

## Practice Review and Discipline

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### Introduction

As discussed in this course's Introduction, one of the characteristics of self-governing professions is rigorous regulation of the conduct of its members. By including these stringent rules in the legislation establishing these professions, the legislature intends to protect the public interest. While this is evident throughout the Act, General Regulation and bylaws, it is most apparent in the portions dealing with practice review, the investigation and discipline of members and in the regulation of practice.

This chapter outlines the provisions in the Act and General Regulation dealing with complaint and practice review. It begins with definitions of unskilled practice and unprofessional conduct – the very actions that set the review processes in motion. These concepts are very important for, if a member is found to have committed either, he or she becomes subject to potentially harsh penalties.

It then continues with a discussion of general procedural rules in effect in hearings before these bodies: the evidence that can be heard, and the procedural protections designed to ensure fair and even-handed hearings for investigated persons.

The major part of the chapter deals with the powers and procedures of the Practice Review Board, the Complaint Review Committee and Council, and the process for appeals of their decisions.

Finally, relevant issues not found in the Act or the GR are discussed. These include the common law rules on procedural rights, the availability of judicial review and court decisions that have interpreted the Act.



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Part 5

## Establishment of the Complaint Review Committee and Practice Review Board

Practice Review and Discipline provisions are found in Part 5 of the Act which establishes two review panels:

- the **Complaint Review Committee**, to investigate complaints and, if necessary, discipline members, and
- the **Practice Review Board**, to review the professional practices of members and to make recommendations to these members or to Council.

9(1)(k), (l),  
(m), (o)  
and (p)

Part 4, 5

Council has authority to make regulations dealing with the composition, procedures and proceedings of these bodies as well as on *“the review of the practice of authorized entities generally”*. Regulations addressing these areas are contained in the GR under Part 4: Complaint Review Committee, and Part 5: Practice Review Board. As licensed interior designers are included in the definition of *“authorized entities”*, both architects and licensed interior designers are subject to the same complaint and practice review processes.

### A Note on Interpretation

Before beginning however, a note is required on the use of the term “review panel.” A “review panel” is defined in the Act as *“the (Complaint Review) Committee or the (Practice Review) Board, as the case may be”*. When the term is used in the body of the Act, it is difficult to determine whether it refers to the Committee or the Board or both. It is also difficult to determine with certainty which rules and procedures apply to which body.

29(d)

To avoid confusion, we will use the term “review panel” to refer to *both* the Committee and the Board. When referring to one of these bodies only, the name of that body will be used. Finally, a discussion of the most likely interpretations will be included whenever it is unclear which body the term “review panel” is referring to.



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## Cooperation of Members

An authorized entity must cooperate in all matters pertaining to reviews conducted by the Council, the Registration Committee, the Complaint Review Committee and the Practice Review Board as set out in s. 44 of the GR.

## Unskilled Practice and Unprofessional Conduct

Unskilled practice and unprofessional conduct are defined as an act or omission of an authorized entity that “a review panel or, on appeal, the Council” determines:

- To be detrimental to the best interests of the public interest.
- To be a violation of the applicable code of ethics.
- Will harm or tend to harm the standing of the profession(s) of architecture or interior design.
- Will display lack of knowledge of or lack of skill or judgment in the carrying out of any duty or obligation undertaken in the practice of architecture or interior design.

Conduct that meets the above criteria is considered to be unskilled practice or unprofessional conduct “**whether or not that conduct is disgraceful or dishonourable**”. Furthermore, a failure to comply with any part of the Act, regulation or bylaws can also constitute unprofessional conduct if the Complaint Review Committee or the Council considers it a serious violation.

## Rules of Evidence in Hearings before the Committee, Board or Council

Evidence is, of course, the basis upon which decisions are made by the Complaint Review Committee, the Practice Review Board and Council. The Act is clear about the types of evidence that can be introduced and the powers of the tribunals in obtaining it.



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## Presentation of Evidence

Evidence may be presented at a hearing in any way in which the “review panel” or Council considers appropriate. They are not bound to follow the rules of evidence applicable to courts of law. This is normal practice for administrative tribunals such as the Complaint Review Committee, the Practice Review Board and Council, for a very important reason. One advantage of administrative tribunals is that they are quicker and less expensive forums for the settlement of disputes than courts. The complex rules of evidence applicable in judicial proceedings can make proceedings slow, expensive and formal. Therefore, their application to the proceedings of administrative tribunals would work to defeat the very rationale behind the tribunal’s existence.

