



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

Memorandum

Date: August 20, 2015

To: AIBC Council

From: Thomas M. Lutes, General Counsel and the Bylaw Review Committee
("BRC" or "Committee") Brian Sim, Architect AIBC, Chair

**RE: Analysis and Recommendations:
Investigations and Discipline Bylaws, including Remedial Discipline
Process**

Revision 1 – November 2015 (see last page for details)

1.0 Background

- 1.1 Most self-governing professions' legislation makes provision and provides authority for the receipt, processing and investigations of complaints. In some cases, the authorization is basic, with details left to bylaws or rules. For other professions, such as those governed by the *Health Professions Act* of BC, the legislation establishes a detailed process, with only 'fleshing-out' provisions found in the organizations' bylaws.¹
- 1.2 Section 46 of the *Architects Act*, which is the "Inquiry" authorization section, states that "council may order an inquiry by a disciplinary committee into a complaint against a member, architectural firm, licensee or associate or into the conduct, capability or fitness to practise of a member, architectural firm or licensee" [emphasis added]. While this section makes it clear that a complaint triggers an inquiry, the legislation is otherwise completely silent with respect to the actual process and authority for the investigations of complaints that may lead to a formal disciplinary inquiry.
- 1.3 An investigation process that honours legislation, bylaws and the common law expectations of procedural fairness is a cornerstone of professional regulation. In 2001,

¹ For reference, Appendix "B" to this memorandum (attached separately) includes excerpts from the legal and health professions of a small portion of the investigations and discipline language found directly in their statutes.

AIBC Council approved Rules for the Professional Conduct Process of the AIBC (the “Rules”). These Rules were most recently updated in September 2013 to reflect that the *Act* and bylaws had been substantively amended to enshrine consensual resolution at that higher level of regulation.

- 1.4 While the Rules have served the institute extremely well since 2001 – including establishing the original consensual resolution process – the BRC has targeted the processes the Rules establish for elevation to bylaw status. Until modernization of the *Architects Act* creates statutory provisions for investigations and an updated disciplinary process, enshrining the fundamentals of a complaint and investigations process and fleshing out the disciplinary process in AIBC bylaws is an important step. Legal staff has advised that the AIBC’s complaints, investigations and disciplinary processes readily meet the ‘bylaw test’ established by Section 24 of the *Act*, namely that they are “necessary for the regulation of the institute, its members, architectural firms, licensees and associates”.
- 1.5 The bylaw analysis of investigations and discipline has had two related phases. The first was consideration of the transition of ‘rules to bylaws’. The other was consideration of an alternative disciplinary process, discussed below, which would allow for a more nuanced and remedial approach to certain complaint matters than the current ‘dismissed or to discipline’ trajectory allows. Internal reports were prepared on these topics, as well as council updates and submissions – most recently the staff memorandum to council in April 2015 elaborating on the remedial discipline concept. A draft of this memorandum and bylaws has been shared with the Investigations Committee, the Professional Conduct and Illegal Practice Board and the Consensual Resolution Review Panel. Their feedback will continue to be sought throughout the consultation process (see Section 5.0).

2.0 Complaints and Investigations

- 2.1 Currently, the Rules provide for a complaint investigation and professional conduct process administered by the Executive Director (“ED”). The ED is authorized to delegate authority as long as these duties are carried out under the ED’s supervision and direction. The Rules establish an investigations committee (“IC”) whose primary function is to investigate matters referred to it by the ED and determine whether to make a recommendation that council order in inquiry by a disciplinary committee.
- 2.2 The Rules allow the ED to investigate complaints “by whatever fair and reasonable means the [ED] determines are appropriate including the referral of a matter to the investigations committee” In some circumstances, such as when a real or potential conflict of interest may arise, the AIBC has conducted investigations into complaints using external investigators. However, the vast majority of complaints received by the institute are channeled through the IC.
- 2.3 The drafting approach taken with complaint and investigation bylaws at Appendix “A” (beginning at page 7) is to replicate the current complaint investigation process as much

as possible, without importing the entire suite of Rules into bylaws. Key Rules have been proposed as bylaws, with general authority granted in the bylaws to AIBC Council to establish additional procedural rules where necessary.

- 2.4 In addition, concepts have been clarified and defined in a more specific manner, including the use of the term “disciplinary violation” to capture the range of *Act*, bylaw, competency and fitness to practise concerns that are the general subject matter of complaints and discipline. The drafters have borrowed from and adapted language and concepts from other professional regulatory schemes, including those found in the *Health Professions Act* and *Legal Profession Act* and subordinate bylaws and rules of the professions governed by such legislation. Definitions and other drafting concepts used with the 2013 consensual resolution bylaw series were also followed as closely as possible for consistency.

3.0 Discipline and Remedial Discipline Outcome

- 3.1 As noted in paragraph 1.2 above, a disciplinary committee is the statutory entity tasked with conducting an inquiry. The Rules currently flesh out and confirm some of the procedural and administrative requirements of the disciplinary committee and inquiry process such as the ability of that committee to retain its own legal advisor and the requirement that inquiries be public.
- 3.2 Besides elevating some of the key Rules related to the disciplinary stage to bylaws, the BRC is recommending that the institute implement a ‘remedial discipline’ process. Under the current Rules, an investigation results in a decision that either charges are not warranted or that they are, and that council should order a disciplinary inquiry.
- 3.3 The IC is bound by these zero-sum options. Effectively, there is no middle ground to address the many scenarios where, during an investigation, concerns have arisen about an architect or other registrant’s conduct or practice, but the alleged behavior or practice does not meet the threshold for concluding that a more formal, public disciplinary inquiry (or consensual resolution) should automatically follow.² The reasons for this conclusion can be diverse, such as the presence of one or more of:
- a) compelling mitigating factors to the conduct, including acknowledgment by the individual of the problem at issue and steps taken to address it;
 - b) the individual’s professional conduct history;
 - c) the seriousness of the practice deficiency or behaviour;
 - d) unclear factual circumstances;
 - e) the need for specific or general deterrence; and/or

² Paragraphs 3.2 to 3.7 are adapted from the staff memorandum provided to council for its April 14, 2015 planning session and provide background on the remedial discipline option.

- f) the overriding public and professional interest in remediation and likelihood of a successful remedial result.
- 3.4 Under the current process, in cases where factors like those set out in paragraph 3.3 exist, the IC is sometimes prevented from taking the most effective action consistent with the public interest. Clearly, more serious, obvious or repeated misconduct or competency concern should attract a charge(s) leading to a disciplinary inquiry or consensual resolution admissions. For certain other files, however, an inquiry or consensual resolution may not be the most effective process for addressing the underlying cause of the complaint. It is these cases where an option to prescribe a remedial discipline outcome intended to improve the member's practice would be more appropriate. Such option is also in line with the range of options available to many other professional regulators.
- 3.5 Currently, where the factors identified in paragraph 3.2 exist, the IC may determine that charges are not warranted and will dismiss the complaint with a direction to staff to include in a dismissal letter the IC's "observations" on the member's handling of the matter raised in the complaint. These observations generally include suggestions or recommendations from the IC for how the member can improve in the area of deficiency. Observations can include, but are not limited to, recommending courses to attend, reminders of certain bulletins and bylaws, recommendations for improving communication, file or practice management skills and encouraging the member to seek out a mentor or avail him/herself of the peer review (practice consultation) process.
- 3.6 While beneficial to the member, these "observations" or recommendations hold no weight other than as peer advice. They appear in the body of the dismissal letter wherein the member is informed the complaint has been dismissed. There is no obligation on the member to implement or even acknowledge the recommendations given.

Proposed framework for the Remedial Discipline Outcome

- 3.7 The proposal of an additional discipline option is intended to address complaints that fall into this "middle ground" where mitigating factors suggest a formal discipline finding or admission is not necessary, in the public interest, but at the same time the conduct or competency concerns require more than a dismissal with observations. The aim of providing an additional or alternative option for action after investigation of a complaint is to elevate the recommendations that would be given in a dismissal letter into a disposition stream of its own that aims to remediate the underlying issue that gave rise to the complaint.
- 3.8 Under the proposed framework, after an investigation is complete and a determination made that the matter should not be dismissed but does not warrant charges, the IC would instruct staff to provide the member with notice via letter that:
 - a) the complaint was investigated;

- b) it gave rise to concerns identified in the body of the letter; and
 - c) that a remedial course of action is prescribed.
- 3.9 Under the draft Remedial Discipline bylaws in Appendix “A”, the IC would recommend a remedial course of action to a separate panel called the Remedial Discipline Review Panel (the “Remedial Panel”). This group (with a suggested composition of architects and retired architects with staff support) would be tasked with the monitoring and review of the remedial action recommended by the IC and reporting back to the IC as to whether the individual has satisfied the recommendations. If the remediation was completed, the IC would formally discontinue the matter, with publication to follow on an anonymous basis.³
- 3.10 In the event that the Remedial Panel reports non-compliance, the IC would have authority to recommend a charge based on that non-compliance alone. While alternatives were considered, the BRC believes this approach to non-compliance provides the proposed remedial discipline process with the necessary gravity it requires. Remedial discipline, while intended primarily to address deficiencies without resort to the full inquiry or consensual resolution process, is still a disciplinary outcome.⁴ Matters referred by the IC and reviewed by the Remedial Panel are sufficiently serious that they might otherwise proceed to formal discipline. An individual who chooses not to follow the remedial discipline recommendations would still have the option of contesting the charge of non-compliance at a disciplinary inquiry or making admissions in a consensual resolution.⁵

4.0 Bylaw Drafting and Act Modernization

- 4.1 The overall approach to these draft bylaws has been to strike a balance between bylaws that provide the bare authority for investigations and discipline and a much longer, detailed bylaw suite that is exhaustive of procedure and process. The BRC and staff have reviewed multiple variations from other regulators in statute, bylaw and rule, and recognize that there is a broad spectrum of approaches to these bylaws. In the end, the intermediate choice was preferred for these initial drafts, by which some less important procedural matters could be established by council rules and updated as necessary.

³ The approach of publishing a summary of the complaint and outcome using “Architect A” instead of a name is consistent with the public and profession’s interests in the publication of disciplinary matters, balanced with the recognition that a remedial outcome is not intended to be punitive. Appendix “C” (attached separately) is an example of how this publication could take place. It is a representative sample of ‘conduct review’ publication from the Law Society of British Columbia (including an instance in which the member consented to being named).

⁴ Staff and the BRC believe it is important, should this initiative proceed, to accurately convey this aspect of remedial discipline to the membership. The direction and the outcome, while intended to ‘remediate’, is disciplinary in nature. Prior to advancing bylaws to a vote, the institute will have to squarely address whether, and how, such outcomes are identified in AIBC records and whether they are discloseable to the public and reportable by members in such situations as insurance or registration with other jurisdictions.

