the *Act* set out in the Decision and Order of the Registration Committee and Reasons for Decision dated February 29, 2024 (redacted). Specifically, the Committee agrees that the *Act* permits the Committee to utilize both the exemption power set out in section 25(8)(b)(ii) and the power to impose terms, conditions, and limitations pursuant to section 25(8)(c)(iii), substantially for the reasons set out in the February 29th decision. For ease of reference, we have reproduced the relevant paragraphs from the Analysis section of the February 29th decision in **Schedule "B"** and adopt that analysis as our own.

Mr. Worton

The evidence demonstrates that Mr. Worton has significant and relevant education and experience. He completed the 3-year Advanced Architectural Technologist Program at [REDACTED] in 2005, as well as the Ontario Building Code Certification Examinations

for Designer Legal, House and Small Buildings in 2006, and successfully completed the OAA Admission Course and obtained his Licensed Technologist OAA designation in July 2011. As to his qualifications, among other things, Mr. Worton gained more than 8,000 hours of work experience in the specific categories as set out in the OAA Technology Program Guide, 1,880 of which were accumulated while registered in the Technologist OAAAS category, and 940 of which were gained in Ontario within the last three years prior to applying for licensure and were under the personal supervision and direction of an architect. He has had no discipline or complaints brought against him, fulfilled all continuing education requirements, paid all fees, and held the required professional liability insurance during that time. He has not exceeded his previously defined scope of practice and has worked with a licensed architect holder of a certificate of practice whenever one was required. The Committee has no reason to believe that Mr. Worton could not continue to do so going forward.

Mr. Smith

The evidence similarly demonstrates that Mr. Smith has significant and relevant education and experience. He completed the 3-year Architectural Technology Program at Loyalist College in 1994, the Ontario Building Code Certification Examinations for Designer Legal, House and Small Buildings in 2006 and successfully completed the OAA Admission Course and obtained his Licensed Technologist OAA designation in June 2015. Regarding his qualifications, among other things, Mr. Smith gained 7,200 hours of work experience in the specific categories as set out in the OAA Technology Program Guide, 1,880 of which were accumulated while registered in the Technologist OAAAS category, and 940 of which were gained in Ontario within the last three years prior to applying for licensure and were under

the personal supervision and direction of an architect. Like Mr. Worton, he has had no discipline or complaints brought against him, fulfilled all continuing education requirements, paid all fees, and held the required professional liability insurance during that time. He has not exceeded his previously defined scope of practice and has worked with a licensed architect holder of a certificate of practice whenever one was required. The Committee has no reason to believe that Mr. Smith could not continue to do so going forward.

Based on the evidence, the Committee finds it is appropriate to direct the Registrar to issue to Mr. Worton and Mr. Smith a license and certificate of practice with terms, conditions, and limitations. The Applicants have been providing architectural services to the public under their previous limited licenses and limited certificates of practice without complaints or disciplinary issues and were in good standing up to the date their licenses and certificates of practice were declared void. The Committee is of the view that both Mr. Worton and Mr. Smith will engage in the practice of architecture with competence and integrity within the limits of architectural practice they are permitted to perform. Issuing to Mr. Worton and Mr. Smith a license and certificate of practice with terms, conditions, and limitations would allow them to continue to provide the same architectural services to the public they provided prior to May 2023, and not issuing them such a licence would neither serve nor protect the public interest.

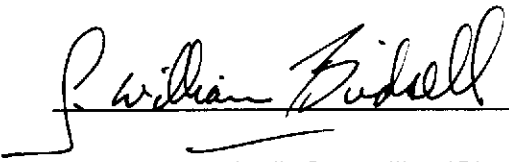
Given the Applicants' experience, education, and long history of service without complaints or disciplinary issues, the Committee finds that the terms, conditions, and limitations set out in Appendix "A" are necessary and appropriate to serve and protect the public interest. Mr. Worton and Mr. Smith will be required to meet the full Continuing Education requirements and pay all fees at the rate of full scope practicing members and corresponding certificates

of practice. If, in the future, a different class of licence and/or certificate of practice becomes available through regulation or legislative amendment, the Applicants may elect to maintain the licence and certificate of practice resulting from this decision or to apply for new designations.

THE REGISTRATION COMMITTEE having duly considered all the information placed before it with respect to the Applicants' applications for a Licence and Certificate of Practice **HEREWITH DIRECTS** the Registrar to:

1. Issue to Mr. Worton a Licence and Certificate of Practice subject to the terms, conditions and limitations set out in Schedule "A;" and
2. Issue to Mr. Smith a Licence and Certificate of Practice subject to the terms, conditions and limitations set out in Schedule "A;" and

DATED AT TORONTO THIS 5th DAY OF JULY 2024



J. William Birdsell, Councillor (Chair)

Shirley Lee, Member

Julius Horvath, Member

of practice. If, in the future, a different class of licence and/or certificate of practice becomes available through regulation or legislative amendment, the Applicants may elect to maintain the licence and certificate of practice resulting from this decision or to apply for new designations.

