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Rules for the Professional Conduct Process of the Architectural Institute of British Columbia

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TABLE OF CONTENTS

1.	INTERPRETATION	3
2.	EXECUTIVE DIRECTOR.....	4
3.	INVESTIGATIONS	4
4.	INVESTIGATIONS COMMITTEE	6
5.	DISCIPLINARY COMMITTEE.....	7
6.	PROSECUTION	8
7.	CONSENSUAL RESOLUTION.....	8
8.	CONSENSUAL RESOLUTION REVIEW PANEL	10
9.	CONFIDENTIALITY AND PUBLICATION.....	11
10.	COMPLIANCE WITH SANCTIONS, REMEDIAL ACTIONS AND COSTS	11
11.	DUTY TO COOPERATE	11
12.	ORAL CONDUCT REVIEWS	12
13.	AUTHORITY.....	12

RULES FOR THE PROFESSIONAL CONDUCT PROCESS OF THE ARCHITECTURAL INSTITUTE OF BRITISH COLUMBIA

1. INTERPRETATION

- 1.1 The object of the professional conduct process of the Institute is to uphold and safeguard the public interest in maintaining appropriate standards of professional conduct and practice by members.
- 1.2 The object of these Rules is to secure the just, speedy and cost-effective determination of every complaint on its merits as provided in the *Act* and these Rules, and where such complaint leads to allegations of unprofessional conduct, to resolve the matter preferably by consensual resolution but otherwise by adjudication by a Disciplinary Committee.
- 1.3 Unless otherwise indicated by the context, in these rules:
- (a) "**Act**" means the Architects Act, R.S.B.C. 1996, chapter 17, as amended;
 - (b) "**complainant**" means a person(s) who makes a written complaint about a member(s), and "**complaint**" means the written complaint;
 - (c) "**consensual resolution**" means an agreement for the resolution of a matter made pursuant to the provisions of section 7 of these Rules between parties which include the Institute and a respondent;
 - (d) "**Consensual Resolution Review Panel**" or "**Panel**" means the Panel established pursuant to section 8.1 of these Rules;
 - (e) "**Council**" means the Council of the Institute;
 - (f) "**Disciplinary Committee**" means a disciplinary committee appointed by the Council pursuant to section 46 of the *Act*;
 - (g) "**Executive Director**" means the executive director of the Institute or person delegated authority hereunder by the Executive Director;
 - (h) "**Institute**" means the Architectural Institute of British Columbia;
 - (i) "**Investigations Committee**" means the committee established pursuant to section 4.1 of these Rules;
 - (j) "**matter**" means the conduct or circumstance that is initially the subject of a complaint or concern, and includes the conduct or circumstance that is or becomes the subject of any resulting investigation, consideration, inquiry, consensual resolution or decision under the *Act*, the Bylaws, the Code of Ethics or these Rules;
 - (k) "**member**" means a member of the Institute, and includes an architectural firm, associate or a licensee;
 - (l) "**oral conduct review**" means the process established and described pursuant to section 12.0 of these Rules;
 - (m) "**Registrar**" means the registrar of the Institute; and

(n) **"respondent"** means a member who is the subject of a complaint and includes a member who is the subject of any resulting investigation, consideration, inquiry, consensual resolution or decision under these Rules or the *Act*.

1.4 Unless otherwise indicated by the context, words and expressions used in these Rules and defined in the *Act* have the same meanings as defined in the *Act*.

1.5 These Rules are intended to provide procedural guidance regarding the professional conduct process of the Institute to members, 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*.

2. EXECUTIVE DIRECTOR

2.1 Subject to section 2.2, the Executive Director is responsible for administering the professional conduct process of the Institute and carrying out the duties assigned to the Executive Director by these Rules.

2.2 The Executive Director may be assisted by one or more persons appointed by Council or the Executive Director to assist the Executive Director. The Executive Director may delegate powers and duties to persons so appointed, but such persons shall at all times remain subject to the direction and supervision of the Executive Director.

