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 Linas Saplys, Architect

Committee Members:	Heard: November 23 and 24 2016, December 14 and 15, 2016, January 25 and 26, 2017 and June 2, 2017.	
Paul Surtel, OAA, Chair	Counsel:	
Richard Dabrus, OAA, Member	Barbara Miller	For the OAA
	Marshall Swadron	For Linas Saplys
Wayne Medford, Lieutenant Governor Appointee	John Terry	Independent Legal Counsel

REASONS FOR DECISION OF THE DISCIPLINE COMMITTEE

Linas Saplys ("Saplys" or the "Member"), Architect, is alleged in a Notice of Hearing dated October 27, 2016, to have committed the following acts of professional misconduct:

1. During the years 2011 and 2012 you copied the design or work of another person without the consent or agreement of the other person with respect to:
   (a) the construction of a hotel, Holiday Inn & Express, at 8 International Drive, Pembroke, Ontario;

(b) the renovation of a hotel, Holiday Inn & Express, at 320 Bay Street, Sault Ste. Marie, Ontario; and

(c) the construction of a residential condominium project known as Capital Pointe at 2511 Victoria Avenue, Regina, Saskatchewan.

all contrary to Subsection 34 of Section 42 of Regulation 27 under the *Architects Act* (the "Regulation").

2 During the years 2011, 2012 and 2013 you failed to maintain the standards of practice in the profession by failing to provide written notice to a holder of a certificate of practice that you had been engaged or employed for the same purpose by the same client, with respect to:

(a) the construction of a hotel, Heuther Hotel, at 59 King Street N., Waterloo, Ontario;

(b) the renovation of a hotel, Holiday Inn & Express, at 320 Bay Street, Sault Ste. Marie, Ontario;

(c) the construction of the hotel portion of a project known as Crates Landing, at Cameron Crescent, Keswick, Ontario;

(d) the renovation/addition of a commercial plaza at 1025 — 1032 Wellington Road, London, Ontario; and

(e) the construction of a residential condominium project known as Capital Pointe at 2511 Victoria Avenue, Regina, Saskatchewan,

all contrary to Subsections (1) and (2) of Section 49 of the Regulation.

3. During the years 2012 and 2013 you failed to affix your seal and signature to designs prepared under your personal supervision and direction with respect to the construction of a hotel, Hampton Inn & Suites at 12700 Hwy 50, Bolton, Ontario, contrary to Subsection 21 of Section 42 of the Regulation.

4. During the years 2012 and 2013 you failed to ensure that your name and designation were on designs you created with respect to the construction of a hotel, Hampton Inn & Suites at 12700 Hwy 50, Bolton, Ontario, contrary to Subsection 20 of Section 42 of the Regulation.

5. During the years 2012 and 2013 you provided architectural services with respect to the construction of a hotel, Hampton Inn & Suites at 12700 Hwy 50, Bolton, Ontario,

through "API International Marketing and Architecture & Planning Initiatives", which does not hold a certificate of practice, contrary to Subsection 1 of Section 42 of the Regulation and contrary to Section 11 of the Act.

6. During 2012 you attended at a small claims court hearing as an owner's representative for the Heuther Hotel project at 59 King Street N. Waterloo, Ontario, for which your former employer provided architectural services, despite the oral caution with which you were provided by the Complaints Committee of the Ontario Association of Architects on April 12, 2011 that you were to divest yourself of any review of financial matters when in a conflict of interest, and thereby engaged in conduct which would reasonably be regarded by members of the Association as disgraceful, dishonourable or unprofessional, contrary to Subsection 54 of Section 42 of the Regulation.

7. During 2012 you attended at a small claims court hearing as an owner's representative for Heuther Hotel at 59 King Street N. Waterloo, Ontario project, which hearing related to the collection of fees by your former employer for architectural services to the owner of this project while employed by your former employer. Having this direct or indirect interest in a contract with the owner of the project to act as its representative, in opposition to your former employer with respect to its attempt to collect fees for this same project, resulted in your having a conflict of interest, contrary to subsection 16 of Section 42 and subsections (1)(d) and (1)(e) of Section 43 of the Regulation.

8. While employed with a former employer you approved invoices related to the Capital Pointe project at 2511 Victoria Avenue, Regina, Saskatchewan; but thereafter, you left the employ of that former employer, became the owner's representative for the Capital Pointe project and in that capacity, rejected the said invoices of your former employer. This was done despite the oral caution with which you were provided by the Complaints Committee of the Ontario Association of Architects on April 12, 2011 that you were to divest yourself of any review of financial matters when in a conflict of interest, and thereby engaged in conduct which would reasonably be regarded by members of the Association as disgraceful, dishonourable or unprofessional, contrary to subsection 54 of Section 42 of the Regulation.

9. While employed with a former employer you approved invoices related to the Capital Pointe project at 2511 Victoria Avenue, Regina, Saskatchewan; but thereafter, you left the employ of that former employer, became the owner's representative for the Capital Pointe project and in that capacity, rejected the said invoices of your former employer. Having this direct or indirect interest in a contract with the owner of the project to act as its representative, in opposition to your former employer with respect to its attempt to collect fees for this same project, resulted in your having a conflict of interest, contrary to subsection 16 of Section 42 and subsections (1)(d) and (1)(e) of Section 43 of the Regulation.

The Discipline Committee heard evidence respecting this matter at hearings held on November 23 and 24, December 14 and 15, 2016, and January 25 and 26, 2017. This included testimony from two witnesses called on behalf of the OAA (Adrian Mauro and Linnea Chamberlain of Chamberlain Architects Services Limited ("Chamberlain")) and three witnesses called on behalf of Saplys (Saplys, David Adlys of the Heuther Hotel Group and James Buckler of the Brightstar Group). The Committee received written submissions from the parties, which were completed on March 20, 2017, and held a hearing to hear oral submissions on June 2, 2017.

In the paragraphs below, we set out our findings on liability with respect to each of the above allegations, as well as the reasons for our decision not to admit the evidence of Roberto Chiotti, who Saplys had proposed to call as an expert witness.

As described below, we find Saplys guilty in respect of Allegations 2(a), 2(b), 2(e) and 5, but not guilty in respect of the other Allegations.

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

Allegation 1

Allegation 1 deals with the issue of copying referred to in s. 42(34) of the Regulation, which defines as professional misconduct "[c]opying the design or work of another person without the consent or agreement of the other person". This Allegation relates to three incidents – described as Allegations 1(a), 1(b) and 1(c) -- each with a unique set of circumstances.

