



To: Board of NZRAB
From: Investigating Panel (IP)
Subject: Investigation Report to the Board of NZRAB on a complaint or inquiry

1 Complaint

NZRAB Complaint Number: 111

Registered Architect: Mr Adam Taylor **Reg No:** 4275

Complainant(s): Board Own Inquiry.

Complaint referred to IP under rule 60.

1.1 Pursuant to Rule 60 of the Registered Architects Rules 2006, in an email dated 6 August 2020, the Chief Executive of the New Zealand Registered Architects Board (the Board) has asked for an own motion inquiry as to whether Mr Taylor has breached the Registered Architects Act 2005.

1.2 Rule 60 provides in part:

60 Board may inquire into matters on own motion

(1) The Board may inquire into any matter on its own motion under this Part if it has reasonable grounds to suspect that the conduct of a registered architect or former registered architect may come within any of the grounds for discipline in section 25 of the Act.

(2) If subclause (1) applies, the Board may—

(a) decide whether or not to refer the matter to an investigating panel in accordance with rules 61 to 64 (other than notifying the complainant under rule 64(1)(a) and (c)) as if it were a complaint;

...

(3) A reference in these rules to the person complained about must be read, in the case of an inquiry, as a reference to the person who is the subject of the inquiry.

1.3 The reason for commencing the inquiry was the publication of an article in the X publication on 6 August 2020 with the title 'Top architect told boss community project was on hold – then did the job in secret himself'. The top architect referred to in the article was Mr Taylor.

1.4 The Executive Officer Public Protection of NZRAB emailed Mr Taylor on 7 August 2020 advising that a Registered Architects Rule 60 Inquiry had been initiated as a result of

that article. The email stated that the inquiry was about whether there are grounds for discipline under any of sections 25(1)(a) to (c) of the Registered Architects Act 2005 which provide:

25 Grounds for discipline of registered architects

(1) The Board may (in relation to a matter raised by a complaint or by its own inquiries) take any of the actions referred to in section 26 if it is satisfied that—

(a) both of the following matters apply:

(i) a registered architect has been convicted, whether before or after he or she is registered, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more; and

(ii) the commission of the offence reflects adversely on the person's fitness to carry out the work of a registered architect;
or

(b) a registered architect has breached the code of ethics contained in the rules; or

(c) a registered architect has practised as a registered architect in a negligent or incompetent manner.

1.5 In the absence of evidence, the IP does not consider that there are any grounds for disciplining Mr Taylor under section 25(1)(a) of the Registered Architects Act 2005 and has not considered that ground further.

1.6 With regards section 25(1)(c), the IP wishes to make it clear that it has not considered the quality or standard of the design work that Mr Taylor has carried out for the Community organisation; that is not part of its inquiry.

1.7 The IP has focussed its inquiry on whether Mr Taylor has breached the Rules in the Code of Ethics. The IP has therefore not investigated further whether the approach that Mr Taylor took to his dealings with the Community organisation and his former employer (A Comp) meant that he practised as a registered architect in a negligent or incompetent manner in terms of section 25(1)(c) of the Act.

1.8 With regards section 25(1)(b) of the Registered Architects Act 2005, the IP has investigated whether Mr Taylor has breached the following provisions of the Code of Ethics contained in the Registered Architects Rules 2006:

Rule 47: Honesty and fairness

A registered architect must perform the architect's professional activities with both –

(a) honesty; and

(b) fairness

Rule 55: Conflicts of professional appointment

If a registered architect, acting in the architect's own capacity or representing a practice, is approached to provide professional services in relation to a project, and the architect knows that another registered architect has a current agreement for services for that project, the architect must notify the other registered architect.

Rule 58A: Terms of appointment

- (1) A registered architect must provide professional services only if—
 - (a) written terms of appointment appropriate to the commission or services to be undertaken have been provided; and
 - (b) the client, having agreed to the written terms of appointment, has provided an instruction to proceed.
- (2) The written terms of appointment must cover—
 - (a) the scope of the work; and
 - (b) the allocation of responsibilities; and
 - (c) any limitation of responsibilities; and
 - (d) fees, or any methods for calculating fees; and
 - (e) how billing will occur.

