

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 Licence and Certificate of Practice
by **Alfredo Cimini** as set out in the Notice of
Proposal dated October 5, 2023, to refuse the
application for Licence and Certificate of Practice
by **Brandon Martin** as set out in the Notice of
Proposal dated June 7, 2023, to refuse the
application for Licence and Certificate of Practice
by **Raymond McCarthy** as set out in the Notice
of Proposal dated June 9, 2023 and to refuse the
application for Licence and Certificate of Practice
by **Vincent Pezzano** as set out in the Notice of
Proposal dated May 26, 2023.

Lara McKendrick, Member (Chair))

)

Shirley Lee, Member)

)

Chris Montgomery, Member)

MONDAY THE 27TH DAY OF
NOVEMBER, 2023

John Terry and Grant Worden, Counsel to the
Tribunal

Rebecca Durcan and Erin MacQuarrie,
Counsel to the Association

Jimmy Gangadin, Counsel to Mr. Cimini, Mr. Martin, Mr. McCarthy and Mr. Pezzano¹

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 October 5, 2023 to refuse to issue a Licence or Certificate of Practice to Alfredo Cimini,
2. a Notice of Proposal, dated June 7, 2023 to refuse to issue a Licence or Certificate of Practice to Brandon Martin,
3. a Notice of Proposal, dated June 9, 2023 to refuse to issue a Licence or Certificate of Practice to Raymond McCarthy and
4. a Notice of Proposal, dated May 26, 2023 to refuse to issue a Licence or Certificate of Practice to Vincent Pezzano.

In the presence of the Registrar of the Association and Alfredo Cimni, Brandon Martin, Raymond McCarthy and Vincent Pezzano, and hearing the evidence adduced:

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

HEREWITH DIRECTS the Registrar to:

¹ Also present: Alfredo Cimini; Brandon Martin; Raymond McCarthy; Vincent Pezzano; Christie Mills, Registrar of the Ontario Association of Architects (Registrar); Amanda Byrd, Lawyer observing; Evan Sidawi, Virtual Case Manager.

- a) Issue to Mr. Cimini a Licence and Certificate of Practice subject to the terms, limitations and conditions set out in Schedule "A".
- b) Issue to Mr. Martin a Licence and Certificate of Practice subject to the terms, limitations and conditions set out in Schedule "A".
- c) Issue to Mr. McCarthy a Licence and Certificate of Practice subject to the terms, limitations and conditions set out in Schedule "A".
- d) Issue to Mr. Pezzano a Licence and Certificate of Practice subject to the terms, limitations and conditions set out in Schedule "A".

DATED AT TORONTO THIS 29th DAY OF FEBRUARY, 2024



Lara McKendrick, Member (Chair)



Shirley Lee, Member



Chris Montgomery, 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 Registrar² (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

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*.

² 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 Licence and Certificate of Practice
by **Alfredo Cimini** as set out in the Notice of
Proposal dated October 5, 2023, to refuse the
application for Licence and Certificate of Practice
by **Brandon Martin** as set out in the Notice of
Proposal dated June 7, 2023, to refuse the
application for Licence and Certificate of Practice
by **Raymond McCarthy** as set out in the Notice
of Proposal dated June 9, 2023 and to refuse the
application for Licence and Certificate of Practice
by **Vincent Pezzano** as set out in the Notice of
Proposal dated May 26, 2023.

Lara McKendrick, Member (Chair))

)

Shirley Lee, Member)

)

Chris Montgomery, Member)

MONDAY THE 27TH DAY OF
NOVEMBER, 2023

John Terry and Grant Worden, Counsel to the
Tribunal

Rebecca Durcan and Erin MacQuarrie,
Counsel to the Association

Jimmy Gangadin, Counsel to Mr. Cimini, Mr. Martin, Mr. McCarthy and Mr. Pezzano¹

¹ Also present: Alfredo Cimini; Brandon Martin; Raymond McCarthy; Vincent Pezzano; Christie Mills, Registrar of the Ontario Association of Architects (Registrar); Amanda Byrd, Lawyer observing; Evan Sidawi, Virtual Case Manager.

REASONS FOR THE DECISION AND ORDER OF THE REGISTRATION COMMITTEE

The Registration Committee of the Ontario Association of Architects (OAA) met on this date via videoconference hosted by Arbitration Place, for the purpose of hearing the proposals of the Registrar of the Association to refuse to issue licences and certificates of practice to Alfredo Cimini, Brandon Martin, Raymond McCarthy and Vincent Pezzano (collectively, the “Applicants”).

All of the Applicants were represented by Mr. Gangadin. At the outset of the proceeding, Mr. Gangadin and counsel for the Registrar advised the Committee that all parties consented to the Applicants’ applications proceeding together, pursuant to section 9.1(1) of the *Statutory Powers Procedure Act*.

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

- a) Mr. Cimini obtained a Licensed Technologist OAA designation from the OAA on February 26, 2018, and a certificate of practice from the OAA on February 26, 2018.
- b) Mr. Martin obtained a Licensed Technologist OAA designation from the OAA in 2013.
- c) Mr. McCarthy obtained a Licensed Technologist OAA designation from the OAA on March 13, 2019, and a certificate of practice from the OAA on March 13, 2019.
- d) Mr. Pezzano obtained a Licensed Technologist OAA designation from the OAA on July 3, 2018, and a certificate of practice from the OAA on July 3, 2018.

These licences and certificates of practice were voided upon the dissolution of the OAA's former Licensed Technologist OAA Program on May 10, 2023. A brief discussion of the Licensed Technologist OAA Program and the events which led to its dissolution is necessary to provide context for the Registration Committee's Decision.²

The OAA's Former Licensed Technologist OAA Program

Between April 2003 and May 2023, the OAA founded a program for architectural technology college graduates. 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

² Agreed Statements of Facts (ASOF) were submitted on behalf of Mr. McCarthy (Exhibit 4) and Mr. Cimini (Exhibit 7). No ASOFs were submitted for Mr. Martin or Mr. Pezzano, although Mr. Pezzano's supporting documentation (Exhibit 8) contains a draft ASOF. The background facts set out in these Reasons for Decision reproduce and/or summarize relevant facts from the ASOFs for Mr. McCarthy and Mr. Cimini.

³ ASOFs, paragraphs 8-11.

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 *Architects Act*, R.S.O. 1990, c. A.26 (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 ASOFs, paragraphs 12-13.