Allegation 1(a)

Allegation 1(a) deals with a hotel project in Pembroke, Ontario -- the Holiday Inn & Express (the "Pembroke Hotel"). It is alleged that drawings prepared by Saplys in respect of the Pembroke Hotel were the same as drawings prepared by Chamberlain, for whom Saplys had previously worked under a contractual relationship, in respect of another hotel project in Nepean (the "Nepean Hotel").

The evidence adduced during the hearing was that the Pembroke Hotel had to be designed to brand standards which prescribed, among other things, the treatment of elevations, plan, materials, and suite layout. Variances between sites in different locations might include the site plan and actual size of the installation. Details for construction were expected to be largely the same, unless for some specific reason they needed to be changed. Brand standards were subject to constant development and refinement in response to marketing, economics, construction developments, and related matters.

The evidence in support of the allegation included the similarity of details and sheet organization of an in-progress set of drawings for the Pembroke Hotel when compared to the drawings prepared for the Nepean Hotel. The similarity between the two sets of drawings extended to a copied Ontario Building Code matrix and project name on the title block. However, it should be noted that the size, number of rooms, height, and site plan differed between the two projects.
There was evidence that the same draughtsman had worked for Chamberlain on the Nepean Hotel project and subsequently with Saplys on the Pembroke Hotel project, that the details were largely expected to be the same, that the draughtsman could be expected to employ his or her own particular style, and that the draughtsmen's style would have developed from where he or she had first learned his or her craft and would subsequently evolve. There was also evidence that Saplys was not aware, until the evidence was presented before the Committee, of the similarity of the drawings for the Nepean Hotel and the drawings for the Pembroke Hotel, because they had been prepared by the draughtsman.

It should be noted that the title block and matrix, circulated by Saplys' firm, were corrected prior to applying for a building permit.

While there is no definition of the word "copying"" in s. 42(34) of the Regulation or in the *Architects Act*, the Committee is of the view that the primary concern underlying the prohibition

against copying relates to the overall design concept and protection of the larger creative endeavour, as opposed to technical construction details that may be widely used within the architectural profession or prescribed by clients such as those in the hotel industry. In this respect, we note that the corporate hotel industry has basic architectural requirements associated with branding, that hotel brands have prototype designs that are intentionally duplicated, and that details from one hotel project to the next are not only expected to be similar but may have a requirement to be identical.

The content and organization of the technical contract documentation relating to Allegation No. 1(a) is similar between the projects in evidence, as a result of details which were expected to be the same by the hotel brand, and because of the drawing style and organizational habits of a draughtsman who had worked for the same brand for different architectural firms.

The fact that in this case the Ontario Building Code matrix and project name on the title block were copied from the Nepean Hotel drawings to the Pembroke Hotel drawings, before being corrected, shows an egregious lack of review of documentation on Saplys' part that is unprofessional. However, that lack of supervision is not the subject matter of this allegation.

As for the duplication of details and sheet organization as it relates to copying, the Committee would offer the following:

- Draughtsman and architects working on details are strongly encouraged to emulate both the construct and graphics of construction details from more experienced technicians and professionals. Details and graphics most often are learned, and are not a result of invention. This educational/mentorship development aspect of the profession and the building industry is fundamental to its evolution. Details from one hotel project to the next are not only expected to be similar but may have a requirement to be identical.

- Draughtsman often develop a style, which can include the layout of a page. Draughtsman will repeat graphics and layout of details from project to project. A draughtsman will prepare and organize details as they have learned, whether by memory or by referencing their own work.

- Draughtsman will bring their style from one office to another, and predictably it is their skill at details and organization that results in being hired.

- It is normal for draughtsman to retain copies and examples of their work and it is reasonable for draughtsman to refer to their own work.

In light of those considerations, the evidence in this case of the respective roles of the draughtsman and Saplys in the preparation of the construction details, the evidence of the role that hotel brands played in this case with respect to the preparation of those details, and the Committee's view of the primary concern underlying the prohibition in s. 42(34) of the Regulation, as described above, the Committee concludes that Saplys is not guilty of violating s. 42(34) of the Regulation in respect of the facts relating to Allegation 1(a).

Allegation 1(b)

Allegation 1(b) deals with the renovation of a hotel from a Days Inn to a Holiday Inn Express in Sault Ste. Marie. The evidence was that Saplys worked on this project when Chamberlain was hired to do conceptual design work, and then took over the project after his relationship with Chamberlain was terminated. It was alleged that the drawings Saplys prepared after he had taken over the project contained some elements that were similar, and in some cases identical, to the designs that had been prepared for this project by Chamberlain, contrary to s. 42(34) of the Regulation.

The evidence was that Chamberlain was paid for conceptual design services, and subsequently Saplys was retained to complete design services for the same project. The changing of firms is the prerogative of the client, as is the use of designs paid for by the client for the same project. To be specific, there is nothing proprietary about designs such as the location of a reception desk or the closing in of balconies, both of which were referred to in the evidence, that could be viewed as being unique as a design.

At a certain point in time the client in this case chose to end the relationship with Chamberlain and a financial settlement was reached for the work performed. Chamberlain had completed a particular phase of design services, and was excused at the completion of that particular stage of the design process by the client. It is reasonable that the client would be able to continue

with the design concepts, through subsequent stages of design and construction utilizing the consultants they chose.

For those reasons, the Committee concludes that Saplys is not guilty of violating s. 42(34) in respect of the facts relating to Allegation 1(b).

Allegation 1(c)

Allegation 1(c) relates to the design of a residential condominium project known as Capital Pointe in Regina, Saskatchewan. The facts relating to Allegation 1(c) are similar to Allegation 1(b), in that Saplys initially worked on the project when Chamberlain was retained to do design work, and was subsequently retained to continue that design work when he had left Chamberlain.

Chamberlain was paid for design services, and excused at the completion of a particular stage of the design process. It is reasonable that the client would be able to continue with a different architect to complete the design, including using the design concepts already developed, for subsequent stages of design and construction.

In addition, although there was evidence of Chamberlain's design being featured on the developer's website, there was no evidence of work advancing beyond what Chamberlain had completed or of any further design work being carried out on the project by Saplys or any other architect.

For those reasons, the Committee concludes that Saplys is not guilty of violating s. 42(34) of the Regulation in respect of the facts relating to Allegation 1(c).

