

## **Draft Bylaws for Council Consideration: Investigations and Discipline**

**Updated February 29, 2016 for Council Information**

**Further Updated March 22, 2016 following BRC Review**

**Further Updated April 15, 2016 following Council Planning Session**

**Further Updated April 26, 2016 following BRC/Staff Review**

**Further Updated May 19, 2016 following BRC Review**

### **INVESTIGATIONS AND DISCIPLINE**

#### **Definitions [Interpretation]**

37.0 In these investigations and discipline bylaws 37.0 through 37.42,

**“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;

**“complainant”** means a person or other entity ~~other than the institute~~ who submits a written complaint to the institute about an architect, architectural firm, licensee or associate 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 committee” has the meaning given to it in the Architects Act;**

**“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~~ means the issues and subjects relating to a complaint or potential complaint;

*[“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~~ disciplinary violation;

**“public member”** means a person not registered with the institute, appointed by council to the investigations committee or remedial review panel;

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

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

**“respondent”** means the architect, architectural firm, licensee or associate who is the subject of a complaint. ~~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~~ disciplinary violation must be treated as a potential complaint and processed in accordance with these bylaws.
- 37.3 ~~Except as permitted under Bylaw 37.7,~~ 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 *Architects 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 ~~take action pursuant to Bylaw 37.3~~ ~~investigate with respect to~~ 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~~ ~~disciplinary~~ 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~~ public member 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, and the quorum shall have a majority of architects. 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 ~~of and any investigation related to~~ a ~~ny~~ written report from the CEO ~~under bylaw 37.6~~, to ~~consider~~ **determine** whether to recommend that council order an inquiry into a matter by a disciplinary committee pursuant to section 46 of the *Architects Act*;

- (e) to determine whether, after investigation of any complaint, to make a **remedial recommendation** ~~direction for remedial discipline~~ under bylaws 37.20 through 37.25;
- (f) **upon receipt of a report from the remedial review panel indicating that a respondent has satisfied a remedial recommendation, to discontinue the investigation and close the matter per bylaw 37.18;**
- (g) upon receipt of a report from the remedial ~~discipline~~ review ~~committee~~ **panel** indicating that a respondent has failed to satisfy **a remedial recommendation**, ~~discipline directions~~, to ~~consider~~ **determine** whether to recommend that council order an inquiry by a disciplinary committee pursuant to section 46 of the *Architects Act* into **the concerns that arose during the investigation or remedial recommendation process;** ~~such failure and~~
- (h) **upon a decision by a respondent to reject a remedial recommendation, to recommend that council order an inquiry into a matter by a disciplinary committee pursuant to section 46 of the *Architects Act*;**
- (i) 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; and
- (j) **where the committee deems it appropriate, and upon the discontinuance of an investigation, to provide written, non-binding observations to a respondent related to professional conduct, practice and ethics. Such observations do not constitute a disciplinary violation and are intended to assist the respondent with future practice.**

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 **and the investigation shall be discontinued.** 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 Recommendation**

- 37.20 Where the investigations committee concludes after an investigation that a matter raises concerns about a respondent's conduct, competency or fitness to practise 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.**
- 37.21 The investigations committee's remedial **recommendation** ~~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;
  - (d) **seeking assistance, assessment or counselling from a health professional, such as a financial professional, or registered social worker or health professional;** and/or
  - (e) such other reasonable remedial measures as may be appropriate to the circumstances.
- 37.22 **A respondent may elect to accept or reject a remedial recommendation. If rejected, the investigations committee must recommend that council order a disciplinary inquiry per bylaw 37.16 (d). A respondent's decision to reject a remedial recommendation does not constitute a separate allegation of a disciplinary violation.**
- 37.23 **Satisfaction by a respondent of a remedial recommendation does not constitute a disciplinary violation and is therefore not considered part of the respondent's professional disciplinary record.**
- 37.24 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~~\* **public member** and one retired architect associate. At all times the majority of the remedial **review** 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}*
- 37.25 Remedial **review** panel members shall hold office at council's pleasure or on terms otherwise established by council.
- 37.26 The remedial **review** 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.