⁵ McCarthy ASOF, Tab D.

- 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 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, limitations, and conditions of this policy has been issued under sections 14 or 15 of the *Act*.⁶

⁶ ASOFs, paragraph 15.

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 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 ASOFs, paragraphs 17-18.

⁸ ASOFs, paragraph 19.

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

Alfredo Cimini's Application for a Licence and Certificate of Practice

On or about July 14, 2023, the Registrar of the OAA (the "Registrar") received an application from Mr. Cimini¹⁰ for a licence under section 13 of the *Act*. Mr. Cimini submitted a revised application on July 14, 2023, that corrected minor errors on the first application.

On or about September 11, 2023, the Registrar received an application for a certificate of practice from Mr. Cimini for his corporation, Cimini Design Ltd. under section 14 of the *Act*.¹¹

Mr. Cimini's application demonstrates that he was educated and trained in architectural technology in Ontario and offers related services. Among other things he:

- a) graduated from the 3-year Environmental Design Program at Ontario College of Art in 1985;
- b) obtained an Architectural Technology Certificate from Ryerson University;
- c) obtained a Master of Science in Green Building from San Francisco Institute of Architecture;
- d) obtained a certificate in Computer Applications in Architecture from the University of Toronto;
- e) completed sufficient hours for admission to the Technologist OAAAS category on June 15, 2014;

⁹ ASOFs, paragraph 20.

¹⁰ Cimini ASOF, Tab A.

¹¹ Cimini ASOF, paragraphs 2-3.

- f) completed the required continuing education units for Cycle 2014/16 and 2016/18;
- g) gained 5,580 hours of work experience in the specified categories under the responsible control or personal supervision and direction of an architect;
- h) 1,880 of the above hours were accumulated while registered in the Technologist OAAAS category;
- i) 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;
- j) attended the OAA Admission Course in May 2015;
- k) passed the Licensed Technologist OAA examination on November 21, 2017;
- l) is a member of the Association of Registered Interior Designers of Canada;
- m) is a Licensed Interior Designer with Interior Designers of Canada;
- n) is a Certified Office Ergonomics Evaluator; and
- o) has completed many commercial and residential projects since 1987.¹²

On or about October 5, 2023, the Registrar proposed to refuse Mr. Cimini's application for a licence and a certificate of practice pursuant to section 25(1)(a) of the *Act*.¹³

As explained in the Registrar's Notice of Proposal and reasons for decision,¹⁴ with respect to Mr. Cimini's application for a licence the Registrar determined that Mr. Cimini had completed the Admission Course offered by the OAA, but had not:

¹² Cimini ASOF, paragraph 1.

¹³ Cimini ASOF, paragraph 4.

¹⁴ Cimini ASOF, Tab B.

- 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;
- 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.¹⁵

¹⁵ Cimini ASOF, paragraph 5.

With respect to the application for a certificate of practice, the Registrar determined that the primary function of Cimini Design Ltd. is to engage in the practice of architecture. However, the ownership and control of the corporation is neither 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 by the issuance of a certificate of practice to a corporation. The Registrar noted that Mr. Cimini currently meets the requirements set out at section 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*.¹⁶

Brandon Martin's Application for a Licence and Certificate of Practice

The Registrar received an application from Mr. Martin for a licence under section 13 of the *Act*. In the Fall of 2021. The Registrar received a further application from Mr. Martin for a certificate of practice from Mr. Martin for his corporation, BCM Design Studio under section 14 of the *Act*.¹⁷

Mr. Martin did not finalize an Agreed Statement of Fact. His oral evidence and supporting documentation¹⁸ demonstrates that he was educated and trained in architectural technology in Ontario and offers related services. Among other things he:

- a) graduated from the Architectural Technology Program at Sheridan College in 2005, obtaining an award for academic excellence;

¹⁶ ASOF, paragraph 6.

¹⁷ Although the specific dates that Mr. Martin submitted his initial and subsequent applications were not addressed at the hearing, this omission is not relevant to the Committee's decision as it is undisputed that the applications were in fact submitted.

¹⁸ Exhibit 9.

- b) obtained a certificate in Autodesk Revit Level 1 from Sheridan College in May 2006;
- c) completed the Ontario Building Code Training for Part 3 – Large Buildings – Classification & Construction in November 2008;
- d) completed the Ontario Building Code Training for Part 3 – Large Buildings – Health & Safety in March 2009;
- e) completed sufficient hours for admission to the Technologist OAAAS category in May 2013;
- f) gained 7,200 hours of work experience in the specified categories under the responsible control or personal supervision and direction of an architect;
- g) 1,880 of the above hours were accumulated while registered in the Technologist OAAAS category;
- h) 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;
- i) attended the OAA Admission Course in May 2011;
- j) passed the Licensed Technologist OAA examination on November 2012;
- k) obtained a Passive House Designer certificate in February 2020;
- l) from 2005-2021 worked at [REDACTED] as a Senior Technologist and Associate;
- m) from 2021 worked as Principal of the BCM Design Studio; and
- n) since 2005 has completed many institutional projects, including primary, middle and high schools as well as net zero energy fire stations.

On or about June 7, 2023, the Registrar proposed to refuse Mr. Martin's application for a licence and a certificate of practice pursuant to section 25(1)(a) of the *Act*.¹⁹

As explained in the Registrar's Notice of Proposal and reasons for decision,²⁰ with respect to Mr. Martin's application for a licence the Registrar determined that Mr. Martin had completed the Admission Course offered by the OAA, but 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;
- 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

¹⁹ Exhibit 2.

²⁰ Exhibit 2.

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.

With respect to the application for a certificate of practice, the Registrar determined that the primary function of BCM Design Studio is to engage in the practice of architecture.

However, the ownership and control of the corporation is neither 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 by the issuance of a certificate of practice to a corporation. The Registrar noted that Mr. Martin currently meets the requirements set out at section 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*.

Raymond McCarthy's Application for a Licence and Certificate of Practice

On or about May 27, 2023, the Registrar received an application for a certificate of practice from Mr. McCarthy for his corporation, Vizion Media Inc. under section 14 of the *Act*. On or about May 30, 2023, the Registrar received an application from Mr. McCarthy for a licence under section 13 of the *Act*.²¹

Mr. McCarthy's licence application demonstrates that he was educated and trained in architectural technology in Ontario and offers related services. Among other things he:

²¹ McCarthy ASOF, paragraphs 2-3 and Tab A.