Allegation 2

This Allegation is that during the years 2011, 2012 and 2013 Saplys failed to maintain the standards of practice in the profession by failing to provide written notice to a holder of a certificate of practice that he had been engaged or employed for the same purpose by the same client for the following projects:

(a) the construction of a hotel, Heuther Hotel, at 59 King Street N., Waterloo, Ontario;

(b) the renovation of a hotel, Holiday Inn & Express, at 320 Bay Street, Sault Ste. Marie, Ontario;

(c) the construction of the hotel portion of a project known as Crates Landing, at Cameron Crescent, Keswick, Ontario;

(d) the renovation/addition of a commercial plaza at 1025 — 1032 Wellington Road, London, Ontario; and

(e) the construction of residential condominium project known as Capital Pointe at 2511 Victoria Avenue, Regina, Saskatchewan,

On the third day of the hearing, OAA counsel advised that it was withdrawing Allegations 2(c) and 2(d).

Section 49(1) and (2) of the Regulation prohibits the holder of a certificate of practice from soliciting or accepting 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, except where the holder has undertaken 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 (s. 49(2)(ii)(A)), 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 (s. 49(2)(ii)(B)).

Allegation 2(a)

Allegation 2(a) relates to work done by Chamberlain (led by Saplys) for the Heuther Hotel Group ("Heuther"), owned by the Adlys family, in respect of a hotel project in Waterloo, and Saplys' involvement with the same project after he was no longer working with Chamberlain. Saplys' evidence was that he was tasked by Heuther with coordinating a planning exercise with the City of Waterloo, and did not provide architectural services in respect of the project. He stated on cross-examination that he had done no drawings or renderings with respect to this project, but that he had introduced the Adlys family to an artist who had done a rendering. His evidence respecting the rendering was contradicted by the testimony of David Adlys ("Adlys"), who stated that after Heuther terminated Chamberlain's services, Saplys continued to act as a consultant to Heuther on an as-needed basis, including producing artist's renderings of the project to assist Heuther's planning expert in planning discussions with the City of Waterloo.

Having considered the evidence of Saplys and Adlys on this issue, and bearing in mind in particular that Adlys – unlike Saplys – has no interest in the outcome of this proceeding, the Committee prefers the evidence of Adlys that Saplys produced artist's renderings of the project to assist in the planning exercise. The Committee notes in addition that the work that Saplys acknowledged he did in relation to the coordination of planning services is work that is also typically carried out by architects. Given the nature of Saplys' work on the project, his status as a licenced architect, and the evidence as to his relationship with and interactions with Heuther, the Committee is satisfied that the work Saplys did in respect of the project was for the same purpose as the work that had been done by Chamberlain for Heuther.

The Committee therefore finds that Saplys was required by ss. 49(1) and (2) of the Regulation to give notice in writing to Chamberlain. Since he did not give notice, the Committee concludes that Saplys is guilty of violating ss. 49(1) and (2) of the Regulation in respect of the facts relating to Allegation 2(a).

Allegation 2(b)

Allegation 2(b) relates the same subject matter as Allegation 1(b), the renovation of a hotel from a Days Inn to a Holiday Inn Express in Sault Ste. Marie. As stated above in our discussion of Allegation 1(b), the evidence was that Chamberlain carried out and was paid for conceptual design services, and subsequently Saplys was retained to complete design services for the same project.

Saplys testified that he did not give notice to Chamberlain because the conceptual design work done by Chamberlain had been completed and Saplys was working on a fresh project. In the written submissions filed on his behalf, Saplys takes the position that his design work on this project was for a different project or purpose than the work done by Chamberlain, which was to submit a particular marketing proposal to a hotel brand.

The Committee disagrees with the position taken by Saplys. While the design work carried out by Chamberlain may have been more conceptual that the design work continued by Saplys, the work done by each was part of a continuum of design work to be carried out in order to renovate the hotel to Holiday in express. To accede to Saplys' position would be give the notice requirements in ss. 49(1) and (2) an unduly narrow interpretation, one that is not consistent with the ordinary meaning of the words of that provision and their purpose.

Accordingly, the Committee concludes that Saplys is guilty of violating ss. 49(1) and (2) of the Regulation in respect of the facts relating to Allegation 2(b).

Allegation 2(e)

Allegation 2(e) relates to the same subject matter as Allegation 1(c), the design of a residential condominium project known as Capital Pointe in Regina, Saskatchewan. As explained above, in that case Saplys initially worked on the project when Chamberlain was retained to do design work, and was subsequently retained to continue that design work when he had left Chamberlain.

Saplys acknowledges that he did not give notice pursuant to ss. 49(1) and (2) of the Regulation when he began work on the Capital Pointe project after leaving Chamberlain. However, in his written submissions he takes the position that the requirements of the Regulation do not apply to these events because they took place in Saskatchewan.

Having considered submissions from counsel respecting the applicable law, the Committee concludes that the Regulation does apply to these events. As the Supreme Court of Canada stated in *Global Securities Corp. v. B.C. Securities Commission*, 2000 SCC 21 at paras 42 and 43:

> Two different courts of appeal have also acknowledged that provincial regulatory bodies may have jurisdiction to investigate violations of foreign law. In *Re Legault and Law Society of Upper Canada* (1975), 58 D.L.R. (3d) 641, the Ontario Court of Appeal upheld the Law Society's authority to entertain a complaint about the conduct of an Ontario lawyer in another jurisdiction. As the court noted at p. 643, "the jurisdiction of the Law Society over its member is a personal one, which extends to the member's conduct without territorial limitation". In *Re Underwood McLellan & Associates Ltd.* (1979), 103 D.L.R. (3d) 268 (Sask. C.A.), the court similarly upheld the power of the Association of Professional Engineers to examine conduct outside the province in making its licensing decisions.
>
> Both these cases recognize that provincial regulatory bodies governing professions with a strong interjurisdictional aspects must be able to take into account events occurring abroad.

Consistent with what the courts have said, as described above, we are of the view that the set of professional obligations described in the *Architects Act* and the Regulation is a code of ethics particular to OAA members that applies to them so long as they remain members, regardless of

where they carry out their work. It is appropriate to apply it in this case because, although Saplys was also licenced to practice in Saskatchewan, he maintained his certificate of practice in Ontario and therefore was under the OAA's regulatory authority when the events in question took place. This is not a circumstance in which the OAA is seeking to apply the Regulation to practitioners outside Ontario who are not members of the OAA.

For these reasons, the Committee concludes that Saplys is guilty of violating ss. 49(1) and (2) of the Regulation in respect of the facts relating to Allegation 2(e).