3. INVESTIGATIONS

3.1 The Executive Director may investigate or cause to be investigated complaints that a member:

- (a) has been unprofessional;
- (b) has contravened the *Act* or a Bylaw, or the Code of Ethics and Professional Conduct, or the Code of Conduct for Participating Members, or other rules of Council;
- (c) has been negligent or guilty of misconduct in the execution of a duty of office;
- (d) is incompetent or unfit to practise architecture or is incapable of practising architecture, or
- (e) is an architectural corporation that has ceased to meet the applicable qualifications for registration under section 26(2) or (3) of the *Act*.

3.2 The Executive Director shall decline to conduct an investigation in the absence of a written complaint unless the Investigations Committee otherwise directs. Circumstances in which the Investigations Committee may be asked to authorize initiation of a complaint, with the AIBC as nominal complainant, may include, but are not limited to:

- (a) reports or information provided by members to the AIBC of apparent Act, Bylaw or Council ruling infractions as required under Bylaw 32.5 ;
- (b) complaints that arise out of failures to satisfy consensual resolution agreements, Disciplinary Committee Orders, undertakings or findings or

recommendations arising out of professional conduct-generated oral conduct reviews, practice or peer reviews and related processes.

- 3.3 On receipt of a complaint against a member, the Executive Director shall provide a copy of it, or a summary sufficient to describe the concerns or allegations, to the member, who shall provide a written response to the Executive Director within two weeks of being requested to do so or within such extended period of time as the Executive Director may in writing allow.
- 3.4 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 concern which initially led to the investigation.
- 3.5 The Executive Director may:
- (a) conduct an investigation into a matter to the extent and by whatever fair and reasonable means the Executive Director determines are appropriate including the referral of a matter to the Investigations Committee for investigation by the Investigations Committee;
 - (b) require the respondent or other members to submit original drawings, renderings or reproductions of the originals, specifications, records and other materials and documents reasonably relevant to the investigation;
 - (c) conduct interviews of any party or other person to obtain information reasonably relevant to the investigation;
 - (d) attend at the business premises of a member during reasonable business hours and, with the member'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;
 - (e) seek the opinion of advisers and experts;
 - (f) retain the services of a private investigator;
 - (g) retain the services of mediators or other persons for the consensual resolution of matters;
 - (h) facilitate a discussion between the complainant and the respondent to arrive at a resolution of the matter;
 - (i) act on behalf of the Institute in relation to the consensual resolution of a matter, and
 - (j) arrange for the drafting and prosecution of the charges against the respondent.
- 3.6 Where the Executive Director concludes that:
- (a) a complaint is not within the jurisdiction of the Institute,
 - (b) a complaint is incapable of substantiation, or
 - (c) a complainant has insufficient personal knowledge of the matter or has an insufficient interest in the matter,

the Executive Director may decline to investigate the matter or terminate the investigation, in which case the Executive Director shall notify the complainant

of the Executive Director's decision and no further action shall be taken in relation to the matter unless otherwise directed by the Investigations Committee.

- 3.7 A complainant may request the Investigations Committee to review a decision of the Executive Director under section 3.6. The request must be made in writing to the Investigations Committee within 30 days after notification of the decision of the Executive Director to the complainant.
- 3.8 If, as the result of an investigation by the Executive Director, it appears to the Executive Director that the matter may warrant an inquiry under section 46 of the *Act*, the Executive Director 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.