1.9 The IP considers that Mr Taylor has breached section 25(1)(b) of the Registered Architects Act 2005 as he has breached Rules 47, 55 and 58A of the Code of Ethics contained in the Registered Architects Rules 2006

Names of members of the IP:

Chair (Non architect): NS
Architect member: JT
Architect member: PN

2 Background

2.1 In order to carry out its investigations, the IP has considered two published decisions of the Employment Relations Authority (ERA) relating to an employment dispute between Mr Taylor and his former employer, A Comp, being:

- (1) Interim Orders of the ERA dated 18 June 2020 (the ERA Interim Orders); and
- (2) A Consent Determination of the ERA dated 29 July 2020 (the Consent Determination).

2.2 Some of the background set out in this report is taken from those decisions.

2.3 Mr Taylor was employed by A Comp from January 2013 to July 2020. By the time he left A Comp, he was a senior employee with the title “Director”, leading the special projects sector of A Comp.

2.4 In or about 2017 or 2018, A Comp secured the commission to design a new clubhouse for the Community organisation in Txxxxx. The president of Community organisation (Mr M) states that the only reason A Comp was invited to pitch for the work (along with two other architecture practices) was due to Community organisation’s connection with Mr Taylor, as he had been a member of the Community organisation since 1997.

2.5 In 2019, Community organisation engaged A Comp to design its new clubhouse. In the period from July 2019 to March 2020, Community organisation paid A Comp approximately \$200,000 for its services in preparing a preliminary design, then a developed design and detailed design for the clubhouse and assisting in the contractor procurement process. It is not clear who, at A Comp, carried out that design work.

- 2.6 On 26 March 2020, New Zealand went into a level 4 lockdown due to the Covid-19 pandemic. This meant that all but essential workers were required to work from home. Mr Taylor and the other employees of A Comp were working from home until 27 April 2020.
- 2.7 In the first week of the lockdown, Mr M contacted Mr Taylor and advised that Community organisation could not continue with the A Comp design for the clubhouse, which looked to be over budget (in relation the cost of the build) by \$400,000 to \$500,000. He asked if Mr Taylor would be able to design a new alternative single level building to a concept stage (so that the organisation could establish indicative pricing for the alternative build). He asked whether Mr Taylor would be able to complete that work as a member volunteer, as the club had already spent more than its entire design budget with A Comp.
- 2.8 Mr M states that Mr Taylor agreed and that the design he prepared cost approximately \$800,000 less (to build) than the A Comp design for the clubhouse.
- 2.9 Mr Taylor states that he worked on the design over the lockdown period. Sometimes this was during “working hours”; but he considers that this did not affect the work that he was doing for A Comp, as is evidenced by his results (and the results of his team) during that period and that he made up time by working mornings and evenings.
- 2.10 He also states that his design for the clubhouse was prepared from scratch, with the exception of the bar and café joinery (which was consistent with A Comp’s original concept). He states that once the new concept design that he had prepared was approved by Community organisation, the organisation instructed its project manager to prepare a cost estimate for the purpose of determining whether the design was commercially feasible for Community organisation.
- 2.11 Mr Taylor confirms that he did not mention these discussions with Community organisation to his employer or his colleagues during the lockdown period. He states that there was no “natural opportunity to discuss the project with A Comp’s management” during the lockdown period.
- 2.12 The Consent Determination records that Mr Taylor told A Comp that Community organisation had decided to put the project on hold. Mr Taylor has objected to a number of the statements in the Consent Determination. However, Mr Taylor does not object to this statement that he advised A Comp that Community organisation had decided to put the project on hold.
- 2.13 When Mr Taylor returned to the office, he also did not discuss the work that he was doing for Community organisation as, by that time (according to Mr Taylor) his relationship with A Comp had deteriorated. Mr Taylor does not explain what caused that deterioration.
- 2.14 The Consent Determination states that Mr Taylor established and operated a business on his own account in order to undertake the project for Community organisation. Mr Taylor objects to this characterisation of his actions. He states that he reserved a company name and a domain name while he was at A Comp (he does not say when) but he did not start operating his new business until late August 2020. All his work for Community organisation prior to leaving A Comp was unpaid. Community organisation has confirmed that it did not pay Mr Taylor for the work on the new concept design.
- 2.15 It appears that A Comp found out about Mr Taylor’s ongoing work for Community organisation. We have not had an explanation as to how that occurred.