Allegation 3

This allegation is that during the years 2012 and 2013 Saplys failed to affix his seal and signature to designs prepared under his personal supervision and direction with respect to the construction of a hotel, Hampton Inn & Suites at 12700 Hwy 50, Bolton, Ontario, contrary to Subsection 21 of Section 42 of the Regulation.

Entered into evidence were two letters of agreement for services.

The first letter of agreement dated April 14, 2011 is between Architecture & Planning Initiatives and AOne Construction, and is signed by Linus Saplys, B. Arch., OAA, MRAIC on behalf of API Development Consultants. There is a hand-written notation "OLD – COMPLETED JUNE 2012" in the top right corner of the front page.

The second letter of agreement dated July 16, 2012 is between Architecture & Planning Initiatives / AWS Architects and AOne Construction, and is signed by Linus Saplys, B. Arch., OAA, MAA, MRAIC on behalf of Architecture & Planning Initiatives / AWS Architects.

The following sets of drawings related to this project were also submitted into evidence with testimony confirming that these drawings were prepared under Saplys' personal supervision and direction:

1) The first set of drawings is labelled as Revision 1 with an issue date of April 21, 2011 and includes the Site Plan – Option 'A', Ground Floor Plan, and Typical Floor Plan. These plans would have been completed as part of the April 14, 2011 letter of agreement.

2) The second set of drawings is labelled as Revision 3 with an issue date of June 2, 2011 and includes a Conceptual Rendering, Site Plan, and Elevations. These plans would have been completed as part of the April 14, 2011 letter of agreement.

3) The third set of drawings is labelled as Revision 6 with the rendering and elevations having an issue date of January 18, 2012 and the remaining sheets dated January 12, 2012. It is an original set that includes a Building Rendering, Site Plan, floor plans with furnishings, and elevations, all of which have been altered by the application of white stick-on labels to cover the API logo of Saplys' company in the lower right-hand corner of the drawings. Testimony indicated that these drawings were distributed to the project Owner for submission to Hampton Inn & Suites for brand approval and for the purposes of obtaining Construction Management proposals. These plans would have been completed as part of the April 14, 2011 letter of agreement.

4) The fourth set of drawings dated January 18, 2012 appears to be the same set of drawings as the third but with the API logo visible. Interestingly the drawings are listed in the List of Documents as "drawings by AWS" and have an added title page reading "Appendix D Bolton API and AWS Drawings" even though no reference to AWS appears anywhere on the drawings. These plans would have been completed as part of the April 14, 2011 letter of agreement.

5) The fifth set of drawings dated October 17, 2012 are issued for "Building Permit" and do not include the cover sheet but include all the architectural drawings listed on the title page from the fourth set of drawings, and have the AWS Architects logo in the title blocks. There is no mention of API. These plans would have been completed as part of the July 16, 2012 letter of agreement.

6) The sixth set of drawings dated April 9, 2013 are "Issued for Construction" and contain the "Cover Sheet" that lists API as the "Development Consultants" and AWS Architects as the "Architect", and also includes all 48 of the architectural drawings listed on the cover sheet with the AWS Architects logo in the title blocks. These plans would have been completed as part of the July 16, 2012 letter of agreement.

Section 42(21) of the Regulation requires a member to "affix his or her seal and signature through the imprint of his or her seal to every design prepared under his or her personal supervision and direction and issued or exhibited to a person who is not a holder and is either submitted as part of an application for a building permit or is issued for the construction, enlargement or alteration of a building, except in the case of an open competition in which anonymity is a requirement".

OAA Regulatory Notice R.1 Version 3.0 dated November 14, 2013 regarding "Architect's Professional Seal – Application" advises that the documents that **must** be sealed are "[t]hose documents accompanying application for building permit or to be used to govern construction, enlargement, or alteration of a building as stated in the Regulation. In addition to the Building Permit Application Drawings, those documents which govern construction, enlargement or alteration of a building include sketches and drawings accompanying applications for site plan control, committee of adjustment, other authorities having jurisdiction, site instructions, change orders or change directives".

The documents in evidence that do not include the Member's seal and signature that are the basis of Allegation 3 were not issued for the purposes set out in s. 42(21) of the Regulation, or submitted for the purposes as described in OAA Regulatory Notice R.1. As a result, the Committee concludes that Saplys is not guilty of violating s. 42(21) of the Regulation in respect of the facts relating to Allegation 3.

The Tribunal notes that the placement of the phrase "except in the case of an open competition in which anonymity is a requirement" is confusing because there is no instance in which "an application for building permit … or for construction, enlargement or alteration of a building" can be made anonymously or as part of an open competition. This exception should be either eliminated or revised to better convey the intentions of the drafters, in which case the wording of OAA Regulatory Notice R.1 would need to be reconsidered.

Allegation 4

This allegation is that during the years 2012 and 2013 the Member failed to ensure that his name and designation were on designs he created with respect to the construction of a hotel, Hampton Inn & Suites at 12700 Hwy 50, Bolton, Ontario, contrary to subsection 20 of Section 42 of the Regulation.

The evidence discussed under Allegation 3 is applicable to this allegation.

There was no dispute that the company under which Saplys provided services, known variously as Architecture & Planning Initiatives, API, API Development Consultants, or API International Marketing and Architecture & Planning Initiatives, was never a holder of a certificate of practice.

The Regulation defines “holder” to mean “a holder of a certificate of practice, a certificate of practice issued under section 23 of the Act, or a temporary licence”.

The drawings of concern are the first four sets of drawings described above in respect of Allegation 3, as the fifth and sixth sets of drawings were completed under the letter of agreement with AWS Architects which is a holder of a certificate of practice and each of those drawings include reference to AWS Architects.

Three of the first four sets of drawings sets have the API logo of Saplys’ company in the lower right corner. There is no other indication on the drawings of a holder name and designation.

One set of the first four sets of drawings in evidence has been altered by the application of white stick-on labels to cover the API logo of Saplys’ company in the lower right corner of the drawings. There is no other indication on the drawings of a holder name and designation. Testimony indicated that these drawings were issued to the project Owner for submission to Hampton Inn & Suites for brand approval and for the purposes of obtaining construction management proposals.

The letter of agreement dated April 14, 2011 is signed by “Linus Saplys, B. Arch., OAA, MRAIC” on behalf of API Development Consultants with a hand-written note on the agreement that it was completed in June 2012. This should indicate that all drawings produced from April 14, 2011 until June 2012 would be produced by a member of the OAA and thus be governed by the requirements of the profession.

