

IN THE MATTER OF the Architects Act, R.S.O. 1990, c. A.26, as amended (the “Act”), and Ontario Regulation 27 under the Act, as amended, (the “Regulation”)

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 Act to hear and determine allegations of professional misconduct against **Brian K. Porter**, Architect, carrying on Business as Two Row Architect.

Vincent Alcaide, Member)	Heard Wednesday the 8 th day of November, 2023
)	
James Hargreaves, Member)	

	Grant Worden, Counsel to the Tribunal Barbara H. Miller, Counsel to the Association Tim McGurrin, Counsel to the Member
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REASONS FOR THE DECISION OF THE DISCIPLINE COMMITTEE (PENALTY)

The Discipline Committee of the Ontario Association of Architects met on November 8, 2023, to hear submissions regarding the penalty to be imposed in respect of findings of professional misconduct against Brian K. Porter, an Architect licensed by the Ontario Association of Architects (the "Association") and a holder of a Certificate of Practice. In its prior Reasons for Decision dated June 15, 2023 (the "Liability Decision") the Discipline Committee found that Porter had violated section 42(9) and 49 of the *Regulation*. A copy of the Liability Decision is attached to these reasons as Appendix A.

SUBMISSIONS OF THE PARTIES

1. Prior to the November 8th hearing the Discipline Committee received written submissions on penalty from both the Association and Porter pursuant to an agreed timetable, consisting of:
 - a. Penalty Submissions of the Ontario Association of Architects dated August 4, 2023;
 - b. Written Responding Penalty Submissions of Brian K. Porter, Architect, Carrying on Business as Two Row Architect, dated August 18, 2023; and
 - c. Reply Submissions of the Ontario Association of Architects, dated September 1, 2023
2. These submissions focus on the parties' positions regarding the appropriate penalty, given the Discipline Committee's findings of professional misconduct as set out in the Liability Decision.
3. The parties agree that in determining an appropriate penalty for findings of professional misconduct, the Discipline Committee should consider several factors, including:
 - a. Nature of the offence;
 - b. Need for the protection of the public;
 - c. Reformation of the OAA member and the holder; and
 - d. Deterrence of others.

4. Considering these factors, the Association submits that an appropriate penalty for Porter would be:
 - a. A reprimand;
 - b. Publication of the Liability Decision and any penalty decision in the OAA Newsletter and entry on the OAA Registrar, after the relevant appeal period had elapsed;
 - c. A two month suspension of Porter's Licence and Certificate of Practice for a period of two months.
 - d. An order that Porter pay costs in the sum of \$25,000.
5. In support of this recommended penalty, the Association urges the Discipline Committee to consider Porter's failure to acknowledge any wrongdoing on his part, his failure to take responsibility for the actions of his employee (Wilson) in copying the Original Site Plan, and the suggestion that because Wilson had been found liable for similar acts Porter was in some way exonerated. The Association also submits that the Discipline Committee should consider evidence suggesting that Porter had attempted to distance himself from the Original Site Plan rather than investigating how Wilson had used it, and how Porter's other employee, Tien Von, was involved.
6. The Association also submits that Porter should not have required a hearing in relation to Porter's violations of sections 42(9) and 49 of the Regulations. The Association cites evidence which indicated that Porter had no personal knowledge of the work for which the prior architect (Eightspace) had been contracted with the client (Weins), and Porter's admission that Weins never advised him that Eightspace's mandate had been terminated. The Association submits that, based on this evidence, Porter could not have made an error, or had a different interpretation of Section 49 or thought he had complied with that section. Rather he either chose not to be apprised of his obligations under Section 49, or not to comply with such obligations.
7. The Association submits that aspects of the following three decisions, including penalties, are analogous to the present case and should be considered in determining penalty:

(1) OAA and Robin Chubb¹ (“*Chubb*”); (2) OAA and Seppo Kanerva² (“*Kanerva*”); and (3) OAA and Linas Saplys³ (“*Saplys*”).

8. Porter submits that findings of professional misconduct fall along a spectrum. He notes that the most serious of the allegations against him (that he had copied the design or work of Eightspace) were dismissed, and therefore the resulting penalty should fall on the lower end of the spectrum and should not include any suspension of his licence or Certificate of Practice or a reprimand, and that any reporting of the penalty decision in the OAA Newsletter should not name him.
9. Porter contrasts the Discipline Committee’s findings of a breach of section 42(9) and 49 of the *Regulation* with findings of direct copying, which he characterizes as a more serious offence. Porter notes that Wilson received a one-month licence suspension where there had been a finding of direct copying and submits that it would be inappropriate to impose a longer two month suspension in circumstances where he had not been found to have engaged in direct copying. Porter notes that *Chubb* and *Kanerva* involved deliberate copying and are distinguishable on that basis.
10. Porter submits that failure to provide the notice required by 42(9) and 49 of the *Regulation* is an offence falling on the low end of the spectrum, citing OAA and Unnamed Architect.⁴ He also submits that while *Saplys* also involved a failure to provide notice, the principal concern of the Discipline Committee was the provision of services through an entity that did not hold a Certificate of Practice and the architect’s prior history of related complaints. Porter notes that *Saplys* described the failure to provide notice as “merely a technical infraction” and Porter submits that the Discipline Committee did not disagree with that characterization. He further submits that there is no dispute, based on the evidence at the hearing, that Eightspace knew that its engagement had been terminated without the need for any written notice.

¹ Reasons for the Decision and Order of the Discipline Committee of the Ontario Association of Architects - Robin S.C. Chubb, October 15, 1990.

² Reasons for the Decision and Order of the Discipline Committee of the Ontario Association of Architects – Seppo Kanerva, July 24, 1985.

³ Reasons for Judgment of the Discipline Committee of the Ontario Association of Architects, December 7, 2017; Reasons for Decision and Order of the Discipline Committee (Penalty and Costs), April 19, 2018; *Saplys v. Ontario Association of Architects*, 2019, ONSC 1679 (Div Ct); Further Reasons for Decision and Order of the Discipline Committee of the Ontario Association of Architects, November 26, 2019; *Saplys v. Ontario Association of Architects*, 2021, ONSC 2784 (Div Ct),

⁴ Reasons for the Decision and Order of the Discipline Committee, Unnamed Architect, April 25, 2018.