⁵ One issue raised by council is whether to limit the potential charge to non-compliance with the remedial order or provide the Investigations Committee with discretion whether to proceed on that issue as well as the complaint leading to the remedial order.

However, it remains a live issue to consider whether to include such details as hearing procedure (evidentiary matters, deadlines, etc.) in any proposed bylaws.

- 4.2 Perhaps the greatest challenge to preparing a coherent, modern and fair investigations and discipline bylaw matrix is the structure and language of the *Architects Act*. Without providing such key regulatory touchstones as complaint and investigation authority or the statutory definitions of professional misconduct and conduct unbecoming, the bylaws must carry weight not normally required of them. Staff and the BRC hope that modernization of the *Architects Act* will include further ‘elevation’ of some of the concepts and processes found in the draft bylaws proposed in this memorandum.
- 4.3 The definitions to the draft bylaws pre-suppose that AIBC bylaws have been amended to replace Executive Director with “CEO” in the 20-plus bylaws that would require such a change. The BRC will be preparing this recommendation separately as part of the next stage of administrative or ‘housekeeping’ bylaw amendments.

5.0 Bylaw Consultation Policy Update

- 5.1 Council passed a policy in June 2014 that requires any bylaw amendment supported in principle by council to proceed to a consultation process prior to any member vote (12.1 series, Appendix “D” attached separately). Given the length and detail of these bylaws, the importance to the membership of the content and the high likelihood of questions and concerns from members, the BRC recommends an enhanced consultation process be considered and supported by council. Council will also have to give consideration as to the voting method (at a meeting, by mail or electronically) should bylaws be advanced. Staff and the BRC suggest that consultation include efforts to gauge members’ preferences and perspectives as to how a vote on substantive bylaws like these should best proceed.
- 5.2 Finally, in light of the subject matter of these bylaws and the gravity of ‘discipline’ to professional reputations and livelihood, the BRC and staff recommend an enhanced consultation with the Ministry of Advanced Education, if possible, prior to putting bylaws to member vote. Council is reminded that the province may disallow any bylaws otherwise lawfully passed by the institute.

Appendix “A”

Draft Bylaw for Council Consideration: Investigations and Discipline

INVESTIGATIONS AND DISCIPLINE

Definitions [Interpretation]

37.0 In these investigations and discipline bylaws 37.0 through 37.38,

“Chief Executive Officer” or **“CEO”** means the individual appointed by council under bylaw 3.6 and includes a person designated by the CEO to perform any of the duties assigned to the CEO in these bylaws;

[NOTE: This definition presumes change to existing bylaws to replace all ED mention with CEO. This definition allows delegation by CEO of investigative/disciplinary roles.]

“complainant” means a person or other entity ~~other than the institute~~ who submits a written complaint to the institute about an architect, firm, associate or licensee under bylaw 37.1;

[NOTE: Same definition as Bylaw 36.0 except for cross-out; consider amending 36.0 definition given CES considerations (i.e., that for CES, the institute’s professional services department is the nominal complainant)]

“complaint” means an allegation or assertion, provided to the institute in writing, that a respondent has committed a discipline violation or a potential complaint that has been reviewed by the investigations committee and deemed to be of sufficient concern to become a complaint;

“disciplinary violation” means any one or more of the following:

- i) a breach of the *Architects Act*;
- ii) a breach of any bylaw or council ruling in the Code of Ethics and Professional Conduct;
- iii) conduct constituting professional misconduct, unprofessional conduct or conduct unbecoming;
- iv) incompetency or lack of physical or mental fitness or capability to practise;

[NOTE: Quaere whether to define professional misconduct/conduct unbecoming as the HPA does, or leave to common law]

[BRC Comment: Concern about confusion around previous use of “discipline violation” – namely, whether ‘discipline’ is understood as meaning the ‘discipline of architecture’ or ‘discipline’ in the regulatory sense.. Staff recommends changing defined term to “disciplinary” to address any confusion.]

“institute” has the meaning given to it in the *Architects Act*;

“investigations committee” means the committee established pursuant to bylaw 37.10;

“matter” has the same meaning as established in Bylaw 36.0;

[“matter” means the issues and subjects relating to an inquiry against the architect, architectural firm, licensee or associate, including any charge(s) or allegation(s) arising out of an investigation into a complaint]

“potential complaint” means information provided to the institute, by any means and from any source, that indicates a respondent’s conduct or competency may constitute a discipline violation;

“remedial discipline” means the process established under these bylaws;

“remedial discipline review panel” or **“remedial panel”** means the panel established under these bylaws;

“respondent” has the same meaning as established in Bylaw 36.0.

[“respondent” means the architect, architectural firm, licensee or associate who is the subject of an inquiry]

Complaints and Investigations

- 37.1 Any person may deliver a complaint concerning the conduct or competency of a respondent to the CEO, who shall investigate or cause to be investigated such complaint in accordance with these bylaws.
- 37.2 Information provided to the CEO from any source that indicates a respondent’s conduct or competency may constitute a discipline violation must be treated as a potential complaint and processed in accordance with these bylaws.
- 37.3 On receipt of a complaint or potential complaint, the CEO shall provide a copy of it, or a summary sufficient to describe the concerns or allegations, to the respondent, who shall provide a written response to the institute within two weeks of being requested to do so or within such extended period of time as the CEO may in writing allow.
- 37.4 Upon conclusion of the exchange of correspondence related to a complaint or potential complaint with the respondent, the CEO shall:
 - (a) refer the matter directly to the investigations committee; or
 - (b) conduct an investigation into a complaint or potential complaint to the extent and by whatever fair and reasonable means the CEO determines are appropriate.
- 37.5 In any investigation conducted under bylaw 37.4, the CEO or investigations committee is authorized to do one or more of the following:
 - (a) require the respondent or any other registrant who may be in possession or control of information, to submit original drawings, renderings or reproductions of the originals, specifications, contracts, records and other materials and documents reasonably relevant to the investigation;
 - (b) conduct interviews of any person to obtain information reasonably relevant to the investigation;
 - (c) attend at the business premises of a respondent during reasonable business hours and, with the respondent's consent (not to be unreasonably withheld) inspect the premises, make copies of documents and otherwise obtain evidence that is or may be reasonably relevant to the investigation;

- (d) seek the opinion of advisers and experts;
 - (e) retain the services of a private investigator;
 - (f) facilitate a discussion between the complainant and the respondent to arrive at a resolution of the matter; and
 - (g) arrange for the drafting and prosecution of the charges against the respondent.
- 37.6 If, as the result of an investigation by the CEO under bylaw 37.4 (b), it appears to the CEO that the matter may warrant an inquiry under section 46 of the *Act*, the CEO shall provide a written report of the results of the investigation to the investigations committee, with or without recommendations. A copy of the report shall be delivered to the respondent at least 10 days prior to its consideration by the investigations committee. The respondent may make written representations to the investigations committee in response to the report.
- 37.7 The CEO may decline to investigate a complaint or potential complaint if the CEO is satisfied that:
- (a) it is not within the jurisdiction of the institute;
 - (b) it is frivolous, vexatious, an abuse of process or incapable of substantiation; or
 - (c) it does not allege facts that, if proved, would amount to a discipline violation.
- 37.8 Within 30 days of any decision by the CEO not to investigate a complaint pursuant to bylaw 37.7, the CEO shall provide the complainant with a written explanation of such decision.
- 37.9 A complainant may request that the investigations committee review a decision of the CEO under bylaw 37.7. The request must be made in writing to the investigations committee within 30 days after notification of the decision of the CEO to the complainant.

Investigations Committee

- 37.10 Council shall appoint an investigations committee of not less than five individuals, one of whom shall be appointed as chairperson. Council may appoint one lay person to serve as a member of the investigations committee and one retired architect associate, but otherwise a person must be an architect to be eligible for appointment to the investigations committee.
- [BRC Note: Consider whether to use 'public member' concept/definition as with consensual resolution review panel instead of 'lay person']*
- 37.11 Members of the investigations committee shall hold office at the pleasure of the council.
- 37.12 Council may provide for staggered terms of office of members of the investigations committee and otherwise establish terms of reference and other procedural matters to supplement these bylaws.
- 37.13 A majority of the members of the investigations committee shall constitute a quorum. While the investigations committee shall attempt to reach decisions and recommendations by consensus, the decision of a majority of the members of the investigations committee shall constitute the decision or recommendation of the committee.
- 37.14 The investigations committee shall meet and deliberate *in camera*, but may ask complainants, respondents or third parties to attend for interviews. The investigations committee shall maintain a confidential record of its investigations, but as an investigative body is not required to issue formal reasons for its decisions or recommendations.

- 37.15 A member of council may be appointed to the investigations committee but any such member will not be eligible, during the balance of that member's current term on council, for appointment to a disciplinary committee, nor consideration at council meetings of approval of any notice of inquiry.
- 37.16 The investigations committee shall have the following functions:
- (a) to investigate complaints referred to it by the CEO under bylaw 37.4(a);
 - (b) to review any written report from the CEO under bylaw 37.6 and to conduct any further investigation it may in its discretion deem necessary or advisable;
 - (c) to consider any potential complaints referred to it by the CEO under 37.4(a) to determine whether such matter should be dismissed without investigation or should become a complaint for investigation under subsection (a) above, with the institute as the nominal complainant;
 - (d) after investigation of a complaint or review and any investigation related to any written report from the CEO under bylaw 37.6, to consider whether to recommend that council order an inquiry into a matter by a disciplinary committee pursuant to section 46 of the *Act*;
 - (e) to determine whether, after investigation of any complaint, to make a direction for remedial discipline under bylaws 37.20 through 37.25;
 - (f) upon receipt of a report from the remedial discipline review committee indicating that a respondent has failed to satisfy remedial discipline directions, to consider whether to recommend that council order an inquiry into such failure by a disciplinary committee pursuant to section 46 of the *Act*;
 - (g) to review decisions of the CEO made under bylaw 37.7 at the written request of a complainant per bylaw 39.9 and, in its sole discretion without further appeal or review by any party, determine whether to further investigate the matter and exercise any of its post-investigation powers or to concur with the CEO's decision;
- 37.17 The investigations committee may invite the complainant, respondent or any other person(s) who may provide relevant information about a matter to a meeting for an interview concerning the matter. While the information elicited at the meeting will form part of the investigation, such meeting is not a formal hearing and evidence is not taken under oath.
- 37.18 If the investigations committee concludes that charges are not warranted, the CEO shall so notify the respondent and any complainant. This notification must include confirmation that there is no appeal from the decision under any AIBC process and that the complainant can seek independent legal advice as to judicial review or other recourse.
- 37.19 Neither the investigation nor any resulting inquiry shall be limited in scope to the particular conduct or circumstance that was the subject of the complaint or potential complaint that initially led to the investigation.

