



# Complaints Task Force Recommendations

Fall 2013

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## Executive Summary

The Complaints Task Force brings before the Legislation Committee, Council and members of the AAA this document for discussion, recommendations and approval.

This document contains the draft recommendations, which upon receiving final approval from AAA members, are intended to be used by the AAA as it enters into the legislative review process with the Government of Alberta.

The draft recommendations are open to discussion and revision. This document is being presented to the Legislation Committee, Council and AAA membership to determine: a) whether to endorse the recommendations in principle; and b) whether any fundamental changes to the recommendations need to be made. The recommendations will only be final once endorsed by AAA membership.

## Current Legislation

In terms of complaints, the *Architects Act* and *General Regulation* currently provides for the following:

- The publication of names of those members that have had their registration suspended or cancelled, and the period of suspension if applicable;
- Complaints hearings are held in private;
- No public representatives sit on the review panel; and
- The only form of alternative dispute resolution available is mediation.

## Issue

The issue is whether the current legislation/status quo is sufficiently protecting the public. If it is not, how can the legislation be improved:

- to better protect the public;
- to provide the AAA with the best tools for enforcing the *Architects Act* and *General Regulation*, and Bylaws, and to ensure the practice of architecture and interior design are being performed competently; and
- to provide AAA members with the tools to resolve complaints fairly and quickly.

## Draft Recommendations

The Complaints Task Force recommends the following.

1. Provide for the ability to publish both names in the case of suspension or cancellation of registration and outcomes once a final order is made by the Complaint Review Committee.
2. Provide for public hearings.
3. Include a public representative on the Complaint Review Committee.
4. Provide for a consensual complaints resolution process.

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## Rationale

Publishing names and decisions is in the public's best interest; without this information, the public cannot adequately or properly be informed about members of our profession. As a self-regulating body, we have the obligation to disclose this information to the public.

Conducting public hearings would better align our disciplinary process with other provincial regulators, and would promote transparency and openness in our profession and organization.

Including a public representative on the Complaint Review Committee would encourage transparency and openness, and mitigate potential issues of bias and unfairness.

A consensual complaints resolution process would help to distribute the scarce resources of the CRC towards those issues that cannot be resolved through a consensual process. This process would also help to alleviate the time and money necessary in a traditional complaints review process.

## What We Learned

Of the architectural associations nationwide, all publish names except for Saskatchewan; how this ability is exercised varies from province to province. Of the six self-regulated professions in Alberta, all have the ability to publish names, and there is a trend towards publishing decisions as well.

In terms of public hearings, there are two approaches taken by architectural associations: to either mandate that hearings be made public, or that hearings be in camera.

Having a public representation on the hearing panel is not a trend amongst the provincial architectural associations. Four provinces insist that at least one member of the panel be lay, and Newfoundland and Labrador mandate that at least three lay persons be representative of the public. What public representation is thought to do is to effectively mitigate potential issues of bias on complaints committees.

While we currently provide for an alternative form of dispute resolution in our legislation, we do not have the process known as consensual complaints resolution. The architectural associations of British Columbia and Nova Scotia both provide for this process, as well as the *Regulated Accounting Profession Act*<sup>1</sup> in Alberta.

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<sup>1</sup> *Regulated Accounting Profession Act* RSA 2000, c.R-12, ss.71-72.

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# Recommendations

## Issue 1 Publishing Names and Decisions

### 1.1 Current Legislation

The current *Architects Act* and *General Regulations* only permits the publication of names of those members that have had their registration suspended or cancelled, and the period of suspension if applicable<sup>2</sup>.

### 1.2 Issue

As the current legislation does not allow for the decision, or the rationale behind the decision, to be published, it is thought that without this the public is not adequately informed. Without publishing the decision and rationale of the case, how can the public properly appreciate and understand a violation? Only with full disclosure can the public interest be said to be adequately protected.

Should the Alberta Association of Architects continue to have the ability to publish names in regards to complaints, and should complaints decisions be published to provide this protection?

### 1.3 What We Learned

The majority of provincial self-regulated associations provide for some method of publication of their disciplinary decisions, but the particular form of this publication power varies from province to province.

In terms of provincial architectural associations, all publish names except for Saskatchewan.

In Prince Edward Island and New Brunswick, Council has a discretionary power to publish any decision of the discipline committee, while Nova Scotia and British Columbia simply call for the publication of all discipline decisions. Alternatively, Northwest Territories mandates that notice must be given to the profession for all findings of improper conduct, but there is discretion as to whether notice is to be given to the public.

