

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 Discipline Committee of the Ontario
Association of Architects pursuant to Sections 34
and 35 of the *Architects Act* to hear and determine
allegations of professional misconduct against
**Mohammed Saleh Elbadawi, Mohammed S.
Elbadawi Architect**

J. William Birdsell, Member (Chair))	MONDAY, THE 28 TH DAY OF OCTOBER, 2024
Izabela Kazanczuk, Member)	
Elaine Mintz, Lieutenant Governor Appointee)	

	Grant Worden, Counsel to the Committee Paul J. Davis, Counsel to the Association Mohammed S. Elbadawi, self-represented
--	---

REASONS FOR THE DECISION AND ORDER OF THE DISCIPLINE COMMITTEE

The Discipline Committee of the Ontario Association of Architects met via videoconference on October 18, 2024 and in person on October 28, 2024, to consider the allegations of professional misconduct against Mohammed S. Elbadawi, an architect licensed by the Ontario Association of Architects (the “Association”) and Mohammed S. Elbadawi, a holder of a Certificate of Practice (the “Architect/Holder”).

BACKGROUND

In the Notice of Hearing dated July 18, 2024, it was alleged that the Architect/Holder committed the following acts of professional misconduct:

1. he engaged in an act or acts of professional misconduct as defined in s. 42(26) of the Regulation in that he failed to reply promptly to a letter from the Registrar relating to his professional conduct or competence;
2. he engaged in an act or acts of professional misconduct as defined in s. 42(54) of the Regulation in that he engaged in conduct or an act relevant to the practice of architecture that, having regard to all of the circumstances, would reasonably be regarded by members of the Ontario Association of Architects as disgraceful, dishonourable, or unprofessional by:
 - a. failing to comply with the Decision and Order of the Discipline Committee, dated April 3, 2024, requiring him to comply with the terms of an Undertaking and Acknowledgement, dated March 5, 2024.

The First Discipline Committee Proceeding

The background leading to the issuance of the Undertaking and Acknowledgment referenced in paragraph 2(a) above is set out in the Reasons for Decision and Order of the Discipline Committee dated April 3, 2024, attached to these Reasons as **Appendix “A”**.

Briefly, on November 22, 2022 the Complaints Committee referred allegations of professional misconduct and incompetence against the Architect/Holder to the Discipline Committee, and on February 6, 2023 the Discipline Committee issued a Notice of Hearing containing those allegations. The initial Discipline Committee hearing to consider the allegations was delayed, in part, as a result of certain medical and personal issues the Architect/Holder was experiencing at the time. On

November 8, 2023 the OAA delivered an expert report opining that the Architect/Holder had engaged in professional misconduct and was incompetent.

On February 22, 2024, the Discipline Committee issued an Amended Notice of Hearing setting out allegations of professional misconduct and incompetence against the Architect/Holder. The Discipline Committee hearing to consider the allegations was scheduled to be heard over two weeks in the Spring of 2024. However, prior to the hearing, the Architect/Holder proposed and negotiated a resolution of the allegations. The parties subsequently wrote to the Discipline Committee to explain the proposed resolution and forwarded to the Committee an Undertaking and Acknowledgment and an Agreed Statement of Facts, both signed by the Architect/Holder, to support the proposal.

The Undertaking provided, among other things, that the Architect/Holder would retire from the practice of architecture, resign his membership in the Association and cause Mohammed S. Elbadawi Architect to surrender its certificate of practice with the Association by April 30, 2024.

The Acknowledgment provided, among other things, that:

7. Any failure by me to comply with any term of the Undertaking and Acknowledgement will constitute an act of professional misconduct, in that it will amount to conduct that would reasonably be regarded by members of the Association as disgraceful, dishonourable, or unprofessional; and

8. In the event that I should fail to satisfy any term of this Undertaking and Acknowledgement, the Association may bring such failure to the attention of the appropriate committees within the Association, and this may result in the matter being referred to the Discipline Committee and in the prosecution of allegations of professional misconduct against me.

...

13. I confirm that I am entering into this Undertaking and Acknowledgment voluntarily, without compulsion or duress, and I have been advised of my right to obtain independent legal advice on this Undertaking and Acknowledgement and its implications. I have had an opportunity to seek such legal advice.

