



CASE SUMMARY #1

Unsuitable Building Envelope Details and Misrepresentation of Substantial Completion.

Complaint Review Committee

The NWTAA Complaints Review Committee recently investigated a case that illustrates the need for architects to be diligent during design-build projects where they are hired by or partnered with the contractor undertaking the work on site. An architect's work must be in accordance with the NWTAA's Code of Ethics every time they practice, regardless of their relationship to the client.

Background and Facts

The architect entered into a design contract in 2011 with a contractor undertaking a renovation and expansion of an existing building. The contractor was hired to undertake the work by the building's owner under a separate construction contract.

In March 2013, the architect submitted letters of assurance to the City of Yellowknife indicating that work on the site was substantially complete. These letters of assurance were submitted despite significant aspects of the work remaining incomplete on site, based on an assumption that the contractor would complete the outstanding work. The architect also recommended payment on some of the contractor's invoices without sufficient holdback for deficiencies, again based on an assumption that the contractor would remedy the deficiencies. The architect followed up with the contractor several times through the summer of 2013 to check on the status of the outstanding work, only to find the contractor had left town and could not be contacted.

The building owner submitted a complaint in 2016 identifying several design and construction deficiencies that had yet to be resolved since work stopped on site in 2013. The building had sustained significant damage since 2013 because of incomplete and improper work.

Structure of the Complaint Investigation and Hearing

A Complaints Review Committee was established following receipt of the complaint and was composed of three NWTAA members who were not members of the NWTAA council. The Committee appointed another non-council architect as investigator. Following the investigator's report and additional requests for information from both the architect and building owner, the Complaints Review Committee retained an expert witness residing outside the NWT. The expert witness conducted an independent investigation of available documents and submitted a second report to support the Committee's findings.

To facilitate scheduling of the complaint hearing, the council established a Hearing Review Panel of three council members to conduct the hearing and decide the complaint. The Hearing Review Panel was empowered with the full authority of council for these purposes.

Findings of the Panel

The architect was cooperative at the hearing, submitting an Agreed Statement of Facts jointly with the building owner. The Hearing Review Panel found the architect was guilty of multiple instances of professional misconduct, grouped into the following categories:

- i. Improper building envelope design related to a new deck above an existing roof;
- ii. Insufficient acoustic design of an interior floor assembly separating different occupancies;
- iii. Insufficient instructions provided by the architect when unsound work performed by the contractor, but outside the architect's design scope, was identified by the architect during a site review;
- iv. Failure to administer lien holdbacks for deficiencies identified during site reviews;
- v. Premature issuance of letters of assurance to the City of Yellowknife, which confirmed the building had reached a state of substantial completion despite critical items remaining incomplete.

Sanctions

The architect was formally reprimanded. The panel also ordered the following:

- The architect was to report all outstanding significant deficiencies at the building to the NWT Office of the Fire Marshal;
- The architect was fined \$25,000 to cover all instances of professional misconduct;
- The NWTAA was to produce this Case Summary for the education of its members and information of the public.

The panel required the architect to report deficiencies to the Office of the Fire Marshal in the interest of public safety. At the time of the hearing, the Office of the Fire Marshall was the Authority Having Jurisdiction with the power to determine whether the building was safe to occupy. The building had been occupied since shortly after the architect provided letters of assurance to the City of Yellowknife, but the hearing confirmed that these letters had been submitted improperly. The panel wanted assurance that the building could continue to be occupied safely.

Commentary

This case illustrates several potential pitfalls an architect may encounter when engaging in design-build work. The architect prepared construction documents that in some areas lacked sufficient information to construct a feasible solution on site, inappropriately relying on the contractor to take responsibility for some aspects of the design work. The architect was also found to rely inappropriately on the contractor's word to complete or rectify critical work on site. When an architect is hired by a contractor in a design-build project, they still retain responsibilities to the building owner and the public as laid out in the NWTAA's Code of Ethics.

This case also illustrates how improper conduct can be discovered during the complaint review process. Both the Complaint Review Committee and the expert witness found instances of misconduct that were not identified in the building owner's original complaint.