- a) graduated from the 3-year Architectural Technology Program at Confederation College in 1982;
- b) completed sufficient hours for admission to the Technologist OAAAS category on October 8, 2015;
- c) gained 7,200 hours of work experience in the specified categories under the responsible control or personal supervision and direction of an architect;
- d) 1,880 of the above hours were accumulated while registered in the Technologist OAAAS category;
- e) 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;
- f) attended the OAA Admission Course in 2017;
- g) passed the Licensed Technologist OAA examination on November 21, 2018;
- h) worked as Manager, Commercial and Retail Design at [REDACTED] [REDACTED] from May 2002 to November 2015;
- i) worked in business development at [REDACTED] from November 2015 to November 2016;
- j) worked as Senior Architectural Technologist at [REDACTED] [REDACTED] from January 2017 to September 2017 on a 9-month contract;
- k) has worked as Architectural Project Manager and Architectural Technologist at Vizion Media Inc. Architectural Consulting since November of 2016;
- l) obtained a Master Certificate Project Management from Durham College in 2014;
- m) obtained a Revit Professional Certificate in 2013;
- n) attended Mentoring/Management Sessions at TF in 2013, 2014, and 2015;
- o) successfully completed the application for CanBIM P3 in 2015;

- p) is a member of OMI Institute and member of Durham Chapter;
- q) is a Member of Architectural Technologists of Ontario (“AATO”);
- r) is actively involved with the East Chapter of AATO;
- s) has been a member of ICSC since 2015; and
- t) has been a member of SIOR since 2016.²²

On or about June 9, 2023, the Registrar proposed to refuse Mr. McCarthy’s application for a licence and a certificate of practice pursuant to section 25(1)(a) of the *Act*.²³

As explained in the Registrar’s Notice of Proposal and reasons for decision,²⁴ with respect to Mr. McCarthy’s application for a licence the Registrar determined that Mr. McCarthy had completed the Admission Course offered by the OAA, but 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

²² McCarthy ASOF, paragraph 1.

²³ McCarthy ASOF, paragraph 4.

²⁴ McCarthy ASOF, Tab B.

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.²⁵

With respect to the application for a certificate of practice, the Registrar determined that the primary function of Vision Media Inc. is to engage in the practice of architecture. However, the ownership and control of the corporation is neither 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 by the issuance of a certificate of practice to a corporation. The Registrar noted that Mr. McCarthy currently meets the requirements set out at section 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*.²⁶

²⁵ ASOF, paragraph 5.

²⁶ ASOF, paragraph 6.

Vincent Pezzano's Application for a Licence and Certificate of Practice

On or about May 27, 2023, the Registrar received an application from Mr. Pezzano for a licence under section 13 of the *Act*, and an application for a certificate of practice from Mr. Pezzano for his corporation, Pezzano Consulting Inc. under section 14 of the *Act*. Mr. Pezzano submitted a revised application on or about June 5, 2023, that corrected minor errors in the first application but otherwise included the same information.

Mr. Pezzano did not finalize an Agreed Statement of Fact. His oral evidence and supporting documentation²⁷ demonstrates that he was educated and trained in architectural technology in Ontario and offers related services. Among other things he:

- a) graduated from the 4-year Architectural Technology Program at Fanshawe College in 1983. The program included one year of co-op work experience;
- b) has completed over 80,000 hours of work experience over the course of 38 years under the personal supervision and direction of a person authorized to engage in the practice of architecture;
- c) of those hours, has the equivalent of 940 hours under the Personal Supervision and Direction of an Architect, within the three consecutive years immediately prior to submitting an Application for Advanced Standing;
- d) successfully completed the Advanced Standing Interview process on February 23, 2017;
- e) attended the OAA Admission Course in May 2017;
- f) passed the Licensed Technologist OAA examination on June 20, 2017;

²⁷ Exhibit 8.

- g) from May 2, 1983, worked as a Draftsman and Contract Coordinator with [REDACTED]
[REDACTED], Ontario;
- h) from August 1, 1985, worked as a Draftsman with [REDACTED]
[REDACTED], Ontario;
- i) June 1, 1995, worked as a Job Captain with [REDACTED]
[REDACTED], Ontario;
- j) from December 1, 2006, was Partner with the [REDACTED], Ontario;
- k) from October 1, 2015, was President of Pezzano Consulting Inc. in Guelph and
Oakville, Ontario; and
- l) is an accredited member of the Association of Architectural Technologists of Ontario and
has been a Member since 1987.

On or about June 9, 2023, the Registrar proposed to refuse Mr. Pezzano's application for a licence and a certificate of practice pursuant to section 25(1)(a) of the *Act*.

As explained in the Registrar's Notice of Proposal and reasons for decision, with respect to Mr. Pezzano's application for a licence the Registrar determined that Mr. Pezzano had completed the Admission Course offered by the OAA, but 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;
- 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.

With respect to the application for a certificate of practice, the Registrar determined that the primary function of Pezzano Consulting Inc. is to engage in the practice of architecture. However, the ownership and control of the corporation is neither 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 by the issuance of a certificate of practice to a corporation. The Registrar noted that Mr. Pezzano currently meets the requirements set out at section 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*.

The Parties' Submissions

The Committee heard submissions from counsel for the Registrar and counsel for the Applicants as to how licences and certificates of practice could be issued to each of them.

Counsel for the Registrar emphasized the principle object of the Association set out section 2(2) of the *Act*. She observed that the key foundational element of the OAA and its committees and Counsel is to ensure that qualified people are registered or licensed to become architects in Ontario, that those licenses comply with standards that are set forth by the OAA and that all of this occurs so that the public interest is served and protected.

Counsel for the Registrar also noted that as a statutory committee, the Registration Committee must adhere to powers set out in both the *Act* and *Regulations*.

Counsel for the Registrar observed that section 25(8)(b) of the *Act* permits the Committee to exempt the Applicant from any of the requirements of the *Act* and *Regulations*. She described this as an incredibly wide power and noted that none of the academic or experience requirements set out in the OAA's governing legislation are non-exemptible.

Counsel for the Registrar further observed that section 25(8)(c) of the *Act* permits the Committee to direct the Registrar to issue a licence, certificate of practice or temporary licence subject to such terms, conditions or limitations as the Committee specifies.

