



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

Investigations & Remedial Recommendation Bylaw Amendments

**Updated April 4, 2016 to reflect changes made to the draft bylaws
following member consultation, council and BRC review.**

We ask that you please remember to:

- Turn off your cell phones;
- Raise your hand and wait to be called upon;
- Comment or ask a question, one at a time;
- Give everyone an opportunity to respond; and
- Wait until all have had a chance to respond before asking another question.

Thank you for attending!

AIBC Bylaw Review Committee 2015 - 2018 Work Plan

BYLAWS	2016												2017												2018																		
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
HOUSEKEEPING / ADMINISTRATION																																											
Continued research / review of 3 possible bylaws for next vote:																																											
I) 16 bylaw amendments for CEO (20 references to the title)																																											
II) Provide for Code of Ethics																																											
III) Quorum																																											
Presentation to council (planning session)																																											
Member consultation																																											
Final BRC submission to council post consultation and council decision to proceed with vote																																											
Proposed e-vote																																											
ASSOCIATE																																											
Continued development of bylaws per council direction																																											
Presentation to council (planning session)																																											
BRC Submission to council seeking approval in principle																																											
Member consultation																																											
Final BRC submission to council post consultation and council decision to proceed with vote																																											
Vote on associate bylaws																																											
INVESTIGATIONS-DISCIPLINE BYLAWS (REMEDIAL DISCIPLINE)																																											
Conclude BRC review and internal review and advance to council																																											
Member consultation																																											
Final BRC submission to council post consultation and council decision to proceed with vote																																											
Vote on investigations / discipline bylaws																																											
CODE OF ETHICS BYLAWS																																											
BRC review and analysis; internal stakeholder consultation																																											
Presentation to Council (planning session)																																											
Submission to council seeking approval for amendments																																											
Member consultation																																											
Final BRC submission to council post consultation and council decision to proceed with vote																																											
ADMINISTRATIVE BYLAW REVIEW: Chapters, Membership & Registration, Honorary Members & Fees, Fines & Levies																																											
BRC analysis & recommendations: bylaws 8.1 - 12.2																																											
Submission to council																																											
Member consultation																																											
Final BRC submission to council post consultation and council decision to proceed with vote																																											
ADMINISTRATIVE BYLAW REVIEW: Institute Seat, Officers & Council, Boards, Task Force & Committees, Remuneration & Expenses																																											
BRC analysis & recommendations: bylaws 1.0 - 7.0																																											
Submission to council																																											
Member consultation																																											
Final BRC submission to council post consultation and council decision to proceed with vote																																											
ADMINISTRATIVE BYLAW REVIEW: Architectural Firms, Institute Meetings, Nominations & Elections																																											
BRC analysis & recommendations: bylaws 15.1 - 25.0																																											
Submission to council																																											
Member consultation																																											
Final BRC Submission to council post consultation and council decision to proceed with vote																																											
DEFINITIONS																																											
BRC analysis & recommendations																																											
Submission to council																																											
Member consultation																																											
Final BRC Submission to council post consultation and council decision to proceed with vote																																											
BYLAW REORGANIZATION																																											
Update previous committee work: document organization, numbering, and subheadings																																											
Presentation to council																																											
Member consultation																																											
Final BRC submission to council post consultation and council decision to proceed with vote																																											

December 2015

AIBC Bylaw Review Committee 2015-2018 Work-plan

Professional Conduct

The AIBC's professional conduct complaint and investigation process has operated under the *Rules for the Professional Conduct Process* of the AIBC since 2001.

Changes Proposed

Two changes are proposed to this longstanding process:

1. That the process be elevated from the *Rules* to bylaws; and
2. The establishment of a “remedial **recommendation** process” within the process.

The Rationale for Elevating the Process from Rules to Bylaws:

- Section 46 of the *Architects Act* provides:

Inquiry

46 (1) The 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.

- Section 51.1 establishes authority to resolve any issue that would otherwise proceed to an inquiry under section 46 by consensual resolution

The Rationale for Elevating the Process from Rules to Bylaws:

- The *Act* is silent about the complaint and investigation process that may lead to inquiry or consensual resolution.

The Rationale for Elevating the Process from Rules to Bylaws:

- In 2001, AIBC Council approved *Rules for the Professional Conduct Process* of the AIBC.
- These Rules were most recently updated in September 2013 to reflect that the *Act* and Bylaws had been amended to incorporate consensual resolution.
- Until the *Act* is modernized with respect to investigations and discipline, enshrining the fundamentals of the institute's conduct process in bylaws is an important step.