- 2.16 Mr M confirms that Community organisation did not inform A Comp of the decision to ask Mr Taylor to assist them on a no-fees basis for the concept design/preliminary design of the alternative clubhouse.
- 2.17 On or about 11 June 2020, A Comp raised an urgent employment relationship problem in the ERA, claiming that Mr Taylor was in breach of express and implied terms of his employment agreement.
- 2.18 On 18 June 2020, the ERA issued various orders requiring Mr Taylor to give an IT expert access to his computers and cloud-based storage systems. That expert subsequently established that in the period from 12 June 2020 (when Mr Taylor was served with the ERA proceedings) to 17 June 2020, Mr Taylor had deleted 18.1GB of data from his personal OneDrive. The ERA Consent Determination states that the data deleted included documents directly related to the ERA proceedings.
- 2.19 Mr Taylor states that he:
- ...did not intentionally destroy or delete any documents that pertained to the Club project or any other A Comp projects for which he was involved with. When it became clear that his computer would be examined, he deleted personal material and material which his wife had backed-up on his computer.*
- 2.20 On 17 July 2020, Mr Taylor resigned from A Comp “on agreed terms”. This was a confidential agreement between Mr Taylor and A Comp and this IP is not aware of the full details of that confidential agreement. However, the letters from WK (the solicitors for Mr Taylor) that have been sent to the IP, state that it was agreed that Mr Taylor could undertake paid work for Community organisation in relation to the project and also that there would be an “enquiry for damages in relation to the Clubhouse project”. We do not know the outcome of that enquiry.
- 2.21 A Comp and Mr Taylor also agreed to settle the ERA proceedings and asked the ERA to issue a Consent Determination dated 29 July 2020. The Consent Determination sets out an agreed description of the background and a list of the breaches of duties and obligations that Mr Taylor owed to A Comp (as admitted to and consented to by Mr Taylor).
- 2.22 Mr Taylor’s position (in these proceedings) is that he only agreed to accept the A Comp version of the background being included in the Consent Determination, as he wanted to resolve the dispute and avoid further financial and emotional distress for his family. In these proceedings, Mr Taylor has set out the parts of the background in the Consent Determination that he does not agree with and has provided his own explanation of what occurred.
- 2.23 This IP has not approached A Comp for its version of what occurred and has relied on the description of the background in the ERA decisions and also Mr Taylor’s comments on those decisions and the documents provided by Mr Taylor to this IP.
- 2.24 On 21 August 2020, Mr Taylor and Community organisation entered into an agreement for Mr Taylor to provide the following services:
- B4 - \$30,000 for Developed Design
B5 - \$47,500 for Detailed Design and Documentation
B6 - \$3,000 for Contract Procurement, Supplier co-ordination

B8 – \$16,500 for Observation

- 2.25 The contract stated that the work that had already been carried out by Mr Taylor on “Project Establishment, Concept Design and Preliminary Design” was done on a pro bono basis.
- 2.26 Mr Taylor did not have professional indemnity cover for his work through his new company, until 28 August 2020.

3 Relevant Registered Architects Rules and process

- 3.1 This complaint was considered under the Registered Architects’ Act 2005 and the Registered Architects Rules 2006. The Code of minimum standards of ethical conduct for registered architects is set out in Rules 46 – 58D.
- 3.2 The IP under Rule 66 (2) must as soon as practicable after receiving the complaint or an inquiry, investigate and prepare a written report on the matter and provide that report to the Board.
- 3.3 Under Rule 66 (2) the Panel may include in its report on a complaint or an inquiry a recommendation to the Board to -
 - (a) decide there are grounds for disciplining the person complained about under section 25 of the Act; or
 - (b) decide there are no grounds for disciplining the person complained about under section 25 of the Act; or
 - (c) dismiss the matter on a ground in Rule 69.

4 Investigation process followed

- 4.1 The architect was sent details of the complaint on 7 August 2020 and was given at least 20 working days to make a written submission.
- 4.2 Mr Taylor provided his response on 9 September 2020. This consisted of a letter from his solicitors (WK), a statement (in the form of an email) from Mr C M, President of the Community organisation dated 8 September 2010 and a copy of Mr Taylor’s *curriculum vitae*.
- 4.3 The IP read the X Publication, the two ERA decisions and the information from WK and met on 12 October 2020. The IP formulated a number of further questions and requests for information from Mr Taylor and they were sent to Mr Taylor by the EOPP on 15 October 2020. The requests were as follows:

The IP asks that Mr Taylor provide further information and evidence of:

The contract for services (including the agreed scope of services) and terms of engagement between Mr Taylor and the community organisation.