Counsel for the Registrar submitted that if the Committee had sufficient evidence to justify the use of the exemption power under section 25(8)(b) of the *Act* it would be appropriate to do so because it would be in the public's interest to have as many licensed architects as possible to provide architectural services. However, she also observed that there must also

be confidence that the person who is licensed is able to meet the requisite standards and will be able to practice the profession in a safe and competent way and cautioned that if the public cannot have confidence when they see the title “architect” that someone can safely practice as an architect, then the public interest foundation will be eroded.

Finally, counsel for the Registrar addressed a previous decision of another panel of the Registration Committee from October 6, 2023, dealing with similar issues.²⁸ She observed that that panel had determined that it did not have the authority outright to both exempt and impose terms, conditions and limitations, *i.e.*, it viewed the Committee’s powers at section 25(8) as purely singular and that it could do one of the three listed options, A, B or C, but could not combine them. Counsel for the Registrar observed that the October 6th decision is not binding on this panel.

The Applicants’ counsel also addressed the October 6th decision and submitted that the previous panel erred in failing to exercise its exemption power under section 25(8)(b)(ii) of the *Act*. The Applicants’ counsel urged the panel to exercise its broad discretion in this case to direct the Registrar to issue licenses and certificates of practice to each of the Applicants.

The Applicants’ counsel noted that the OAA is working to implement a legislative solution to the dissolution of the Licensed Technologist OAA program and designation and invited the panel to alternatively direct the Registrar to issue temporary licenses to the Applicants pursuant to section 24(7) of the *Act* pending legislative amendments.

²⁸ Reasons for the Decision and Order of the Registration Committee, Unnamed Architect, October 6, 2023 (the “Prior Decision”).

As to the public interest, the Applicants' counsel noted that the Applicants' hours of work experience and completion of the requirements set out by the OAA to obtain the Licensed Technologist OAA designation is a strong indicator of their integrity and competency to practice as architects should the Committee choose to use its exemption power.

Finally, the Applicants' counsel noted that the OAA has a duty of care to its members. He observed that prior to May 10, 2023, when the Licensed Technologist OAA program and designation were dissolved, each of the Applicants was a member in good standing and had never appeared before the disciplinary committee or been the subject of a complaint. The Applicants' counsel submitted that this should weigh in favour of the issuance of licences to the Applicants.

In reply, counsel for the OAA noted that section 38(1) of the *Regulation* contemplates that a temporary licence is to be granted for a short, time limited period to a licensed architect from outside of Ontario and does not apply to the present applications.

After the hearing concluded, the Committee posed six questions to counsel for the Registrar and counsel for the Applicants. After receiving the parties' responses, the Committee posed three additional questions to the parties and received their responses. In each case the Registrar provided her responses first, and the Applicants then responded to both the questions and the Registrar's submissions in relation to each question. The questions and the parties' responses are set out below.

1. Has Section 25(8)(c)(iii) of the *Architects Act*, R.S.O 1990, c. A.26 previously been used by the OAA Registration Committee to direct the Registrar to issue a licence or certificate of practice? If yes, what were the circumstances and what “terms, conditions or limitations” were specified?

Registrar’s response: The Registrar’s counsel provided cases²⁹ which indicates the Committee has apparently availed itself of s. 25(8)(b) and (c) albeit to order additional training. The Registrar noted that these orders appear to relate to certificates of practice, and not licences, and to architects who had already met the licensing requirements.

Applicants’ response: The Applicants’ counsel noted that the Applicants met all the requirements required to obtain a license from the OAA under the Technologist program, and the cases cited by the Registrar show that the Committee understands that they can place conditions or limitations. The Applicants’ Counsel noted that the Applicants are more than willing to follow any reasonable conditions placed upon them.

²⁹ (1) IN THE MATTER OF a proceeding before the Registration Committee of the Ontario Association of Architects pursuant to Section 25 of The Architects Act, RS.O. L990, c. 4.26, to hear the proposal of the Registrar of the Association to refuse to issue a Certificate of Practice to RICHARD BEMBEN as set out in the Notice of Proposal dated April 24, 1995; (2) 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 Certificate of Practice made by A. Yousufi Architect as set out in a Notice of Proposal dated November 10, 2005.

2. How could the OAA enforce “terms, conditions or limitations” imposed upon a licence and/or certificate of practice such that the public is adequately protected?

Registrar’s response: The Registrar’s counsel noted that if a term, condition or limitation is imposed on a licence or certificate of practice, the licensee or holder are required to abide within the ambit of the terms, conditions or limitations. As is the case with all terms, conditions or limitations, if it is determined that a licensee has not complied with them, an investigation could result in a referral to discipline for failing to comply with s. 42(8) of the *Regulation*.

Applicants’ response: The Applicants’ counsel noted that section 42(8) would give the security the Committee is seeking in order to serve and protect the public interest, and if it has been proven that there is a breach, a discipline hearing would be the best course of action to revoke the license and certificate of practice.

3. What would the holder of a licence and/or certificate of practice with “terms, conditions or limitations” be required to do to ensure that the public is aware of the “terms, conditions or limitations” such that the public is adequately protected?

Registrar’s response: The Registrar’s counsel noted that section 27(1) of the *Act* requires the OAA register/directory to post all terms, conditions or limitations so that they are transparently known to the public and various stakeholders. The formal certificates provided with a licence or certificate of practice will explicitly state any stipulated terms, conditions or limitations imposed. Licensees and holders are required to post their licence and certificate of practice so that it can be publicly viewed. The Registrar’s counsel also noted that all

licensees and holders are required to operate within the ambit of the licence and the certificate of practice. If the OAA had concerns that the Applicants would not operate within the ambit and scope authorized to them, the OAA would not issue a licence or certificate of practice.

Applicants' response: The Applicants' counsel advised that the Applicants agree with the Registrar's position.

4. If, despite the measures put in place to make the public aware of the “terms, conditions or limitations” of the licence and/or certificate of practice, harm was caused to the public what would be the legal implications for the OAA?

Registrar's response: The Registrar's counsel noted that section 51 of the *Act* provides that the OAA, and all Council and committee members, are statutorily protected from all decisions made in good faith. This provision reinforces the case law immunity which applies to quasi-judicial, policy, or discretionary decisions by a regulator. The Registrar's counsel also noted that the OAA does not have a duty of care to members of the public.³⁰ If the Committee directed the Registrar to issue a licence or certificate of practice with terms, limitations or conditions, in good faith, and if the licensee or holder caused harm to a third party, the licensee or holder could be subject to civil liability but not the OAA as there isn't the requisite proximity and a regulator is not vicariously liable for the acts of registrants it has registered.