THE REGISTRATION COMMITTEE having duly considered all the information placed before it with respect to the Applicants' applications for a Licence and Certificate of Practice **HEREWITH DIRECTS** the Registrar to:

1. Issue to Mr. Worton a Licence and Certificate of Practice subject to the terms, conditions and limitations set out in Schedule "A," and
2. Issue to Mr. Smith a Licence and Certificate of Practice subject to the terms, conditions and limitations set out in Schedule "A," and

DATED AT TORONTO THIS 5th DAY OF JULY 2024

J. William Birdsell, Councillor (Chair)

Shirley Lee

Shirley Lee, Member

Julius Horvath, Member

Schedule "A"

Applicants' Terms, Conditions and Limitations

Terms, Conditions and Limitations of Licence

1. The Applicant may provide, and personally supervise and direct, architectural services for a building that:
 - a. as constructed, enlarged, or altered, is not more than three storeys in height and not more than 600 square meters in gross area and is used or intended for one or more of the following occupancies:
 - i. Residential;
 - ii. Business;
 - iii. Personal Services;
 - iv. Mercantile;
 - v. Industrial; or
 - vi. a restaurant designed to accommodate not more than 100 persons consuming food or drink;
 - b. is used or intended for residential occupancy, and contains one dwelling unit or two attached dwelling units, and, as constructed, enlarged, or altered, is not more than four storeys in height;
 - c. is used or intended for residential occupancy, that contains three or more attached dwelling units and as constructed, enlarged, or altered, is not more than four storeys in height and not more than 600 square meters in building area; or
 - d. is excepted by the *Architects Act*, s. 11(3).

2. The Applicant shall ensure that his limited scope of practice is clearly indicated to the public in a manner set out and approved by the Registrar²⁵ (e.g., website, letterhead, business cards, social media profile).
3. The Applicant may act as the prime consultant for the construction, enlargement, or alteration of any building. However, where the Applicant has agreed to arrange for the provision of architectural services to a member of the public beyond those permitted in Paragraph 1, he must engage a holder of a Certificate of Practice not subject to these Terms, Conditions, and Limitations.

Terms, Conditions and Limitations of Certificate of Practice

4. The Certificate of Practice shall be subject to the same Terms, Conditions, and Limitations as the licence.
5. The Applicant may provide architectural services to the public as a sole proprietor, in a partnership, or through a corporation, providing that the proprietor, partnership, or corporation holds a Certificate of Practice. The Certificate of Practice shall be subject to the limitations of Paragraph 1.
6. The Applicant shall not directly or indirectly own or control more than 49% of the voting shares and value of all the shares of a corporation, or directly or indirectly hold more than 49% of the voting and financial interest of a partnership, to which a Certificate of Practice not subject to the Terms, Limitations, and Conditions of this policy has been issued under Section 146 or 157 of the *Architects Act*.

²⁵ Whatever title the Registrar selects should clearly convey the Applicant's limited scope of practice, e.g., "Architect (Limited Scope)," "Limited Scope Architect" or similar

Schedule “B”

**Analysis of section 25(8) from the Decision and Order of the Registration
Committee and Reasons for Decision dated February 29, 2024 (redacted)**

Section 25(8) of the *Act* provides, in relevant part [emphasis added]:

Powers of Registration Committee

(8) Following upon a hearing under this section in respect of a proposal by the Registrar, the Registration Committee may, by order,

...

(b) where the committee is of the opinion upon reasonable grounds that the applicant does not meet the requirements and qualifications of this Act and the regulations,

...

(ii) where the committee is of the opinion upon reasonable grounds that the applicant will engage in the practice of architecture with competence and integrity, exempt the applicant from any of the requirements of this Act and the regulations and direct the Registrar to issue a licence, certificate of practice or temporary licence, as the case may be; **or**

(c) where the committee is of the opinion upon reasonable grounds that it is necessary in order to ensure that the applicant will engage in the practice of architecture with competence and integrity,

...

(iii) direct the Registrar to issue a licence, certificate of practice or temporary licence, as the case may be, subject to such terms, conditions or limitations as the Registration Committee specifies.

The Committee is aware of its obligation to read the words of the *Act* in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the *Act*, its object, and the intention of parliament, and in a way that does not produce absurd consequences. The Committee is also aware from reviewing the authorities and submissions on this issue that “or” may be read exclusively, in the sense of permitting only one option or another, or inclusively, in the sense of permitting several options. The authorities cited above explain this concept in different ways. These passages from the Ontario Court of Appeal’s decision in *Rooney v. ArcelorMittal S.A.*, 2016 ONCA 630 are particularly useful to illustrate this point:

[46] As Ruth Sullivan explains, in ordinary usage, "or" can be either inclusive (A or B or both) or exclusive (A or B, but not both), and it is up to the reader to decide which one the writer intended: Sullivan, at 4.97. In other words, the default plain meaning of "or" is not exclusive.

[47] In *Garner's Modern American Usage*, 3rd ed. (New York: Oxford University Press, 2009), Bryan Garner goes further, arguing that the default plain meaning of "or" is actually inclusive. In lamenting the popularity of what he regards as the unnecessary legal phrase "and/or", Garner explains, at pp. 45-46: "If you are offered a coffee or tea, you may pick either (or in this case, neither), or you may for whatever reason order both. This is the ordinary sense of the word, understood by everyone and universally accommodated by the simple or." Garner advises that, if a writer intends to use the exclusive "or", he or she should make this intention explicit.

The Committee finds that the word "or" between subparagraphs (b) and (c) of section 25(8) of the *Act* is to be read inclusively rather than exclusively. Therefore, in circumstances where the Committee determines that it is appropriate to "*exempt the applicant from any of the requirements of this Act and the regulations*" (section 25(8)(b)(ii)), it may direct the Registrar "*to issue a licence, certificate of practice or temporary licence, as the case may be, subject to such terms, conditions or limitations as the Registration Committee specifies*" (section 25(8)(c)(iii)).

Read together, subparagraphs (b) and (c) of section 25(8) of the *Act* permit the Committee to exempt an applicant from any of the requirements of the *Act* and regulations "*where the committee is of the opinion upon reasonable grounds that the applicant will engage in the practice of architecture with competence and integrity*" (section 25(8)(b)(ii)), and to impose

such terms, conditions and limitations as are necessary to ensure that they do so (section 25(8)(c)(iii)).