Prosecuting Counsel submitted a letter to the Discipline Committee dated March 6, 2024 in support of the proposed resolution, in which he noted the following:

“In the Association's view, the Architect's Undertaking and Acknowledgement provides appropriate protection of the public and respects the interests of the Association and the Architect in the circumstances of this matter. The obligations and terms of the Undertaking and Acknowledgment are at least as robust as may have been sought and ordered following findings of incompetence and/or professional misconduct at a Discipline Committee hearing, given the Committee's powers under subsection 34(4) of the *Architects Act*, R.S.O. 1990, c. A.26.

The Association's view is that the Undertaking and Acknowledgement is in the public interest and is preferable to the expense, inconvenience to witnesses, and uncertainty of a lengthy contested hearing.”

The Discipline Committee accepted the parties' proposed resolution of the allegations of professional misconduct and incompetence against the Architect/Holder as set out in the February 22, 2024 Amended Notice of Hearing and found that the proposed resolution was appropriately protective of the public, was in the public interest, and was preferable to a contested hearing. By Decision and Order dated April 3, 2024 the Discipline Committee ordered the Architect/Holder to comply with the terms of the agreed Undertaking and Acknowledgment.

On April 5, 2024, Independent Legal Counsel to the Discipline Committee sent a copy of the April 3, 2024 Decision and Order and Reasons for Decision and Order to the Architect/Holder via email, with cc: to Prosecuting Counsel and others. On April 6, 2024, the Architect/Holder responded by email to say “Received, thanks. Mohammed Elbadawi.”

The Second Discipline Committee Proceeding

On April 11, 2024, the Registrar sent a letter to the Architect/Holder dated April 10, 2024 via regular mail and email to the Architect/Holder's mailing and email addresses on file with the OAA, confirming the Discipline Committee's Decision and Order and enclosing the OAA's Guidelines for Surrendering a Licence and Certificate of Practice. The Registrar received an electronic confirmation that the email to the Architect/Holder had been received. However, the Architect/Holder did not resign from membership in the OAA, and did not cause Mohammed S. Elbadawi to surrender its certificate of practice by April 30, 2024.

On May 7, 2024, the Registrar sent a letter to the Architect/Holder via regular mail advising him that he had not complied with the Undertaking and Acknowledgement or the Discipline Committee's Decision and Order. The letter advised the Architect/Holder that if he did not surrender his licence and certificate of practice by May 10, 2024, the OAA would take further steps. The Architect/Holder did not respond to the May 7th letter.

On May 14, 2024, having received no response to the May 7th letter, the Registrar appointed an investigator pursuant to s. 38(1) of the *Architects Act* to investigate the Architect/Holder's conduct.

On May 24, 2024, the investigator submitted a Report to the Registrar, and sent the Architect/Holder via email copies of the Appointment of Investigator, the Report to the Registrar and a list of documents the investigator had reviewed in preparing the Report. The investigator requested a response from the Architect/Holder within 14 days and by no later than June 7, 2024. The investigator's May 24th email advised the Architect/Holder that failure to respond would result in the matter being forwarded to the Complaints Committee for their consideration. The Architect/Holder did not respond to the May 24th email.

On June 13, 2024, the Registrar referred the results of the investigation to the Complaints Committee pursuant to s. 38(1) of the *Architects Act*. That same day, the investigator sent an email to the Architect/Holder again attaching the Appointment of Investigator, Report to the Registrar, as well as the Registrar's June 13th letter referring the results of the investigation to the Complaints Committee. In her June 13th email, the investigator asked the Architect/Holder to provide any submissions or evidence to the Complaints Committee by June 28, 2024. The Architect/Holder did not respond to the June 13th email.

On July 2, 2024, the Complaints Committee issued a decision referring the Architect/Holder to the Discipline Committee. On July 4, 2024, the Registrar sent the Complaints Committee's decision to the Architect/Holder by regular mail and email along with a copy of the OAA's Guidelines for Members Referred to the Discipline Committee. The Architect/Holder did not respond to the July 4th letter or email.

On July 18, 2024, the Discipline Committee issued a Notice of Hearing setting out allegations of professional misconduct against the Architect/Holder. On July 24, 2024, Prosecuting Counsel for the OAA sent a copy of the Notice of Hearing to the Architect/Holder by email. The Architect/Holder did not respond to the July 24th email.

Prosecuting Counsel sent a follow up letter to the Architect/Holder via email on August 15, 2024 regarding the Discipline Committee proceeding. The Architect/Holder did not respond. Prosecuting Counsel sent a further follow up letter via regular mail and email on September 24, 2024, advising the Architect/Holder that the Discipline Committee hearing had been scheduled to be heard on October 18, 2024 via videoconference. The Architect/Holder did not respond to the September 24th email and the letter mail copy was returned to sender.