4. INVESTIGATIONS COMMITTEE

- 4.1 Council shall appoint an Investigations Committee of not less than five and not more than eight persons, one of whom shall be appointed as Chairperson. Council may appoint one lay person to serve as a member of the Investigations Committee, but otherwise a person must be a member of the Institute to be eligible for appointment to the Investigations Committee.
- 4.2 Council may provide for staggered terms of office of members of the Investigations Committee.
- 4.3 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. The Investigations Committee shall meet and deliberate *in camera*, except where complainants, respondents or third parties have been asked to attend for informal 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.
- 4.4 Members of the Investigations Committee shall hold office at the pleasure of the Council.
- 4.5 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.
- 4.6 The Investigations Committee shall have the following functions:
- (a) to investigate matters referred to it by the Executive Director, including directing the Executive Director to further investigate a matter where the Investigations Committee considers more information or clarification is required;
 - (b) to consider whether to recommend that Council order an inquiry into a matter by a Disciplinary Committee pursuant to section 46 of the *Act*, and

- (c) to review decisions of Executive Director made under section 3.6, either on its own motion or at the request of a complaint.
- 4.7 If considered necessary, the Investigations Committee may invite the complainant, respondent or any other person(s) to a meeting with the Committee for an informal interview concerning the matter. While the information elicited at the meeting will form part of the investigation, the meeting is not a formal hearing and evidence is not taken under oath. Although an interview is not a hearing, respondents are entitled to retain (at their own expense) and attend with legal representation. In such cases, the Investigations Committee will make it clear to respondents and their counsel that it expects to hear primarily from the respondent.
- 4.8 On the basis of any report of the Executive Director and any written representations of the respondent, as well as any other information acquired in the course of the investigation, the Investigation Committee may:
- (a) conclude that charges are not warranted (which decision is final);
 - (b) refer the matter back to the Executive Director for further investigation or clarification, or
 - (c) if it concludes that charges are warranted, recommend to Council that it order an inquiry into the matter by a Disciplinary Committee pursuant to section 46 of the *Act*.
- 4.9 If the Investigations Committee concludes that charges are not warranted, the Executive Director shall so notify the respondent and the complainant. This notification will include confirmation that there is no appeal from the decision under any AIBC process.

5. DISCIPLINARY COMMITTEE

- 5.1 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*.
- 5.2 If Council orders an inquiry by a Disciplinary Committee, the Executive Director shall serve a notice of hearing on the respondent and the complainant in accordance with section 48 of the *Act*.
- 5.3 Once selected, the Disciplinary Committee may engage the services of legal counsel or other assistance it thinks necessary or proper, by making a request to the Executive Director for such assistance. Legal counsel so retained may advise the Disciplinary Committee on questions of law and procedure, and may assist the Disciplinary Committee with the drafting of its decisions and orders.
- 5.4 Unless the charges are withdrawn or stayed, or the matter is resolved by consensual resolution, the Disciplinary Committee shall conduct an inquiry into the matter. After conclusion of the inquiry, the Disciplinary Committee shall make its decision under section 50(1) or (2) of the *Act*, and if it makes a decision against a respondent under section 50(1), it shall, after hearing from the respondent, make any order it is authorized to make by section 50(3) of the *Act*.
- 5.5 The Disciplinary Committee may make any order as to costs it is authorized to make by section 51 of the *Act*.

- 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, the Disciplinary Committee shall deliberate its findings *in camera*.

6. PROSECUTION

- 6.1 The Executive Director shall be responsible for the drafting and prosecution of the charges against the respondent at an inquiry by a Disciplinary Committee, and:
- (a) may conduct or cause to be conducted further investigations into the matter, and
 - (b) notwithstanding the order of Council for an inquiry into the matter by a Disciplinary Committee pursuant to section 46 of the *Act*, may at any time engage in discussion for the consensual resolution of the matter and, of a consensual resolution is arrived at, refer the matter to the Panel for approval of the consensual resolution.
- 6.2 The Executive Director may retain and instruct legal counsel to assist with the drafting and prosecution of the charges.
- 6.3 The Executive Director, with the approval of the Panel, may recommend withdrawal of charge(s). The Executive Director shall prepare a letter or report setting out the reasons for recommending withdrawal of charges and distribute it to the Panel, who shall determine whether to approve this recommendation as set out in Rule 8.5(c) herein.