11. Porter submits that the Discipline Committee should consider the character of the person charged, citing *Kanerva*, and emphasized his professional accomplishments and significant contributions to the architectural community, as well as his status as one of the few licensed and practicing Indigenous architects in Ontario. At the penalty hearing, the Discipline Committee received into evidence a brief containing seven letters which Porter urges the Committee to consider in relation to the issue of his character. Porter also notes that he has no prior complaint or disciplinary history with the OAA.
12. Finally, Porter submits that as his conduct did not directly affect the public and instead related exclusively to Architect/Holder to Architect/Holder matters it should not incur any significant penalty in the form of a practice suspension.
13. In light of these factors, Porter submits that an appropriate penalty should not include any suspension of his license or certificate of practice, and that his name should be omitted from any publication relating to penalty. He submits that the valid objectives of the Act may be achieved using other tools such as fines and educational attendance.
14. In reply, the Association submits that in regards to character the Discipline Committee should consider, among other things: Porter's failure to take responsibility for Wilson's wrongful conduct and his failure to investigate or to distance himself from Wilson; his failure to contact Eistrat to explain or apologize for his conduct; and his inconsistent position regarding what he knew of Weins' prior retainer, on the one hand stating he had no knowledge of the retainer and on the other hand taking the position he was not required to provide notice to Eistrat because he had been engaged for different purposes.
15. The Association distinguishes Wilson's penalty on several grounds including acknowledgment of wrongdoing and remorse for his conduct, and the fact that his guilty plea avoided the need for the preparation and conduct of a hearing. The Association contrasts this to what it characterizes as Porter's failure to acknowledge guilt or responsibility for his actions, and failure to investigate Wilson's conduct while simultaneously blaming him for any wrongdoing. The Association submits that it is understandable that Porter wanted a hearing on the copying charge, but based on the evidence in the liability phase he had no plausible defence to the charge that he had failed to provide the requisite notice.

16. In response to questions from the Discipline Committee as to whether it would be appropriate in the circumstances to suspend Porter's Certificate of Practice, the Association advised that it was content that the Certificate of Practice not be suspended, and that any suspension be limited to Porter's licence.

PENALTY

17. The Discipline Committee has considered the parties' submissions. In determining the appropriate penalty, the Discipline Committee has considered the nature of the offence committed, protection of the public, reformation of the Architect/Holder, and the deterrence of others.

18. The Discipline Committee finds the following factors particularly relevant to its determination as to penalty:

- a. Porter failed to contact the OAA member Eistrat when he was first engaged on the Dealership Project. Had he done so, this dispute may have been resolved between Porter and Eistrat directly;
- b. Porter failed to take responsibility for his actions, instead blaming the wrongdoing in this case entirely on Wilson;
- c. Porter failed to investigate Wilson's actions and take responsibility for his lack of supervision of Wilson;
- d. After learning of Wilson's wrongful conduct, Porter failed to contact Eistrat to apologize and attempt to make amends; and
- e. This is Porter's first offence, and the nature of the offence is not of concern for the protection of the public.

19. The Discipline Committee has considered Porter's submissions regarding his character and contributions to the profession. The Discipline Committee acknowledges these professional contributions; however, they are unrelated to the professional responsibility Porter must uphold when exercising his responsible control of his employees.

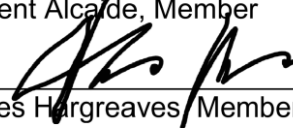
20. The Discipline Committee therefore imposes the following penalty against the Architect/Holder:

- a. **THIS COMMITTEE ORDERS** that the Architect's licence shall be suspended for a period of one month, beginning on Friday, March 1, 2024, or such earlier date as the Association and the Architect may mutually agree.
- b. **THIS COMMITTEE ORDERS** that the Architect/Holder pay to the Association a portion of the costs of this proceeding, which is hereby fixed at \$ 5,000.00 to be paid by Monday, April 1, 2024, or such other date as the Association and the Architect may mutually agree.
- c. **THIS COMMITTEE ORDERS** that in the event that the Architect/Holder fails to comply with paragraph b above, the Architect's licence shall continue to be suspended until such time as the payment contemplated in paragraph b is made.
- d. **THIS COMMITTEE ORDERS** that that the Architect/Holder is hereby reprimanded.
- e. **THIS COMMITTEE ORDERS** that the Architect/Holder is required to attend an OAA approved course in ethics and professional responsibility within 12 months of the date of this Decision. The specific course must be approved in advance by the Association. Failure to attend such course within this period of time will result in the automatic suspension of the Architect's licence for a one month period and thereafter for further consecutive one month periods until the course is taken. If the Architect's licence is suspended for a two year period, his licence will be automatically cancelled.
- f. **THIS COMMITTEE ORDERS** that the Decision and Order of the Discipline Committee on both Liability and Penalty, and the Reasons therefor, be published in an official publication of the Association including the name of the Architect/Holder and be recorded on the Register of the Association.

DATED AT TORONTO THIS 22ND DAY OF JANUARY, 2024



Vincent Alcaide, Member



James Hargreaves, Member

Appendix A

IN THE MATTER OF the *Architects Act*, R.S.O. 1990, c. A.26, as amended (the “Act”), and Ontario Regulation 27 under the Act, as amended, (the “Regulation”).

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 **Brian K. Porter**, Architect, carrying on Business as Two Row Architect.

VINCENT ALCAIDE, Member)	Heard: November 30 and December 1, 2022
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JAMES HARGREAVES, Member)	
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)	

	Grant Worden, Counsel to the Tribunal
	Barbra H. Miller and Mark Omenugha, Counsel to the Association
	Rohit Kumar and Timothy McGurrin, Counsel to the Member

REASONS FOR THE DECISION OF THE DISCIPLINE COMMITTEE (LIABILITY)

The Discipline Committee of the Ontario Association of Architects met on November 30 and December 1, 2022, to hear and determine allegations of professional misconduct against Brian K. Porter, an Architect licensed by the Ontario Association of Architects (the "Association") and a holder of a Certificate of Practice.