[NOTE: This is the current language in Rule 3.4 under which the institute has operated since 2001. What it means is that if the IC determines there is a potential disciplinary violation other than that identified in the complaint, that issue can proceed through investigation and to discipline.]

Remedial Discipline

- 37.20 Where the investigations committee concludes after an investigation that a matter raises concerns about a respondent's conduct, competency or fitness to practice that would be better resolved through a remedial discipline process than referral to a disciplinary inquiry, it shall provide a report with a direction for remedial discipline to the remedial discipline review panel.
- 37.21 The investigations committee's direction for remedial discipline may include, but is not limited to:
- (a) educational action, such as coursework;
 - (b) an oral conduct review as may be established by the institute by council rule or bylaw;
 - (c) a practice consultation or peer review process as may be established by the institute by council rule or bylaw; and/or
 - (d) such other reasonable remedial measures as may be appropriate to the circumstances.
- 37.22 Council shall appoint a remedial discipline review panel consisting of at least three and up to five individuals and, in its discretion, one lay person* and one retired architect associate. At all times the majority of the remedial panel must be comprised of architects and the chairperson must be an architect.
- [NOTE: As with IC, use "public member" instead? Consider whether to replicate language used in consensual resolution bylaws]*
- 37.23 Remedial panel members shall hold office at council's pleasure or on terms otherwise established by council.
- 37.24 The remedial panel shall meet as it deems necessary for the performance of its functions in a timely, fair and cost-effective manner, including meetings by teleconference, videoconference or otherwise electronically.
- 37.25 The remedial panel shall attempt to carry out its functions by consensus, but where no consensus is possible, the decision of the remedial panel majority shall be the remedial panel's decision.
- 37.26 The remedial panel shall have the following functions:
- (a) to receive directions for remedial discipline from the investigations committee;
 - (b) to monitor and assess the respondent's compliance with remedial discipline directions; and
 - (c) to provide a written report to the investigations committee as to the respondent's compliance with remedial directions, which report shall include a determination whether, in the remedial panel's sole discretion, the respondent has satisfied the remedial discipline directions.

[NOTE: The following bylaws 37.27 through 37.39 are adapted closely from the existing Rules, removing as many as possible that are too 'administrative', duplicative of the Act or otherwise deemed not suitable for bylaw threshold.]

Disciplinary Committee

- 37.27 Upon receipt of a recommendation from the investigations committee, the council shall consider whether to order an inquiry into the matter by a disciplinary committee pursuant to section 46 of the *Act*.
- 37.28 If council orders an inquiry by a disciplinary committee, the CEO shall serve a notice of hearing on the respondent and the complainant in accordance with section 48 of the *Act*.
- 37.29 The disciplinary committee shall conduct its hearings at the offices of the AIBC, unless an alternative venue is required. Hearings shall be open to the public except for the disciplinary committee's *in camera* deliberations and in any circumstance where the disciplinary committee deems it appropriate to exclude some or all non-parties to the proceeding.

[NOTE: This draft bylaw is a blend of the current AIBC Rule and the Law Society's rule (bylaw) giving its panel authority to exclude. The Law Society's rules on its hearings are extremely detailed.]

- 37.30 The CEO shall be responsible for the drafting and prosecution of the charges against the respondent to be included in the notice of inquiry and considered at an inquiry by a disciplinary committee. The CEO may retain and instruct legal counsel to assist with the drafting and prosecution of the charges.
- 37.31 The CEO may withdraw charges against a respondent based on a legal opinion which, to the CEO's satisfaction, raises reasonable grounds for charge withdrawal, including but not limited to the likelihood of a successful prosecution. The CEO shall notify the respondent and any complainant in the matter as to a decision to withdraw charges. The legal opinion supplementing to the CEO decision shall be retained as part of the matter records.

[NOTE: These bylaws are consistent with current approach in the Rules. In practice, the CEO/ED delegates responsibility for almost all tasks to staff designates. The aggregation of responsibility in one position is consistent with the professional regulatory model, by which the operational head of a regulator (often identified in statute as the "registrar") has the nominal responsibility for investigative/discipline tasks, which can be delegated. In other words, the CEO does not actually, personally draw up the charges, but assigns the task to staff or external consultants]

Confidentiality and Publication

- 37.32 As a minimum level of publication and disclosure, the AIBC shall disclose to the membership and make publicly available any decision or order of a disciplinary committee, or suitable summary thereof.
- 37.33 Institute staff, every member of council and all disciplinary committee, investigations committee and panel members must keep all information concerning a matter strictly confidential, except insofar as:
- (a) the person's official duty requires or permits the person to make disclosure of the information or to report or take official action on it;
 - (b) public disclosure or publication has been made pursuant to these bylaws; and/or
 - (c) it may otherwise be directed by the order of a court of competent jurisdiction, or as provided in Section 51.2 of the *Act* in respect of consensual resolutions.

- 37.34 Nothing in these bylaws restricts the ability of a disciplinary committee to order wider publication and disclosure of its decision, nor the ability for the AIBC and respondent to agree to wider publication and disclosure, if established within a consensual resolution agreement pursuant to AIBC Bylaw 36.20.

Compliance with Sanctions, Remedial Directions and Costs

- 37.35 Unless otherwise provided by the disciplinary committee in its order, all fines and costs ordered to be paid by the respondent, shall be paid to the institute within 30 days of the date of the order.

- 37.36 Where a respondent is:

- a) ordered by the disciplinary committee to undertake remedial actions or satisfy conditions placed on a certificate of practice;
- b) directed by the investigations committee to undertake remedial discipline; or
- c) undertakes or agrees to remedial action or other provisions within a consensual resolution agreement;

the respondent shall comply with the order, direction or agreement within the time limit ordered, directed or agreed to. Failure by the respondent to comply is grounds for disciplinary action, including automatic suspension if such a suspension term is provided for by way of disciplinary committee order or consensual resolution.

[NOTE: 37.36 has been modified considerably from the current rule and now includes remedial directions.]

- 37.37 The CEO is authorized to monitor and enforce sanctions, remedial actions, conditions on certificates of practice and costs ordered by a disciplinary committee or provided for in a consensual resolution agreement.

Oral Conduct Reviews

- 37.38 In the event that an order of a disciplinary committee, direction of the investigation committee or a term of a consensual resolution or undertaking provides that a respondent (including a former member or other registrant applying for reinstatement) must undertake an oral conduct review, such review will be conducted according to the guidelines or rules established by the AIBC for such process.

Supplemental Rules

- 37.39 Council may pass procedural rules and guidelines to supplement Bylaws 37.1 through 37.37, which rules must be consistent with the language and intent of these bylaws.

[NOTE: The alternative to 37.39 – or in addition – is to fill in the procedural gaps in these bylaws, particularly as to disciplinary hearings. The Law Society, for example, leaves almost no detail of the hearing process to discretion, administrative law concepts or argument between the parties. Their rules (bylaws) detail such matters as panel member disqualification; compelling witnesses; cross-examinations and exhibit procedures; writing of hearing decisions; varying orders, etc. For further discussion with the BRC, investigations committee, council, members, etc.]

Document Amendment History:

2015: November 25 – Numbering amendment (37.22 through 37.39)

Appendix “B”:

General Legislation and Bylaw Examples from Other Regulators: **Investigations and Discipline**

LEGAL PROFESSION ACT [SBC 1998] CHAPTER 9

Part 3 — Protection of the Public

Complaints from the public

- 26 (1) A person who believes that a lawyer, former lawyer or articulated student has practised law incompetently or been guilty of professional misconduct, conduct unbecoming a lawyer or a breach of this Act or the rules may make a complaint to the society.
- (2) The benchers may make rules authorizing an investigation into the conduct of a law firm or the conduct or competence of a lawyer, former lawyer or articulated student, whether or not a complaint has been received under subsection (1).
- (3) For the purposes of subsection (4), the benchers may designate an employee of the society or appoint a practising lawyer or a person whose qualifications are satisfactory to the benchers.
- (4) For the purposes of an investigation authorized by rules made under subsection (2), an employee designated or a person appointed under subsection (3) may make an order requiring a person to do either or both of the following:
- (a) attend, in person or by electronic means, before the designated employee or appointed person to answer questions on oath or affirmation, or in any other manner;
 - (b) produce for the designated employee or appointed person a record or thing in the person's possession or control.
- (5) The society may apply to the Supreme Court for an order
- (a) directing a person to comply with an order made under subsection (4), or
 - (b) directing an officer or governing member of a person to cause the person to comply with an order made under subsection (4).
- (6) The failure or refusal of a person subject to an order under subsection (4) to
- (a) attend before the designated employee or appointed person,

- (b) take an oath or make an affirmation,
- (c) answer questions, or
- (d) produce records or things in the person's possession or control

makes the person, on application to the Supreme Court by the society, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

Suspension during investigation

26.01 (1) The benchers may make rules permitting 3 or more benchers to make the following orders during an investigation, if those benchers are satisfied it is necessary to protect the public:

- (a) suspend a lawyer who is the subject of the investigation;
- (b) impose conditions or limitations on the practice of a lawyer who is the subject of the investigation;
- (c) suspend the enrollment of an articulated student who is the subject of the investigation;
- (d) impose conditions or limitations on the enrollment of an articulated student who is the subject of the investigation.

(2) Rules made under subsection (1) must

- (a) provide for a proceeding to take place before an order is made,
- (b) set out the term of a suspension, condition or limitation, and
- (c) provide for review of an order made under subsection (1) and for confirmation, variation or rescission of the order.

(3) Rules made under this section and section 26.02 may provide for practice and procedure for a matter referred to in subsection (2) (a) and (c) or section 26.02 (3) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

...

Practice standards

27 (1) The benchers may

- (a) set standards of practice for lawyers,
- (b) establish and maintain a program to assist lawyers in handling or avoiding personal, emotional, medical or substance abuse problems, and
- (c) establish and maintain a program to assist lawyers on issues arising from the practice of law.