³⁰ Citing *Cooper v. Hobart* (2001), 206 DLR (4th) 193 (SCC) and *Rogers v Faught*, 2002 CanLII 19268 (ON CA).

Appellants' response: The Applicants' counsel noted that all liability would fall on the Applicants and their insurance policies.

5. Does section 25(8) of the Act permit the Registration Committee to employ both the exemption powers under section 25(8)(b)(ii) and the limitation powers (terms, conditions or limitations) under section 25(8)(c)(iii)? How is the “or” between 25(8)(b) and (c) to be interpreted?

Registrar's response: In response to this question the Registrar's counsel submitted that, based on a strict reading of the Act, the Committee is to pick (a), (b), or (c). Traditionally, if the Legislature were to authorize the Committee to discharge all powers, an “and” would have been inserted after (b). However, as discussed further below, the Registrar advanced a more nuanced position in relation to this issue in response to question 7.

Appellants' response: The Applicants' counsel urged the Committee to exercise its exemption power under section 25(8)(b)(ii), on the basis that it is very clear and has no ambiguous interpretation. He submitted that all of the Applicants have shown that they are more than competent and have the integrity to uphold the profession that they have all done over the past few decades, and that all were in good standing, competence and integrity.

6. Does section 25(8)(c)(iii) of the Act permit the Registration Committee to require the Register to issue a licence or certificate of practice with terms, conditions and limitations? How is the “or” between “conditions” and “limitations” to be interpreted?

Registrar’s response: The Registrar’s counsel noted that this provision of the Act permits the Committee to direct the Registrar to issue a licence or certificate of practice subject to any terms, limitations or conditions that the Committee specifies, and that terms, conditions, and limitations may overlap but are disjunctive. She further noted that generally, a term involves a continuing restriction and often implies some positive action that must be done. A condition is a requirement needed in order to practise. A limitation is a restriction that often implies avoiding certain actions. Because the boundaries between the three words are not always clear, statutory committees (*i.e.*, Registration Committees and Discipline Committees) generally refer to all three and do not try to distinguish them.

Appellants’ response: The Applicants’ counsel advised that the Applicants agree with the Registrar’s position. In addition, he noted that “or” does not mean that the Committee must choose between these three options. In the absence of mandatory language, *e.g.*, “should” or “must”, the Committee can use one or all of the terms, conditions or limitations.

7. Whether the authorities provided by Independent Legal Counsel³¹ and any additional relevant authorities permit the Registration Committee to employ both the exemption powers under section 25(8)(b)(ii) and the limitation powers (terms, conditions or limitations) under section 25(8)(c)(iii) of the *Architects Act* (the “Act”)³²

Registrar’s response: The Registrar’s counsel noted that these and other authorities³³ address the issue of the inclusive interpretation of the word “or” in statute and are helpful in assisting the Committee with the interpretation of the word “or” in the provisions of the *Act*. Registrar’s counsel also noted that it is important for the Committee to consider the interpretation of sections 25(8)(b)(ii) and 25(8)(c)(iii) within the broader context of statutory interpretation. She explained that courts interpreting statutory provisions do so using the “modern principle” of statutory interpretation; this principle dictates that the words of a statute must be read *“in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”* Administrative decision makers have some flexibility with respect to statutory interpretation. The Supreme Court has also held that *“[i]t is a well-established principle of*

³¹ *Rooney v. ArcelorMittal S.A.*, 2016 ONCA 630 at paras. 45-48; *Consumer’s Choice v. Her Majesty the Queen*, 2013 ONSC 5600 at paras. 17-18; *Ron John William Dowell et al. v. York Condominium Corporation No. 403*, 2023 ONSC 5219 at paras. 50-53; 7th edition of Sullivan’s *Construction of Statutes*, chapter 19 “And” / “or”

³² In conveying the authorities listed in footnote 36 to the parties, independent counsel to the Committee explained that they had been directed by the Committee to identify authorities where “or” had been read inclusively.

³³ *Rizzo and Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 SCC [1998] 1 SCR 27 at paras 21, 27; *Canada (Minister of Citizenship and Immigration) re Vavilov*, 2019 SCC 65 (CanLII) [2019] 4 SCR 653 at paras 117-121; *Yarco Developments Inc. v Home Construction Regulatory Authority (Registrar)*, 2024 ONSC 93 (CanLII) at paras 34-35; *Legislation Act*, SO 2006 c 21 Sch F at s. 64; *Architects Act*, RSO 1990 c A 26 at ss. 1, 2(2), 24, 25, 46(2), 46(8); Ruth Sullivan (2016) *Statutory Interpretation*, 3rd edition (excerpt) at pp. 94-95; *Ignazio Bellavia v Allianz Insurance Company of Canada/ING* 2006 ONFSCDRS 29 (CanLII) at pp. 5-12; *General Regulation under the Architects Act*, RRO 1990 Reg. 27 at ss. 38 and 39; Richard Steinecke (2023) *Complete Guide to the Regulated Health Professions Act*, 2nd edition (excerpt) at §6.60.

statutory interpretation that the legislature does not intend to produce absurd consequences”.

Registrar’s counsel further noted that section 64 of Ontario’s *Legislation Act* provides that “[a]n Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects.” Section 2(2) of the Act establishes that the principal object of the OAA is to: “*regulate the practice of architecture and to govern its members, holders of certificates of practice and holders of temporary licences in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.*” The Committee’s consideration of sections 25(8)(b)(ii) and 25(8)(c)(iii) must therefore occur within the overall context of the Act, including its object and true intent, meaning and spirit. Registrar’s counsel submitted that in this case, that object is to protect and serve the public interest. Furthermore, the Committee’s interpretation must not lead to an absurd or illogical conclusion.