For the purposes of an investigation, each member of a review panel or Council is given the power of a commissioner for oaths. Witnesses can be sworn in so that their testimony is taken under oath.

68(1)

## Certificate of Registration

Section 68(1) of the Act establishes presumptions applicable to hearings. A presumption means that when evidence of one fact is presented, another fact is presumed to be true. The presumptions are as follows:

- A certificate allegedly signed by the Registrar stating that as of a certain date or during a certain period, an individual was or was not a registered architect, visiting project architect, restricted practitioner, licensed interior designer, visiting project interior designer, officer of the association or a member of the Council, or that a corporation was or was not an architects corporation, a joint firm or interior design corporation, is conclusive proof of these facts unless contrary evidence is presented. Furthermore, the Registrar’s signature is deemed authentic in the absence of contradictory evidence.
- If contradictory evidence is presented, the presumption cannot be relied upon and the above facts must be proved in the same manner as any other relevant fact.



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## Witnesses

In judicial proceedings, policy considerations dictate that certain individuals cannot be compelled to testify in certain situations. In administrative hearings however, the dominant policy consideration is allowing the tribunal or body to have access to all relevant information so that it may make an educated decision. Therefore, all witnesses who have relevant information are usually required to testify. The following rules apply:

- The individual under investigation and anyone else thought to have relevant information may be compelled (ordered) to give evidence.
- Witnesses may be questioned on any relevant matter regardless of whether their responses may:
  - Incriminate them, or
  - Subject them to potential liability under Part 5 of the Act (*Practice Review and Discipline*) or in a civil proceeding.
- However, in order to ensure candour and the receipt of accurate information, witnesses' testimony at a hearing may not be used against them in a civil proceeding, a prosecution for violation of the Act (recall that s. 71 makes violation of the Act a quasi-criminal offence), or in a proceeding under any other Act. This does not mean that a witness cannot be prosecuted for any actions discussed in their testimony, but merely that the testimony itself cannot be used as evidence. The only exception to this rule is in prosecutions for perjury or the giving of contradictory evidence as it is the witnesses' testimony that forms the subject matter of the charge.
- It is only the witnesses' *testimony* that cannot be admitted at subsequent proceedings. Other kinds of evidence relating to the prior hearing, including the rulings of Council or a review panel, may be admitted provided they are otherwise admissible.<sup>1</sup>
- The AAA may apply to the Court of Queen's Bench for a commission to obtain evidence from an out-of-province witness. The court *may* grant the commission. If it does, the evidence is then taken in accordance with the *Alberta Rules of Court*.



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## Attendance of Witnesses and Production of Documents

- The Registrar may issue a notice to an individual requiring him or her to attend a hearing. This notice must contain the time and date and place of the hearing.
- The Registrar may also require the person to bring any relevant documents, such as plans or drawings, to the hearing.
- Upon receiving a written request, the Registrar must deliver notices to any individuals that the investigated person or their counsel wish to have testify at the hearing.
- Witnesses who are required to attend a hearing are entitled to the same fees as a witness in Court of Queen's Bench.

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## Failure to Attend or Give Evidence at a Hearing

A person who does not comply with a notice to attend a hearing, does not produce requested documents or refuses to be sworn in or answer a question may be charged with civil contempt of court. If the guilty party is the individual under investigation, the Complaint Review Committee or the Council may find this non-compliance to constitute unprofessional conduct.

## Procedural Protections for Investigated Persons

Parties in judicial proceedings are entitled to significant procedural protections such as the right to counsel and the right against self-incrimination. Due to the desire for more informality and flexibility in administrative hearings, the full range of protections applicable in court proceedings are not generally available to those under investigation. However, those under investigation by the Committee, Board or Council are entitled to treatment in accordance with "natural justice." Natural justice has been defined as "fairness writ large and juridically. It has been described as '*fair play in action*.'"<sup>2</sup> It may include, among other things, the right of investigated persons to be notified of the case against them, to make submissions to the decision-maker(s) and to be represented by a lawyer.

The level of procedural protections or "natural justice" accorded to an investigated person varies with the nature of the proceeding. In *Kane v. University of British Columbia*,<sup>3</sup> the Supreme Court of Canada determined that a high level of natural justice is required in professional discipline hearings due to the potentially serious consequences to the individual under investigation.<sup>4</sup> As a result, those whose conduct is under investigation are entitled to significant procedural protections in hearings before the Complaint Review Committee or Council as both of these bodies have the authority to discipline members. However, these bodies are not courts and are given significant freedom to devise their own procedures, provided the hearing is fair.