7. CONSENSUAL RESOLUTION

- 7.1 A matter may, at any time, be resolved by a consensual resolution arrived at between parties which include the Institute, as represented by the Executive Director, and respondent. Prior to service of a Notice of Inquiry upon a member or firm facing allegations of unprofessional conduct, the AIBC shall communicate an offer to enter into consensual resolution with that member or firm. This offer does not in any way affect the AIBC's discretion in the consensual resolution process nor affect the other Rules relating to consensual resolution, including Rule 7.6 allowing any party to withdraw from discussions at any time.
- 7.2 The parties to the consensual resolution discussions may agree to consult with the complainant or any other person whose participation might facilitate a consensual resolution.
- 7.3 A consensual resolution shall not become effective until it has been approved by the Panel. The Panel may withhold its approval if it concludes that the consensual resolution is unreasonable or unfair, having regard to the interest of the public, the profession, the respondent and the complainant. If the Panel withholds approval, it shall explain its concerns or recommendations in a summary way so that the parties can, if they wish, arrive at a modified consensual resolution with a view to resubmitting it for approval by the Panel.
- 7.4 The terms and conditions of a consensual resolution shall be confirmed in a written agreement, signed on behalf of the Institute by the Executive Director and by the respondent. If the complainant is a participant in the consensual

resolution, the complainant may also sign the agreement. If the consensual resolution is approved by the Panel, such approval shall be indicated by affixing all signatures of the Panel members to the document or by having the Panel Chairperson sign on behalf of the Panel for ease of procedure.

- 7.5 A consensual resolution may include any one or more of the following:
- (a) admissions of specified conduct and facts by the respondent;
 - (b) admissions of the respondent to some or all of the allegations in the complaint or charges;
 - (c) undertakings or other agreement of the respondent to restrict the scope of the respondent's practice;
 - (d) undertakings or other agreement of the respondent concerning remedial action;
 - (e) provisions, including undertakings or other agreements by the respondent, concerning sanctions, remedial actions and costs; and
 - (f) any other provisions consistent with the *Act*, the Bylaws, the Code of Ethics and Professional Conduct, or the Code of Conduct for Participating Members, or other rules of Council that resolves the matter to the mutual satisfaction of the parties.
- 7.6 Any discussions for a consensual resolution shall be on a voluntary basis, and any party may withdraw from the discussions at any time.
- 7.7 If the consensual resolution discussions do not result in an approved consensual resolution and the matter proceeds to an inquiry by a Disciplinary Committee, the respondent may not impeach or challenge the fairness of the inquiry or the jurisdiction of the Disciplinary Committee on the basis of any time lapse associated with the unsuccessful attempt to arrive at an approved consensual resolution.
- 7.8 Unless otherwise stipulated by one of the parties, consensual resolution discussions will be on a "without prejudice" basis such that any admissions or statements made by a party during the discussions or before the Panel may not be given in evidence at a subsequent inquiry into the matter. This restriction shall not apply to a subsequent inquiry into the conduct of the respondent in relation to another matter, and neither shall it apply to inquiries into a breach by the respondent of a consensual resolution agreement.
- 7.9 In any consensual resolution discussions, the parties may, by agreement, employ the assistance of a mediator or other person to facilitate the arriving at a consensual resolution of the matter. The respondent will not be expected to pay more than one-half of the costs of the mediator or other person employed to facilitate the arriving at a consensual resolution.

- 7.10 Every consensual resolution agreement must include these terms:
- (a) that any sanctions, remedial actions and costs agreed to by the respondent in the agreement shall have the same effect, and shall be enforceable in the same manner and to the same extent as if they had been imposed pursuant to statutory authority expressly authorizing them; and
 - (b) acknowledgment by the member that failure to meet any of the terms of the agreement may itself constitute unprofessional conduct.