The Registrar’s counsel noted that with respect to the interpretation of the word “or” in a statute, there is some ambiguity in that the word can be inclusive or exclusive. In *Statutory Interpretation* (2016), Ruth Sullivan noted that “or” is presumed to be inclusive in legislation unless “*it is clear from the context that the listed alternatives are meant to be mutually exclusive*”. The Registrar’s counsel submitted that interpreting the “or” in section 25(8) as exclusive in this case would likely lead to an absurd conclusion as an exclusive reading would mean that terms, conditions and limitations could never be imposed on a licence, temporary licence, or certificate of practice in cases where the Committee was of the opinion that the applicant does not meet the requirements and qualifications of the Act. This would reach the level of absurdity articulated in the case law because it would not serve the

objective of protection of the public for the Committee to be unable to impose terms, conditions and limitations in cases where applicants were exempted from the educational or experience requirements. Section 25(1) of the *Act* suggests that the Registrar may issue a licence, certificate of practice, or temporary licence with terms, conditions and limitations attached.

Finally, the Registrar's counsel noted that the *Act* allows an applicant to both meet the criteria for licensing (which would permit the Registrar to issue the licence) and require terms, conditions and limitations to be imposed on the licence issued. It follows, therefore, that an applicant can also meet the criteria for exemption from requirements and require the imposition of terms, conditions and limitations on the issued licence. It would not make sense that the legislature intended to provide the Committee with fewer options with respect to licencing for applicants it has determined meet the criteria for exemption from requirements. The Registrar's counsel submitted that Sections 25(8)(b)(ii) and 25(8)(c)(iii) of the *Act* are not mutually exclusive and address different subject matter. Section 25(8)(b)(ii) permits the Committee to exempt requirements and direct the Registrar to issue a licence, certificate of practice or temporary licence. Section 25(8)(c)(iii) provides options to the Committee in cases where it might feel additional provisions should be made to ensure the applicant will engage in the practice of architecture with competence and integrity. The inclusive interpretation of the word "or" allows these two provisions to work in harmony.

Applicants' response: The Applicants' counsel submitted that the Committee could employ both the exemption powers under section 25(8)(b)(ii) and the limitation powers (terms, conditions or limitations) under section 25(8)(c)(iii). He noted that these two provisions give

the Committee the authority to both exempt persons from the educational and experience requirements and to impose restrictions on the scope of practice.

8. If the Registration Committee were to issue a licence to one or more of the applicants:

i. Could it/they be time limited?

ii. Could it/they impose restrictions on the licence holder's or holders' scope of practice?

iii. Could it/they prohibit the licence holder from using the titles "architect", "architectural technologist" or "Technologist"?

Registrar's response: The Registrar noted that licences issued pursuant to the *Act* are not subject to time limits, other than annual renewal. To continue to hold a licence, all architects must maintain their membership in good standing, including by completing the OAA mandatory Continuing Education (ConEd) Program, by holding mandatory professional liability insurance, and by paying annual fees, among other things. As long as a member maintains good standing with the OAA, and renews in the usual course, they may hold an architects' licence. Section 24 of the *Act* contemplates the issuance of temporary licences. However, they are intended to be issued to applicants who are licensed or registered as architects outside of the province of Ontario who will be providing architectural services in Ontario in respect of a specific project. Therefore, the applicants in this case do not qualify for a temporary licence issued pursuant to s.24 of the *Act*.

The Registrar's counsel also noted that the imposition of terms, conditions and limitations must be rationally connected to a finding of the Committee. The relevant finding would be that the Committee believes, on reasonable grounds, that terms, conditions and limitations are necessary for the applicant to "*engage in the practice of architecture with competence and integrity*". It is arguable that placing a time limit on the applicant's licence would not address issues of competence and integrity. For example, such a term, condition and limitation could be interpreted to mean the Committee feels the applicant will practise with competence and integrity in the short-term, but not in the long term, which would lead to an absurd result. The Registrar's counsel asked, if the Committee determines that an applicant should be exempted from some requirements, and requires terms, conditions and limitations, then why would a time limit be necessary or fair? The (now) licensee would be subject to the same renewal process as all other licensees. Their licence (subject to terms, conditions and limitations) would need to be renewed in the usual course should the licensee wish to continue to be a member of the OAA. The Registrar's counsel submitted that a term, condition and limitation should not be interpreted to mean that the licence can be time limited.

The Registrar's counsel noted that Section 1 of the *Act* defines "architect" as "*the holder of a licence, a certificate of practice or a temporary licence.*" Section 46(2) of the *Act* stipulates that it is an offence to use the title "architect" if a person is not the holder of a licence, certificate of practice or temporary licence. Section 46(8) of the *Act* specifies that it is not an offence under subsections 46(2) for a member of the Association of Architectural Technologists of Ontario ("AATO") to use the designation "architectural technologist". Therefore, the Committee is not permitted under the *Act* to prohibit the licence holder from using the title "architect", as that is the title for a holder of a licence, and the only licence the

Committee can issue is an architect's licence. With respect to the title of "architectural technologist" or "technologist", the Act provides that a person who receives a licence and wishes to use the designation of "architectural technologist" would have to be a member of the AATO; if not, the applicant would be prohibited from using that designation under the Act.

Applicants' response: The Applicants' counsel submitted that the Committee could issue a time-limited license pursuant to section 25(8)(c)(iii) of the *Act*, which permits the Committee to impose terms, conditions or limitations on a certificate of registration. In the alternative, the applicants should be grandfathered as they had previously complied with the licensing provisions of the OAA's previous Licensed Technologist OAA Program.

The Applicant's counsel also submitted that the Committee could impose restrictions on the license holder's (or holders') scope of practice pursuant to section 25(8)(c)(iii) of the *Act*. He noted that the *Act* provides that a licence or certificate of registration may be revoked if the holder has contravened a term, condition or limitation imposed on the certificate. He submitted that the Committee could use these provisions to impose restrictions on the scope of practice of a license holder and to suspend or revoke the license if the holder contravenes those restrictions.

Finally, the Applicants' counsel submitted that the Committee could prohibit the license holder from using the titles "architect", "architectural technologist" or "technologist". He noted that section 11(1) of the *Act* states that no person shall practice architecture or architectural technology unless the person holds a certificate of registration, and that section 46(2) of the Act states that no person shall use the title "architect" unless the person

holds a licence. He submitted that the Committee could use these provisions to prohibit a license holder from using the titles “architect”, “architectural technologist” or “technologist”.