EVIDENCE AND SUBMISSIONS

October 18th hearing

Shortly before the October 18th hearing the Architect/Holder submitted to the Discipline Committee an unsworn affidavit dated October 16, 2024.

The October 18th hearing proceeded by way of videoconference. After pleading not guilty to the charges of professional misconduct, the Architect/Holder requested an adjournment to retain counsel, and the Committee heard the Architect/Holder's request by way of motion. In support of his adjournment request, the Architect/Holder relied on his affidavit and provided oral testimony.

In both, the Architect/Holder sought to reargue matters relating to the merits of the First Discipline Committee Proceeding which had been resolved by way of the Undertaking and Acknowledgement referenced above and in the April 3, 2024 Decision and Order. Among other things, the Architect/Holder asserted that [emphasis in original]:

"27 - To the Extreme surprise of Mohammed Elbadawi The OAA registrar, related staff and the OAA hired Solicitor (**for their own reasons**) relied on false and unsubstantiated allegations against Mohammed S. Elbadawi Architect and continued the false allegations against the Architect with the above noted history even though knowing that this allegations caused him considerable health and personal damages. The OAA, its staff and solicitors new that Mohammed Elbadawi who is 81 Years Old, and who had 2 heart operations during the year 2023 and furthermore they knew that Mohammed Elbdawi wife died in January 20, 2024 causing him further health problem as he brought the body from Cairo to Toronto to be buried in oackville. [sic]

28- To continue the use of the above noted unfortunate health and personal events and knowing that Mohammed Elbadawi is acting without a solicitor to defend him, the OAA Solicitor monitor the situation to get Mohammed Elbadawi agreement to settle, only three weeks from the date his of wife burial in Oakville.”

In his affidavit, Mr. Elbadawi asked the Committee to:

- “a) Disregard the agreement to settle and the undertaking as they were obtained cunningly and in very unhealthy circumstances.
- b) Adjourn the discipline committee hearing of the matter to permit Mohammed Elbadawi to hire a solicitor.
- c) Allow Mohammed S. Elbadawi and or his hired solicitor to examine for discovery the affidavit of Marian Pollux submitted for this hearing by the OAA.”

The Architect/Holder stated that he had been out of the country for an extended period of time and had only become aware of the hearing a week before the hearing date. He said that he had not received any letters from the OAA as they had been sent to the wrong address. The Architect/Holder noted that he had advised the Registrar in April 2023 that his address had changed from 34 Eglinton Avenue West, #335 in Toronto to 250A Eglinton Avenue East, #335, also in Toronto. He also stated that he had not received “most of the emails” on the basis either his email was “not properly installed” or “had been hacked”.

The Architect/Holder stated that he had begun the process of retaining a lawyer and asked for a 3 to 4 month adjournment of the hearing. The Committee noted that the Architect/Holder had previously been represented by a lawyer for part of the First Discipline Committee Proceeding and asked if the Architect/Holder had made any attempts to retain that lawyer or another one before the second hearing. The Architect/Holder indicated simply that he could not continue with his prior counsel as he was “too expensive”. The Architect/Holder also asserted, spontaneously, that his previous counsel had told him that the First Discipline Committee Proceeding was “a way for the OAA to make money.” He also alleged that the OAA had taken a biased, unjustified position against him in the previous proceeding, but did not elaborate as to how.

In response to questions from the Committee, the Architect/Holder asserted that he had not received the April 3rd Decision and Order, had been unaware of it, and only received a copy the week before the October 18th hearing.

The Architect/Holder then experienced technical difficulties which made it difficult to continue with the virtual hearing. The Committee therefore adjourned the proceeding to an in-person hearing on October 28, 2024, and issued an interim decision suspending the Architect/Holder's licence and certificate of practice until the continued hearing. The Committee advised the Architect/Holder that his adjournment motion would resume at the continued hearing, and strongly encouraged the Architect/Holder to take preliminary steps to retain a lawyer in the intervening 10 days if he wished to be represented by counsel. Initially, the Architect/Holder confirmed both that he was available for the October 28th hearing and that he would attend. However, when the Committee notified the Architect/Holder of its intention to issue an interim decision suspending his Architect's licence and certificate of practice pending the continued hearing the Architect/Holder advised that he was no longer available on October 28th, and that he would "see the Committee in Divisional Court."