It was alleged that Mr. Porter committed the following acts of professional misconduct, as set out in the Amended Notice of Hearing dated June 6, 2022:

1. During 2019 he copied the design or work of another person without the consent or agreement of the other person with respect to the design and construction of an office/automotive dealership (including a parking garage), located at 7200 Victoria Park Avenue, Markham, Ontario (the "Dealership Project"), contrary to section 42(34) of the Regulation.
2. During 2019 he authorized, permitted, counselled, assisted, aided, abetted, or acquiesced in SR Architecture Inc.'s contravention of section 42(34) of the Regulation in respect of the Dealership Project, contrary to section 42(6) of the Regulation.
3. During 2019 he authorized, permitted, counselled, assisted, aided, abetted, or acquiesced in SR Architecture Inc.'s contravention of section 42(34) of the Regulation in respect of the Dealership Project, which constituted professional misconduct, contrary to section 42(7) of the Regulation.
4. During 2019 he failed to maintain the standards of practice in the profession by soliciting or accepting work in respect of the Dealership Project knowingly or having reason to believe that another holder had been engaged on the same building project for the same purpose by the same client, and in circumstances where:
 - (a) the client had not given notice in writing to him that the engagement of the other holder had been terminated; and
 - (b) he failed to give the other holder notice, in writing, by registered mail, that he had been engaged for the same purpose by the client;

all contrary to section 42(9) and section 49 of the Regulation.

5. During 2019 he solicited or accepted work when he knew or had reason to believe that another member or holder had been engaged or employed for the same purpose by the same client contrary to section 42(47) of the Regulation.

On August 11, 2021, the Discipline Committee issued a Notice of Hearing setting out the allegations against Mr. Porter and the Holder which appear in paragraphs 1 and 4 above.

On June 6, 2022, the Discipline Committee issued an Amended Notice of Hearing which added the allegations which appear in paragraphs 2, 3 and 5 above.

Mr. Porter entered a plea of not guilty to the allegations set out in the Amended Notice of Hearing.

For the reasons set out below, we find Porter guilty in respect of allegations 2, 3, 4 and 5 but not guilty of allegation 1.

A further hearing will be scheduled to determine the penalty to be imposed.

EVIDENCE

The parties submitted into evidence a Joint Brief of Documents and a Supplementary Brief of Documents and called oral evidence from the following witnesses:

1. **Tarvo Eistrat** (“Eistrat”). Eistrat is a licensed architect under the Ontario *Architects Act* (the “Act”). He practices under a certificate of practice of Eightspace Inc. (“Eightspace”) and is the principal of Eightspace. Mr. Eistrat submitted a complaint to the Ontario Association of Architects dated November 27, 2019 (the “Complaint”) as described further below.

2. **Brian K. Porter** (“Porter”). Porter is a licensed architect under the Act. He practices under a certificate of practice of Two Row Architect (“Two Row”) and is the principal of Two Row.¹
3. **Samuel (Jesse) Wilson** (“Wilson”). Wilson is a licensed technologist under the Act. He practices under a certificate of practice with terms, conditions, and limitations of SR Architecture Inc. (“SR Architecture”) and is the principal of SR Architecture. Mr. Wilson is also a part-time employee of Two Row, where in 2019 he held the position of Head of Production. Mr. Wilson was involved in a separate Discipline Committee proceeding arising from the circumstances outlined in the Complaint, and in 2021 was sanctioned by the Association following a hearing.

FACTS

The Project

1. The following is a summary of the facts relevant to the issues in the proceeding.
2. The Complaint relates to a project involving the construction of the Dealership Project, which is owned by Weins Canada, formerly Don Valley North Automotive Group.
3. Eightspace was the original architect on the Dealership Project and worked on the project from 2013-2019.
4. In early 2013, at Weins’ request Eightspace submitted “Architectural Fee Proposals” for certain work, including the Dealership Project. Weins retained Eightspace on the Dealership Project pursuant to the proposal for that work (the “Proposal”). Weins and Eightspace did not otherwise conclude a formal written contract in relation to the Dealership Project.

¹ The Committee acknowledges Porter’s significant accomplishments and contributions to the profession, as well as his status as one of a few licensed and practicing Indigenous architects in Ontario. However, these matters are not relevant to the Committee’s decision in relation to the allegations of professional misconduct enumerated above.

5. The Proposal provided a fee structure for certain services including Schematic Design, Design Development, Working Drawings & Specifications and Tender & Construction Administration.
6. Between 2013 and 2019, Eightspace completed various aspects of the Dealership Project, including the site plan portion of Working Drawings and Specifications.
7. Wilson had an ongoing relationship with Weins since 2015 and was engaged as the on-site manager for the Dealership Project through SR Architecture.
8. In early 2019 Wilson attended a meeting with Weins to discuss the Dealership Project. Wilson formed the view, on the basis of that discussion, that Weins had lost confidence in Eightspace's ability to complete the project.
9. In May 2019, structural engineering consultant Mirkwood Engineering ("Mirkwood") received an email from Wilson soliciting structural engineering services for the Dealership Project. The email from Wilson, sent from his SR Architecture email address, attached a set of drawings and stated: *"If you are interested, please review and send me your figures so that I can add it to ours."* Mirkwood had been retained by Eightspace to assist with certain aspects of the Dealership Project, so Mirkwood shared this email and drawings with Eightspace. Eistrat recognized the drawings attached to Wilson's email as ones Eightspace had prepared.
10. Eistrat confronted Wilson and accused him of soliciting fee proposals from consultants. Eistrat also contacted Weins to determine the status of the Dealership Project, which appeared to be stalled.
11. In September 2019, Wilson suggested to representatives of Weins that they should meet with Porter to discuss the Dealership Project.
12. On October 2, 2019, Eistrat attended a meeting with Weins where he was advised that Weins had decided to engage another architect on the Dealership Project. Eistrat testified that he was told at that meeting that Two Row Architect was being retained.