However, while the obligation under s. 42(21) of the Regulation at issue with respect to Allegation 3 speaks to obligations of a “member or holder”, the professional misconduct described in s. 42(2) of the Regulation addresses only the obligations of the holder, defining the

specific professional misconduct addressed in that subsection as “failing to ensure that the name and designation of the ***holder*** is on every design created by the ***holder*** that is issued or exhibited to any person who is not a holder except in the case of an open competition in which anonymity is a requirement.”

The four sets of drawings in evidence that are the basis of Allegation 4 were issued by a member who is ***not*** a holder, the result being that the requirement under s. 42(20) to ensure the inclusion of the name and designation of the holder responsible for the design cannot be applied.

Accordingly, the Committee concludes that Saplys is not guilty of violating s. 42(20) of the Regulation in respect of the facts relating to Allegation 4, and that these facts are most appropriately dealt with under Allegation 5.

Allegation 5

This allegation is that during the years 2012 and 2013 the member provided architectural services with respect to the construction of a hotel, Hampton Inn & Suites at 12700 Hwy 50, Bolton, Ontario, through "API International Marketing and Architecture & Planning Initiatives", which does not hold a certificate of practice, contrary to Subsection 1 of Section 42 of the Regulation and contrary to Section 11 of the Act.

The evidence discussed under Allegations 3 and 4 is applicable to this Allegation.

The drawings of concern are the first four sets of drawings in evidence for Allegations 3 and 4, as the fifth and sixth sets of drawings were completed under the letter of agreement with AWS Architects which is a holder of a Certificate of Practice.

There was no dispute that the company under which the Member provided services, known variously as Architecture & Planning Initiatives, API, API Development Consultants, or API International Marketing and Architecture & Planning Initiatives, was never a holder of a Certificate of Practice.

The letter of agreement dated April 14, 2011 is signed by “Linus Saplys, B. Arch., OAA, MRAIC” on behalf of API Development Consultants with a hand-written note on the agreement that it was completed in June 2012.

The Committee finds that the four sets of drawings prepared by Saplys through API under the April 14, 2011 letter of agreement are typical of those offered by architects in the progression of a design of a building from initial concept to complete design. The Committee rejects the evidence and submissions of Saplys that the production of these drawings should not be considered the practice of architecture because they were produced at an earlier stage of the design process, when the client was seeking marketing and brand approval. It would be an unduly technical interpretation of the professional obligations governing the practice of architecture if the Committee were to accept the distinction Saplys argues it should make, given the nature of the facts in this case, including that the four sets of drawings were prepared pursuant to the April 14, 2011 letter of agreement which, as noted above, was signed on behalf of API Development Consultations by “Linus Saplys, B. Arch., OAA, MRAIC”.

The Committee therefore finds that Saplys provided architectural services through a company that did not hold a certificate of practice, in violation of s. 42(1) of the Regulation and s. 11 of the *Architects Act*, and is guilty in respect of Allegation 5.

Allegation 6

The allegation is that during 2012 Saplys attended at a small claims court hearing as an Owner's Representative for the Heuther Hotel project at 59 King Street N. Waterloo, Ontario, for which Saplys’ former employer, Chamberlain provided architectural services, despite the oral caution with which Saplys was provided by the Complaints Committee of the Ontario Association of Architects on April 12, 2011 that Saplys was to divest himself of any review of financial matters when in a conflict of interest, and thereby engaged in conduct which would reasonably be regarded by members of the Association as disgraceful, dishonourable or unprofessional, contrary to Subsection 54 of Section 42 of the Regulation.

Testimony confirmed that Saplys was present at the court house at which a small claims court settlement conference was to be held but, due to objections made by representatives of Chamberlain, did not attend the settlement conference.

Because the basis of Allegation 6 is that Saplys attended at the small claims court hearing as an owner's representative, when in fact he did not attend the hearing, the Committee concludes that Saplys is not guilty of Allegation 6.

Allegation 7

This allegation is based upon the same events noted in Allegation 6 that during 2012 Saplys attended at a small claims court hearing as an Owner's Representative for the Heuther Hotel project at 59 King Street N. Waterloo, Ontario, which hearing related to the collection of fees by the Saplys's former employer, Chamberlain, for architectural services to the owner of this project while employed by Chamberlain. According to this allegation, having this direct or indirect interest in a contract with the owner of the project to act as its representative, in opposition to his former employer with respect to its attempt to collect fees for this same project, resulted in Saplys having a conflict of interest, contrary to subsection 16 of Section 42 and subsections (1)(d) and (1)(e) of Section 43 of the Regulation.

Testimony confirmed that Saplys was present at the court house at which a small claims court settlement conference was to be held but, due to objections made by representatives of Chamberlain, did not attend the settlement conference.

Because the basis of Allegation 7 is that Saplys attended at the small claims court hearing as an owner's representative, when in fact he did not attend the hearing, the Committee concludes that Saplys is not guilty of Allegation 7.

Allegation 8

This allegation is that while employed with his former employer Chamberlain, Saplys approved invoices related to the Capital Pointe project at 2511 Victoria Avenue, Regina, Saskatchewan; but thereafter, Saplys left the employ of Chamberlain, became the owner's representative for the Capital Pointe project and in that capacity, rejected the said invoices of Chamberlain. According to this allegation, this was done despite the oral caution with which Saplys was provided by the Complaints Committee of the Ontario Association of Architects on April 12, 2011 that Saplys was to divest himself of any review of financial matters when in a conflict of interest, and thereby engaged in conduct which would reasonably be regarded by members of

the Association as disgraceful, dishonourable or unprofessional, contrary to subsection 54 of Section 42 of the Regulation.

The basis of this allegation is that Saplys reviewed and approved invoices based on his work on the Capital Pointe Project while in Chamberlain's employ, and then disputed these same invoices when employed by the owners of the Capital Pointe Project. This it is claimed puts Saplys into a conflict of interest.

However, no invoices were submitted into evidence to demonstrate the allegation. The tribunal therefore has no basis on which to assess whether Saplys was in fact in a conflict of interest or was acting in good faith in disputing invoices that Saplys had no input in creating.

As the OAA has not fulfilled its evidentiary burden to establish Saplys' role in the creation and review of the invoices thus establishing a conflict of interest, the Committee finds that Saplys is not guilty of Allegation 8.