October 28th hearing

The Architect/Holder attended the in-person hearing on October 28 without counsel. He advised that he was aware of his right to be represented by counsel and that he wished to proceed without one. However, he then restated his request for an adjournment, not to retain counsel but to better understand the case against him. The Committee therefore resumed its consideration of the Architect/Holder's motion for an adjournment.

The Architect/Holder then asserted alternatively (and inconsistently) that:

- He had not been served "legally" with the OAA's letters as he considered email to be invalid service and did not consent to service via email;
- He did not receive the emails sent to him as his email had been "hacked";
- Notices sent to him via letter mail had been sent to an old address despite the fact that he had advised the Association of his change of address on April 16, 2023;
- The Association had deliberately sent the letters to the wrong address; and
- He was withdrawing his Undertaking and Acknowledgement on the basis that he had not been "not in his right mind" to sign them at the time due to his grief from his wife's passing.

Under cross-examination by Prosecuting Counsel, the Architect/Holder insisted that he was “not in his right mind” when he signed the Acknowledgement and Undertaking. He accused Prosecuting Counsel of having taken advantage of him when he was unrepresented and emotionally unstable. He acknowledged that he had negotiated changes to the Acknowledgement and Undertaking before signing them but insisted that he had not been in a position emotionally to do so.

Prosecuting Counsel tendered the affidavit of Marian Pollux, affirmed October 11, 2024. According to her affidavit, Ms. Pollux is the Coordinator, Complaints & Act Enforcement at the Association. Ms. Pollux’s affidavit set out the facts listed above in relation to the First Discipline Committee Proceeding and the steps in the Second Discipline Committee Proceeding leading up to the October 18th hearing. At the Architect/Holder’s request, Ms. Pollux was made available for cross-examination. She confirmed that the letters sent to the Architect/Holder by regular mail had been addressed to the Architect/Holder’s previous address, and that the letter dated September 24, 2024 had been returned to sender.

The Discipline Committee then invited the parties to make submissions in relation to the Architect/Holder’s adjournment request.

The Architect/Holder submitted that the OAA had sent letters to the wrong address intentionally, and that this warranted an adjournment.

Prosecuting Counsel vigorously rejected this assertion, characterizing it as “outrageous.” He also submitted that the error in the Architect/Holder’s business address was in any event of no moment as all of the correspondence had also been sent via email to the Architect/Holder at the email address on file with the Association and service via email to the address indicated for the person in the Association’s records is valid service under section 49(1)(d) of the *Architects Act*. Prosecuting Counsel submitted that the Architect/Holder’s assertion that he did not receive a copy of the April 3, 2024 Decision and Order was not credible given his email response to the Independent Legal Counsel’s April 6th email acknowledging that he had, in fact, received it.

The Discipline Committee denied the Architect/Holder’s adjournment request, finding that the Architect/Holder was provided notice of the April 3, 2024 Decision and Order and subsequent correspondence relating to the Second Discipline Committee Proceeding by email, which is valid service under the *Architects Act*.

The Committee then offered the parties the opportunity to call additional evidence in relation to the merits of the proceeding. Both declined to do so and proceeded to make closing submissions.

Submissions

As regards the first allegation of professional misconduct, Prosecuting Counsel submitted that the Architect/Holder failed to respond promptly or at all to the Registrar's letters of April 10 and May 7, 2024 which had been sent via email to the Architect/Holder's email on file with the Association.

As regards the second allegation of professional misconduct, Prosecuting Counsel noted that the Decision and Order dated April 3, 2024, issued on the basis of the Acknowledgement and Undertaking negotiated and signed by the Architect/Holder required that he resign and surrender his Certificate of Practice, yet he failed to do so. Prosecuting Counsel further submitted that this failure to comply with the Decision and Order dated April 3, 2024 constituted conduct relevant to the practice of architecture that, having regard to all of the circumstances, would reasonably be regarded by members of the Ontario Association of Architects as disgraceful, dishonourable, or unprofessional.

In response, the Architect/Holder submitted that he had never received any information from the OAA in relation to the April 3rd Decision and Order or the Second Discipline Committee Proceeding, that the April 3, 2024 Decision and Order was in any event improper and that the documents underlying it were false. At this point, the Architect/Holder also added that by proceeding with the hearing the Committee was denying him his right to retain a solicitor.