37.27 The remedial **review** panel shall attempt to carry out its functions by consensus, but where no consensus is possible, the decision of the remedial **review** panel majority shall be the remedial **review** panel's decision.

37.28 The remedial **review** panel shall have the following functions:

- (a) to receive **remedial recommendations** ~~directions for remedial discipline~~ from the investigations committee;
- (b) to monitor and assess the respondent's compliance with **the remedial recommendation** ~~discipline directions~~; and
- (c) to provide a written report to the investigations committee as to the respondent's compliance with **the remedial recommendation** ~~directions~~, which report shall include a determination whether, in the remedial **review** panel's sole discretion, the respondent has satisfied the remedial **recommendation**. ~~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**

37.29 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 *Architects Act*.

37.30 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 *Architects Act*.

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.

*[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.]*

37.32 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.

37.33 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 the CEO decision shall be retained, **as a privileged document**, as part of the matter records.



*[NOTE: These bylaws are consistent with current approach in the Rules. In practice, the CEO 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**

- 37.34 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.
- 37.35 Institute staff, every member of council and all disciplinary committee, investigations committee and remedial review 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 *Architects Act* in respect of consensual resolutions.
- 37.36 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 B bylaw 36.20.
- 37.37 The institute shall publish summaries, without respondents’ names, of successfully-completed remedial recommendations for the purpose of educating architects, firms, associates and licensees regarding professional conduct and ethics.**

## **Compliance with Sanctions, Remedial Directions and Costs**

- 37.38 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.
- 37.39 Where a respondent is:
- a) ordered by the disciplinary committee to undertake remedial actions or satisfy conditions placed on a certificate of practice; **or**
  - ~~b) directed by the investigations committee to undertake remedial discipline direction; or~~
  - b)** 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.]*

- 37.40** 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

- 37.41** 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

- 37.42** Council may pass procedural rules and guidelines to supplement bylaws 37.1 through **37.41**, which rules must be consistent with the language and intent of these bylaws.

*[NOTE: The alternative to 37.42 – 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, consensual resolution review panel investigations committee, council, professional conduct/illegal practice board, members, etc.]*

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## REVISION SUMMARY

- 1) November 2015:  
Appendix A - Numbering amendment (37.22 through 37.39)
- 2) **February 2016:**
  - **Amendments to change “remedial discipline” to “remedial recommendation” affecting eight bylaws (37.0, 37.16, 37.20, 37.21, 37.22, 37.27, 37.38 and 37.39);**
  - **Additional language to bylaw 37.16 to lay out the Investigations Committee’s key functions as exhaustively;**
  - **Addition of bylaws 37.22, 37.23 and 37.37 to clarify remedial recommendation ‘consequences’;**

- Addition of definition of “disciplinary committee” in the definitions section;
- Style changes for conformity with recent bylaw amendments (e.g., use of “institute”, “bylaw” in lower-case, etc.); and
- Consequential renumbering throughout.

3) March 2016:

- Amendment to the definition of “respondent” in the definitions section; and
- Additional language to bylaws 37.20 and 37.21 to clarify remedial recommendations.

4) April 15 and 26, 2016

- Additional language to bylaw 37.21 to clarify remedial recommendation per Council request;
- Amendment to definition of “matter” in definitions section;
- Amendment to disciplinary violation definition to remove “physical or mental” descriptor;
- Amendment to add “public member” to definitions section, consistent with ‘consensual resolution’ bylaw use of public member, and consequential amendment to bylaws 37.10 and 37.24 to replace lay member with “public member”;
- Amendments to correct references from “discipline” to “disciplinary” where appropriate;
- Amendment to bylaw 37.1 to remove “conduct or competency” descriptor relating to complaints;
- Amendments to bylaws 37.3, 37.7 and 37.8 to clarify CEO authority to decline to take action with respect to a complaint or potential complaint; and
- Amendment to 37.33 confirming privileged nature of legal opinion.

5) May 19, 2016

- Additional language to bylaw 37.13 to clarify quorum; and
- Amendment to bylaw 37.16(d) to clarify the investigations committee decisions.