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41(1), 42(1) and 47		<p>However, the importance of “natural justice” to this discussion is minimized by the fact that the Act and GR accord significant procedural protections to investigated persons. Many of these protections meet or exceed the common law requirements of “natural justice,” rendering them superfluous. These provisions are set out below.</p> <p><b>Right to Notice and to be Present at Hearing</b></p> <p>The Registrar must provide the investigated person with a notice indicating the date and time of the hearing. This notice must summarize the particulars of the “<i>complaint or conduct</i>” in issue to allow the investigated person to know the case against him or her, and to give the investigated person a sufficient opportunity to respond.</p> <p>Both the accused and the AAA may be present and represented by counsel. The review panel itself may also have a lawyer for advice.</p> <p>The “review panel” or Council may proceed with a hearing in the absence of the investigated person if proof is provided that they were given notice.</p>
52-3 and 39(3)		<p><b>Written Decision</b></p> <p>A “review panel” or Council must prepare a written decision including the findings it has made, the reasons for these findings and any order made. Furthermore, the Registrar must forward copies of this decision to the person under investigation and the chair or vice-chair of the review panel. These individuals, as well as Council on appeal, are also entitled to examine the formal record of the hearing or any mechanical, written or tape recorded records of testimony.</p> <p>Complainants are not entitled to a copy of the decision but are entitled to receive notice of the decision reached.</p> <p>This does not appear to apply to the reports of the Practice Review Board (for reasons set out below). However, the Board must submit a written report to Council at the conclusion of a practice review. Whether or not the person under review is entitled to this report is unclear. However, given that transparency is always a good policy for administrative bodies such as the Board, it would be well advised to provide those subject to a review with a copy of its reports.</p>



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Act	GR	Bylaws
41(2)		<p><b>Privacy of Hearings and Confidentiality</b></p> <p>Hearings before the Complaint Review Committee or the Council must be held in private. The Practice Review Board, its reviewers and all other Association staff must keep confidential all reports and files related to a review as well as any other information gathered while carrying out a review.</p>
31(1) and (2)	51	<p><b>Complaint Review</b></p> <p><b>Initial Handling of Complaints</b></p> <p>Complaints about the conduct of an authorized entity are made to the Registrar. The Registrar must do his or her best to get the complaint in writing, and may ignore any complaint that is anonymous or not in writing. However, there are occasions when the Registrar becomes aware of improper conduct but it is not possible to obtain a written complaint. In these circumstances the Registrar can commence the complaint review process. Complaints dealing with the activities of an authorized entity whose registration has already been cancelled can be dealt with provided they are made within one year of cancellation.</p> <p>After receiving a written complaint, if the Registrar determines that mediation may be viable in the circumstances, the Registrar may inform the complainant and the authorized entity subject to the complaint that mediation is available. If mediation is not viable, the Registrar informs them that the complaint has been forwarded to the chair or vice-chair of the Complaint Review Committee.</p>
31(3)		<p><b>Mediation</b></p> <p>If it is determined that mediation is viable and <u>both</u> parties agree to mediation, then Council appoints a mediator to work with the parties toward resolution. If no settlement is reached within 30 days of receipt of the complaint (or a longer period agreed upon by the parties) and the mediator believes one unlikely, the mediator forwards the complaint promptly to the chair of the Committee.</p>
32	52	<p><b>Receipt of Complaint by the Chair or Vice-Chair</b></p> <p>The Registrar, mediator or <b>“any other person”</b> can refer complaints to the chair. When the chair receives a written complaint, he/she must inform the authorized entity that a complaint has been received and it will be investigated. The chair must review a complaint within 30 days of receipt; however he/she can ask Council for an extension.</p>





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32 (3)	53	
33		
34, 35		

## i. Preliminary Investigation

### a. Initiation and Conduct of Investigation

The chair may conduct a preliminary investigation into the conduct of an authorized entity at any time, not only when a complaint has been received. The chair may conduct the investigation personally or appoint someone else to do it. If someone other than the chair or vice-chair conducts the investigation, they must report their findings to the chair or vice-chair as soon as possible after completing the inquiry.