FINDINGS

The Committee finds that both charges of professional misconduct have been made out.

The Committee finds that the Registrar's letters of April 10 and May 7, 2024 were sent to the Architect/Holder via email to the email address on file with the Association, and that service via email is valid pursuant to section 49(1)(d) of the *Architect's Act*. The Committee further finds that the Architect/Holder did not respond promptly to these letters from the Registrar relating to his professional conduct or competence, in contravention of section 42(26) of the Regulation. The Committee agrees with the Prosecuting Counsel's submission that the error in the mailing address was inconsequential as each of the Registrar's letters were also delivered via email to the address on file with the Association and from which the Architect/Counsel had acknowledged receipt of the Independent Legal Counsel's April 6th email. The Committee finds the Architect/Holder's assertion that his email account had been "hacked" is not credible. The Architect/Holder provided no details of

this alleged “hacking” and in any event the Architect/Holder was inconsistent in his position as to whether he: (a) did not receive the emails, or (b) did receive them, but did not accept that email was valid service. While it is unnecessary for the Committee to further address the issue of service by regular mail, given the Architect/Holder’s suggestion that the letters were sent to his prior address deliberately and not through inadvertence the Committee feels obligated to note that it categorically rejects this suggestion as false. It was not supported by any evidence and was not put to Ms. Pollux on cross-examination for her response.

The Committee also finds that by failing to comply with the Decision and Order of the Discipline Committee, dated April 3, 2024, the Architect/Holder engaged in an act or acts of professional misconduct as defined in s. 42(54) of the Regulation by engaging in conduct or an act relevant to the practice of architecture that, having regard to all of the circumstances, would reasonably be regarded by members of the Ontario Association of Architects as disgraceful, dishonourable, or unprofessional. This was contemplated by paragraph 7 of the Undertaking and Acknowledgement which provides that failure to comply with the terms of the Undertaking and Acknowledgement constitutes an act of professional misconduct. Separately, the Committee finds that the Architect/Holder’s failure to comply with the April 3rd Decision and Order was an act of professional misconduct as defined in the Regulation.

The Committee also finds that the Architect/Holder was competent to sign the Undertaking and Acknowledgment, noting that he proposed this resolution and negotiated changes to the Undertaking and Acknowledgment before signing them. The Committee rejects the Architect/Holder’s assertion that his agreement was obtained improperly, noting again that there is no evidence to support this assertion and that it was not put to Ms. Pollux on her cross-examination for her response.

PENALTY

At the October 28th hearing the Committee advised the parties of its finding that both charges of professional misconduct had been made out and requested submissions as to penalty.

Prosecuting Counsel submitted that the Architect/Holder’s failure to comply with the terms of the April 3rd Decision and Order was a very serious matter, and that the only way to protect the public in the circumstances was to immediately revoke the Architect/Holder’s licence and certificate of practice. Prosecuting Counsel further submitted that the Committee’s Decision and Order and Reasons for Decision and Order arising from this proceeding should be published on the

Association's website and in its publication with the Architect/Holder's name as required by Section 34(35) of the *Architects Act*. Finally, Prosecuting Counsel submitted that a substantial costs award was warranted in the circumstances on the basis that the Second Discipline Committee Proceeding could and should have been avoided had the Architect/Holder complied with April 3rd Decision and Order. Prosecuting Counsel requested costs on a partial indemnity basis for both proceedings in the amount of \$31,339.35, or alternatively costs on a full indemnity basis for the second proceeding in the amount of \$51,875.75 on the basis that it was entirely unnecessary.

The Architect/Holder was given the opportunity to make submissions regarding penalty but chose not to do so.

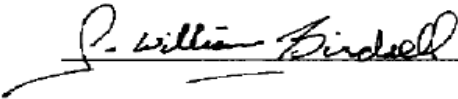
The Committee agrees with the submissions of Prosecuting Counsel that the Architect/Holder's breach of the Undertaking and Acknowledgement that he freely negotiated with Prosecuting Counsel in order to avoid a contested Discipline Committee hearing and potential finding of professional misconduct and incompetence is a very serious matter worthy of sanction. If the Architect/Holder cannot be trusted to comply with an Undertaking and Acknowledgment freely given, he cannot be trusted to practice in a manner protective of the public interest or consistent with the standards of the Association.