Of the six self-regulated professions in Alberta that we surveyed, all have the ability to publish names and the overwhelming trend was to publish decisions of complaints cases. Accountants and Health Professions<sup>3</sup> must publish or post the decision or a summary when a Discipline Tribunal suspends/cancels the registration, or restricts the practice of an investigated person. Agrologists, Engineers, Lawyers, and Veterinarians may publish information respecting a complaint and a ratified settlement.

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<sup>2</sup> *Architects Act* R.219/2010 (Regulations), s. 55(1),(2).

<sup>3</sup> Physicians and Surgeons; Dentists

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## 1.4 Options

### 1.4.1 Status quo

#### Overview

The legislation remains the same – names of members who have had their registration suspended or cancelled shall be published.

Continuing the ability to publish names is an essential component to adequately protecting the public and the public interest. Providing for this continuation provides for greater transparency, openness, awareness, and education. If this ability were to be removed, the best interests of the public would not be served.

#### Pros

- No increased burden on the AAA's administration or Complaints Review Committee (CRC).
- Processes and procedures remain as are.

#### Cons

- The public interest is not being fully promoted and protected.
- Members are not held accountable to the public.

### 1.4.2 Provide for the ability to publish decisions

#### Overview

Legislation would be amended to provide for the ability to publish both names and outcomes once a decision has been reached.

#### Pros

- The public will have access to more complete information.
- Further encourages openness and transparency in both the profession and the AAA.
- Publication of both names and decisions may deter members from violating professional standards.
- A possible incentive for the parties to enhance communications skills to resolve issues before a complaints is filed.
- There are always lessons to be learned and these decisions can become case studies and/or education sessions.

#### Cons

- Minor changes to AAA's administration process.

## 1.5 Recommendation

After considering the feedback received during the member consultations, the Complaints Task Force recommends that the ability to publish names after a suspension or cancellation of registration remains (option 1.4.1).

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Additionally, the ability to publish final decisions should be provided for in future legislation (option 1.4.2). The publication should include: whether or not the member is guilty of the specified offence, and any fines or sanctions that have been laid down.

The Task Force also recommends that this ability only be triggered once a decision by the Complaint Review Committee has been made.

## 1.6 Rationale

The rationale behind this recommendation is that it is in the public's best interest to publish both names and decisions. Without this information, the public cannot begin to be adequately informed about members of the profession. As a self-regulating body, the AAA has an obligation to disclose this information to the public.

## Issue 2 Public Hearings

### 2.1 Current Legislation

Currently, complaint hearings are held in private<sup>4</sup>, and there are no provisions in our legislation that provide for public hearings.

### 2.2 Issue

A trend in new regulatory legislation has been towards holding public hearings in order to encourage greater transparency and openness. Of the ten other architectural associations in Canada, six of them provide for public hearings. The issue before this Task Force is whether or not to follow this nationwide trend.

### 2.3 What We Learned

There are two opposing approaches to public hearings related to architecture throughout Canada: British Columbia, Saskatchewan, Manitoba, Nova Scotia, Newfoundland, and Quebec all have recently updated legislation that mandate disciplinary hearings be open to the public; while Ontario, Prince Edward Island, and New Brunswick all hold in camera discipline hearings.

Of the other six self-regulated professions<sup>5</sup> in Alberta that we researched, all conduct public hearings.

Public hearings aim to promote transparency in the discipline process. This is balanced against any privacy interests surrounding the investigated conduct. Generally speaking, the provinces which utilize public hearings attempt to balance these interest by allowing for the hearing to be held in private (in whole or in part) where the subject matter involves issues of a confidential or otherwise highly private nature, or where it is otherwise in the best interests of the public to do (examples of such provisions can be seen in Manitoba, Ontario, Quebec, and Newfoundland and Labrador).

The Task Force strongly believes that it is in the public's best interest for hearings to be public. The Task Force concluded that a clause should be inserted into the new legislation that states something to the effect of 'unless proven otherwise, hearings shall be made public'. This clause will give both parties to the complaint the opportunity to state why the hearing should or should not be made public (i.e. potential privacy concerns). As to when exactly public hearings should be made private, the *Engineering and Geoscience Professions Act* mandates that all disciplinary hearings and their appeals shall be open to the public unless the Committee or Board deems otherwise<sup>6</sup>. The Task Force recommends that a similar process be adopted in our new legislation.

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<sup>4</sup> *Architects Act*, RSA 2000 c.A-44, s. 41(2).

<sup>5</sup> Accounting, Agrolology, Engineering, Law, Health Professions (Physicians and Surgeons; Dentists), and Veterinary Medicine.