13. On October 15, Porter met with representatives of Weins. He asked what the relationship was with the former architect and was told that it had been terminated. At the end of the meeting Porter was asked to prepare a draft contract. A draft agreement was prepared in October and finalized in November.
14. Eistrat did not receive written notice from Weins that his engagement had been terminated, or from Porter that Two Row Architect had been engaged on the project.
15. On October 29, 2019, structural engineering consultants Mistry Engineering (“Mistry”) received an email from Wilson attaching an “updated site plan.” Wilson’s email was sent from his SR Architecture email address. Mistry had been retained by Eightspace to provide certain services in relation to the Dealership Project, so they shared Wilson’s email and attachments with Eightspace.
16. It was apparent to Eistrat from reviewing the attachments to Wilson’s email that the digital schematic designs and site plan designs and drawings prepared by Eightspace had been used as the basis for the updated site plan without Eightspace’s consent. Among other things, the updated site plan: included Two Row’s title block where Eightspace’s title block had been; indicated that it had been prepared by THV, an apparent reference to Tien Voung who at the time worked for Porter; and indicated that it had been reviewed by JW, an apparent reference to Wilson.
17. Neither Wilson nor Porter sought Eistrat’s permission to use Eightspace’s designs and drawings.

SUBMISSIONS OF THE PARTIES

18. After the close of evidence, the Committee received written submissions from the Association and Mr. Porter pursuant to an agreed timetable,² consisting of:

² The original deadline for the Association’s Reply Submissions was March 10, 2023. That deadline was suspended by Members Alcaide and Hargreaves upon being advised by the Registrar of the Association that the Order in Council appointing Gaganjot Singh as part-time member of the Council of the Association had been revoked. As described in further detail in Appendix “A” to these Reasons, the remaining Members invited submissions from the parties on whether the revocation of Mr. Singh’s appointment to the Council of the Association affected the panel’s ability to continue with the hearing.

- (a) Written Submissions of the Ontario Association of Architects dated January 31, 2023;
 - (b) Written Responding Closing Submissions of Brian K. Porter, Architect, Carrying on Business as Two Row Architect, dated February 24, 2023; and
 - (c) Reply Submissions of the Ontario Association of Architects, dated April 28, 2023.
19. These submissions focused on the regulatory provisions at issue and their application to the facts.
20. The allegations against Porter relate to two main issues: (1) whether Porter copied Eightspace's work or permitted or acquiesced to such copying (allegations 1-3), (2) whether Porter was required to provide notice to Eightspace that Porter had been retained on the Dealership Project (allegations 4 and 5).

Issue 1: Whether Porter copied Eightspace's work, or permitted or acquiesced to such copying (allegations 1-3)

21. The relevant provisions of the Regulation provide that:
42. For the purpose of the Act, "professional misconduct" means,
- ...
- (6) Authorizing, permitting, counselling, assisting, aiding, abetting, or acquiescing in any contravention of the Act or the regulations by any person.
- (7) Authorizing, permitting, counselling, assisting, aiding abetting, or acquiescing in any act that constitutes professional misconduct.
- ...
- (34) Copying the design or work of another person without the consent or agreement of the other person.

In their written submissions on this issue the parties agreed that it did not, and the deadline for the Association's Reply Submissions was reinstated as April 28, 2023.

22. The Association submits that Porter is responsible as a member and as a holder of a certificate of practice for the work of his employees. While acting as Porter's employee, Wilson copied the design or work of Eightspace, removed its title block and substituted it for Porter's title block and therefore, Porter contravened section 42(34) of the Regulation.
23. In the alternative, the Association submits that Porter authorized, permitted, aided and/or abetted Wilson's contravention of section 42(34) of the Regulation, contrary to sections 42(6) and 42(7) of the Regulation.
24. The Association submits that Wilson copied the original site plan on Porter's behalf while working for Porter and that it "defies logic" that Porter was unaware in October 2019 that Wilson was preparing and revising drawings on behalf of Two Row, and that he did not see the updated site plan prior to receiving the complaint.
25. The Association notes that Wilson admitted in cross-examination that having the Two Row logo on a site plan that was not created by Two Row violates the Regulation.
26. The Association also notes that Porter testified that: he would regularly review Wilson's work; they spoke on the phone daily; often they would conduct virtual work sessions; he would review Wilson's drawings and mark them up when necessary; and he took certain steps to maintain control of Wilson's work.
27. The Association further notes that in response to a question in a letter from the Association dated March 31, 2000, about why Two Row's title block appeared on the updated site plan, Porter stated:

In order to be prepared for the commencement of the work, we began to review the Site Plan approval drawings in detail including comments that had been issued by municipal authorities. We undertook to flag revisions that were going to be required during future phases of the work and circulated them prior to a contract being signed as a courtesy to WEINS Canada. The flagged revisions appear on a site plan drawing that bears the Two Row Architect logo and is dated October 29, 2019.

28. The Association submits that in giving this answer Porter attributed knowledge and actions to both himself and Wilson, in contrast to later parts of his testimony where

Porter more expressly identified information that he received from Wilson in preparing his response to the Complaint.

29. The Association rejects Porter's submission that Wilson acted as a "rogue employee" (the Association's characterization), without Porter's knowledge or direction. Specifically, the Association asserts that:
 - (a) the fact that Wilson added the Two Row Architect title block is evidence that Wilson was acting on Porter's behalf, rather than his own; and
 - (b) Porter's admission on cross-examination that he used the updated site plan "is in effect an admission that he copied the original Site Plan."
30. The Association submits in the alternative that Porter was willfully blind in his conduct and chose to accept copied documents as his own.
31. Porter submits that the uncontradicted testimony of himself and Wilson was that Wilson copied the Two Row title block and circulated the amended site plan without permission or authorization.
32. Porter submits that Wilson took sole responsibility for most of the wrongful acts alleged against Porter for which he was sanctioned in another proceeding. Specifically, Porter relies on Wilson's testimony that:
 - (a) although Weins had told Wilson prior to October 15, 2019 that Two Row would be retained on the Dealership Project, Porter was not informed of this;
 - (b) his intention was to get a "head start" on the work that he knew would be coming to Two Row; and
 - (c) he prepared the updated site plan as described above and was wrong in doing so.
33. Porter notes that the May 14, 2019, email from Wilson to Mirkwood and others soliciting fee proposals was sent from Wilson's SR Architect email address. Porter also notes Wilson's testimony that the reference to "ours" in the phrase "*send me your figures so that I can add it to ours*" referred to the costs of him and Weins, not Porter.