Upon hearing the parties' evidence and submissions:


1. THIS COMMITTEE FINDS Mohammed S. Elbadawi guilty of professional misconduct as defined in s. 42(26) and s. 42(54) of the Regulation;
2. THIS COMMITTEE ORDERS that the licence and certificate of practice held by Mohammed S. Elbadawi are hereby revoked as of the date of this Order;
3. THIS COMMITTEE ORDERS Mohammed S. Elbadawi to pay to the Association its costs of the initial hearing on April 3, 2024 and the subsequent hearing on October 18 and 28 assessed on a partial indemnity scale in the amount of \$31,339.35; and

4. THIS COMMITTEE ORDERS that this Decision and Order and the Reasons for Decision and Order to follow shall be reflected in the public register of the Association and an official publication of the Association and shall be posted on the Association's website all with the name of the Architect/Holder.

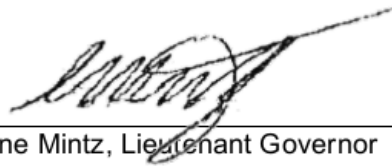
DATED AT TORONTO THIS 25th DAY OF NOVEMBER, 2024.



J. William Birdsell, Member (Chair)



Izabela Kazanczuk, Member



Elaine Mintz, Lieutenant Governor
Appointee

APPENDIX ‘A’

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 Discipline Committee of the Ontario
Association of Architects pursuant to Sections 34
and 35 of the *Architects Act* to hear and determine
allegations of professional misconduct against
**Mohammed Saleh Elbadawi, Mohammed S.
Elbadawi Architect**

J. William Birdsell, Member (Chair))	WEDNESDAY, THE 3 rd DAY OF APRIL, 2024
James R. Anderson, Member)	
Elaine Mintz, Lieutenant Governor Appointee)	

	Grant Worden, Counsel to the Committee Paul J. Davis, Counsel to the Association Mohammed S. Elbadawi, self-represented
--	---

REASONS FOR THE DECISION AND ORDER OF THE DISCIPLINE COMMITTEE

The Discipline Committee of the Ontario Association of Architects met via teleconference on Tuesday, March 26, 2024, to consider a written proposal by the parties in relation to the allegations of professional misconduct against Mohammed S. Elbadawi, an architect licensed by the Ontario Association of Architects (the Association) and Mohammed S. Elbadawi, a holder of a Certificate of Practice (the "Architect/Holder").

Allegations

It was alleged that the Architect/Holder committed the following acts of professional misconduct, as set out in the Amended Notice of Hearing dated February 22, 2024:

1. He engaged in an act or acts of professional misconduct as defined in s. 42(19) of the Regulation made under the Act in that, in respect of building projects at:
 - a) Loyalist Parkway in Prince Edward County ("Project #1"), and
 - b) Queen Street in Belleville ("Project #2," together with Project #1, the "Projects")

he affixed his seal or permitted his seal to be affixed to a design that was not prepared in its entirety under his personal supervision or control;
2. He engaged in an act or acts of professional misconduct as defined in s. 42(5) of the Regulation made under the Act in that, in respect of the Projects, he permitted, counselled, assisted, aided or abetted his son, Sam Elbadawi, who is not a member or holder of a certificate of practice, to engage or hold himself out as engaging in the practice of architecture;
3. He engaged in an act or acts of professional misconduct as defined in s. 42(52) of the Regulation made under the Act in that, in respect of the Projects, he provided architectural services without an express written or oral contract;
4. He engaged in an act or acts of professional misconduct as defined in ss. 42(16) and 43(1) of the Regulation made under the Act in that, in respect of the Projects, he had a conflict of interest;

5. He engaged in an act or acts of professional misconduct as defined in ss. 42(10) and 50 of the Regulation made under the Act in that, in respect of the Projects, he failed to maintain the performance standards of the profession by failing to:
 - a) make periodic visits to the sites of the Projects to determine whether the work was in general conformity with the design documents;
 - b) inform the clients and contractors on the Projects in writing as to the progress and quality of the work and as to any part of the work that he observed during the visits to the sites not to be in conformity with the design documents;
 - c) review all changes to the design documents to determine whether the changes conformed to the building code;
 - d) review and comment on shop drawings and samples for general conformity with the design concept of the works; and/or
 - e) co-operate with the professional engineer responsible for the co-ordination of the general review of the Projects;
6. He engaged in an act or acts of professional misconduct as defined in s. 42(2) of the Regulation made under the Act in that, in respect of the Project #2, he failed to ensure that the name and designation of the holder was on every design that was issued by the holder to a person; and
7. He is incompetent as defined in s. 34(3)(a) of the Act in that, in respect of the Projects, he displayed in his professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public of a nature or to an extent that demonstrates that he is unfit to carry out the responsibilities of an architect, by failing to prepare architectural drawings that were comprehensible, confirmed feasibility and constructability, and demonstrated compliance with the Ontario *Building Code*, including:
 - a) with respect to Project #1, failing to: (1) identify *Building Code* classifications; and/or (2) provide a complete and feasible design for stairs,

a fence, reflecting pool, swimming pool, balcony, and roof, including appropriate drainage and structural elements;