(2) The benchers may make rules to do any of the following:

(a) establish a practice standards committee and delegate any or all authority and responsibility under this section, other than rule-making authority, to that committee;

(b) permit an investigation into a lawyer's competence to practise law if

(i) there are reasonable grounds to believe that the lawyer is practising law in an incompetent manner, or

(ii) the lawyer consents;

(c) require a lawyer whose competence to practise law is under investigation to answer questions and provide access to information, files or records in the lawyer's possession or control;

(d) provide for a report to the benchers of the findings of an investigation into the competence of a lawyer to practise law;

(d.1) permit the practice standards committee established under paragraph (a) to make orders imposing conditions and limitations on lawyers' practices, and to require lawyers whose competence to practise law has been investigated to comply with those orders;

(e) permit the benchers to order that a lawyer, a former lawyer, an articulated student or a law firm pay to the society the costs of an investigation or remedial program under this Part and set and extend the time for payment;

(f) permit the discipline committee established under section 36 (a) to consider

(i) the findings of an investigation into a lawyer's competence to practise law,

(ii) any remedial program undertaken or recommended,

(iii) any order that imposes conditions or limitations on the practice of a lawyer, and

(iv) any failure to comply with an order that imposes conditions or limitations on the practice of a lawyer.

(3) The amount of costs ordered to be paid by a person under the rules made under subsection (2) (e) may be recovered as a debt owing to the society and, when collected, the amount is the property of the society.

(3.1) For the purpose of recovering a debt under subsection (3), the executive director may

(a) issue a certificate stating that the amount of costs is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and

(b) file the certificate with the Supreme Court.

(3.2) A certificate filed under subsection (3.1) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a

judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it.

(4) Rules made under subsection (2) (d.1)

(a) may include rules respecting

(i) the making of orders by the practice standards committee, and

(ii) the conditions and limitations that may be imposed on the practice of a lawyer, and

(b) must not permit the imposition of conditions or limitations on the practice of a lawyer before the lawyer has been notified of the reasons for the proposed order and given a reasonable opportunity to make representations respecting those reasons.

...

Part 4 — Discipline

Discipline rules

36 The benchers may make rules to do any of the following:

(a) establish a discipline committee and delegate any or all authority and responsibility under this Part, other than rule-making authority, to that committee;

(b) authorize an investigation of the books, records and accounts of a lawyer if there is reason to believe that the lawyer may have committed any misconduct, conduct unbecoming a lawyer or a breach of this Act or the rules;

(c) authorize an examination of the books, records and accounts of a lawyer or law firm;

(d) require a lawyer or law firm to cooperate with an investigation or examination under paragraph (b) or (c), including producing records and other evidence and providing explanations on request;

(e) require a lawyer or articulated student to appear before the benchers, a committee or other body to discuss the conduct or competence of the lawyer or articulated student;

(e.1) require a representative of a law firm to appear before the benchers, a committee or other body to discuss the conduct of the law firm;

(f) authorize the ordering of a hearing into the conduct or competence of a lawyer or an articulated student, or the conduct of a law firm, by issuing a citation;

(g) authorize the rescission of a citation;

(h) permit the benchers to summarily suspend or disbar a lawyer convicted of an offence that was proceeded with by way

of indictment or convicted in another jurisdiction of an offence that, in the opinion of the benchers, is equivalent to an offence that may be proceeded with by way of indictment;

(i) establish a process for the protection of the privacy and the severing, destruction or return of personal, business or other records that are unrelated to an investigation or examination and that, in error or incidentally, form part of

(i) the books, records or accounts of a lawyer, an articulated student or a law firm authorized to be investigated or examined under a rule made under paragraph (b) or section 26, or

(ii) files or other records that are seized in accordance with an order of the Supreme Court under section 37.

Search and seizure

37 (1) The society may apply to the Supreme Court for an order that the files or other records, wherever located, of or relating to a lawyer or articulated student be seized from the person named in the order, if there are reasonable grounds to believe that a lawyer or articulated student may have committed or will commit any

(a) misconduct,

(b) conduct unbecoming a lawyer, or

(c) breach of this Act or the rules.

(2) An application under subsection (1) may be made without notice to anyone or on such notice as the judge requires.

(3) If the application under subsection (1) is in relation to the conduct of an articulated student, the order may be made in respect of the books, accounts, files or other records of the student's principal or the principal's firm.

(4) In an application under subsection (1), the person making the application must state on oath or affirmation the grounds for believing the matter referred to in subsection (1) and the grounds for believing that the seizure will produce evidence relevant to that matter.

(5) In an order under subsection (1), the court may

(a) designate the person who will conduct the seizure and authorize that person to conduct it,

(b) state the time and place where the seizure will take place, and

(c) give any other directions that are necessary to carry out the seizure.

Personal records in investigation or seizure

37.1 In conducting an investigation or examination of books, records or accounts under section 26 or rules made under section 36 (b) or in the seizure of

files or other records in accordance with an order of the Supreme Court under section 37, the society may collect personal information unrelated to the investigation or examination that, in error or incidentally, is contained in those books, accounts, files or records, but the society must, subject to rules made under section 36 (i),

- (a) return that personal information if and as soon as practicable, or
- (b) destroy that personal information.

Discipline hearings

- 38 (1) This section applies to the hearing of a citation.
- (2) A hearing must be conducted before a panel.
- (3) A panel must
- (a) make a determination and take action according to this section,
 - (b) give written reasons for its determination about the conduct or competence of the respondent and any action taken against the respondent, and
 - (c) record in writing any order for costs.
- (4) After a hearing, a panel must do one of the following:
- (a) dismiss the citation;
 - (b) determine that the respondent has committed one or more of the following:
 - (i) professional misconduct;
 - (ii) conduct unbecoming a lawyer;
 - (iii) a breach of this Act or the rules;
 - (iv) incompetent performance of duties undertaken in the capacity of a lawyer;
 - (v) if the respondent is not a member, conduct that would, if the respondent were a member, constitute professional misconduct, conduct unbecoming a lawyer, or a breach of this Act or the rules;
 - (c) [Repealed 2012-16-27.]
- (5) If an adverse determination is made against a respondent, other than an articulated student, under subsection (4), the panel must do one or more of the following:
- (a) reprimand the respondent;
 - (b) fine the respondent an amount not exceeding \$50 000;
 - (c) impose conditions or limitations on the respondent's practice;

- (d) suspend the respondent from the practice of law or from practice in one or more fields of law
 - (i) for a specified period of time,
 - (ii) until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection,
 - (iii) from a specified date until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection, or
 - (iv) for a specified minimum period of time and until the respondent fulfills a condition imposed under paragraph (c) or subsection (7) or complies with a requirement under paragraph (f) of this subsection;
- (e) disbar the respondent;
- (f) require the respondent to do one or more of the following:
 - (i) complete a remedial program to the satisfaction of the practice standards committee;
 - (ii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent is competent to practise law or to practise in one or more fields of law;
 - (iii) appear before a board of examiners appointed by the panel or by the practice standards committee and satisfy the board that the respondent's competence to practise law is not adversely affected by a physical or mental disability, or dependency on alcohol or drugs;
 - (iv) practise law only as a partner, employee or associate of one or more other lawyers;
- (g) prohibit a respondent who is not a member but who is permitted to practise law under a rule made under section 16 (2) (a) or 17 (1) (a) from practising law in British Columbia indefinitely or for a specified period of time.

(6) If an adverse determination is made under subsection (4) against an articulated student, the panel may do one or more of the following:

- (a) reprimand the articulated student;
- (b) fine the articulated student an amount not exceeding \$5 000;
- (c) extend the period that the articulated student is required to serve under articles;
- (d) set aside the enrollment of the articulated student.

(7) In addition to its powers under subsections (5) and (6), a panel may make any other orders and declarations and impose any conditions it considers appropriate.

(8) A fine imposed under this Act may be recovered as a debt owing to the society and, when collected, it is the property of the society.

(9) For the purpose of recovering a debt under subsection (8), the executive director may

(a) issue a certificate stating that the fine is due, the amount remaining unpaid, including interest, and the name of the person required to pay it, and

(b) file the certificate with the Supreme Court.

(10) A certificate filed under subsection (9) with the Supreme Court is of the same effect, and proceedings may be taken on it, as if it were a judgment of the Supreme Court for the recovery of a debt in the amount stated against the person named in it.

Suspension

39 (1) The benchers may make rules permitting 3 or more benchers to do any of the following until the decision of a hearing panel or other disposition of the subject matter of the hearing:

(a) suspend a respondent who is an individual, if the respondent's continued practice would be dangerous to the public or the respondent's clients;

(b) impose conditions or limitations on the practice of a respondent who is an individual;

(c) suspend the enrollment of a respondent who is an articled student;

(d) impose conditions or limitations on the enrollment of a respondent who is an articled student.

(2) Rules made under subsection (1) must

(a) provide for a proceeding to take place before an order is made,

(b) set out the term of a suspension, condition or limitation, and

(c) provide for review of an order made under subsection (1) and for confirmation, variation or rescission of the order.

(3) Rules made under this section may provide for practice and procedure for a matter referred to in subsection (2) (a) and (c) and may specify that some or all practices and procedures in those proceedings may be determined by the benchers who are present at the proceeding.

**HEALTH PROFESSIONS ACT
[RSBC 1996] CHAPTER 183**

Part 3 — Inspections, Inquiries and Discipline

Definitions for Part

26 In this Part:

"professional misconduct" includes sexual misconduct, unethical conduct, infamous conduct and conduct unbecoming a member of the health profession;

"registrant" includes a former registrant, and a certified non-registrant or former certified non-registrant to whom this Part applies;

"serious matter" means a matter which, if admitted or proven following an investigation under this Part, would ordinarily result in an order being made under section 39 (2) (b) to (e);

"unprofessional conduct" includes professional misconduct.

Quality assurance program

26.1 (1) [Not in force.]

(2) If the bylaws provide for assessment of the professional performance of a registrant, the quality assurance committee or an assessor appointed by that committee may

- (a) assess the professional performance of a registrant, and
- (b) inspect the records, including patient records, of the registrant that are related to professional performance.

(3) If the quality assurance committee concludes after assessing a registrant's professional performance that there is a deficiency in the manner in which the registrant's practice is being conducted, the quality assurance committee may recommend that the registrant

- (a) undertake further education or training,
- (b) undergo clinical or other examinations, or
- (c) undertake other remedial activities

that the quality assurance committee considers will assist the registrant to remedy the deficiency.

(4) The quality assurance committee may appoint assessors for the purposes of a quality assurance program.