<sup>6</sup> *Engineering and Geoscience Professions Act* 2000 c.E-11, s.57.

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## 2.4 Options

### 2.4.1 Maintain the status quo

#### Overview

The legislation remains the same, and complaint hearings are held in private.

#### Pros

- No changes to the AAA's administration or the Complaints Review Committee would be necessary.

#### Cons

- The public interest is not being fully promoted and protected.
- Members are not held accountable to the public.
- We would not be following the trend in new regulatory legislation which seeks to promote transparency.

### 2.4.2 Provide for public hearings

#### Overview

Complaint hearings are made public. Only in certain circumstances would the hearings remain private i.e. privacy reasons.

#### Pros

- Having an open process increases transparency.
- Members are held accountable to the public.
- Public hearings may serve to deter members from violating professional standards.
- Would create stronger alignment with other architectural associations and self-regulating professions in both Alberta and Canada.
- The complaints hearing process holds the same value as hearings in our judicial system. Aligning the systems would entrench the value and seriousness of our complaints hearing process.

#### Cons

- Minor changes to the AAA's administration or the Complaints Review Committee would be necessary.

## 2.5 Recommendation

After considering the feedback received from the members, as well as surveying the legislation of other architectural and self-regulating professions, the Task Force recommends that complaint hearings be made public in order to promote transparency to the public (option 2.4.2).

The Task Force also feels that a clause should be included in future legislation that allows for certain cases to be held in private if deemed appropriate.

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## 2.6 Rationale

Replacing current legislation with the ability to conduct public hearings as laid out in option 3.3.1 would align our disciplinary process with other provincial regulators, and would go a long way towards promoting greater transparency and openness in our organization and profession to the public. Having the process open to the public will deter members from violating professional standards, and since the profession is one with a strong focus on serving the public, it was definitely be in the public interest for fewer violations to occur.

Additionally, having an open and public process benefits members that find themselves involved in a complaints case. Having a process whereby the Complaints Review Committee is accountable to the public in an open setting helps mitigate bias and promotes fairness.

## Issue 3 Public Representatives

### 3.1 Current Legislation

Currently, no fewer than three registered architects and one licensed interior designer, appointed by Council, sit on the Complaints Review Committee<sup>7</sup>. This Committee's name is used interchangeably with the Complaints Hearing Panel. There are provisions within the legislation that we must have an appointed public representative on Council and on the Practice Review Board, but no provision speaking of having public representation on the Complaints Review Committee.

### 3.2 Issue

Should a public representative sit on the Complaints Review Committee, or should the composition remain as is? Is a public representative better suited to be appointed to this Committee than to the Practice Review Board?

### 3.3 What We Learned

Of ten other architectural associations nation-wide, four of them mandate that at least one public member be included in their complaints committee. Ontario, Nova Scotia, and Prince Edward Island insist that one member of the panel be represented by a lay person, while Newfoundland and Labrador call for at least three lay persons to represent the public interest on the panel. The other provincial regulators make no mention of public representation.

Having public representation on the complaints panel is thought to promote the public interest because the opportunity to voice thoughts and opinions on behalf of the public exists.

Public representation is also thought to mitigate potential issues of bias on complaints committees. Lay members do not have the possible pre-existing opinions or relationships that members of the profession might have; therefore, lay members are thought to approach cases with a more open mind.

The Task Force believes that it is definitely in the public's best interest for a lay member to be included in the complaints committee. This kind of composition may have the effect of increasing the public's confidence in both the complaints process, and the profession as a whole.

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<sup>7</sup> *Architects Act*, RSA 2000 c.A-44, s.36.

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## 3.4 Options

### 3.4.1 Maintain the status quo

#### Overview

The legislation remains the same, and public representatives do not sit on the Complaints Review Committee (CRC).

#### Pros

- No changes to the AAA's administration or the CRC would be necessary.

#### Cons

- Potential issue of bias on the panel is not addressed.
- Not aligned with the majority opinion of the members.
- Chance to add additional accountability to panel is missed.

### 3.4.2 Include a public representative on the CRC

#### Overview

It is suggested that two peers and a public representative, able to make sound decisions, sit on the CRC.

It will be up to the Minister whose portfolio contains professions and occupations to decide to appoint the public representative, but the AAA could offer names of potential individuals as well.

#### Pros

- Could effectively address the potential problem of bias on the panel.
- Opportunity for the public's voice to be heard.
- Encourages accountability and openness in both the profession and the AAA.