### b. Conclusion of Initial Review

When the initial review of a complaint in writing is completed, the chair must make at least one of the following orders:

- Refer the complaint to the Committee if he/she believes that the Committee should evaluate it. In the case of a complaint not made in writing or an initial review not initiated by the complainant, the chair may refer the matter to the Committee if he/she believes it deserves further consideration.
- Direct that no further action be taken if he/she believes the complaint is “frivolous or vexatious” or is not supported by adequate evidence of unskilled practice or unprofessional conduct. A frivolous complaint is one so minor that it is not reasonable to proceed further. A vexatious complaint is a mean-spirited or hurtful accusation. It should be noted, however, that even though a complaint may be made out of anger, it may still relate to improper conduct that can be reviewed.

### c. Notice and Appeal

The Chair must notify the complainant and the person under investigation of his/her decision. If it has been decided that no further action will be taken, the complainant may appeal the decision to Council by notifying the Registrar within 30 days of receiving notice. Council then decides if the chair’s decision was correct or whether the Committee should consider the matter. There is no provision allowing those under investigation to appeal the chair’s decision to forward a complaint to the Committee.



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37, 40  
and 42(1),  
(2) and  
(3)

42(4) and  
(5)

52, 53

## ii. Hearing before the Complaint Review Committee

### a. Investigation, Hearing and Suspension

The Committee must investigate and hold a hearing within 30 days of the receipt of a complaint when the chair or Council refers a matter to it. The investigated person must be given sufficient notice of the time, location and subject matter of the hearing. Council may grant one or more 30-day extensions to this deadline if the chair submits a written request.

S. 40 of the Act allows the chair of a “review panel” to suspend the registration of an authorized entity pending its decision. While the title above s. 40 (Suspension Pending Committee or Board Decision) suggests it applies to both the Practice Review Board and the Complaint Review Committee, this is unlikely due to the finding in *Chandler v. The Alberta Association of Architects* that the Board has no authority to discipline members. Therefore, s. 40 likely applies only to the Complaint Review Committee.

### b. Notice and Subject Matter of the Hearing

A “review panel” or Council on appeal may hear any other matter concerning the conduct of the person under investigation that arises during a hearing. However prior to doing so, they must:

- Declare their intention to hear the matter.
- Allow the person under investigation an adequate opportunity to prepare their response to the new matter.

## iii. Decision of the Committee

### a. Written Decision and Notice

As mentioned earlier, the Committee or the Council on appeal must prepare a written decision outlining the findings made, the reasons for these findings and the orders made. This decision is given to the Registrar who gives copies to the investigated person and the chair or vice-chair of the panel. The complainant is provided with “**notice of the nature of the decision.**”



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and 50

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## b. Conclusion and Orders

At the conclusion of the hearing or appeal, the Committee or Council decides if the conduct of the investigated person constitutes either unskilled practice or unprofessional conduct. If so, the Committee or Council has the authority to make any order they find appropriate. Some of the possible orders are as follows:

- A reprimand may be issued.
- The registration of the person may be suspended. This suspension may be from either architecture or interior design in general or from any area or areas of these professions.
- The person's registration may be suspended, either in general or in specific areas, until they complete required courses or supervised practical experience or until the Committee or Council is satisfied that they are competent in the relevant areas.
- The person may be required to limit their practice to certain areas.
- Conditions may be placed on a person's right to practice including:
  - Requiring them to practice under supervision.
  - Prohibiting them from engaging in sole practice.
  - Requiring periodic inspections of their practice.
  - Ordering them to report to the Committee or Council on certain matters.
- The person may be ordered to complete certain courses or otherwise satisfy the Committee or Council as to their competence either in general or in a particular area.
- A suspension until the Committee or Council is convinced a disability or addiction has been dealt with.
- The person may be required to undergo counselling.
- The person may be ordered to waive, reduce or refund fees charged for services that were done improperly.
- The person's registration may be cancelled.

## iv. Suspension, Cancellation, Costs and Fines

### a. Practice Prohibitions

Any authorized entity whose registration has been cancelled or suspended cannot practice architecture ***“or directly or indirectly associate the entity with the practice of architecture with any authorized entity”*** without Council's permission.



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63 (1)

Furthermore, no authorized entity may **“associate in the practice of architecture directly or indirectly”** with a person whose registration has been cancelled or suspended, or employ this person in any capacity relating to their practice without Council’s permission. If Council allows an authorized entity to employ this person, employment is subject to any stipulations Council wishes to set.

**b. Cancellation of Falsely Obtained Registration**

In addition to the reasons listed above, Council must cancel a person’s registration if it believes they have become registered through false or fraudulent representation(s). However, it must hold a hearing before doing so. All the procedures outlined above for the hearing of complaints apply to these hearings as well.