34. Porter also notes that the October 29 email from Wilson to Mistry and others attaching the updated site plan was sent from Wilson's SR Architect email address, he was not copied on the email, and was unaware of its existence before receiving the Complaint.
35. Regarding his response to the Association's question discussed in paragraph 27 above, Porter submits that he was relaying information that he had received from Wilson and was not intending to convey that he had any knowledge of what Mr. Wilson had done prior to being made aware of the Complaint.
36. Porter submits that he did not permit Wilson or any other Two Row employee to prepare the updated site plan, and that he was not aware that Wilson had placed the Two Row title block on the plan until he received the Complaint. Porter submits that Wilson's testimony supports his in this regard.
37. Porter further submits that Wilson had access to Two Row's title block for the purpose of carrying out his duties and responsibilities as an employee of Two Row. Porter notes that Wilson testified that he was aware of his obligations not to put Two Row's title block on drawings without Porter's authorization, or to issue drawings on behalf of Two Row.
38. Porter submits that there are no steps that he could have taken to prevent Wilson's misappropriation of Two Row's title block and draws an analogy to an employee wrongfully copying an electronic signature on a letter.
39. In reply, the Association submits that in denying any responsibility for Wilson's acts as his employee, Porter failed to assume control over his practice. The Association notes that Porter admitted that the checks and balances he put in place do not prevent an employee from committing the acts what Wilson admits to having performed in this case. The Association also submits that Wilson copied Eightspace's site plan in his capacity as Porter's employee and did so for the purpose of flagging revisions that would be required once Porter formalized an agreement with Weins. The Association further submits that taking the position that an employee "went rogue" (the Association's characterization) cannot relieve Porter from his obligations under sections 42(34), 42(6) and (7) of the Regulations.

Issue 2: Whether Porter was required to Provide Notice to Eightspace (allegations 4-5)

40. The relevant provisions of the Regulation states:

49. The following are prescribed as standards of practice [emphasis added]:

1. No holder or officer, director, employee, or partner of a holder shall solicit or accept any work in respect of a building project knowing or having reason to believe that another holder has been engaged on the same building project for the same purpose by the same client.

2. Paragraph 1 does not apply to prevent a holder from,

i. advising or reporting on any aspect of the practice of architecture if an independent opinion is being sought and the other holder has been so informed in writing by the client, or

ii. undertaking the work after,

A. the client has given notice in writing to the holder that the engagement or employment of the other holder has been terminated, and

B. the holder has given notice in writing, by registered mail, to the other holder that he, she or it has been engaged or employed for the same purpose by the same client.

42(47) professional misconduct includes ... Soliciting or accepting any work when the member or holder knows or has reason to believe that another member or holder has been engaged or employed for the same purpose by the same client except as permitted by the standards of practice set out in this Regulation.

41. The Association submits that the work of both architects was part of a continuum of work for the project and was therefore for the "same purpose". The Association submits that the role of Eightspace in the Dealership Project, as set out in the Proposal, was to provide services from the schematic design phase all the way to tender and construction administration, and that Porter was retained to carry out the remaining portions of the work for which Eightspace was responsible after Wiens terminated its engagement.

42. The Association submits that Porter's attempt to draw a bright line between the work that Eightspace was engaged to perform and the work that he was engaged to perform should be rejected. The Association relies on the reasons for decision in a Discipline Committee proceeding involving Linas Saplys, and the subsequent decision of the Divisional Court of Ontario in *Saplys v. Ontario Association of Architects*.³ ("Saplys") In those proceedings, the respondent argued that section 49 was not engaged because the complainant's engagement was for conceptual design work only, and therefore was not in respect of a "building project" or "for the same purpose" as Saplys who was retained to complete the design service. The Discipline Committee rejected this submission and found that the work of both architects was part of the same continuum of design work for the project. On appeal, the Divisional Court upheld this decision.
43. On the basis of *Saplys*, the Association submits that Eightspace and Porter undertook "work" in respect of a "building project" for the "same purpose" and for the "same client".
44. The Association also observes that Porter's argument that he did not provide the notice required under section 49(2) because Eightspace's retainer had been terminated is inconsistent with his position that he had no knowledge of the contract between Eightspace and Weins.
45. Porter submits that Two Row had been engaged by Wiens for new work, separate to the site plan approval process that Eightspace had completed, and therefore section 49(1) of the Regulation was not engaged, and notice was not required.
46. Porter submits that Eightspace's retainer ended at the completion of the site plan for the Dealership Project and that Two Row was retained to take the Dealership Project from site plan approval through to occupancy, which Porter characterizes as an "entirely different scope of work."
47. Porter relies on the absence of a written contract between Eightspace and Weins with respect to the Dealership Project as evidence that Eightspace's retainer ended at the completion of the site plan. Porter also relies on the fact that

³ 2019, ONSC 1679 (Div Ct).

Eightspace's Proposal listed a number of services as "additional" including "[d]rawings, documents and site plan application" and that no charge for a "site plan application" was listed on the fee structure page. Porter submits that Eightspace worked on a per diem basis for these services, and that Eightspace had an expectation that it would enter into a formal, written contract with Weins once the project's scope of work had stabilized, which expectation never materialized.