From Rules to Bylaws...examples

Rule to Bylaw with minor edits

Rule 5.6

- 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. However, disciplinary committee shall deliberate *in camera*.

Bylaw 37.31

- 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. ~~However, disciplinary committee shall deliberate *in camera*.~~

From Rules to Bylaws...examples

Rule that will not become a bylaw

Rule 1.4

- These *Rules* are intended to provide procedural guidance regarding the professional conduct process of the institute to members and other registrants, complainants, respondents, institute staff, the investigations committee, the panel, disciplinary committees and council. These *Rules* shall not be applied to restrict or fetter the exercise of any discretion conferred on any person or body of persons by the *Act*.

Bylaw

- No corresponding bylaw – no longer considered necessary and effectively deleted.

From Rules to Bylaws...examples

No Rule → New Bylaw

Rule

- No corresponding rule

Bylaw 37.20 NEW

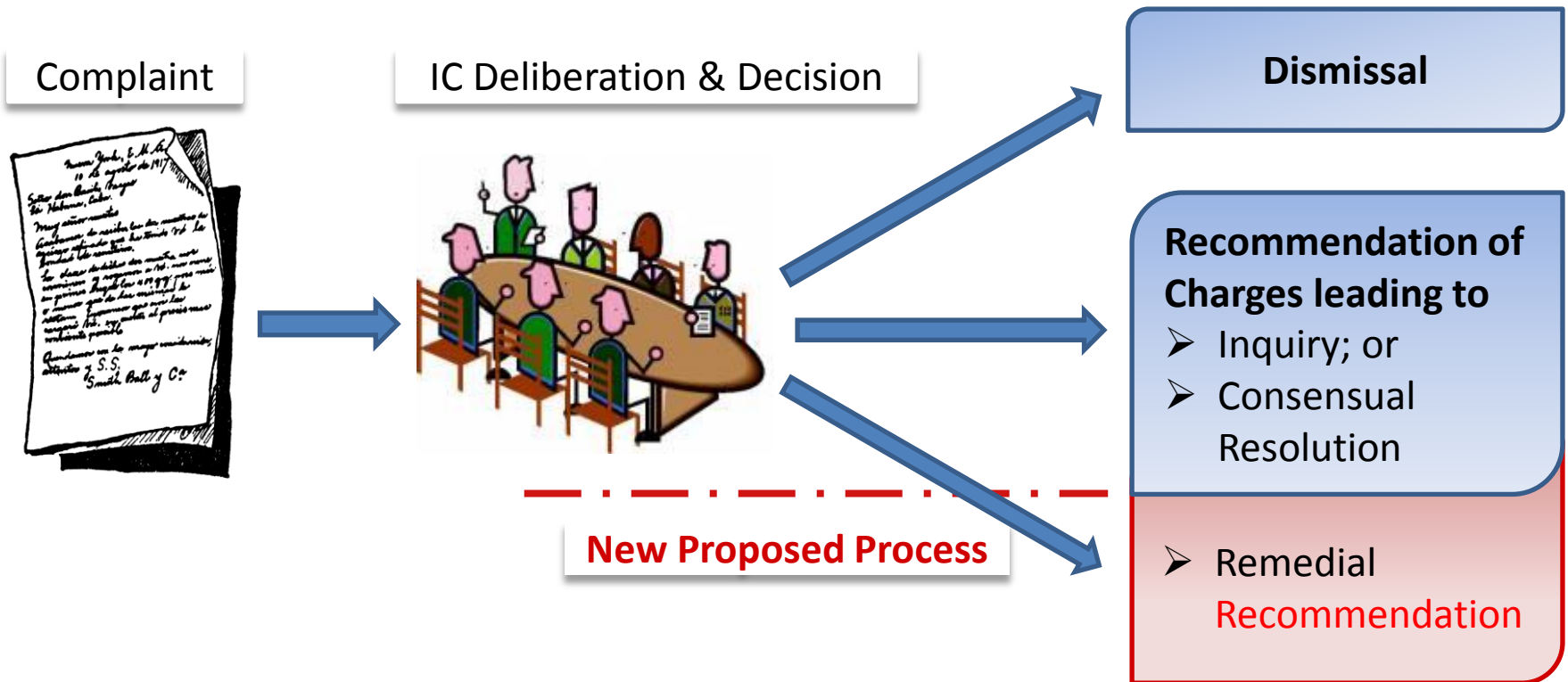
- Where the investigations committee concludes after an investigation that a matter raises concerns about a respondent's conduct, competency or fitness to practice that would be better resolved through a remedial ~~discipline~~ process **intended to improve a respondent's practice or otherwise protect the public**, rather than referral to a disciplinary inquiry, it shall provide a report with a ~~direction~~ **remedial recommendation** ~~for remedial discipline~~ to the remedial ~~discipline~~ review panel. **There is no appeal from a decision of the investigations committee as to whether a remedial recommendation is appropriate for a particular investigation.**