Allegation 9

This allegation is based upon the same events outlined in Allegation 8 that while Saplys was employed with his former employer Chamberlain he approved invoices related to the Capital Pointe project at 2511 Victoria Avenue, Regina, Saskatchewan; but thereafter, Saplys left the employ of Chamberlain, became the owner's representative for the Capital Pointe project and in that capacity, rejected the said invoices of Chamberlain. According to this allegation, having this direct or indirect interest in a contract with the owner of the project to act as its representative, in opposition to his former employer with respect to its attempt to collect fees for this same project, resulted in Saplys having a conflict of interest, contrary to subsection 16 of Section 42 and Subsections (1)(d) and (1)(e) of Section 43 of the Regulation.

The basis of this allegation is that Saplys reviewed and approved invoices based on his work on the Capital Pointe Project while in Chamberlain's employ, and then disputed these same invoices when employed by the owners of the Capital Pointe Project. This it is claimed puts Saplys into a conflict of interest.

However, no invoices were submitted into evidence to demonstrate the allegation. The tribunal therefore has no basis on which to assess whether Saplys was in fact in a conflict of interest or was acting in good faith in disputing invoices that Saplys had no input in creating.

As the OAA has not fulfilled its evidentiary burden to establish Saplys' role in the creation and review of the invoices thus establishing a conflict of interest, the Committee finds that Saplys is not guilty of Allegation 9.

Reasons for Decision not to Admit Proposed Expert Evidence

During the course of the hearing, Saplys' counsel proposed to call an expert witness, Robert Chiotti. The Tribunal heard evidence from Chiotti for the purpose of assessing his qualifications. Chiotti is a principal of Larkin Architect Limited and an assistant professor at OCAD University, where he teaches professional practice to environmental design students. He is also a member of program advisory committees at Ryerson University and Fleming College. He testified that over the years he had done architectural work in the hotel industry, including for the Royal York Hotel under the Canadian Pacific and Fairmont brands, and for Novotel Hotel under its brand, and was familiar with brand standards and their impact on design. He also stated that he had been retained by the OAA to help develop a curriculum for education respecting starting an architectural practice, including a module on contracts between client and architect.

Saplys' counsel proposed that Chiotti be qualified to testify with respect to three matters: (1) the relationships between architects and the hotel industry, being the franchisees or builders of hotels, and the brands and brand standards; (2) the forms of contracts between architects and their clients, including limited scope contracts; and (3) the distinction between architectural services as identified in the legislation and planning services, feasibility studies and brand liaison services in connection with the hotel industry. He stated that, if qualified, Chiotti would give expert testimony in relation to Allegations 1 to 5. In his testimony respecting his qualifications, Chiotti acknowledged that his expertise on these subjects was in many respects similar to the knowledge many architects in Ontario, including those on the panel, would have.

In deciding whether Chiotti should be qualified to testify as an expert the Committee considered the case law presented by counsel, including the test for admissibility of expert evidence described in *R. v. Mohan* [1984], 2 SCR 9, Chiotti's qualifications, the subject matters on which

it was proposed that Chiotti provide expert evidence, and how they relate to the allegations. The Committee focused in particular on whether it was necessary for it to hear from Chiotti in order for it to decide the matters before it.

The first issue on which it was proposed that Chiotti testify – hotel brand standards and in particular how they relate to the copying allegations in Allegation 1 – is an issue of fact, i.e. whether or not there were particular hotel standards with which Chamberlain and Saplys were required to comply, which would help to explain why construction details were the same. The Committee heard this fact evidence from other witnesses, including Saplys, and is of the view that, because this is a question of fact, there is no need for it to hear expert evidence on this point.

The second issue, the forms of contract between architects and their clients, including limited scope contracts, which relates primarily to Allegation 2, is also essentially an issue of fact. One of the submissions made by Saplys in respect of certain of the incidents described in Allegation 2 is that the work done by Chamberlain was carried out on the basis of limited scope contracts that had been completed and were for a different purpose than the subsequent contracts that Saplys entered into with the same clients. The scope of these contracts is a question of fact, and the question of whether Saplys' work was for the same project and same purpose as Chamberlain's work is a question on which it is neither necessary nor appropriate for an expert to opine, since this is the ultimate question of mixed fact and law that the Committee must determine.

The third issue – the distinction between architectural services and planning services or feasibility studies – which relates Allegations 2 to 5 is also primarily a question of fact. The Committee has ample factual evidence before it about the nature and context of the work done by Saplys. The issues of whether that work constituted the practice of architecture and whether Saplys breached his professional obligations in the way in which he carried out and documented that work are ultimate questions that is for the Committee to decide, and on which it is neither necessary nor appropriate for an expert to opine.

For those reasons, the Committee concludes that it will not admit the expert evidence of Chiotti.

DATED AT TORONTO this **7**th Day of December, 2017.

Richard Dabrus, Member

Paul Surtel, Member

Wayne Medford, Lieutenant Governor in Council Appointee

The Member appealed the Decision of the Discipline Committee dated December 7, 2017. The Divisional Court upheld the convictions on three counts relating the Member's failure to give his former employer written notice that he had been engaged on three of its former projects. The Court set aside the finding that the appellant had practised architecture through API and remitted this issue of whether any of the drawings constituted a "design" for the purpose of s. 1 of the Act. The reasonableness of the penalty and costs related to this issue was also remitted back to the Committee. A link to this appeal can be found here: February 2019 Appeal

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 Linas Saplys, Architect

Committee Members:

Paul Surtel, OAA, Chair

Richard Dabrus, OAA, Member

Wayne Medford, Lieutenant Governor Appointee

Heard: February 26, 2018.

Counsel:

Barbara Miller	For the OAA
Marshall Swadron	For Linas Saplys
John Terry	Independent Legal Counsel

REASONS FOR DECISION AND ORDER OF THE DISCIPLINE COMMITTEE
(PENALTY AND COSTS)

In its Decision on liability dated December 7, 2017, the Committee found Linas Saplys ("Saplys") guilty of four allegations brought against him by the Ontario Association of Architects, and not guilty of another nine allegations brought against him. The allegations with respect to which Saplys was found guilty, as described in more detail in the Committee's Decision on liability, relate to two types of offences:

> (1) failure to provide written notice to a holder of a certificate of practice that Saplys had been engaged or employed for the same purpose by the same client, contrary to s. 49(1) and (2) of Regulation 27 under the *Architects Act* (the "Regulation") – three allegations with respect to which Saplys was found guilty relate to this offence; and
>
> (2) providing architectural services through an entity that did not hold a certificate of practice, contrary to s. 42(1) of the Regulation and s. 11 of the Act – one allegation with respect to which Saplys was found guilty relates to this offence.