9. Whether the Registration Committee should take into account the May 10, 2023, order in Association of Architectural Technologists of Ontario v. Ontario Association of Architects, Court file no. CV-22-00688355-0000, and if so how

Registrar’s response: The Registrar’s counsel noted that the order was issued by the Ontario Superior Court of Justice and the Committee is bound by it. The order determined that it was unlawful and therefore prohibited for the OAA to issue licences or certificates of practice based on the “*Policy of the Council with respect to the Licensed Technologist OAA*” or “*similar policy not set out in a regulation under the Architects Act.*” The Registrar’s counsel further submitted that the licences in question in the current matter are not based on policy, rather, they are based on legislation, specifically section 25 of the *Act*. Therefore, while the OAA is prohibited from issuing licences based on any policy that is not set out in the regulations to the *Act*, it is not prohibited from issuing licences pursuant to the *Act*.

Applicants’ response: The Applicants’ counsel submitted that the Committee should take the order into account. He further submitted that the court found that the OAA had breached its duty of fairness to the Association of Architectural Technologists of Ontario by failing to consult with the AATO before making changes to the OAA’s bylaws that would have restricted the scope of practice of architectural technologists.

The Applicants' Counsel further submitted that the Committee should consider the court's decision in this case when making any decisions about the scope of practice of architectural technologists. He urged the Committee to consult with the AATO and other stakeholders before making any changes to the *Act* or the *Regulation* that would affect the scope of practice of architectural technologists. He also submitted that any licenses issued to architectural technologists must be consistent with the order.

Analysis

One of the central questions on this application is whether 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). The Committee finds that it does, substantially for the reasons set out by the Registrar's counsel in response to question 7, above.

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)).

Having carefully considered the evidence of each of the Applicants, the Committee is of the opinion that they will engage in the practice of architecture with competence and integrity, and it therefore appropriate to exempt them from the academic and experience deficiencies listed in the Registrar’s Notices of Proposal. To ensure that they do so, to the Committee will direct the Registrar to issue to each of them licenses and certificates of practice subject to the terms, conditions and limitations set out in **Schedule “A”**.

The Applicants all have significant and relevant education and experience.

Mr. Cimini obtained an undergraduate degree in environmental design from OCA, a Master of Science in Green Building Design from San Francisco Institute of Architecture and an Architectural Technology Certificate from Ryerson University. He has worked in the field of architecture for 37 years, was a partner in an architecture firm from 2006 to 2015 and has completed many commercial and residential projects since 1987. He completed sufficient hours for admission to the Technologist OAAAS category in June 2014. He gained 5,580 hours of work experience in the specified categories under the responsible control or personal supervision and direction of an architect, 1,880 of which were accumulated while registered in the Technologist OAAAS category, and 940 of which were gained in Ontario within 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. He

held a limited licence and limited certificate of practice under the Licensed Technologist OAA program from 2018-2023.

Mr. Martin graduated at the top of his class from the Architectural Technology Program from Sheridan College in 2005 and has completed Ontario Building Code Training for Part 3 (Large Buildings). He has been practicing in the field of architecture for almost 20 years, has completed many institutional projects, and was an associate and shareholder at an architectural practice. He completed sufficient hours for admission to the Technologist OAAAS category in May 2013. He gained 7,200 hours of work experience in the specified categories under the responsible control or personal supervision and direction of an architect, 1,880 of which were accumulated while registered in the Technologist OAAAS category, and 940 of which were gained in Ontario within 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. He held a limited license and limited certificate of practice under the Licensed Technologist OAA program from 2013-2023.

Mr. McCarthy completed a three-year degree in Architectural Technology in 1982 and a certificate in project management in 2014. His professional experience includes working as a Manager in Commercial and Retail Design at an architectural firm from 2002 to 2015 and as an Architectural Project Manager and Architectural Technologist at another architectural firm since 2016. He completed sufficient hours for admission to the Technologist OAAAS category in October 2015. He gained 7,200 hours of work experience in the specified categories under the responsible control or personal supervision and direction of an architect, 1,880 of which were accumulated while registered in the Technologist OAAAS category, and 940 of which were gained in Ontario within 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. He held a limited license and limited certificate of practice under the Licensed Technologist OAA program from 2018-2023.

Mr. Pezzano completed a four-year degree in Architectural Technology in 1983, which included one year of co-op work experience. He was a partner at an architecture firm from 2006 to 2015. He has completed over 80,000 hours of work experience over the course of 38 years under the personal supervision and direction of a person authorized to engage in the practice of architecture. Of those hours, he has the equivalent of 940 hours under the Personal Supervision and Direction of an Architect, within the three consecutive years immediately prior to submitting an Application for Advanced Standing, which he successfully complete in 2017. He held a limited license and limited certificate of practice under the Licensed Technologist OAA program from 2018-2023.

All of the Applicants have had no discipline or complaints brought against them, fulfilled all continuing education requirements, paid all fees, and held the required professional liability insurance during that time. All show a commitment to lifelong learning. None have exceeded their previously defined scope of practice, demonstrating that whenever a project required a licensed architect, they entered into partnership with a licensed architect holder of a certificate of practice. The committee has no reason to believe that the Applicants would not continue to do so going forward.

Based on the evidence, the Committee finds each of the Applicants to be competent in the business of architecture, client management, technical drawings, permits and approvals, building code, and construction contract administration. It is therefore appropriate, given the

individual circumstances of the four Applicants, to direct the Registrar to issue to each of them a license and certificate of practice with terms, conditions and restrictions which would allow them to continue to provide the same services to the public they were providing prior to May 2023. 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 by the Ontario Superior Court order. They have each indicated they are amenable to terms, restrictions, and conditions. Issuing to each of the Applicants 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 were providing prior to May 2023. Not issuing them such a licence would neither serve nor protect the public interest.

The Committee agrees with the Registrar's submission that the imposition of terms, conditions and limitations must be rationally connected to a finding of the Committee. Given the Applicants' experience, education and long history of service without complaints or disciplinary issues, the Committee finds that the terms, limitations and conditions set out in Appendix "A" are necessary and appropriate to serve and protect the public interest. The Applicants 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 licences and certificates of practice resulting from this decision or to apply for new designations.

Separately, the Committee observes that members of the OAA are bound by the Act and regulation, and the OAA has the mandate and processes in place to ensure those licensed to practice architecture in Ontario are competent to do so. For example:

- a) OAA is authorized to, and enforces standards of practice and performance for its members;
- b) OAA members are subject to mandatory professional continuing education. The OAA sets out the standards and enforces compliance this continuing education requirement;
- c) OAA members have access to the OAA Practice Advisory Services which supports members in their efforts to provide best practices in professional architectural services;
- d) OAA has a publicly stated Code of Ethics which provides guidance to members;
- e) OAA maintains and publicly demonstrates the status of all its members regarding their competency and qualifications; and
- f) The public has recourse via the OAA complaints and discipline process in the event of potential professional misconduct (unskilled practice or unprofessional conduct) by OAA members.