Confidential information

- 26.2 (1) Subject to subsections (2) to (6), a quality assurance committee, an assessor appointed by a quality assurance committee and a person acting on its behalf must not disclose or provide to another committee or person
- (a) records or information that a registrant provides to the quality assurance committee or an assessor under the quality assurance program, or
 - (b) a self assessment prepared by a registrant for the purposes of a continuing competence program.
- (2) Despite subsection (1), a quality assurance committee or an assessor appointed by it may disclose information described in that subsection to show that the registrant knowingly gave false information to the quality assurance committee or assessor.
- (3) If a quality assurance committee has reasonable grounds to believe that a registrant
- (a) has committed an act of professional misconduct,
 - (b) has demonstrated professional incompetence,
 - (c) has a condition described in section 33 (4) (e), or
 - (d) as a result of a failure to comply with a recommendation under section 26.1 (3), poses a threat to the public,
- the quality assurance committee must, if it considers the action necessary to protect the public, notify the inquiry committee which must treat the matter as if it were a complaint under section 32.
- (4) Records, information or a self assessment obtained through a breach of subsection (1) may not be used against a registrant except for the purposes of subsection (2).
- (5) Subject to subsection (2), records, information or a self assessment prepared for the purposes of a quality assurance program or continuing competence program may not be received as evidence
- (a) in a proceeding under this Act, or
 - (b) in a civil proceeding.
- (6) Subsection (1) applies despite the *Freedom of Information and Protection of Privacy Act*, other than section 44 (2) or (3) of that Act.

Inspectors

- 27 (1) The inquiry committee may appoint persons as inspectors for the college.
- (2) The registrar is an inspector.

Powers and duties of inspectors

- 28 (1) During regular business hours, an inspector may, subject to any limits or conditions imposed on the inspector by the inquiry committee, investigate, inquire into, inspect, observe or examine one or more of the following without a court order:
- (a) the premises, the equipment and the materials used by a registrant to practise the designated health profession;
 - (b) the records of the registrant relating to the registrant's practice of the designated health profession and may copy those records;
 - (c) the practice of the designated health profession performed by or under the supervision of the registrant.
- (2) The inquiry committee may direct an inspector to act under subsection (1) or undertake any aspect of an investigation under section 33.
- (3) If an inspector acts under this section as a consequence of a direction given under subsection (2), the inspector must report the results of those actions in writing to the inquiry committee.

Search and seizure under court order

- 29 (1) A person authorized by the inquiry committee may apply to the Supreme Court for an order that authorizes a person named in the order
- (a) to enter into the premises or land of the person named in the order at any reasonable time and conduct an inspection, examination or analysis,
 - (b) to require the production of any record, property, assets or things and to inspect, examine or analyze them, and
 - (c) on giving a receipt, to seize and remove any record, property, assets or things inspected, examined or analyzed under paragraph (a) or (b) for further inspection, examination or analysis.
- (2) Unless the court otherwise directs, an application under subsection (1) may be made without notice to any person and may be heard in private.
- (3) On application under subsection (1), the court may make an order under this section if satisfied on oath that there are reasonable grounds for believing that evidence may be found
- (a) that a person who is not a registrant has contravened this Act, the regulations or the bylaws, or
 - (b) that a person who is a registrant
 - (i) has contravened this Act, the regulations or the bylaws,
 - (ii) has failed to comply with a standard, limit or condition imposed under this Act,

- (iii) has acted in a manner that constitutes professional misconduct,
 - (iv) is not competent to practise the designated health profession, or
 - (v) is suffering from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs the person's ability to practise the designated health profession.
- (4) In an order under this section, the court
- (a) must identify the premises or land to be entered and must generally describe any thing to be searched for and examined, audited or seized,
 - (b) may include any limitations or conditions the court considers proper including the time of entry, the disposition of things seized and the access by any person to the things seized, and
 - (c) may direct that section 30 does not apply to a thing specified in the order
 - (i) if all limitations and conditions included under paragraph (b) are met, and
 - (ii) unless, within 21 days of the seizure of the thing, a person who owned or controlled the thing at the time of the seizure requests by registered mail addressed to the inquiry committee that section 30 apply to the thing seized.
- (5) A person who, while conducting or attempting to conduct an entry or search under this section, finds any thing not described in the order that the person believes on reasonable grounds will provide evidence in respect of a contravention of this Act, the regulations or the bylaws may seize and remove that thing.

Detention of things seized

- 30 (1) For the purposes of subsection (2), the person who makes a seizure under section 29 must report the seizure as soon as practicable to a judge of the Supreme Court, who must be the judge who issued the order under which the seizure was made unless this is not practicable.
- (2) On receiving a report under subsection (1), the judge must
- (a) order the thing that was seized returned to its owner or other person entitled to it unless satisfied that an order under paragraph (b) should be made, or
 - (b) order the thing detained if satisfied that the detention is required for the purposes of this Act.
- (3) An inspector may make one or more copies of any record detained under subsection (2).

(4) A document purporting to be certified by a representative of the inquiry committee to be a true copy made under the authority of subsection (3) is evidence of the nature and content of the original document.

(5) Subject to an order under section 29 (4) (b), the person from whom any thing is seized under this section or the owner of the thing, if he or she is a different person, is entitled to inspect that thing at any reasonable time and, in the case of a record, to obtain one copy of the record at the expense of the board.

(6) A record must not be detained under this section for a period longer than 3 months from the time of its seizure unless, before the expiration of the period, either

(a) the person from whom it was seized agrees to its continued detention, or

(b) the Supreme Court, on application and after being satisfied that its continued detention is justified, orders its continued detention for a specified period of time.

Prohibition against obstructing inspection or search

31 (1) A person must not obstruct an inspector in the lawful performance of duties or the lawful exercise of powers under this Act.

(2) A person must not obstruct a person acting under section 29 or 30 or under an order made under those sections.

Complaints to be made to registrar for delivery

32 (1) A person who wishes to make a complaint against a registrant must deliver the complaint in writing to the registrar.

(2) As soon as practicable after receiving a complaint, the registrar must deliver to the inquiry committee a copy of the complaint, an assessment of the complaint and any recommendations of the registrar for the disposition of the complaint.

(3) Despite subsection (2), the registrar, if authorized by the board, may dismiss a complaint, or request that the registrant act as described in section 36 (1), without reference to the inquiry committee if the registrar determines that the complaint

(a) is trivial, frivolous, vexatious, or made in bad faith,

(b) does not contain allegations that, if admitted or proven, would constitute a matter subject to investigation by the inquiry committee under section 33 (4), or

(c) contains allegations that, if admitted or proven, would constitute a matter, other than a serious matter, subject to investigation by the inquiry committee under section 33 (4).

(4) If a complaint is disposed of under subsection (3), the registrar must deliver a written report to the inquiry committee about the circumstances of the disposition.

(5) A disposition under subsection (3) is considered to be a disposition by the inquiry committee unless the inquiry committee gives the registrar written direction to proceed under subsection (2).

Definition for sections 32.2 and 32.3

32.1 In sections 32.2 and 32.3, "**other person**" means a person who is a registrant in one of the colleges and is believed to be

- (a) not competent to practise the designated health profession, or
- (b) suffering from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs his or her ability to practise the designated health profession.

Duty to report registrant

32.2 (1) A registrant must report in writing to the registrar of an other person's college if the registrant, on reasonable and probable grounds, believes that the continued practice of a designated health profession by the other person might constitute a danger to the public.

(2) If a person

- (a) terminates the employment of an other person,
- (b) revokes, suspends or imposes restrictions on the privileges of an other person, or
- (c) dissolves a partnership or association with an other person

based on a belief described in subsection (1), the person must report this in writing to the registrar of the other person's college.

(3) If a person intended to act as described in subsection (2) (a), (b) or (c) but the other person resigned, relinquished their privileges or dissolved the partnership or association before the person acted, the person must report this in writing to the registrar of that other person's college.

(4) On receiving a report under subsection (1), (2) or (3), the registrar must

- (a) act under section 32 (2) as though the registrar had received a complaint under section 32 (1), or
- (b) with the prior approval of the inquiry committee, enter into an agreement with the other person
 - (i) to impose limits or conditions on the practice of the designated health profession by the other person, or
 - (ii) to suspend the registration of the other person in order that continued practice by the other person does not constitute a danger to the public.

(5) Subject to the registrar's approval, the other person, if ordered under this section to cease or restrict practice as a registrant of the college, may employ another registrant of the college to carry on the practice.

Duty to report respecting hospitalized registrant

32.3 (1) If an other person is a registrant in a college prescribed by the minister for the purposes of this section and because of admission to a hospital or a private hospital as defined in the [Hospital Act](#), for psychiatric care or treatment, or for treatment for addiction to alcohol or drugs the other person is unable to practise, the chief administrative officer of the hospital, or someone acting in that capacity, and the medical practitioner who has the care of the other person must promptly report the admission in writing to the registrar of the other person's college.

(2) The medical practitioner who has care of the other person must, no later than the date of that other person's discharge from the hospital, provide the registrar of the other person's college with a written report of the diagnosis, particulars of treatment, prognosis and an opinion as to whether the other person is fit to continue to practise the other person's health profession.

(3) On receipt of the report, or if the registrar does not receive a report within one week of the other person's discharge but is informed of the discharge, the registrar must

(a) act under section 32 (2) as though the registrar has received a complaint under section 32 (1), or

(b) with the prior approval of the inquiry committee, enter into an agreement with the other person

(i) to impose limits or conditions on the practice of the designated health profession by the other person, or

(ii) to suspend the registration of the other person in order that continued practice by the other person does not constitute a danger to the public.

(4) Subject to the registrar's approval, the other person, if ordered under this section to cease or restrict practice as a registrant of the college, may employ another registrant of the college to carry on the practice.

Duty to report sexual misconduct

32.4 (1) If a registrant has reasonable and probable grounds to believe that another registrant has engaged in sexual misconduct, the registrant must report the circumstances in writing to the registrar of the other registrant's college.

(2) Despite subsection (1), if a registrant's belief concerning sexual misconduct is based on information given in writing, or stated, by the registrant's patient, the registrant must obtain, before making the report, the consent of

(a) the patient, or

(b) a parent, guardian or committee of the patient, if the patient is not competent to consent to treatment.

(3) On receiving a report under subsection (1), the registrar must act under section 32 (2) as though the registrar had received a complaint under section 32 (1).

Immunity

32.5 No action for damages lies or may be brought against a person for making a report in good faith as required under section 32.2, 32.3 or 32.4.

Investigations by inquiry committee

33 (1) If a complaint is delivered to the inquiry committee by the registrar under section 32 (2), the inquiry committee must investigate the matter raised by the complainant as soon as possible.

(2) If

(a) a registrant fails to authorize a criminal record check or a criminal record check verification, as applicable, under the [Criminal Records Review Act](#),

(b) the registrar under that Act has determined that the registrant does not have a portable criminal record check, or

(c) the deputy registrar under that Act has determined that the registrant presents a risk of physical or sexual abuse to children or a risk of physical, sexual or financial abuse to vulnerable adults and that determination has not been overturned by the registrar under that Act,

the inquiry committee must take the failure or the determination into account, investigate the matter and decide whether to impose limits or conditions on the practice of the designated health profession by the registrant or whether to suspend or cancel the registration of the registrant.