A full table showing the bylaw modification is found on the AIBC [website](#).

The Investigations Process:

- On average, the Investigations Committee reviews 15-20 complaints a year.
- Of these complaints, approximately:
 - one third are dismissed;
 - one third are dismissed with non-binding observations from the Committee; and
 - one third result in a recommendation of charges.

AIBC Investigation Process:



Why Remedial Recommendation:

Currently, the Rules provide for one of two outcomes after an investigation:

- A recommendation of charges, leading to an inquiry or consensual resolution; or
- Dismissal of the complaint (with or without observations).

Limitations of This “Binary” Approach:

- The Investigations Committee is bound by these zero-sum options.
- There is currently no third option to deal with situations in which a remedial approach is more appropriate than an inquiry or consensual resolution.

WHAT is Remedial Recommendation?

- The proposed process would give the Investigations Committee the authority to make a “remedial recommendation” – proposed bylaw 37.16(e).
- This could include mandatory coursework, counselling, examinations, peer review/practice evaluation, an oral conduct review or other appropriate measures.

WHAT is Remedial Recommendation?

- A separate panel, the Remedial Review Panel, would monitor and assess compliance with the remedial direction and report back to the Investigations Committee.

WHAT is Remedial Recommendation?

- A respondent has the option to accept or reject a remedial recommendation. A decision to reject a remedial recommendation would not result in a separate disciplinary violation, but rather the matter would proceed normally through the discipline process.
- If a respondent chose not to comply with a remedial **recommendation**, or failed to satisfy the direction, the Investigations Committee would have authority to recommend charges, in which case the file would move to an inquiry or consensual resolution.

WHAT is Remedial Recommendation?

- Upon successful conclusion of the remedial recommendation process, a summary of the file would be published without the respondent's name – a 'green sheet light'.
- The completion of a remedial recommendation will not form part of the respondent's professional disciplinary record.

WHEN would Remedial Recommendation be used?

The Investigations Committee may **make a remedial recommendation**, rather than make a recommendation of charges regarding the architect's conduct **IF**:

- The committee determines that the conduct meets the threshold for a charge, but considers remedial **recommendation** to be in the public interest and a more effective resolution.

Factors in determining if remedial **recommendation** is an appropriate resolution of a complaint investigation include:

- The registrant's professional conduct record;
- Seriousness of the conduct in the complaint;
- The need for specific or general deterrence;
- Acknowledgement of the misconduct and any steps taken to remedy any loss or damage caused by the misconduct;

Factors that are taken into account ...

- The likelihood that remedial **recommendation** will provide an effective remedial result or rehabilitate the respondent;
- Other mitigating factors such as personal life challenges, mental health issues or physical illness.

A Tale of Two Complaints

- There is no one type of case that is automatically suitable for remedial **recommendation**.
- Two hypothetical complaint scenarios illustrate two possible discipline results, as follows:

A Tale of Two Complaints

- Complaint One:

Architect Joe has been an architect for 15 years. He operates his own firm as a sole practitioner. A client building a family residence complains about Joe not providing the services she understood she hired Joe to provide. It turns out Joe failed to sign a client-architect agreement (contract) and failed to seal drawings submitted for development permit.

Upon investigation of the complaint, the Committee finds:

A Tale of Two Complaints

- Architect Joe has had an established practice for 15 years;
- Architect Joe has a professional conduct record comprised of two other complaints based on similar facts; and
- Architect Joe has taken the position that written client–architect agreements are unnecessary and that the bylaws regarding seal application are ambiguous and merely a suggestion.