#### Cons

- Mechanism to appoint public representatives has yet to be determined, however we already perform this for the Practice Review Board and Council.
- A pool of public representatives would be needed.

## 3.5 Recommendation

After considering the feedback received from the members, as well as surveying the legislation of other architectural associations and self-regulating professions, the Task Force recommends that the Complaints Review Committee composition be amended to include at least one public representative (option 3.4.2).

## 3.6 Rationale

Amending current legislation to reflect this suggestion would align the composition of our Complaints Review Committee with several other architectural associations in Canada. While including a public representative is not the current trend, the Task Force believes that having public representation is vital to encouraging transparency in both the profession and the AAA, as well as ensuring the process is fair and within the Complaints Review Committee.

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## Issue 4 Consensual Complaints Resolution

### 4.1 Current Legislation

In Alberta, the current legislation provides that the AAA may propose mediation to the parties involved (i.e. the complainant and the member whose conduct is the subject of the complaint), and if they agree, may recommend a mediator<sup>8</sup>. Additionally, the legislation provides that if mediation is unsuccessful, the matter is referred to the complaint review committee chair to continue with the ordinary complaints process. However, there are no provisions in the legislation that adequately define the mediation process, and there is no practical direction given as to how the process should be carried out.

### 4.2 Issue

Should a different form of alternative dispute resolution be implemented in the new legislation?

### 4.3 What We Learned

Several provincial architectural associations have some form of alternative dispute resolution in their discipline process. Generally speaking this takes the form of structured negotiations or mediation, either before the registrar or a third party mediator. The variations between associations are in regards to the stage of the process in which alternative dispute resolution can be pursued, and the checks and balances in place to ensure satisfactory resolution.

British Columbia and Nova Scotia have an option for alternative dispute resolution after a formal investigation has been conducted and the matter has been referred to a disciplinary hearing, but before the hearing itself. In both cases, the process is initiated by the association tendering a settlement proposal. Both associations also require any settlement to be ratified in some way.

British Columbia has recently adopted a new process known as Consensual Resolution<sup>9</sup>. Consensual Resolution can be thought of as a voluntary, collaborative dispute resolution process. It is an alternative to the traditional complaints review process than can be quite lengthy and costly for all parties involved. The *Regulated Accounting Profession Act* – which governs Chartered, Certified General, and Certified Management Accounts – has also incorporated a consensual complaints resolution process<sup>10</sup>. This system encourages all parties to try and resolve the complaint voluntarily, so that the complaint does not have to proceed to the formal complaints review process.

### 4.4 Options

#### 4.4.1 Maintain the status quo

##### Overview

The legislation remains the same, with a very basic reference to mediation being possible, but not adequately defined in meaning or procedure.

##### Pros

- No changes to the AAA's administration or the complaints review process would be necessary.

##### Cons

- The complaints process can be costly and drawn out.
- Mediation remains an unclear alternative.

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<sup>8</sup> *Architects Act* RSA 2000 c.A-44, s.31(3).

<sup>9</sup> AIBC's members and honorary members voted 96% in favour of them in May 2013 – the bylaws are now in effect.

<sup>10</sup> *Regulated Accounting Profession Act* RSA 2000 c.R-12, ss. 71-72.

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#### **4.4.2 Provide for a consensual complaints resolution process**

##### Overview

Aside from mediation, an additional dispute resolution process should be adopted. In particular, a version of British Columbia's consensual complaints resolution process will be provided for in new legislation. As well, our current provision for mediation will be clarified and more adequately defined. This would have the effect of directing resolution of complaints through an alternative complaints process, without necessitating a full hearing.

##### Pros

- Time and cost effective.
- Our volunteers are currently charged with extensive responsibilities that may represent a huge time commitment. Adopting an alternative process and/or clarifying our current mediation provision could reduce the load that falls on the volunteers.

##### Cons

- Will involve changes to the AAA's administrative process and the Complaint Review Committee.

#### **4.5 Recommendation**

After considering the merits of the consensual complaints resolution process, the Task Force recommends that a similar process be incorporated into future legislation (option 4.4.2).

The Task Force also recommends that the current provision for mediation be clarified and more thoroughly defined in order for parties to take advantage of either option.

#### **4.6 Rationale**

Adopting a consensual complaints resolution process would alleviate some of the load currently experienced by the Complaints Review Committee, and, in particular, the Complaints Chair. Having such a methodology in place would allow for resolution of complaints short of a full hearing, and would be both time and cost effective for all parties involved. Resources will be allocated to contentious issues that cannot be resolved through this process.

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