(3) A registrant against whom action has been taken under subsection (2) may appeal the decision to the Supreme Court and, for those purposes, the provisions of section 40 respecting an appeal from a decision of the discipline committee apply to an appeal under this section.

(4) The inquiry committee may, on its own motion, investigate a registrant regarding any of the following matters:

(a) a contravention of this Act, the regulations or the bylaws;

(a.1) a conviction for an indictable offence;

(b) a failure to comply with a standard, limit or condition imposed under this Act;

(c) professional misconduct or unprofessional conduct;

(c.1) [Repealed 2008-29-34.]

(d) competence to practise the designated health profession;

(e) a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs his or her ability to practise the designated health profession.

(4.1) The inquiry committee must not act under subsection (6) (b), (c) or (d) on the basis of subsection (4) (a.1) if the inquiry committee is satisfied that the nature of the offence or the circumstances under which it was committed do not give rise to concerns about the registrant's competence or fitness to practise the designated health profession.

(5) The inquiry committee must request the registrant who is the subject of an investigation under this section to provide it with any information regarding the matter that the registrant believes should be considered by the inquiry committee.

(6) After considering any information provided by the registrant, the inquiry committee may

(a) take no further action if the inquiry committee is of the view that the matter is trivial, frivolous, vexatious or made in bad faith or that the conduct or competence to which the matter relates is satisfactory,

(b) in the case of an investigation respecting a complaint, take any action it considers appropriate to resolve the matter between the complainant and the registrant,

(c) act under section 36, or

(d) direct the registrar to issue a citation under section 37.

(7) If the inquiry committee acts under subsection (6) (b) to (d), it may award costs to the college against the registrant, based on the tariff of costs established under section 19 (1) (v.1).

Notice of disposition

- 34 If the inquiry committee disposes of a matter under section 32 (5) or 33 (6) (a) or (b), the inquiry committee must, within 30 days of disposition, deliver to the complainant, if any, a written summary of the disposition advising the complainant of the right to apply for a review by the review board under section 50.6.

Extraordinary action to protect public

- 35 (1) If the inquiry committee considers the action necessary to protect the public during the investigation of a registrant or pending a hearing of the discipline committee, it may, by order,
- (a) impose limits or conditions on the practice of the designated health profession by the registrant, or
- (b) suspend the registration of the registrant.
- (2) An order of the inquiry committee under subsection (1) must
- (a) be in writing,

- (b) include reasons for the order,
 - (c) be delivered to the complainant, if any, and to the registrant, and
 - (d) advise the registrant of the registrant's right to appeal the order to the Supreme Court.
- (3) A decision under subsection (1) is not effective until the earlier of
- (a) the time the registrant receives the notice under subsection (2), and
 - (b) 3 days after the notice is mailed to the registrant at the last address for the registrant recorded in the register of the college.
- (4) If the inquiry committee determines that action taken under subsection (1) is no longer necessary to protect the public, it must cancel the limits, conditions or suspension and must notify the registrant in writing of the cancellation as soon as possible.
- (5) A registrant against whom action has been taken under subsection (1) may appeal the decision to the Supreme Court and, for those purposes, the provisions of section 40 respecting an appeal from a decision of the discipline committee apply to an appeal under this section.

Reprimand or remedial action by consent

- 36 (1) In relation to a matter investigated under section 33, the inquiry committee may request in writing that the registrant do one or more of the following:
- (a) undertake not to repeat the conduct to which the matter relates;
 - (b) undertake to take educational courses specified by the inquiry committee;
 - (c) consent to a reprimand;
 - (d) undertake or consent to any other action specified by the inquiry committee.
- (1.1) If a consent or undertaking given under subsection (1) relates to a complaint made under section 32 (1), the inquiry committee must, within 30 days of the consent or undertaking being given, deliver to the complainant a written summary of the consent or undertaking advising the complainant of the right to apply for a review by the review board under section 50.6.
- (2) If a registrant refuses to give an undertaking or consent requested under subsection (1), or if a registrant fails to comply with an undertaking or consent given in response to a request under subsection (1), the inquiry committee may direct the registrar to issue a citation for a hearing by the discipline committee regarding the matter.

Citation for hearing by discipline committee

- 37 (1) If directed by the inquiry committee or the board, the registrar must issue a citation that
- (a) names the affected registrant as respondent,
 - (b) describes the nature of the complaint or other matter that is to be the subject of the hearing,
 - (c) specifies the date, time and place of the hearing, and
 - (d) advises the respondent that the discipline committee is entitled to proceed with the hearing in his or her absence.
- (2) The registrar must have a citation either delivered to the respondent by personal service or sent by registered mail to the respondent at the last address for the respondent recorded in the register referred to in section 21 (2) not fewer than 30 days before the date of the hearing.
- (3) If the subject matter of a citation is a complaint, the registrar must notify the complainant in writing of the date, time and place of the hearing not fewer than 14 days before the date of the hearing.
- (4) The inquiry committee or the board may direct the registrar to cancel a citation that has been issued on its direction if the inquiry committee or board afterwards determines that a hearing by the discipline committee is not required and the registrar must then cancel the citation and notify the respondent and the complainant, if any, of the cancellation.

Consent orders

- 37.1 (1) The registrant may give the inquiry committee a written proposal at any time before the commencement of a hearing under section 38
- (a) admitting the nature of the complaint or other matter that is to be the subject of the hearing,
 - (b) consenting to the making of an order under section 39 (2) or (8) as set out in the proposal,
 - (c) consenting to indemnify the college for the investigation under section 33 in an amount not to exceed the costs for the inquiry calculated under the tariff of costs established under section 19 (1) (v.1), and
 - (d) if the registrant gives the proposal to the inquiry committee less than 7 days before the hearing is scheduled to commence, consenting to indemnify the college for preparing for the hearing in an amount not to exceed the costs of preparing for the hearing calculated under the tariff of costs established under section 19 (1) (w.1).
- (2) The inquiry committee may accept or reject a proposal received under subsection (1) based on the investigations described in section 33 respecting the complaint.

- (3) If the inquiry committee accepts a proposal received under subsection (1),
 - (a) the inquiry committee must make an order consistent with the proposal, and the order is considered to be an order of the discipline committee made under section 39, and
 - (b) [Repealed 2008-29-38.]
 - (c) section 38 does not apply to the citation.
- (4) If the inquiry committee rejects a proposal received under subsection (1),
 - (a) a hearing of the citation must proceed as though the proposal had not been made, and
 - (b) the discipline committee must not consider the admission described in subsection (1) (a) or the consent described in subsection (1) (b) in determining the matter or in making an order under section 39.
- (5) If the hearing under section 38 has commenced
 - (a) the registrant may give to the inquiry committee a written proposal
 - (i) described in subsection (1) (a) to (c), and
 - (ii) consenting to indemnify the college for preparing for and conducting the hearing in an amount not to exceed the costs of preparing for and conducting the hearing calculated under the tariff of costs established under section 19 (1) (w.1), and
 - (b) the inquiry committee may accept or reject the proposal in its discretion.
- (6) If the inquiry committee accepts a proposal under subsection (5), it must make an order consistent with the proposal, the order is considered to be an order of the discipline committee made under section 39, and section 38 has no further application to the complaint or matter that is the subject of the hearing.
- (6.1) Section 39 (3) (a) to (c) applies to an order made under this section as if the order had been made by the discipline committee.
- (7) Subsection (4) applies if the inquiry committee rejects a proposal received under subsection (5).

Discipline committee hearing

- 38 (1) The discipline committee must hear and determine a matter set for hearing by citation issued under section 37.
- (2) The respondent and the college may appear as parties and with legal counsel at a hearing of the discipline committee.

(2.1) A complainant may be represented by legal counsel, at the complainant's cost, when the complainant is giving evidence at a hearing of the discipline committee.

(3) A hearing of the discipline committee must be in public unless

(a) the complainant, the respondent or a witness requests the discipline committee to hold all or any part of the hearing in private, and

(b) the discipline committee is satisfied that holding all or any part of the hearing in private would be appropriate in the circumstances.

(4) At a hearing of the discipline committee,

(a) the testimony of witnesses must be taken on oath, which may be administered by any member of the discipline committee, and

(b) the college and the respondent have the right to cross examine witnesses and to call evidence in reply.

(4.1) Subject to subsection (4.2), evidence is not admissible at a hearing of the discipline committee unless, at least 14 days before the hearing, the party intending to introduce the evidence provides the other party with

(a) in the case of documentary evidence, an opportunity to inspect the document,

(b) in the case of expert testimony,

(i) the name and qualifications of the expert,

(ii) a copy of any written report the expert has prepared respecting the matter, and

(iii) a written summary of the evidence the expert will present at the hearing if the expert did not prepare a written report in respect of the matter, and

(c) in the case of testimony of a witness who is not an expert, the name of that witness and an outline of their anticipated evidence.

(4.2) The discipline committee may

(a) grant an adjournment of a hearing,

(b) allow the introduction of evidence that is not admissible under subsection (4.1), or

(c) make any other direction it considers appropriate

if the discipline committee is satisfied that this is necessary to ensure that the legitimate interests of a party will not be unduly prejudiced.

(5) If the respondent does not attend, the discipline committee may

(a) proceed with the hearing in the respondent's absence on proof of receipt of the citation by the respondent, and

(b) without further notice to the respondent, take any action that it is authorized to take under this Act.

(6) The discipline committee may order a person to attend at a hearing to give evidence and to produce records in the possession of or under the control of the person.

(7) On application by the discipline committee to the Supreme Court, a person who fails to attend or to produce records as required by an order under subsection (6) is liable to be committed for contempt as if he or she were in breach of an order or judgment of the Supreme Court.

(8) If the discipline committee considers the action necessary to protect the public between the time a hearing is commenced and the time it makes an order under section 39 (2), the discipline committee may impose limits or conditions on the practice of the designated health profession by the registrant or may suspend the registration of the registrant and, for those purposes, section 35 applies.

Action by discipline committee

39 (1) On completion of a hearing, the discipline committee may, by order, dismiss the matter or determine that the respondent

(a) has not complied with this Act, a regulation or a bylaw,

(b) has not complied with a standard, limit or condition imposed under this Act,

(c) has committed professional misconduct or unprofessional conduct,

(d) has incompetently practised the designated health profession, or

(e) suffers from a physical or mental ailment, an emotional disturbance or an addiction to alcohol or drugs that impairs their ability to practise the designated health profession.

(2) If a determination is made under subsection (1), the discipline committee may, by order, do one or more of the following:

(a) reprimand the respondent;

(b) impose limits or conditions on the respondent's practice of the designated health profession;

(c) suspend the respondent's registration;

(d) subject to the bylaws, impose limits or conditions on the management of the respondent's practice during the suspension;

(e) cancel the respondent's registration;

(f) fine the respondent in an amount not exceeding the maximum fine established under section 19 (1) (w).