How the arrangement between Mr Taylor and the organisation changed? In particular, did the agreed scope of services, terms of appointment, and agreed remuneration change over time?

Any payments made by the organisation to Mr Taylor.

Any PI insurance held by Mr Taylor (or his new company), at the time of carrying out the work for the organisation.

Any parts of the ERA consent determination that Mr Taylor does not agree with. Were any aspects of the ERA consent determination challenged by Mr Taylor? If so, please provide Mr Taylor's reasons for disagreeing with the finding and any relevant supporting information to support Mr Taylor's position.

The IP also notes that your letter of 9 September 2020 includes a footnote 2 in the text, but no wording in the footnotes. Please advise whether any text is missing from the letter.

4.4 Mr Taylor provided a further response on 13 November 2020, in the form of a letter from WK and attachments including the contract entered into between Mr Taylor (through his new company, Industry) and Community organisation.

4.5 The IP held a further meeting on 2 December 2020 and also communicated by email in order to prepare its report.

5 Summary of the issues

5.1 The issues that arise from this inquiry are whether the architect:

5.1.1 Breached the obligations of honesty and fairness in Rule 47 of the Code of Ethics as he failed to inform his employer when Community organisation approached him to do work on his own account, when Community organisation decided it was dissatisfied with the work carried out by A Comp and could not continue to pay A Comp's fees;

5.1.2 Breached the obligations in Rule 55 of the Code of Ethics as to conflicts of professional appointment when he failed to notify A Comp of the approach from Community organisation, when he knew that A Comp had a current agreement for services with Community organisation; and

5.1.3 Breached the obligation in Rule 58A of the Code of Ethics not to provide professional services unless the client has been provided with written terms of appointment (covering the matters in Rule 58(2)(a)-(e)) and has provided an instruction to proceed.

5.1.4 If the IP finds that Mr Taylor has breached any provisions of the Code of Ethics (and has therefore breached section 25(1)(b) of the Registered Architects Act 2005) are there any grounds in Rule 69 of the Registered Architect's Rules upon which the inquiry may be dismissed?

6 Discussion

Issue 1: Did Mr Taylor breach Rule 47 of the Code of Ethics

6.1 As set out above, Mr Taylor acknowledges that when Mr M approached him to do an alternative design for the Community organisation club house, he did not advise A Comp of that approach. Through WK, Mr Taylor acknowledges that this was an "error of judgement". Mr Taylor also "accepts that he should have sought A Comp's approval before agreeing to assist" Community organisation.¹

6.2 The ERA Consent Determination also states that Mr Taylor "led A Comp to believe that Community organisation decided to put the project on hold. This was misleading".

¹ Letter from WF dated 9 September 2020.

- 6.3 In the letter of 9 September 2020, WK suggests that the factual findings in the ERA Consent Determination did not reflect a consensus, on Mr Taylor's part, as to what had happened. The letter states that Mr Taylor "understood that he could not resolve the employment dispute without agreeing to its terms".
- 6.4 This IP therefore gave Mr Taylor an opportunity to indicate which parts of the ERA Consent Determination he did not agree with. The WK letter of 13 November 2020 does not object to the ERA's statement that Mr Taylor misled A Comp by stating that Community organisation had decided to put the project on hold.
- 6.5 This IP considers that Mr Taylor breached the honesty and fairness obligation in the Code of Ethics by advising A Comp that the project had been put on hold when, in fact, he had been asked to undertake further work for Community organisation. The fact that such work was, at least initially, to be done on a *pro bono* basis does not remedy that failing.
- 6.6 Also, the IP does not accept that Mr Taylor can avoid responsibility for this failing by stating that there was no "natural opportunity to discuss the project with A Comp's management during the lockdown period". Mr Taylor had an obligation to act with honesty and fairness and that required him to make contact with A Comp to set out the approach he had received from Community organisation. This could have been done by email, phone, video or in person on his return to the office.
- 6.7 Mr Taylor's failure to advise A Comp of the approach meant that it lost the opportunity to deal with the concerns raised by Community organisation about the build cost overrun and to preserve that ongoing professional relationship with the President and other decision makers at Community organisation.