On February 26, 2018, the Committee convened a hearing respecting the penalty to be imposed on Saplys and also to deal with costs issues. At the hearing, the Committee heard testimony from Saplys and received documentary evidence in the form of character references provided by Saplys, The Committee also heard submissions from counsel for the Association and for Saplys on both penalty and costs. The panel has considered this evidence and submissions in making its findings respecting penalty and costs, described below.

Penalty

The Committee is aware that any penalty imposed for professional misconduct must consider the reformation of the member, deterrence to the member and others in the profession, and the protection of the public. In this respect consideration should be given to the past and present circumstances of the member, the circumstances of the offence, the need to deter the member's actions in the future, the need to alert the membership of the profession to the seriousness of the offences at issue, and the need to protect the public which, through the Ontario Legislature, has entrusted self-governing status on the profession.

In terms of deterrence and reformation, it was brought to the Committee's attention during the penalty hearing that Saplys had previously been found guilty of related offences by the Discipline Committee of the Association (see *OAA v. Sa/p/ys,* Reasons for Decision and Order of the Discipline Committee dated December 16, 1986, varied as to penalty on June 12, 1987). The Discipline Committee noted in that decision that, in addition to the disciplinary matters at issue in that hearing, Saplys had previously been the subject of two prior complaints, during a time before he was a member, that he had performed architectural services at a time when he was not entitled to do so. Those prior complaints as well as the matters for which he was disciplined in that case all involved the provision of architectural services by means of a corporate vehicle that was not entitled to provide those services.

The Committee imposed penalties of three months and 12 months suspension respectively with regard to the two offences in that case, although following an appeal brought by Saplys these penalties were by agreement reduced to a penalty that placed various restrictions, including a supervisory requirement, on Saplys' practice for a 12-month period. Though these offences occurred many years ago at the beginning of Saplys' career and Saplys filed at the hearing letters in support of his good character, there are troubling similarities between those offences and the facts underlying the offences in this case, which heighten the Committee's concerns that the penalty in this case has to be sufficiently serious to deter the member from further conduct in violation of the Act or Regulations.

With regard to the protection of the public, the offence of providing architectural services through an entity that does not hold a certificate of practice is a very serious offence. The provisions of s. 11 of the *Architects Act,* which clearly establish the categories of persons entitled to engage in the practice of architecture in Ontario, are at the core of the framework of legislation under which this profession governs itself and are fundamental to the protection of the public. Among other things, the offering of architectural services without a certificate of practice excludes a member of the public who commissions architectural work in such a situation from the protection of liability insurance under the Association's self-insured Pro-Demnity mandatory liability insurance protection program.

The Committee considered Saplys' submission that the offence of failing to provide notice to a fellow architect with respect to a retainer for the same purpose by the same client should be regarded in this case as merely a technical infraction, because the architectural firm that had previously worked on these projects was aware that their work was at an end. However, while

Saplys' submission focused on the relationship between the architects who acted for the same client, this offence is part of the overall framework of rules governing the interaction between architects and members of the public. While the requirement relates to notice between architects, its purpose more broadly includes the protection of the public by ensuring there is a clear understanding among not just the architects, but the clients, regulatory authorities and other interested parties, as to which architect bears responsibility with respect to a project. The fact that in this case Saplys has been found guilty of committing this offence on three separate occasions involving three different projects reinforces to the Committee the seriousness of the conduct that is being penalized.

The Association submitted that Saplys should be suspended for 12 months in view of his past misconduct and the seriousness of these offences. Saplys' position was that the appropriate penalty was a reprimand and publication of the Committee's award, but without Saplys' name being published. Bearing in mind all of the factors set out above, including the fact that the offences relate to four different projects and Saplys' disciplinary history, the Committee is of the view that the interests of protection of the public, reformation and deterrence are best served in this case with a penalty for all four offences of a six months licence suspension, and publication of the Decisions and Order of the Committee, and Saplys' name.

Costs

With respect to the issue of costs, the Association presented a bill of costs of $140,000, which the Association's counsel said reflected a significant reduction in fees actually billed by her firm in respect of this matter. She stated that, although Saplys had been found guilty of only four of the 13 allegations made against him, given the overlap in evidence among these allegations, much of the evidence that was called would have had to have been called in any event. The Association submitted that the Committee should make a costs order of $85,000 in favour of the Association. It noted that when he was disciplined in 1986, Saplys had agreed to pay costs of $22,000.

Counsel for Saplys stated that the total of Saplys' actual fees, disbursements and HST in responding to these proceedings was $195,352.23, not including work relating to the hearing regarding penalty. Counsel for Saplys in his submissions emphasized Saplys' relative success in the proceedings and pointed out that the amount of time spent on allegations for which Saplys had not been found guilty greatly exceeded the amount of time spent on the four allegations for

which he was found guilty. Saplys' position was that the Association should pay Saplys $25,000 toward his costs or, alternatively that there be no award as to costs.

Bearing in mind that Saplys was not found guilty on many of the allegations brought against him, but that he was found guilty on four of them in relation to four separate projects, the Committee is of the view that an appropriate order of costs in the circumstances is to have Saplys pay the Association $45,000 of its costs.

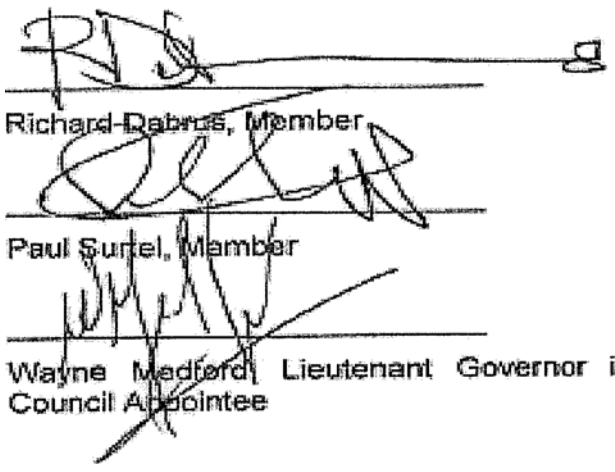
Order

1. **THIS COMMITTEE ORDERS** that the licence of the Architect be suspended for a period of six months, commencing 90 days after the February 26, 2018 hearing date (i.e. May 28, 2018), with the certificate of practice continuing pursuant to the supervision requirements of the Act and Regulations.

2. **THIS COMMITIEE ORDERS** that the Architect pay the Association costs in the amount of $45,000, to be paid in monthly instalments of $2,000, payable on the first day of each month, commencing May 1, 2018.