48. Porter submits that a 2013 email from Weins to Eightspace indicates that Weins did not agree with the scope of work as outlined in the Proposal. From this, Porter infers that the entirety of the services provided by Eightspace on the Dealership Project proceeded on a per diem basis in the absence of an agreement regarding the Proposal.
49. Porter further submits that his agreement with Weins was consistent with his understanding of Two Row's scope of work, noting that the agreement between Two Row and Weins allocated 0% to the "pre-design" and "schematic design" phases, which he characterized as an acknowledgement that the site plan approval had been completed by Eightspace.
50. Porter relies on Wilson's testimony that Eightspace's "scope of services had terminated at site plan approval which was approved." Porter also notes that the Association failed to call a witness from Weins to corroborate Eistrat's understanding of the scope of Eightspace's retainer and asks the Discipline Committee to draw the adverse inference that the testimony of a Weins representative would not support Eistrat's understanding in this regard.
51. Porter further submits that Two Row had not agreed to perform any work for Weins until the contract was finalized in November 2019.
52. Porter submits that *Saplys* is distinguishable on its facts, noting that *Saplys* had provided artist's renderings of the project and the prior architect had provided conceptual design work. Porter submits that, in contrast, Eightspace provided site plan approval while Two Row was contracted to provide everything after site plan approval up to occupancy, and therefore the services provided by Eightspace and Porter were not on "the same continuum of design work."

53. Porter also submits that as a matter of statutory interpretation, the words “on the same building project” and “for the same purpose” in section 49.1 of the Regulation must be interpreted to have different meanings. Porter further submits that the Divisional Court does not appear to have addressed this issue.
54. In the alternative, Porter submits that if the work he was engaged to perform was “for the same purpose” as the Eightspace engagement, the oral notice that Eightspace received from Weins on October 2, 2019, satisfied the requirements of section 49.1. Porter suggests that penalizing Porter for a violation of the Regulation in these circumstances would be unjust as it would serve no real purpose and would be “hard and pedantic in the name of righteousness.”
55. In reply, the Association submits although there was no formal written agreement between Eightspace and Weins in respect of the Dealership Project, there was a contract in the form of the Proposal which Weins had accepted. The Association submits that a contract may be in any form of agreement that satisfies the basics for the formation of a contract (parties, property, and price), and observes that section 42(52) of the Regulation permits architects to provide architectural services by way of a written or oral contract.
56. The Association further notes that at the October 2, 2019, meeting with Weins, Eistrat was told that Weins had decided to go in a different direction and had decided to engage a new architect. He was not told that the agreement was being terminated because Eightspace’s work on the project had concluded.
57. The Association further takes issue with the accuracy of certain submissions made by Porter in relation to the Proposal, namely:
 - (a) No charge of a site plan application was listed on Eightspace’s fee structure. The Association submits that the fee structure set out in the Proposal demonstrates that these charges are included in the quoted fees. The Association further submits that site plan approval and working drawings and specifications are specifically listed in the first page of the Proposal and at page 4 of the Proposal in the fee structure;

- (b) Weins did not agree with the scope of work set out in the Proposal. The Association submits that neither the 2013 email nor the testimony of Eistrat supports this interpretation;
 - (c) Eightspace proceeded on a per diem basis in respect of the entirety of the Dealership Project. The Association submits that the testimony of Eistrat does not support this interpretation.
58. The Association disagrees with Porter's interpretation of *Saplys*, and notes that the Divisional Court considered whether the work performed by the complainant and respondent in that case was "for the same purpose" and concluded that it was. The Association notes that the Divisional Court held that this was a reasonable finding of mixed fact and law given the record before the Committee.

THE COMMITTEE'S FINDINGS

59. Having reviewed the evidence and considered the submissions of the parties, the Committee finds that Porter is guilty of professional misconduct as alleged in allegations 2, 3, 4 and 5 by:
- (a) permitting Wilson to copy the design or work of Eightspace without its consent in contravention of sections 42(6), (7) and (34) of the Regulation; and
 - (b) accepting work in respect of the Dealership Project without providing the notice required by section 49.1 of the Regulation, in breach of sections 42(9) and 49 of the Regulation; and
 - (c) accepting work when he knew or had reason to believe that another member or holder had been engaged or employed for the same purpose by the same client contrary to section 42(47) of the Regulation.

60. The Committee finds that Porter did not copy the design or work of Eightspace and therefore is not guilty of violating section 42(34) of the Regulation as alleged in allegation 1.

Issue 1: Porter permitted or acquiesced to the copying of Eightspace's work

61. The allegations of professional misconduct in relation to the first issue are:
- (a) During 2019 Porter copied the design or work of another person without the consent or agreement of the other person with respect to the design and construction of an office/automotive dealership (including a parking garage), located at 7200 Victoria Park Avenue, Markham, Ontario (the "Dealership Project"), contrary to section 42(34) of the Regulation.
 - (b) During 2019 Porter authorized, permitted, counselled, assisted, aided, abetted, or acquiesced in SR Architecture Inc.'s contravention of section 42(34) of the Regulation in respect of the Dealership Project, contrary to section 42(6) of the Regulation.
 - (c) During 2019 Porter authorized, permitted, counselled, assisted, aided, abetted, or acquiesced in SR Architecture Inc.'s contravention of section 42(34) of the Regulation in respect of the Dealership Project, which constituted professional misconduct, contrary to section 42(7) of the Regulation.
62. There is no dispute that Wilson copied the design and work of Eightspace. He has admitted to doing so and has been sanctioned in another proceeding for his actions in this regard.
63. There is also no dispute that there is no evidence that Porter himself copied the design and work of Eightspace.
64. The Association submits that the Committee should find that Two Row copied the design and work of Eightspace by virtue of Wilson's part time employment with the company, and by virtue of the fact that the ultimate beneficiary of Wilson's wrongdoing was Two Row, not Wilson.