Conclusion

- 6.8 The IP is of the view that Mr Taylor has breached Code of Ethics Rule 47 due to his failure to advise A Comp of the approach from Community organisation to do work on his own account.

Issue 2: Did Mr Taylor breach Rule 55 of the Code of Ethics

- 6.9 Mr Taylor's conduct that meant he was in breach of Rule 47 (as described above) also means that he was in breach of Rule 55.
- 6.10 According to Rule 55, when Mr Taylor was approached by Community organisation to prepare a new design for the clubhouse, he was obliged to notify A Comp of that approach (being the practice with registered architects that already had the agreement for services for the project).
- 6.11 Mr Taylor acknowledges that he did not advise A Comp of that approach. Mr Taylor calls it an error of judgement. However, it was more than that; it was a clear breach of Rule 55.

Conclusion

- 6.12 The IP is of the view that Mr Taylor has breached Code of Ethics Rule 55 due to his failure to advise A Comp of the approach from Community organisation to do work on his own account.

Issue 3: Did Mr Taylor breach Rule 58A of the Code of Ethics

- 6.13 Rule 58A requires a registered architect to provide written terms of appointment to a client (appropriate to the commission or services to be undertaken) and to ensure that the client, having agreed to the written terms, provides an instruction to proceed. Rule 58A(2) sets out the minimum that the terms of appointment must cover.
- 6.14 When Mr Taylor agreed to prepare an alternative design for the clubhouse, he was doing so in his capacity as a Registered Architect. The fact that he agreed, at least initially, to carry out that work on a *pro bono* basis does not mean that he was not required to comply with the Code of Ethics, including the obligation to provide written terms of appointment in term of Rule 58A.
- 6.15 The IP has not seen any evidence to indicate that, when he began working for Community organisation on his own account, Mr Taylor had provided written terms of appointment (complying with Rule 58A) and had received an instruction to proceed.
- 6.16 Mr Taylor subsequently remedied this failing by providing written terms of appointment (covering the matters in Rule 58A(2)) to Community organisation on 21 August 2020.

Conclusion

- 6.17 The IP is of the view that Mr Taylor has breached Code of Ethics Rule 58A due to his failure to provide written terms of appointment to Community organisation when he initially agreed to do work on his own account.

Issue 4: Are there any grounds in Rule 69 upon which the inquiry may be dismissed?

- 6.18 The grounds upon which an inquiry may be dismissed (if a ground for discipline has been found) are that:
- (b) The subject matter is trivial or
 - (c) The matter is insufficiently grave to warrant further investigation; or
 - (d) The complaint is frivolous or vexatious or is not made in good faith; or
 - (e) The complainant does not wish action to be taken or continued; or
 - (f) The complainant does not have sufficient personal interest in the subject matter of the complaint; or
 - (g) It is no longer practicable or desirable to determine the matter given the time that has elapsed since the matter giving rise to the complaint or inquiry arose.
- 6.19 WK have referred to the “insufficiently grave” ground in Rule 69(c) and have stated:
- Here, given the unique circumstances which led to these events, the steps taken to address the consequences of them, and the fact that the only other person effected (A Comp) has no interest in the action being taken or continued, it is open to the Investigating Panel to recommend that this matter should be dismissed.*
- 6.20 The IP acknowledges Mr Taylor’s position that his main motivation in preparing a new design for Community organisation was to assist an organisation, with which he had a long association. He was not paid for his initial work on the new design and there was apparently no commitment to pay him for subsequent work if the design was adopted (although subsequently he was paid).
- 6.21 However, even if that is correct, Mr Taylor failed to act with honesty and fairness in relation to his employer and prevented his employer from remediating its relationship with Community organisation in relation to the first design for the clubhouse. The IP

does not consider that those failings (combined with the failure to document his agreement with Community organisation) can be described as insufficiently grave to warrant further investigation.

7 Conclusion

The IP has decided to include in its report a recommendation to the Board of NZRAB under rule 66 (2) that there are grounds for disciplining the person complained about under section 25(1)(b) of the Act in relation to breaches of Rules 47, 55 and 58A of the Act.

Signed

NS

IP Chair_____

On behalf of the Panel

Date: 16 December 2020