- b) with respect to Project #2, failing to: (1) provide adequate information regarding demolition; (2) identify *Building Code* classifications; and/or (3) provide a complete and feasible design for exterior walls, fire separation, sound transmission, structural elements, exit doors, ground floor changes, foundation consistency, courtyard, entry steps, and roof, including appropriate drainage and structural elements.

The Parties' Proposal

By letter dated March 6, 2024, Counsel for the Association advised the Committee that:

After the referral of this matter to the Discipline Committee, the Association has undertaken further investigation, including interviewing witnesses, obtaining an expert opinion, and receiving information from the Architect about his personal circumstances.

In addition, the parties have had discussions about the allegations in this proceeding, and the underlying facts relating to the Architect's plans for the future.

The Architect has executed an Undertaking and Acknowledgement, which attaches an Agreed Statement of Facts. In light of this Undertaking and Acknowledgement, the Association has determined that it is not in the public interest to proceed with a contested, lengthy Discipline Committee hearing for this matter.

The parties consent to disposition of this matter without a hearing in person, provided that it is a decision of the Discipline Committee to grant leave to the Association to withdraw the allegations of incompetence and professional misconduct given the Architect's Undertaking and Acknowledgement.

Counsel for the Association therefore requested leave to withdraw the allegations against the Architect/Holder set out in the Amended Notice of Hearing dated February 22, 2024 to bring this matter to a conclusion.

EVIDENCE AND SUBMISSIONS

The Agreed Statement of Facts, agreed to by the Association and the Architect/Holder, establishes that:

A. Background

1. The Architect first became a member of the Association in 1972 and most recently was licensed in 2009. He has practiced architecture for over 50 years. The Architect is currently principal of Mohammed S. Elbadawi Architect, which holds a certificate of practice, and is the architect with personal supervision of that practice.
2. The Architect has no history with the Discipline Committee of the Association.

B. Registrar's Investigation

3. In August 2021, the Registrar issued an Appointment of Investigator to examine whether the Architect had engaged in professional misconduct in respect of two building projects undertaken in the area of Prince Edward County and Belleville, for which building permits were issued.
4. Among other things, the investigation was triggered by alleged representations by the Architect's son that he was holding himself out as engaging in the practice of architecture. The Registrar believed that she had reasonable and probable grounds that the Architect was aiding and abetting such holding out. The investigation also raised concerns about the competence of the architectural practice carried out in respect of the two building projects in Prince Edward County and Belleville.
5. The Registrar referred the results of the investigation to the Complaints Committee of the Association.
6. On November 22, 2022, the Complaints Committee referred the matter to the Discipline Committee.
7. On February 6, 2023, the Discipline Committee issued a Notice of Hearing containing allegations of incompetence and professional misconduct against the Architect and the Holder.

8. On November 8, 2023, the Association served an expert report for the Discipline Committee proceeding.
9. On February 22, 2024, the Discipline Committee issued an Amended Notice of Hearing containing allegations of incompetence and professional misconduct against the Architect and the Holder.
10. The Architect disputes all of the allegations contained in the Amended Notice of Hearing.

C. Retirement from practice

11. The Architect began practicing architecture over 50 years ago and is over 80 years old. He has recently experienced medical challenges, including heart surgery, and challenges in his personal life, including the death of his spouse.
12. In view of the Architect's age and personal circumstances, the Architect will retire from the practice of architecture in Canada on or before April 30, 2024, provided that the Association withdraws the allegations of professional misconduct and incompetence in the Amended Notice of Hearing.