65. The Committee disagrees with the Association's position. The evidence supports the finding that Wilson copied the design and work of Eightspace without Porter's knowledge or express permission. While the Association argues that it "defies logic" that Porter was unaware of Wilson's actions, or that Porter did not see the updated site plan before receiving a copy of the Complaint, the evidence does not support these arguments. Porter's testimony regarding when he became aware of Wilson's wrongdoing was unshaken on cross-examination and there is no evidence to the contrary.
66. For these reasons the Committee finds that Porter is not guilty of violating section 42(34) of the Regulation.
67. However, the evidence also establishes that Porter failed to exercise sufficient oversight over Wilson, who was in 2019 Head of Production at Two Row, albeit on a part time basis.
68. Sections 42(6) and (7) of the Regulation prohibit authorizing, permitting, counselling, assisting, aiding, abetting or acquiescing in:
- (a) any contravention of the Act and/or Regulation in the case of subsection (6), and
 - (b) any act that constitutes professional misconduct in the case of subsection (7).
69. The verbs "authorized, permitted, counselled, assisted, aided, abetted, or acquiesced" are not defined in the Act or the Regulations. The Committee therefore interprets them in accordance with their ordinary meanings.
70. According to Oxford Languages,⁴ the definition of "permit" is to "give authorization or consent to (someone) to do something." The definition of "acquiesce" is "to accept something reluctantly without protest."

⁴ <https://languages.oup.com/google-dictionary-en/>

71. Porter submits that “no legislative or regulatory provision, nor Association Standard of Practice, particularizes any specific steps that [he] was required to take in the circumstances to prevent [Wilson] from taking the Two Row title block and putting in onto the [updated site plan] without [his] knowledge, permission, or authorization.” He further submits that “practically, there are no steps that [he] could have taken in the circumstances.”
72. The Committee disagrees with these submissions. As principal of Two Row, Porter is responsible for the use of firm standards including the Two Row title block, and for all work product that goes out under his name. The suggestion that he is not is troubling.
73. As principal of Two Row, Porter could have taken steps to protect himself and his clients against this kind of employee wrongdoing. Examples of such steps include:
 - (a) Reviewing all Two Row work product before it is released to clients; and
 - (b) Developing clear standards to keep Two Row work separate from work conducted by licensed technologists and other part time employees under their own name and/or company.
74. The Committee acknowledges Porter’s testimony that he would: regularly review Wilson’s work; speak with Wilson daily; conduct virtual working sessions; review Wilson’s drawings and mark them up as necessary; and implement procedures to maintain control over Wilson’s work. However, these measures were clearly insufficient.
75. By failing to maintain reasonable office standards to govern the conduct of his employees, Porter enabled Wilson’s wrongdoing by “permitting” or “acquiescing” to such conduct.
76. For these reasons, the Committee finds that Porter violated sections 42(6) and (7) of the Regulation.

77. Separately, the Committee is troubled by Porter's lack of contrition. There is no evidence that Porter took any steps to reach out to Eistrat after receiving the Complaint to explain and apologize for Wilson's conduct, or to make amends. Instead, Porter elected to remain silent. When asked by the Association to address the Complaint, Porter chose to distance himself from Wilson's conduct, but not from Wilson.

Issue 2: Porter failed to provide the required notice to Eightspace

78. The allegations of professional misconduct in relation to the second issue are:
- (a) During 2019 Porter failed to maintain the standards of practice in the profession by soliciting or accepting work in respect of the Dealership Project knowingly or having reason to believe that another holder had been engaged on the same building project for the same purpose by the same client, and in circumstances where:
 - (i) the client had not given notice in writing to him that the engagement of the other holder had been terminated; and
 - (ii) he failed to give the other holder notice, in writing, by registered mail, that he had been engaged for the same purpose by the client;all contrary to section 42(9) and section 49 of the Regulation.
 - (b) During 2019 he solicited or accepted work when he knew or had reason to believe that another member or holder had been engaged or employed for the same purpose by the same client contrary to section 42(47) of the Regulation

79. As noted above, section 49(1) of the Regulation provides that:

No holder or officer, director, employee or partner of a holder shall solicit or accept any work in respect of a building project knowing or having reason to believe that another holder has been engaged on the same building project for the same purpose by the same client.

80. Section 42(47) of the Regulation similarly provides that professional misconduct includes "[s]oliciting or accepting any work when the member or holder knows or has reason to believe that another member or holder has been engaged or

employed for the same purpose by the same client except as permitted by the standards of practice set out in this Regulation.”

81. The issue before the Committee is whether the work that Porter and Eightspace undertook was on the same building project, and for the same purpose. There is no debate that the client (Wiens) was the same.
82. The Act defines a building as “a structure consisting of a wall, roof and floor, or any one or more of them.”
83. The terms “work”, “project” and “purpose” are not defined in the Act or Regulation. The Committee therefore interprets these words in accordance with their ordinary meanings.
84. Oxford Languages defines “work”, “project” and “purpose” as follows:
 - (a) Work is the “activity involving mental or physical effort done in order to achieve a purpose or result”;⁵
 - (b) Project is “an individual or collaborative enterprise that is carefully planned to achieve a particular aim”;
 - (c) Purpose is “the reason for which something is done or created or for which something exists.”
85. While Porter submits that “it is not at all ‘undisputed’ that Eightspace and [Porter] both provided ‘work’ in respect of a ‘building project’” he does not develop this argument and instead focusses his submissions on the issue of whether he and Eightspace were engaged “for the same purpose.”
86. The Committee finds that Eightspace’s Proposal constituted a contract with Weins for certain services in relation to the Dealership Project, including among other things, schematic design, design development, working drawings and specifications, tender and construction administration. Contrary to Porter’s submissions, while these services included the design and approval of a site plan,

⁵ The Committee notes that in *Saplys v. Ontario Association of Architects*, 2019 ONSC 1679 at para. 43 the Divisional Court held that the Committee’s interpretation of “work” as being broader than “architectural services” was reasonable based on the plain meaning of the word “work.”

they did not end there.