3. **THIS COMMITIEE ORDERS** that the Reasons and Order of the Disciplinary Committee be published, including Saplys' name.

DATED AT TORONTO this 19th day of April, 2018.



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 Linas Saplys, Architect

Committee Members:		
Paul Surtel, OAA, Chair	Heard: November 13, 2019	
Richard Dabrus, OAA, Member	Counsel:	
Wayne Medford, Lieutenant Governor Appointee	Barbara Miller	For the OAA
	Marshall Swadron	For Linas Saplys
	John Terry	Independent Legal Counsel

FURTHER REASONS FOR DECISION AND ORDER OF THE DISCIPLINE COMMITTEE

As directed by the Divisional Court in its reasons for judgment in *Saplys v. Ontario Association of Architects*, 2019 ONSC 1679, the Committee reconvened on November 13, 2019 to determine the issue remitted to it by the Court -- whether any of the sets of drawings at issue in respect of Allegation 5 constitute a "design" as described in s. 1 of the *Architects Act* (the "*Act*"). At that hearing, counsel for the Association and for the Architect Linas Saplys advised us that they did not intend to call any witnesses or provide any additional documentary evidence with respect to this issue, and made their submissions based on the existing record.

Having heard these submissions and deliberated upon the matter, we find that the four sets of drawings at issue in respect of Allegation 5 constitute a "design" as described in s. 1 of the *Act*.

The word "design" is defined in s. 1 of the *Act* to mean "a plan, sketch, drawing, graphic representation or specification intended to govern the construction, enlargement or alternation of

a building or part of a building". During the hearing, counsel for each party made submissions as to the meaning of the words "intended to govern" in this definition and referred to the Cambridge English Dictionary definition of "govern" as meaning "to have a controlling influence on something".

The Architect's position is that a plan, sketch or drawing can only be said to be intended to govern construction if it is prepared with the intention that it be submitted for the issuance of a building permit or for construction. We disagree.

The requirement that a "design" be "intended to govern the construction, enlargement or alteration of a building or part of a building" refers not to the intention of the architect to prepare the submission of a design to governing authorities, but instead to the intention that earlier stages of the design have a controlling influence on subsequent stages and the ultimate intended product of the design, that being, "construction, enlargement or alteration of a building". Therefore a 'design' includes everything in the process from initial concept to final construction documentation, and ultimately to the final constructed product.

This interpretation is consistent with the development phases of a design outlined in the GC2 Architect's Scope of Services section of the Standard Form of Contract for Architect's Services OAA 600, an example of which (the OAA 600 agreement between Chamberlain Architect Services Limited and Westgate Development Ltd.) is in the record. It also accords with the public protection goals of the *Act*, including the requirement in s. 40 of the *Act* that no architect or holder of a certificate of practice engage in the practice of architecture without professional liability insurance. If the Architects' narrow interpretation is accepted, much of the work that is currently carried out by architects as part of the design process would be exempted from this insurance requirement.

In this case, each of the four sets of drawings at issue in Allegation 5 was prepared with the understanding of both the Architect and his client that the ultimate intended product of the design was the construction of a building. As described in more detail in our first Reasons for Decision in this matter, these four sets of drawings were prepared between April 2011 and January 2012 and followed in October 2012 and April 2013 with drawings issued for building permit and construction respectively. While the initial four sets of drawings were issued for brand approval rather than to obtain a building permit, the content of these drawings and circumstances surrounding their production demonstrate to us that they were produced on the understanding that the ultimate intended product of those designs was the construction of a Hampton Inn &

Suites in Bolton. Our review of the content of the six drawings also shows that the designs in the first four sets of drawings established the parameters for and had a controlling influence on the subsequent drawings, as one would expect in the design process. As a result, in our view each of these four sets of drawings can be properly regarded as "designs" within the meaning of s. 1 of the *Act*.

In his submissions, the Architect stated:

> [T]he origin of the Committee's error in interpreting section 11 of the *Act* is the wording of count 5 in the amended notice of hearing, which alleged that the respondent provided "architectural services" through API. The term "architectural services" is not found in section 11 of the *Act,* however. Section 11 provides that "No person shall engage in the practice of architecture … unless that person is licensed under this Act". [emphasis in the original]

We agree with the Architect that the wording of Allegation 5 can be clarified by substituting the words "engaged in the practice of architecture" for the words "providing architectural services" since, as the Court stated, the definition of "architectural services" in s. 1 of the *Act* includes services "related to the practice of architecture" and is therefore broader than the definition of the "practice of architecture". Having made that clarification, we find that the Architect in preparing each of these four sets of drawings engaged in the practice of architecture through a company that did not hold a certificate of practice, and therefore violated s. 42(1) of the Regulation and s. 11 of the *Act*.

Given our determination of the issue remitted to us by the Court, there is no reason for us to alter the penalty previously imposed by us for the Architect's misconduct. On the agreement of the parties, however, we have adjusted the amount of costs payable to take into account the Court's costs award in favour of the Architect and the dates on which the Architect's suspension will commence and costs will be paid. Because this matter was remitted to the Committee at the direction of the Court given its finding that the Committee's decision in respect of Allegation 5 was unreasonable, the Committee finds that this is not an appropriate circumstance for it to make a costs order in respect of reattendance of the parties for the November 13, 2019 hearing.

Order

1. **THIS COMMITTEE ORDERS** that the licence of the Architect be suspended for a period of six months, commencing February 28, 2020, with the certificate of practice continuing pursuant to the supervision requirements of the Act and Regulations.

2. **THIS COMMITTEE ORDERS** that the Architect pay the Association costs in the amount of $45,000 (net of the Court's costs award in favour of the Architect) as follows:
   a. $6,000 on or before February 1, 2020; and
   b. 15 equal monthly instalments of $2,000, payable on the first day of each month, commencing March 1, 2020 and ending on May 1, 2021 (the "Instalment Payments").

3. **THIS COMMITTEE ORDERS** that the Architect provide the Association with 15 postdated cheques in respect of the Instalment Payments on or before February 1, 2020,

4. **THIS COMMITTEE ORDERS** that the Reasons and Order of the Disciplinary Committee be published, including Saplys' name.

DATED AT TORONTO this 26th day of November, 2019.

The Member appealed the Discipline Committee's November 26, 2019 decision (the Decision). The Divisional Court heard the appeal on April 8, 2021 and the Decision was upheld. The Member was ordered to pay $28,000 in costs.

A link to the full appeal can be found here: April 2021 Appeall