8. CONSENSUAL RESOLUTION REVIEW PANEL

- 8.1 There shall be a Consensual Resolution Review Panel whose members shall be no fewer than three members and up to four members of the Institute and one lay person. The members of the Panel, appointed by Council, shall hold office at the pleasure of Council.
- 8.2 Council may appoint alternates to act in place of members of the Review Panel who will be authorized to act in their place in respect of any matter that comes before the Panel.
- 8.3 A majority of the members of the Panel shall constitute a quorum. While the Panel shall attempt to reach decisions and recommendations by consensus, the decision of a majority of the members of the Panel shall constitute the decision of the Panel.
- 8.4 Council will appoint one Panel member as the chairperson of the Panel.
- 8.5 The Panel shall have the following functions:
- (a) to consider whether to approve consensual resolutions; and
 - (b) if it withholds approval of consensual resolution, to explain its concerns or recommendations to the parties pursuant to section 7.3, and
 - (c) to consider whether to approve withdrawals of charges proposed by the Executive Director pursuant to section 6.3.
- 8.6 The Panel will meet at the request of the Executive Director and otherwise as necessary for the performance of its functions.
- 8.7 The Panel will conduct its business in an informal and expeditious manner, including meeting by teleconference, e-mail or other appropriate mechanism. It is not a judicial or quasi-judicial body and therefore will not hold hearings or hear evidence, nor issue formal reasons for its decisions or recommendations. Its decisions will be final.
- 8.8 If considered necessary by the Panel, the Panel may invite the complainant, respondent or other person to a meeting with the Panel called to consider whether to approve a consensual resolution or the withdrawal of charges.

9. CONFIDENTIALITY AND PUBLICATION

- 9.1 As a minimum level of publication and disclosure, the AIBC shall disclose to the membership (including associates), and make publicly available, any decision or order of a Disciplinary Committee, or suitable summary thereof.
- 9.2 As a minimum level of publication and disclosure, the AIBC shall disclose to the membership (including associates), and make publicly available, any consensual resolution, or suitable summary thereof.
- 9.3 Institute staff, every member of Council and all Disciplinary Committee, Investigations Committee or Panel members, must keep all information concerning a matter strictly confidential, except in so far 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 sections 9.1 and 9.2, and
 - (c) may otherwise be directed by the order of a court of competent jurisdiction.
- 9.4 Nothing in this Rule 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 by way of consensual resolution.

10. COMPLIANCE WITH SANCTIONS, REMEDIAL ACTIONS AND COSTS

- 10.1 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. Likewise, all fines and costs to be paid by a respondent pursuant to a consensual resolution shall be paid within 30 days of the date of approval of the consensual resolution, unless otherwise provided in the consensual resolution.
- 10.2 Where a respondent is ordered by the Disciplinary Committee to undertake remedial actions, or the respondent undertakes to do so in a consensual resolution, the respondent shall take the remedial actions within the time limit provided in the decision of the Council or in the consensual resolution. Failure by the respondent to comply is grounds for disciplinary action, including automatic suspension if such term is provided for by way of Disciplinary Committee order or consensual resolution.
- 10.3 The Executive Director is authorized to monitor and enforce sanctions, remedial actions and costs ordered by a Disciplinary Committee or provided for in a consensual resolution agreement.
- 10.4 The Executive Director may extend the time for payment of fines or costs, or for the taking of remedial actions, by up to 30 days or as may be reasonable in all the circumstances.

11. DUTY TO COOPERATE

- 11.1 The Institute expects every member will cooperate with the Executive Director and the Investigations Committee in a course of an investigation of a matter. Members are advised that a failure or refusal to respond promptly, or a failure or refusal to cooperate with an investigation, may be regarded as unprofessional conduct warranting disciplinary action.

12. ORAL CONDUCT REVIEWS

- 12.1 In the event that an order of a Disciplinary Committee or a term of a consensual resolution or undertaking provides that a member (including a former member 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.

13. AUTHORITY

- 13.1 These Rules are made by Council pursuant to section 5 of the *Act*.