87. The Committee disagrees with Porter's attempt to draw a bright line between Eightspace's work and his and finds that the work of both was part of a continuum of architectural services in relation to the Dealership Project, and that the work was undertaken for the same purpose namely, the completion of the project.
88. As in *Saplys*, the Committee finds that accepting Porter's submissions would result in an unduly narrow interpretation of the notice requirements in sections 49(1) and (2) of the Regulation, contrary to the ordinary meaning of the words in these provisions and their purpose. Porter's approach would do a disservice to the spirit of these sections of the Regulation, which in the Committee's experience are intended to encourage transparency and collaboration among peers to ensure a smooth and professional transition from one architect to another.
89. Porter submits, in the alternative, that since Eightspace received oral notice from Wiens at the October 2, 2019 meeting that its engagement had been terminated written notice pursuant to section 49 of the Regulation was not required.
90. The Committee disagrees with this submission. As drafted, section 49 of the Regulation expressly requires that notice be provided in writing both by the client and the holder, and further requires that notice by the holder be delivered by registered mail. While Porter may view these requirements as "pedantic" and "unjust" they remain requirements and cannot be ignored either by Porter or the Committee.
91. In any event, even if the Committee were to accept Porter's submission that Wiens' oral notice to Eightspace could satisfy the client notice requirements in section 49(2)(ii)(A) of the Regulation – which it does not – such notice would not satisfy the holder notice requirements in section 49(2)(ii)(B). There is no evidence that Porter provided any notice to Eightspace as required by that section, written or verbal.

92. For these reasons, the Committee finds that Porter violated section 42(9) and 49 of the Regulations.

DATED AT TORONTO THIS 15th DAY OF JUNE 2023.



Vincent Alcaide, Member



James Hargreaves, Member

Appendix A – Revocation of the Appointment of Gaganjot Singh

1. On Friday, March 3, 2023, the Registrar of the Association was advised by the Ministry of the Attorney General that the Order in Council appointing Gaganjot Singh as part-time member of the Council of the Association had been revoked by further Order in Council approved and ordered on March 2, 2023.
2. On Monday, March 6, 2023, the remaining members of panel of the Discipline Committee, Mr. Alcaide, and Mr. Hargreaves, advised the parties of this development. Mr. Alcaide and Mr. Hargreaves directed the parties to confer and to propose a schedule for written and oral submissions on whether the revocation of Mr. Singh's appointment to the Council of the Association affected the panel's ability to continue with the hearing. They also directed that the March 10, 2023, deadline for the delivery of the Association's Reply Submissions was suspended pending receipt of submissions from the parties and the panel's determination of this issue.
3. The parties were further advised that Mr. Singh had been:
 - (a) Appointed to the Council of the College of Denturists for a 3 year term on January 31, 2000, effective the date the order was made;
 - (b) Appointed to the Council of the Association for a three year term on April 9, 2000, effective the date the order was made; and
 - (c) Reappointed to the Council of the College of Denturists for a further three year term, effective January 31, 2023.
4. Mr. Porter's counsel inquired as to whether Mr. Singh's appointment had been revoked for cause. Counsel to the remaining members of panel of the Discipline Committee confirmed, on the advice of the Association Registrar, that it had not.
5. The parties agreed to a timetable for written and oral submissions which provided for written submissions on April 7, 2023, and oral submissions on certain dates, subject to the panel's availability.
6. The remaining members of panel of the Discipline Committee determined, on the basis of the parties' written submissions, that the Discipline Committee would

continue with the hearing as a two-person panel consisting of Mr. Alcaide and Mr. Hargreaves. They directed that oral submissions on this issue were no longer required and directed the Association to file its Reply Submissions by April 14, 2023. That deadline was extended to April 28, 2023, at the request of the Association's counsel with the consent of Mr. Porter.

7. The remaining members of panel of the Discipline Committee advised that they would provide brief reasons for their decision concurrently with their reasons for decision in the main hearing. These are those reasons.
8. In their written submissions, the parties acknowledged that the hearing could continue with the two remaining members of the panel of the Discipline Committee, on the basis of:
 - (a) The interplay between section 33(2) of the *Architects Act*⁶ which provides that quorum which provides that three members of the Discipline Committee constitute a quorum and section 33(3) of the Act which provides that “[w]here the Discipline Committee commences a hearing, and a member of the Discipline Committee becomes unable to act, the remaining members may complete the hearing despite the absence of the member who is unable to act”;
 - (b) Section 4.4(1) of the *Statutory Powers and Procedure Act*,⁷ which applies by virtue of section 3(1) of the SPPA, and similarly provides that “[i]f a member of a tribunal who has participated in a hearing becomes unable, for any reason, to complete the hearing or to participate in the decision, the remaining member or members may complete the hearing and give a decision.”
 - (c) *Piller v Assn. of Land Surveyors (Ontario)*⁸ in which the Divisional Court of Ontario considered sections of the *Surveyors Act* which were identical to the provisions of sections 33(2) and (3) of the Act and determined that the legislature had clearly turned its mind to the procedure to be followed when

⁶ RSO 1990, c. A.26.

⁷ RSO 1990, c. S.22.

⁸ 106 ACWS (3d) 160, 148 OAC 191 (On Div Ct) (“Piller”), aff’d 115 ACWS (3d) 743, 160 OAC 333 (ON CA).

a panel member becomes unable to act and provided that the remaining members may complete the hearing and render a decision.

9. The parties also noted in their submissions that section 34(11) of the Act provides that “[w]here a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated, other than for cause, before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his or her term of office had not expired or been terminated.”
10. Both parties acknowledged Mr. Singh could continue as a member of the panel of the Discipline Committee as he had not been removed for cause, and the evidence in the hearing had already been received. The Association submitted that the preferred approach was for Mr. Alcaide and Mr. Hargreaves to continue as a two member panel “rather than requiring Mr. Singh to continue as a panel member in the circumstances.” Mr. Porter’s position was that Mr. Singh shall be deemed to remain a member of the Panel for the purpose of completing the Hearing and rendering a decision. However, Mr. Porter also acknowledged that the two remaining members of the Panel could complete the Hearing and render a decision without Mr. Singh’s participation.
11. Mr. Alcaide and Mr. Hargreaves agree with the parties that the Discipline Committee may continue with the hearing as a two-person panel, substantially for the reasons set out in paragraph 8 above. They also agree with counsel for the Association that it is preferable to continue as a two member panel rather than requiring Mr. Singh to remain involved in the proceeding.