**c. Surrender of Certificates and Conduct While Registration is Cancelled or Suspended**

Once the registration of an authorized entity has been cancelled or suspended, any certificates of registration, annual certificates, licenses or permits previously issued are also considered cancelled or suspended and must be returned to the Registrar if he/she requests them. Furthermore, any seals or stamps must be returned to the Registrar.

If a person whose registration has been suspended or cancelled represents to another that they are a member in good standing of the AAA, they may be found to have committed unprofessional conduct in accordance with the Act.

**d. Reinstatement of Registration**

Only Council or the Court of Appeal can reinstate a registration that has been cancelled for any of the above reasons. Registration may not be reinstated until one year has passed since cancellation. If cancellation was suspended pending an appeal to the Court of Appeal, reinstatement cannot occur until one year after the Court confirmed the cancellation.

Council members who are part of a committee formed to hear applications for reinstatement are not precluded from participating or voting in proceedings of Council related to requests for reinstatement.

The AAA’s lawyer can take part in any proceedings before Council dealing with requests for reinstatement.

64(1) and 65

64(2), (3) and (4)



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9(1)(r)	55	
10(1)(p)		
51 (1)(a) and (3)		
51(b), (c), (2) and (4)		

## e. Publication of Suspension or Cancellation

Council has the right to make regulations “**governing the publication of a notice of the suspension or cancellation of the registration of an authorized entity.**”

- Notice of suspension or cancellation of the registration of an authorized entity shall be published by the Council in any manner it considers appropriate. The notice must contain the name of the individual or corporation whose registration has been suspended or cancelled and the length of any suspension. No mention is made in the Act whether or not the reasons for suspension or cancellation be included in the notice.
- It is not permissible to publish a notice that a member has been disciplined by means other than suspension or cancellation; however, it is the Association’s practice to prepare anonymous case summaries of these discipline hearings for the education of the membership.

## f. Costs

Section 10(1)(p) of the Act gives Council the right to make bylaws governing the nature of the costs which a “*Discipline Committee* (interpreted by the court as referring only to the Complaint Review Committee) *or, on appeal, the Council*” may award. Therefore, the Practice Review Board may not award costs.

The Committee or Council can order the investigated person to pay part or all the costs of a hearing or appeal. If Council finds a complaint to be “**frivolous or vexatious**,” it can order the complainant to pay the costs of the preliminary investigation and hearing before Council. Costs can be granted on their own or in addition to any other penalties under s. 50.

While s. 55 of the Act allows an investigated person to appeal an order for costs, there is no comparable provision allowing a complainant to appeal an order of costs made against him/her.

## g. Fines

The Committee or Council may order an investigated person to pay fines of up to \$10,000 for each finding of unskilled practice or unprofessional conduct. These may be alone or in addition to an order for costs.

If costs or fines are not paid within the allotted time, the Committee or Council may suspend registration until they are paid. Money owed for costs or fines may be the subject of a civil action for debt.



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## Appeals and Reviews

If a member believes that a fair result was not achieved through the complaint/disciplinary process then, there are two avenues of recourse.

First, if the member feels that a disciplinary action was unwarranted or unjust *based on the facts and merits of the case*, he or she may appeal. There are two levels of appeal:

- Appeal to Council and then
- Appeal of the Council's decision, in turn, to the Court of Appeal of Alberta.

Second, if the objection is that the disciplinary *process* was improper, the member may apply to the court for a judicial review to examine the procedures and jurisdiction of the disciplinary body.

### i. Appeals to Council

#### a. Notice of Appeal

The person under investigation may appeal to Council a finding of unskilled practice or unprofessional conduct or an order made by the Committee regarding unskilled practice or unprofessional conduct, or payment of costs and fines. Note that a complainant (the person who made the complaint) has no right to appeal a decision of the Committee.

The Act also grants a right to appeal a finding that a member's conduct was *not* unskilled nor unprofessional. Why the person would choose to appeal such a finding is not clear.

#### b. Written Notice

If the person under investigation wishes to appeal a decision of the Committee, he/she must notify Council in writing within 30 days of receiving the decision. This notice must set out the finding or order under appeal and the reasons for appeal. The Registrar will then give a copy of the notice of appeal to all members of Council. When it is received, Council will order the Registrar to serve the appellant and Council with notice of the date, time and place of the appeal hearing.