(3) An order of the discipline committee under this section must

- (a) be in writing,
 - (b) include reasons for the order,
 - (c) be delivered to the respondent and to the complainant, if any, within 30 days after the date the order is made, and
 - (d) advise the registrant of the registrant's right to appeal the order to the Supreme Court.
- (4) If the discipline committee dismisses the matter under subsection (1) on the basis that the matter was without merit, it may award costs to the respondent against the college, based on the tariff of costs established under section 19 (1) (w.1).
- (5) If the discipline committee acts under subsection (2), it may award costs to the college against the respondent, based on the tariff of costs established under section 19 (1) (w.1).
- (6) Costs awarded under subsection (4) must not exceed, in total, 50% of the actual costs to the respondent for legal representation for the purposes of the investigation under section 33 and the hearing.
- (7) Costs awarded under subsection (5) must not exceed, in total, 50% of the actual costs to the college for legal representation for the purposes of the hearing.
- (8) If the registration of the respondent is suspended or cancelled under subsection (2), the discipline committee may
- (a) impose conditions on the lifting of the suspension or the eligibility to apply for reinstatement of registration,
 - (b) direct that the lifting of the suspension or the eligibility to apply for reinstatement of registration will occur on
 - (i) a date specified in the order, or
 - (ii) the date the discipline committee or the board determines that the respondent has complied with the conditions imposed under paragraph (a), and
 - (c) impose conditions on the respondent's practice of the designated health profession that apply after the lifting of the suspension or the reinstatement of registration.
- (9) If an order under subsection (2) is appealed under section 40, the discipline committee, on application of the respondent under this section, may, by order,
- (a) stay the order made under subsection (2) pending the hearing of the appeal, and
 - (b) impose limits or conditions on the practice of the designated health profession by the respondent during the stay.
- (10) Before taking action under subsection (2), (5), (8) or (9), the discipline committee may consider whether, in the opinion of the discipline committee, the matter is an appropriate case for a refund to the complainant of all or part of any amount paid by the complainant to the

registrant for or related to a service provided by the registrant or another person under the delegation or supervision of the registrant, and if so, whether a refund has been offered or made by the registrant.

Unprofessional conduct in another jurisdiction or while practising as a registrant of another college

39.1 (1) If the discipline committee learns that

(a) another college established under this Act or a body in another province or a foreign jurisdiction that regulates a health profession in that province or foreign jurisdiction has found, either before or after the registrant was registered under section 20, that the registrant committed an act that, in the opinion of the discipline committee, constitutes unprofessional conduct under this Act, or

(b) the registrant has admitted, either before or after the registrant was registered under section 20, to another college established under this Act or to a body in another province or a foreign jurisdiction that regulates a health profession in that province or foreign jurisdiction, that the registrant committed an act that, in the opinion of the discipline committee, constitutes unprofessional conduct under this Act,

the discipline committee may, without issuing a citation under section 37 or conducting a hearing under section 38, make an order under section 39 (2) respecting the registrant, and section 39 (3), (5) and (7) to (10) applies as if a determination had been made under section 39 (1) by the discipline committee.

(2) The discipline committee may take action under subsection (1) only after giving the registrant the following:

(a) notice of the proposed action, in accordance with the bylaws;

(b) a copy of the record of the relevant decision or findings made or action taken by the other college or body;

(c) an opportunity to be heard, which may be limited to a hearing in writing.

(3) For the purposes of this section, a certified copy of a record of the decision or findings made or action taken by the other college or body in respect of a registrant is proof, in the absence of evidence to the contrary, of the findings made or the action taken, without proof of the signature of the person purporting to have signed on behalf of that college or body.

Consideration of past action

39.2 (1) Before taking any action respecting a registrant under the following provisions, the registrar, inquiry committee or discipline committee may consider any action previously taken under Part 3 respecting the registrant:

- (a) in the case of the registrar or the inquiry committee, section 32, 32.2 or 32.3;
 - (b) in the case of the inquiry committee, section 33 or sections 35 to 37.1;
 - (c) in the case of the discipline committee, section 38 (8), 39 (2), (5), (8) or (9) or 39.1 (1).
- (2) The registrar, inquiry committee or discipline committee may, in applying subsection (1), consider
- (a) any action under Part 3 respecting the registrant that occurred or was recorded before the coming into force of this section, or
 - (b) any action, similar to an action that may be taken under Part 3, that was taken by the governing body for a health profession under a former enactment regulating the health profession.

Public notification

- 39.3 (1) Subject to subsections (3) and (4), the board, inquiry committee or discipline committee, as the case may be, must direct the registrar to notify the public of the information set out in subsection (2) with respect to any of the following actions:
- (a) an action taken under section 32.2 (4) (b), 32.3 (3) (b), 33 (2) or 35 (1);
 - (b) a consent or undertaking given under section 36 (1) in relation to a serious matter;
 - (c) a consent order made under section 37.1;
 - (d) a determination made under section 39 (1);
 - (e) an order made under section 38 (8), 39 (2), (5), (8) or (9), 39.1 (1) or 44 (1) or (2).
- (2) The following information must be included in the notification required under this section:
- (a) the name of the registrant respecting whom or the health profession corporation respecting which the action was taken;
 - (b) a description of the action taken;
 - (c) the reasons for the action taken.
- (3) In the following circumstances, the inquiry committee or discipline committee, as the case may be, must direct the registrar to withhold all or part of the information otherwise required to be included in the public notification under this section:
- (a) the inquiry committee or discipline committee considers it necessary to protect the interests of the complainant, if any, in the matter, or another person, other than the registrant, affected by the matter;

(b) the complainant, if any, in the matter, or another person, other than the registrant, affected by the matter, has requested that the notification not contain information that could reasonably be expected to identify the complainant or the other person.

(4) Subject to subsection (5), in the case of

(a) an admission by a registrant that he or she suffers from a condition described in section 33 (4) (e), or

(b) a determination made regarding a registrant under section 39 (1) (e),

the inquiry committee or discipline committee, as the case may be, must direct the registrar to withhold all or part of the information otherwise required to be included in the public notification under this section if the information could reasonably be expected to identify the registrant or personal health information of the registrant respecting the condition.

(5) In the case of a determination made regarding a registrant under section 39 (1) (e), information respecting the registrant must not be withheld under subsection (4) unless the discipline committee is satisfied that the privacy interests of the registrant outweigh the public interest in public notification of the information.

(6) If information respecting a registrant is withheld under subsection (4), the public notification must indicate that information has been withheld.

(7) The notification required under this section may be made by posting a notice on the college website.

Appeal of discipline committee decision to Supreme Court

40 (1) A college, a respondent described in section 38 (2) or a registrant described in section 39.1 (1), aggrieved or adversely affected by an order of the discipline committee under section 39 or 39.1 (1), may appeal the order to the Supreme Court.

(2) An appeal under this section must be commenced within 30 days after the date on which the order described in subsection (1), or the written notice described in section 20 (7), as the case may be, is delivered to the person who has the right to appeal under this section.

(3) An appeal under this section must be commenced by filing a petition in any registry of the Supreme Court, and the Supreme Court Civil Rules relating to petition proceedings apply to the appeal, but Rule 18-3 of those rules does not apply.

(4) The petition commencing an appeal under this section must, within 14 days of its filing in the court registry, be served on

(a) the college, effected by service on the registrar, if the appellant is a respondent described in section 38 (2) or a registrant described in section 39.1 (1),

(b) the respondent or the registrant, if the appellant is the college, and

- (c) the complainant, if the matter relates to a complaint.
- (5) Only the persons required to be served under subsection (4) (a) and (b) may be parties to an appeal.
- (6) [Repealed 2008-29-42.]
- (7) On request by a party to an appeal under subsection (1) and on payment by the party of any disbursements and expenses in connection with the request, the registrar must provide that party with copies of part or all, as requested, of the record of the proceeding before the discipline committee.
- (8) An appeal under subsection (1) must be a review on the record unless the court is satisfied that a new hearing or the admission of further evidence is necessary in the interests of justice.
- (9) On the hearing of an appeal under this section, the court may
 - (a) confirm, vary or reverse the decision of the discipline committee,
 - (b) refer the matter back to the discipline committee, with or without directions, or
 - (c) make any other order it considers appropriate in the circumstances.
- (10) A decision of the Supreme Court on an appeal under subsection (1) may be appealed to the Court of Appeal if leave to appeal is granted by a justice of the Court of Appeal.

Appendix “C”:

Sample Excerpts of ‘Anonymous’ Publication of Conduct Reviews by Law Society of British Columbia

Excerpted from: Law Society of B.C. web site:

<http://www.lawsociety.bc.ca/page.cfm?cid=3772&t=Conduct-reviews>

Conduct reviews

The publication of conduct review summaries is intended to assist lawyers by providing information about ethical and conduct standards.

A conduct review is a confidential meeting between a lawyer against whom a complaint has been made and a conduct review subcommittee, which may also be attended by the complainant at the discretion of the subcommittee. The Discipline Committee may order a conduct review pursuant to Rule 4-4, rather than issue a citation to hold a hearing regarding the lawyer's conduct, if it considers that a conduct review is a more effective disposition and is in the public interest. The committee takes into account a number of factors, including:

- the lawyer's professional conduct record;
- the need for specific or general deterrence;
- the lawyer's acknowledgement of misconduct and any steps taken to remedy any loss or damage caused by his or her conduct; and
- the likelihood that a conduct review will provide an effective rehabilitation or remedial result.

Breach of trust accounting rules

A lawyer withdrew his fees from trust without first preparing and delivering a bill to 38 of his clients, contrary to Rule 3-57(2). The withdrawals occurred at a time when the lawyer was suffering from significant mental health issues. The lawyer attends the Lawyer Assistance Program and now has no responsibility for trust accounts. (CR #2013-18)

Breach of trust accounting rules and breach of undertaking

A lawyer inadvertently disbursed holdback funds prior to complying with all conditions of an undertaking. He failed to report the breach of undertaking or the resulting trust shortage to the Executive Director, contrary to Rule 3-66, and he permitted a non-lawyer notary, who was supervising his practice while he was away, to sign seven trust cheques, contrary to Rule 3-56(2)(c). The lawyer was encouraged to use Law Society resources, such as the Practice Advisors and local Benchers, when questions arise. (CR #2013-19).