The Undertaking and Acknowledgment provides that:

A. Undertaking

1. On or before April 30, 2024, the Architect/Holder will retire from the practice of architecture and will resign from his membership in the Association. He will also cause Mohammed S. Elbadawi Architect to surrender its certificate of practice with the Association.
2. He will comply with the Association's Guidelines for Surrendering a Licence and Certificate of Practice.
3. He will not re-apply for a licence to practice architecture with the Association and will not cause Mohammed S. Elbadawi Architect to re-apply for a certificate of practice with the Association.
4. He will not apply for a licence to practice architecture with any other professional regulator in Canada.

5. He will not seek the status of Retired Member of the Association, and he will not refer to himself as a Retired Architect or Retired Member.

B. Acknowledgment

6. The facts set out in the Agreed Statement of Facts are true and accurate.
7. Any failure by the Architect/Holder to comply with any term of the Undertaking and Acknowledgement will constitute an act of professional misconduct, in that it will amount to conduct that would reasonably be regarded by members of the Association as disgraceful, dishonourable, or unprofessional.
8. In the event that the Architect/Holder should fail to satisfy any term of this Undertaking and Acknowledgement, the Association may bring such failure to the attention of the appropriate committees within the Association, and this may result in the matter being referred to the Discipline Committee and in the prosecution of allegations of professional misconduct against him.
9. The substance of the Undertaking and Acknowledgement will be reflected in the public register of the Association, including being posted on the Association's website.
10. In the event that the Discipline Committee denies leave to the Association to withdraw the allegations against the Architect/Holder in the Amended Notice of Hearing, the Undertaking and Acknowledgement shall be null and void, and the Association may proceed to prosecute the allegations against me the Amended Notice of Hearing.
11. The Architect/Holder understands and agrees that the Undertaking and Acknowledgement are legally binding on him, and the Association may take any legal action against him to enforce it that the Association considers appropriate.
12. He understands the terms of this Undertaking and Acknowledgement.
13. He confirms that he is entering into the Undertaking and Acknowledgement voluntarily, without compulsion or duress, and he has been advised of his right to obtain independent legal advice on the Undertaking and Acknowledgement and its implications. He has had an opportunity to seek such independent legal advice.

As regards the Undertaking and Acknowledgment, Counsel for the Association made the following submissions in his letter of March 6, 2024:

In the Association's view, the Architect's Undertaking and Acknowledgement provides appropriate protection of the public and respects the interests of the Association and the Architect in the circumstances of this matter. The obligations and terms of the Undertaking and Acknowledgment are at least as robust as may have been sought and ordered following findings of incompetence and/or professional misconduct at a Discipline Committee hearing, given the Committee's powers under subsection 34(4) of the Architects Act, R.S.O. 1990, c. A.26.

The Association's view is that the Undertaking and Acknowledgement is in the public interest and is preferable to the expense, inconvenience to witnesses, and uncertainty of a lengthy contested hearing.

FINDINGS

The Committee agrees with Counsel for the Association that the proposed disposition of this matter is appropriately protective of the public, is in the public interest, and is preferable to a contested hearing, substantially for the reasons set out in the submissions reproduced above.

Upon reviewing the parties' joint proposal and submissions set out in Counsel for the Association's letter of March 6, 2024:

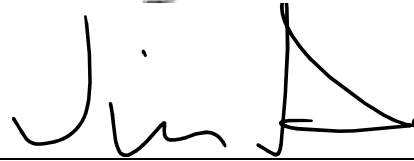
1. **THIS COMMITTEE FINDS** that the proposed disposition of this matter is appropriately protective of the public, is in the public interest, and is preferable to a contested hearing;
2. **THIS COMMITTEE GRANTS LEAVE** to the Association to withdraw the allegations against the Architect/Holder set out in the Amended Notice of Hearing dated February 22, 2024;
3. **THIS COMMITTEE ORDERS** the Architect/Holder to comply with the terms of the Undertaking and Acknowledgment dated March 5, 2024; and

4. **THIS COMMITTEE ORDERS** that the substance of the Undertaking and Acknowledgement dated March 5, 2024 shall be reflected in the public register of the Association and shall be posted on the Association's website.

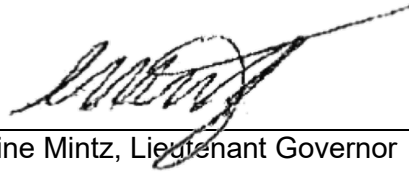
DATED AT TORONTO THIS 3rd DAY OF APRIL, 2024.



J. William Birdsell, Member (Chair)



James R. Anderson, Member



Elaine Mintz, Lieutenant Governor
Appointee