A Tale of Two Complaints

- Complaint Two:

Architect Jane has been an architect for four years. She operates her own firm as a sole practitioner. A client building a family residence complains about Jane not providing the services she understood she hired Jane to provide. It turns out Jane failed to sign a client-architect agreement (contract) and failed to seal her drawings submitted for development permit.

Upon investigation of the complaint, the Committee finds:

A Tale of Two Complaints

- Architect Jane is relatively new to the profession;
- Architect Jane has no professional conduct record;
- In response to the complaint, Architect Jane provides a letter that says she is aware of the importance of a client-architect agreement and she is sorry that she failed to sign one. She explains that she believed a short, e-mailed fee proposal that did not even require a client response was an adequate client-architect agreement, based on her experience as an intern architect at another firm; and

A Tale of Two Complaints

- Architect Jane also acknowledged that she failed to seal the development permit drawings but said she understood from conversations with more senior architects and building officials that the AHJ could lawfully determine whether the architect's seal is necessary at the DP stage.

A Tale of Two Complaints

- In both complaint files, the same bylaws (requirement for a client-architect agreement and sealed drawings) have been breached, requiring consideration by the Investigations Committee of a disciplinary outcome.
- Under the current process, the Committee has the options of dismissing the complaint or recommending charges.
- Based on the facts of the two complaints, they may not warrant the same disciplinary response.

A Tale of Two Complaints

Complaint One: Charges are Appropriate:

- There were breaches of the bylaws and no mitigating factors to suggest an appropriate outcome except charges and an inquiry or consensual resolution.
- Based on the facts, only a recommendation of charges would be an effective resolution of the complaint. However, remedial orders are still possible with a consensual resolution agreement or a discipline committee order after an inquiry.

A Tale of Two Complaints

Complaint Two: Remedial **Recommendation** is Appropriate

- Although there were breaches of the bylaws that require a corrective response, the mitigating factors suggest that an inquiry or consensual resolution – with all of the expense, resources and public naming of the respondent – may not be in the public interest.
- Architect Jane and the public might be better served by directing Jane to upgrade her understanding of the bylaws and satisfactory architectural practice in order to improve her practice.

A Tale of Two Complaints

Complaint Two:

- The potential for remediation is better for this scenario.
- Remediation could include completion of a course, such as Ethics, Act & Bylaws, other courses, and a requirement that she confirm by way of an undertaking that she has changed her practice by always signing standard client-architect agreements and sealing all drawings for formal submission.
- The remedial **recommendation** option helps Jane improve her practice, thus reducing the likelihood of future complaints and/or civil claims.

A Tale of Two Complaints

- Complaint two is an example that calls for the option of remedial **recommendation** – a process that the AIBC cannot currently offer.
- Under the current model, both complaints would result in a recommendation of charges and discipline through an inquiry or consensual resolution.

Remedial Recommendation Process

- The primary benefit of the proposed process is the opportunity to provide a more appropriate and remedial outcome than is currently available.
- The Investigations Committee would retain authority to recommend charges for complaints that do not lend themselves to remedial practice. As before, all decisions are made by Architect volunteer Committee members.

Investigations Committee Support

- The proposed remedial **recommendation** option responds to the concerns of staff and the Investigations Committee about how to better serve the public interest by providing the most appropriate discipline, within the constraints of the *Architects Act*.

Letter from Investigations Committee:

October 19, 2015

“Please accept this letter as a formal endorsement of the efforts of the Bylaw Review Committee to elevate key rules of the current investigation process into bylaws.

The Investigations Committee welcomes this initiative.

The Committee is anxious also to see an additional discipline option be introduced and supported through a bylaw.

The application of a remedial course of action would give the Investigations Committee more flexibility in addressing complaints that may be better resolved through a Remedial Discipline process.”

Next Steps:

- Beginning in October 2015, the Bylaw Review Committee (BRC) will hold at least three member consultation sessions to discuss the proposed changes with members.
- After the consultation sessions are completed, the BRC will consider all member feedback and prepare a final submission of the bylaw amendments to council. As with previous bylaw initiatives, member feedback will be appended to the submission.

Next Steps:

- If council approves the final submission of the bylaw amendments, the vote by members on the bylaw amendments will likely be held in the Spring or Summer of 2016.

Feedback:

- Provide comments verbally or in writing during the session.
- By e-mail at bylawfeedback@aibc.ca.
- All feedback is considered by the BRC before its final submission and by council before its final approval.



ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA