



DRAFT Schedule X: Council Rules for Discipline Hearing Practice and Procedure

Approved by AIBC Council [X Date, 2023]

General Matters

1.0 Appearance and Representation

- 1.1 The parties to a hearing may be self-represented or may be represented by legal counsel at a Proceeding.
- 1.2 If the Respondent is represented by legal counsel in a Proceeding,
 - 1.2.1 the Respondent must provide the AIBC with written notice of the name and contact information of the Respondent's legal counsel; and
 - 1.2.2 all information and documents delivered to the Respondent's legal counsel will constitute delivery to the Respondent.
- 1.3 If the Respondent is self-represented, the AIBC is entitled to use the personal and unique business email address of the Respondent for delivery of all information and documents.
- 1.4 The Discipline Hearing Panel and Discipline Committee may retain legal counsel in conducting a Proceeding.

2.0 Disclosure of Evidence

- 2.1 After a Citation has been issued, unless otherwise agreed to by the parties, or ordered by the Discipline Hearing Panel, the AIBC must disclose to the Respondent:
 - 2.1.1 all relevant written or documentary evidence at least 30 days prior to the commencement of a Discipline Hearing;
 - 2.1.2 a list of witnesses that the AIBC intends to call at least 30 days prior to the commencement of a Discipline Hearing;
 - 2.1.3 a summary of witness evidence that the AIBC intends to call at least 15 days prior to the commencement of a Discipline Hearing; and
 - 2.1.4 expert reports, or a summary of the anticipated evidence of an expert if no expert report is produced, at least 30 days prior to the commencement of a Discipline Hearing.

- 2.2 Unless otherwise agreed to by the parties, or ordered by the Discipline Hearing Panel, the Respondent must disclose to the AIBC:
- 2.2.1 all written and documentary evidence which the Respondent intends to rely upon at the hearing at least 15 days prior to the commencement of a Discipline Hearing;
 - 2.2.2 a list of witnesses that the Respondent intends to call at least 15 days prior to the commencement of a Discipline Hearing;
 - 2.2.3 a summary of witness evidence that the Respondent intends to call at least 15 days prior to the commencement of a Discipline Hearing; and
 - 2.2.4 expert reports, or a summary of the anticipated evidence of an expert if no expert report is produced, at least 15 days prior to the commencement of a Discipline Hearing.
- 2.3 A failure to comply with the disclosure timeline in subsections 2.1 and 2.2 may make the evidence inadmissible, subject to the Discipline Hearing Panel's obligation to ensure procedural fairness and its authority under these Rules.

3.0 Summary of Witness Evidence

- 3.1 The summary of witness evidence for each witness must identify the name, contact address or telephone number of the witness and contain the substance of their evidence.
- 3.2 A failure to comply with the requirement in subsection 3.1 may make the evidence inadmissible, subject to the Discipline Hearing Panel's obligation to ensure procedural fairness and its discretion in relation to witness matters, including Rule 5.7.9.

4.0 Expert Report

- 4.1 An expert's report must contain
- 4.1.1 The name, signature, contact address, and qualifications, including employment and education experience, of the expert;
 - 4.1.2 the instructions provided to the expert in relation to the Proceeding;
 - 4.1.3 the nature of the opinion being sought;
 - 4.1.4 the expert's opinion respecting the issues;
 - 4.1.5 the expert's reasons for his or her opinion, including a description of the factual assumptions for which the opinion is based, and any research conducted that led them to form the opinion; and
 - 4.1.6 a list of every document, if any, relied upon by the expert in forming the opinion.

- 4.2 A failure to comply with the requirement in subsection 4.1 may make the expert's report inadmissible, subject to the Discipline Hearing Panel's obligation to ensure procedural fairness and its authority under these Rules.

5.0 Pre-hearing Conference

- 5.1 Any party may request a pre-hearing conference at any time prior to the commencement of the hearing.
- 5.2 The Discipline Hearing Panel may on its own motion order a pre-hearing conference at any time before a Discipline Hearing commences.
- 5.3 When a pre-hearing conference has been requested or ordered, the Discipline Hearing Panel must:
- 5.3.1 in consultation with the parties, provide written notice of the date, time, and place of the pre-hearing conference and how it will be conducted (in person, by electronic means, in writing, or any combination of the foregoing); and
 - 5.3.2 preside at a pre-hearing conference.
- 5.4 AIBC's counsel and the Respondent, or the Respondent's counsel, or both must be present and participate at the pre-hearing conference.
- 5.5 If the Respondent or the Respondent's counsel fails to attend a pre-hearing conference, the Discipline Hearing Panel may:
- 5.5.1 proceed with the pre-hearing conference if the Discipline Hearing Panel is satisfied that the Respondent had notice of the pre-hearing conference; and
 - 5.5.2 make any order(s) at the pre-hearing conference.
- 5.6 Before the pre-hearing conference begins, the Discipline Hearing Panel may receive and consider:
- 5.6.1 the Citation;
 - 5.6.2 pre-hearing conference submissions from the parties;
 - 5.6.3 an agreed statement of facts; and
 - 5.6.4 any other document or evidence by agreement of the parties.
- 5.7 At the pre-hearing conference, the Discipline Hearing Panel may consider and make orders to assist in the fair and expeditious management of the Discipline Hearing, including but not limited to:
- 5.7.1 identifying, simplifying, or narrowing the issues in dispute;
 - 5.7.2 identifying admissions, or agreed upon facts and documents by the parties;

- 5.7.3 amending the discovery and production of evidence, including the determination of any application made to vary any of the timelines or other requirements set out in sections 2.0, 3.0 and 4.0 of these Rules;
 - 5.7.4 resolving matters of procedure or evidence that can fairly be addressed prior to a Discipline Hearing, either on the motion of a party or on the Discipline Hearing Panel's own motion;
 - 5.7.5 scheduling the time and place of the Discipline Hearing, including determining whether the Discipline Hearing, either will be conducted in person, by electronic means, in writing, or any combination;
 - 5.7.6 estimating the duration of the Discipline Hearing;
 - 5.7.7 setting timelines for the orderly conduct of a Proceeding, including pre-hearing steps such as setting timelines by which the parties must bring motions and applications;
 - 5.7.8 setting a further pre-hearing conference;
 - 5.7.9 taking steps to ensure the best interests of witnesses are protected, including the determination of any application by a party to withhold the identity or contact details of a witness; or
 - 5.7.10 considering whether privilege or confidentiality might require that all or part of the Discipline Hearing be closed to the public, or that exhibits, and other evidence be excluded from public access.
- 5.8 The Discipline Hearing Panel must provide the parties with a written copy of any order made at a pre-hearing conference.
- 5.9 An order made at a pre-hearing conference can be relied on or referred to by any party at a Discipline Hearing.

6.0 Motions

- 6.1 A Motion may be brought by the parties at a pre-hearing conference and at any time after the issuance of a Citation.
- 6.2 The Discipline Hearing Panel must in consultation with the parties, determine:
- 6.2.1 the date, time, and place the Motion will be heard;
 - 6.2.2 the date the Motion must be served; and
 - 6.2.3 the date the responding party must reply.
- 6.3 A Motion must be in writing, unless otherwise agreed upon by the parties or ordered by the Discipline Hearing Panel, and set out:
- 6.3.1 the relief sought;

- 6.3.2 a summary of the grounds for the relief sought; and
- 6.3.3 the evidence and other materials to be relied on.
- 6.4 The party who brings a Motion at a pre-hearing conference must serve it with any accompanying evidence and materials, to the other party and the Discipline Hearing Panel.
- 6.5 The party responding to a Motion served under Section 6.4 must deliver its reply in writing to the other party and the Discipline Hearing Panel, setting out:
 - 6.5.1 its position and the grounds for that position; and
 - 6.5.2 any accompanying evidence.
- 6.6 Any party who includes an affidavit as part of its Motion or reply to the Motion must make the affiant available to be cross-examined.
- 6.7 At the conclusion of the hearing of the Motion, the Discipline Hearing Panel may
 - 6.7.1 grant the relief requested in a Motion;
 - 6.7.2 dismiss or adjourn the Motion in whole or in part, with or without terms; or
 - 6.7.3 make another decision it considers appropriate.

7.0 Motion Adjournment

- 7.1 A party may make a Motion for an order that the Discipline Hearing be adjourned by setting out in writing:
 - 7.1.1 the reason for the adjournment;
 - 7.1.2 a list of evidence and other materials to be relied on; and
 - 7.1.3 the length of time requested for the adjournment.
- 7.2 An application for an adjournment must follow the rules in sections 6.3 to 6.6 of this Schedule, unless otherwise directed by the Discipline Hearing Panel.
- 7.3 In considering an adjournment application, the Discipline Hearing Panel may consider the following:
 - 7.3.1 the reason for the adjournment;
 - 7.3.2 whether the adjournment would cause unreasonable delay;
 - 7.3.3 the impact on the parties that would result from granting or refusing the adjournment; and
 - 7.3.4 the public interest.

- 7.4 The Discipline Hearing Panel may
 - 7.4.1 grant the adjournment;
 - 7.4.2 grant an adjournment on terms or with conditions; or
 - 7.4.3 decline to grant the adjournment.

8.0 Liability and Penalty stages of a hearing

- 8.1 The AIBC may conduct a Discipline Hearing in two parts: a liability hearing, to make findings of fact on liability, and a penalty hearing, to make determinations as to penalty.
- 8.2 The findings on liability and on penalty, when issued, constitute the Discipline Hearing Panel's decision for the purpose of an appeal.
- 8.3 Either party may elect to have the liability and penalty stages heard jointly at a Discipline Hearing.

CONDUCT DURING HEARING

9.0 Attendance

- 9.1 Discipline Hearings are open to the public unless the Discipline Hearing Panel determines the hearing or a portion of a hearing must be held in camera, as referenced in Bylaw 10.62.
- 9.2 In exercising its discretion as to attendance by non parties at a Discipline Hearing, the Discipline Hearing Panel may consider the impact on the Proceeding and procedural fairness caused by attendance or behaviour of any person.

10.0 Recording Proceedings

- 10.1 A Proceeding must not be recorded by any person without the consent of the Discipline Hearing Panel.
- 10.2 A court reporter must keep a record of the Discipline Hearing.
- 10.3 The transcripts of the court reporter are the official record of the Discipline Hearing.

11.0 Preliminary Matters

- 11.1 Before hearing any evidence on the charges set out in a Citation, the Discipline Hearing Panel must determine whether the Citation was served in accordance with the Bylaws.

12.0 Procedure

- 12.1 The Discipline Hearing Panel may determine the procedures to be followed at a Discipline Hearing, consistent with the principles of procedural fairness.
- 12.2 In a Discipline Hearing, both parties may
 - 12.2.1 present evidence;
 - 12.2.2 reply to evidence;
 - 12.2.3 call witnesses;
 - 12.2.4 cross-examine the opposing party's witnesses;
 - 12.2.5 re-examine witnesses;
 - 12.2.6 make submissions; and
 - 12.2.7 reply to the opposing party's submissions.
- 12.3 A party to a Proceeding must not put a document to a witness in cross-examination without having provided reasonable disclosure of the document to the opposing party in advance.
- 12.4 The Discipline Hearing Panel is not bound by the rules and principles of evidence and civil procedure.
- 12.5 Nothing is admissible as evidence in a Proceeding that would be inadmissible in a court of law by reason of any privilege.
- 12.6 The Discipline Hearing Panel may place reasonable limits on the length of a party's submissions in a Discipline Hearing.
- 12.7 A party must not present new evidence in the party's closing submissions.
- 12.8 The Discipline Hearing Panel must not consider the questions of penalty or costs until it has rendered a decision on the charges in the Citation, unless either party requested a combined hearing pursuant to paragraph 8.3 of these Rules.
- 12.9 Where a procedural or other issue cannot be determined through the *Professional Governance Act*, *Architects Regulations*, AIBC Bylaws, or this Schedule, the Discipline Hearing Panel has discretion to make a binding determination and in so doing may make reference to common law rules and principles as applicable.

13.0 Witnesses

- 13.1 Parties are responsible for arranging attendance of their own witnesses.

- 13.2 If a witness requires an interpreter, the party calling the witness must arrange for the attendance of a certified interpreter at their own cost.
- 13.3 Any witness testifying at a Proceeding must give an oath or affirmation before testifying.
- 13.4 The Discipline Hearing Panel may question any witness.
- 13.5 A witness must not see or hear the testimony of other witnesses prior to giving testimony at a Discipline Hearing, unless the witness is also a party to the hearing or is an expert whom the Discipline Hearing Panel has ruled may be present for the testimony of the opposing party's expert.
- 13.6 Witnesses may be issued a subpoena in accordance with Section 80 of the PGA.

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