Breach of undertaking

A lawyer released funds to his client, contrary to terms of an undertaking. The undertaking was not in compliance with what the lawyer believed to be the terms of the settlement. He wrote opposing counsel indicating his disagreement with the terms imposed and saying that, unless he heard from him within two days, he would release the funds. Opposing counsel did not respond for one month, by which time the funds had been released. A conduct review subcommittee discussed with the lawyer the importance of complying with Chapter 11, Rule 11 of the *Professional - Conduct Handbook* (now rules 5.1-6 and 7.2-11 of the *BC Code*). The lawyer has taken steps to flag all undertakings and now knows that, regardless of his personal or professional assessment of their appropriateness, he must comply with the strict wording of the undertaking or advise counsel that he cannot accept the undertaking and promptly return the documents or property sent with it. The subcommittee encouraged the lawyer to consult with Benchers, Law Society Practice Advisors or other senior members of the bar when he faces similar challenges in the future. (CR #2013-22)

Breach of no-cash rule

A lawyer accepted an aggregate amount of \$8,000 cash in relation to one client matter, contrary to Rule 3-51.1. The lawyer received funds from or on behalf of his client that were to be forwarded to the Family Maintenance Enforcement Program. The lawyer mistakenly believed that the \$7,500 restriction applied to each transaction or payment, not each client matter. (CR #2013-13)

Conduct unbecoming

A lawyer was involved in an altercation with another person at a restaurant that resulted in a criminal charge, contrary to Chapter 2, Rule 1 of the *Professional Conduct Handbook* (now section 2.2 of the *BC Code*). The lawyer subsequently completed anger management counselling and a Canadian Bar course on ethics. He is now aware that the private actions of lawyers can affect the public confidence in both the Law Society and the justice system. (CR #2013-21)

Duty to court

A lawyer failed to disclose material information in an *ex parte* application in a family law matter about her communications with an unrepresented opposing party. A conduct review subcommittee encouraged the lawyer to clearly advise the court of all material facts, both adverse and in support of her client's position, on any *ex parte* applications. The subcommittee recommended using written communication when dealing with self-represented litigants, wherever possible, and reminding them that the lawyer was neither acting in their interest nor providing legal advice to them. (CR #2013-12)

A lawyer failed to attend previously scheduled appearances in Provincial Court. The lawyer has improved his office systems to ensure that his diary contains a history of all appearances and that there is written record of requests for adjournments. (CR #2013-14)

Duty to other lawyers and quality of service

A lawyer failed to respond to communications from another lawyer on a real estate transaction and, by doing so, also failed to provide the level of service his client should have been able to expect from a competent lawyer. The lawyer reviewed his office practices and now has procedures in place to ensure that matters requiring attention are not missed or delayed. (CR #2013-20)

Failure to report criminal charge

A lawyer failed to report an impaired driving and refusal to provide a breath sample charge to the Law Society, contrary to Rule 3-90(1). The lawyer has a history of alcohol dependency for which she has been previously - monitored by Practice Standards and for which she is now seeking treatment. She is currently a non-practising lawyer. Lawyers are reminded of their obligation to report criminal charges to the Law Society. (CR #2013-10)

A lawyer failed to report charges of assault and uttering a threat to the Law Society. He was later charged with a breach of a no-contact order, which he did report to the Society. The lawyer acknowledged that his conduct in breaching an undertaking given to the court was conduct unbecoming and admitted that he should have reported the criminal charges. The lawyer has met with the Lawyers Assistance Program and a family counsellor. (CR #2013-16)

Quality of service

A lawyer contacted clients of his employer and entered into retainer agreements with them in an inappropriate manner. His conduct included directing those clients' settlement funds to his own personal trust account while still in the employ of his employer. Such conduct was in breach of Chapter 3, Rules 6 and 8 of the *Professional Conduct Handbook* (now commentary to rule 3.7-1 of the *BC Code*), which require that a letter be sent to the client explaining that the client has the choice of counsel going forward. The rules are intended to prevent clients from being in a legal tug of war between two firms. The lawyer's conduct was also dishonourable in that it showed a lack of professionalism, integrity and collegiality that one should expect from a lawyer, contrary to Chapter 2, Rule 1 (now section 2.2 of the *BC Code*). The lawyer has taken steps to educate himself about his professional obligations and the importance of separating his emotions from his judgment. (CR #2013-23)

A lawyer delayed for 18 months in handling his client's claim and failed to properly communicate with the client his decision to withdraw in the face of an impending deadline for service of a Writ of Summons and Statement of Claim. The lawyer has since taken the Law Society's Communications Toolkit course. (CR #2013-24)

Dishonourable or questionable conduct

A lawyer violated the *Securities Act* by engaging in insider trading. The lawyer had failed to ensure that a press release had been issued prior to purchasing the shares. His conduct is contrary to Chapter 2, Rule 1 and Chapter 7, Rules 1 and 2 of the *Professional Conduct Handbook* (now section 2.2 and rule 3.4-26.1 of the *BC Code*). (CR #2013-25)

A lawyer failed to advise an unrepresented party that she was not protecting their interests, contrary to Chapter 4, Rule 1 of the *Professional Conduct Handbook* (now rule 7.2-9 of the *BC Code*). The lawyer also failed to properly supervise her paralegal by allowing her to give legal advice, contrary to Chapter 12, Rule 1 of the *Professional Conduct Handbook* (now rule 6.1-1 of the *BC Code*). The lawyer now practises with two senior practitioners who are available to provide her with assistance. (CR #2013-26)

Rudeness and Incivility

A lawyer was confrontational and aggressive when dealing with an unrepresented opposing party in a family law matter. He showed no appreciation of the boundaries between being an advocate and litigant and showed a lack of judgment in bringing children to court in a highly charged, emotional matter. He failed to appreciate his role in facilitating a resolution between emotionally volatile parties. A conduct review subcommittee reviewed the professional obligations of a lawyer to uphold the standards of the profession, which include courtesy, civility, good judgment and acting in a professional manner at all time. The subcommittee recommended that he continue to seek professional advice and therapy to rectify his behaviour. (CR #2013-09)

A lawyer was involved in altercations with several Crown Counsel and court staff and treated a client in a rude and verbally abusive manner. The lawyer has a history of anger management problems. The lawyer has been referred to Practice Standards for help with practice management issues. He has also taken courses in anger management and has contacted the Lawyers Assistance Program for guidance. (CR #2013-17)

Conduct Review Summary – Glen Orris QC

The subject of this conduct review summary has consented to publication of his name as this matter is known to the public.

Mr. Orris was counsel for one of the accused charged with three murders committed between 2004 and 2005 in the North Okanagan. The trial, which was expected to last many months, started in Vancouver in May 2011 before a judge and jury.

At the start of the trial, the judge gave instructions to the jury that during the trial the jurors were not to talk about the case or anything else with anyone involved in it, including the accused, witnesses, investigating officers and the lawyers. Two weeks later, Crown Counsel asked the judge to clarify for the jury that no rudeness was implied when counsel ignored them when they ran into each other the vicinity of the courthouse. Several counsel, including Mr. Orris, took the position that this clarification was unnecessary.

Mr. Orris regularly exercised during lunch at a gym close to the courthouse. One of the jurors also started to exercise there. On a number of occasions, Mr. Orris was observed by members of B.C. Sheriff Services talking to a juror for periods of between five to 15 minutes while they worked out in close proximity. The sheriffs advised the judge.

The judge raised the issue with counsel, in the absence of the jury. Mr. Orris volunteered that it was likely he, as he worked out at the same gym as one of the jurors and they had occasionally discussed weightlifting and exchanged

pleasantries. He offered to adjust his workout schedule, but the judge indicated it was not necessary. The judge again warned the jury not to communicate with people involved in the trial. That same day, Mr. Orris again spoke with the juror at the gym, where he apologized to her for what had happened and accepted full responsibility.

The judge again raised the issue in court, after receiving further information from the sheriffs. He conducted an inquiry which included interviewing the juror, who said the conversations did not relate to the trial and her impartiality was not affected. In his decision, while the judge decided it was not necessary to remove the juror from the jury, he characterized Mr. Orris' conduct as "incomprehensible" and "profoundly wrong". The inquiry caused a delay in the proceedings. The contact between Mr. Orris and the juror could have caused grave consequences by interfering with the juror's duty to be objective in her decision-making.

Mr. Orris acknowledged during his conduct review that there was no excuse for his behaviour and that it was wrong. He was embarrassed that his actions caused the concerns that they did as well as delaying the proceedings while the court undertook its inquiry. Mr. Orris acknowledged that his engaging the juror in conversation, even though they did not talk about the trial or anything to do with it, was inappropriate. It was acknowledged by Mr. Orris that in the future any casual contact between counsel and a juror should be dealt with by nothing more than a brief, informal greeting.

Appendix “D”:

AIBC Council Policy Excerpt: 12.0 Bylaw Amendment Consultation

12.0	POLICY CATEGORY:	LEGISLATION and BYLAWS
12.1	POLICY FOCUS:	BYLAW AMENDMENTS:
	CONSULTATION	

- 12.1.1 AIBC bylaws 35.1 and 35.2 provide that members may amend the AIBC’s bylaws only by way of a two-thirds vote of members present at a general meeting or by mail-in ballot with a two-thirds affirmative majority of ballots received (which number must be no less than five per cent of the voting membership of the institute). The bylaws also provide for very specific notice periods and deadlines. E-voting bylaws for bylaw amendments were approved by the members at the 2014 AIBC Annual Meeting which would also require, similarly, two-thirds affirmative majority approval.

Given the high threshold of member support necessary for bylaw change and the importance of bylaws to the governance of the profession, including the establishment of certain professional conduct and ethical standards, an appropriate information and consultation process for architects and other relevant individuals and organizations is warranted. In addition, member consultation provides a genuine opportunity to improve the language of the bylaws and to assess member support prior to any vote.

Council recognizes that a spectrum of bylaw consultation strategies is available; that the options chosen may vary with the nature of the bylaws under consideration; and that bylaw consultation may involve internal and external persons and organizations.

Accordingly, the Executive Director shall ensure that:

- 12.1.2 Any bylaw amendment proposal that council supports in principle shall proceed to a consultation process with architects and other relevant persons and organizations (“bylaw consultation”) prior to any bylaw vote by members.
- 12.1.3 Any relevant board, committee, task force or other bylaw amendment proponent undertakes bylaw consultation and reports back to council on the consultation and the feedback received, for council consideration.
- 12.1.4 Bylaw consultation always includes notification and posting of the bylaw initiative to members and the public through publication on the AIBC web site for a reasonable period of time prior to any bylaw vote; an architect information session; and an opportunity for members, associates and the public to provide feedback to the institute.
- 12.1.5 In recognition of the provincial government’s statutory authority to disallow any bylaw passed by the membership, any bylaw consultation always includes adequate notice to, and consultation with, relevant provincial government representatives prior to any bylaw vote.

REVISION SUMMARY

- 1) November 2015
Appendix A - Numbering amendment (37.22 through 37.39)