The principal object of the OAA *“is to regulate the practice of architecture and to govern its members, holders of certificates of practice and holders of temporary licences in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.”*³⁴ The Committee finds that that this object is achieved by having appropriately qualified individuals and practices providing architectural services

³⁴ Act, s. 2.

regulated by the OAA, including services that may be provided with only a Building Code Identification Number (BCIN).

In terms of their qualifications, the most significant difference between these Applicants and licensed architects is their formal education and passing the architectural exam (ExAC or ARE). However, that distinction is not sufficient to deny them a license with the same terms, conditions and limitations of a Licensed Technologist OAA given the fact that the OAA previously considered their education to be sufficient to obtain a license with limited scope.

The Committee carefully considered the role of the accredited degree in architecture as part of the requirements for licensure, and notes that university schools of architecture provide an education that is not offered at the college level. University schools of architecture teach both the art and science of architecture in the broadest and yet, most connected sense. History and theory, critical thought, philosophy, advanced technology, sociology, ecology, design and debate all form part of the curriculum. Students are both inspired and grounded by the responsibility of working at the scale of architecture and urbanism. Students are taught to think about architecture as an expression of contemporary culture and a way to advance culture. That architecture affects us all remains engrained in the architect. The understanding that what we, as a society, choose to build reflects us and in turn affects us all.

However, this is not to say that one cannot learn these things outside of the walls of a university school of architecture. In fact, having limited scope practitioners as members of the OAA provides the opportunity for broadening their knowledge and understanding of architecture as a cultural expression.

The Committee is aware that in the Prior Decision a different panel of the Committee found that *“the Committee’s exemption power under section 25(8)(b)(ii) and its power to direct the issuance of a licence with terms, conditions and limitations under 25(8)(c)(iii) are alternative powers, as indicated by the word “or” between subparagraphs (b) and (c) of section 25(8).”*³⁵ Respectfully, this panel of the Committee disagrees with that interpretation for the reasons set out above.

The Committee is also aware that in the Prior Decision a different panel of the Committee found that *“[redacted name]’s foundational academic qualifications and experience are as an architectural technologist, not an architect. Accordingly, exempting [redacted name] from the academic qualifications and experience requirements set out in the Regulation would neither serve nor protect the public interest.”*³⁶ This panel of the Committee respectfully disagrees with this analysis, and finds that although there is a distinction in kind between architects and architectural technologists with respect to their education and experience, the public is better served through the OAA regulating individuals who are providing architectural services and have a college level education in architectural technology by means of a limited scope license and certificate of practice.

³⁵ Prior Decision, p. 14.

³⁶ Prior Decision, p. 12.

Other important questions on this application relate to what type of licence may be issued to the Applicants and whether it may be time limited. The Act defines:

- a) “architect” as “the holder of a licence, a certificate of practice or a temporary licence.”
- b) “architectural services” as “services that are part of or are related to the practice of architecture.”
- c) “license” as “...a licence to engage in the practice of architecture issued under this Act.”
- d) “Certificate of practice” as “a certificate of practice to engage in the practice of architecture issued under this Act.”³⁷

The Committee finds that the *Act* permits the issuance of only one category of licence, substantially for the reasons set out by the Registrar’s counsel in response to question 8 above. However, to ensure that the public interest is aware that the Applicants’ licences are subject to terms, conditions and limitations, a further condition of the Applicants’ licences and certificates of practice is that their limited scope must always be clearly indicated to the public in a manner set out and approved by the Registrar (e.g., website, letterhead, business cards, social media profile). This condition is also set out in the terms, limitations and conditions set out in Appendix “A”. The Committee also finds that the Act does not permit the issuance of a time limited licence, substantially for the reasons set out by Registrar’s counsel in response to question 8.

³⁷ Act, s. 1.

This decision should not be understood as automatically applying to all former Licensed Technologist OAA licence holders. It does not. Whether any individual applicant qualifies for exemption from the educational or experience requirements of licensure must be determined on a case-by-case basis, and where an exemption is granted, the terms, conditions and limitations on the applicant's licence must be rationally connected to the scope of exemption, as noted above. The Committee cannot identify, and should not be taken as identifying, any "bright lines" or offering any guidance to prospective applicants on when it would be appropriate for the Committee to exercise the exemption powers under section 25(8)(b)(ii) of the *Act*. Standard setting for licensure is a matter for the legislature, not this Committee.

In the case of former Licensed Technologist OAA licence holders, the Registration Committee hearing process is unsatisfactory for all involved. For applicants, there is significant uncertainty, knowing only that they must persuade the Committee that they "*will engage in the practice of architecture with competence and integrity*"³⁸ without any guidance as to how this standard is to be applied.

In the Prior Decision the Committee observed that "*[i]t is up to the legislature, not this Committee, [to] determine whether or not to accommodate those previously qualified as Licenced Architectural Technologist OAA through the creation of an alternate path to licensure.*" The Committee urges the legislature to take up this question as a matter of fairness to former Licensed Technologist OAA licence holders who, through no fault of their

³⁸ Act, s. 25(8)(b)(ii) and (c).

own, are now without professional licenses they attained in good faith and through years of experience, study and examination.

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


HEREWITH DIRECTS the Registrar to:

- a) Issue to Mr. Cimini a Licence and Certificate of Practice subject to the terms, limitations and conditions set out in Schedule "A".
- b) Issue to Mr. Martin a Licence and Certificate of Practice subject to the terms, limitations and conditions set out in Schedule "A".
- c) Issue to Mr. McCarthy a Licence and Certificate of Practice subject to the terms, limitations and conditions set out in Schedule "A".
- d) Issue to Mr. Pezzano a Licence and Certificate of Practice subject to the terms, limitations and conditions set out in Schedule "A".

DATED AT TORONTO THIS 29th DAY OF FEBRUARY, 2024



Lara McKendrick, Member (Chair)



Shirley Lee, Member



Chris Montgomery, 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 Registrar³⁹ (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*.

³⁹ Whatever title the Registrar selects should clearly convey the Applicants' limited scope of practice, e.g., "Architect (Limited Scope)", "Limited Scope Architect" or similar.