Council must hear the appeal within 30 days of receiving the notice of hearing. However, it may extend this period one or more times if it receives a request from the Registrar or the appellant. Each extension can be no longer than 30 days.

55(1)

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55(2)-(5)  
and 56



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### c. Suspension of Registration Pending Appeal

A review panel may suspend the registration of a person who has lodged an appeal until Council has made its decision. If a decision of Council is appealed to the Court of Appeal, Council may also suspend a registration pending the Court's verdict.

In either case, the appellant may apply to Queen's Bench to have the suspension lifted. The Court cannot hear this application until ten days after having received it. After hearing it, the Court can lift the suspension subject to any conditions it considers appropriate.

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### d. Procedure and Council's Powers on Appeal

The Association's lawyer may be present at an appeal before Council. Council members who are also members of a "review panel" can participate in the hearing, but cannot vote. Council can do any of the following in the course of an appeal:

- It can adjourn the proceedings or reserve judgement until a future meeting.
- It may hear new evidence after granting leave for this purpose.
- It may come to different factual determinations and make different findings than those of the Committee.
- It may refer the matter back to the Committee.
- As mentioned above, s. 50(2) of the Act grants Council the authority to make any additional order appropriate in the circumstances. However, it is obliged to make its decision within 30 days of the end of the hearing, and do at least one of the following:
  - a) Make the finding it believes should have been made by the Committee;
  - b) Quash (set aside), vary or confirm an order of the Committee or substitute it for one of its own;
  - c) Refer the matter back to the Committee to hear in accordance with any instructions Council wishes to make.

Council may also order a person who appeals to pay part or all of the costs of the appeal.

57(5)

### e. Council's Authority to Hear New Matters on Appeal

A review panel or Council on appeal can hear any other matter regarding the conduct of the person under investigation that arises during a hearing. However, before doing so they must notify the individual of their intention to hear this matter and grant them an adequate opportunity to prepare to address it. In such a case, all of the provisions dealing with discipline apply to the review of the further matter.

42(4) and  
(5)



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## ii. The Court of Appeal

### a. Appeal and Stay

The investigated person may appeal a decision of Council to the Court of Appeal. The appeal must be filed and served within 30 days of receiving a copy of Council's decision. The appellant may apply for an order suspending all or part of Council's decision until the appeal is resolved. The Association is the respondent in this appeal and its lawyer may make submissions at the hearing.

### b. Material in Support of the Appeal

Certified copies of Council's decision and the record of the proceedings must be filed in support of the appeal. The Registrar must provide the appellant with as many copies of these documents as he or she requires, provided the Appellant covers the cost.

### c. Powers of the Court

The Court has the authority to do any of the following:

- It may make any finding that it feels should have been made by Council.
- It can quash (set aside), vary or confirm any part of the Council's decision.
- It may send the matter back to Council for a new hearing to be held in accordance with any directions set out by the Court.
- It can direct that a new trial be held in Queen's Bench to deal with any unresolved issues of mixed law and fact.
- It may make an order for costs.

The wording of s. 62 is somewhat deceptive, implying that the Court of Appeal will overturn any order it disagrees with. In reality, there will be many decisions that the Court will be reluctant to interfere with. This is particularly the case with findings of fact. Appellate courts do not hear testimony; the only information they receive is from the record of the prior proceedings and the submissions of the parties.

Furthermore, appellate courts consider tribunals such as the AAA Council to be the experts on matters dealing with the professional conduct of their own members, and are reluctant to replace the Council's opinion as to what is unskilled or unprofessional conduct with their own. As a result, an appeal court will interfere with findings of fact only if there is absolutely no evidence to support a finding or if the evidence diametrically opposes the conclusions reached.





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When the question at issue is one of law, the court is more inclined to intervene. However, the degree of willingness varies depending on the question at hand. The court is most apt to intercede when dealing with a “pure” question of law

### iii. Judicial Review

Those who feel aggrieved by a decision of the Complaint Review Committee or Council may also seek judicial review. Judicial review is not a right granted in legislation and, therefore, there is no mention of it in the Act. It is the inherent right of superior courts (in Alberta, the Court of Queen’s Bench) to oversee the administrative actions of statutory delegates. The Association is a statutory delegate, having been granted certain powers by the legislature. The role of the courts in judicial review is to ensure that the delegate exercises only those powers granted to it in the legislation and does so in a proper manner. Therefore, judicial review is not concerned with the merits of a decision. Rather it is concerned with whether a statutory delegate has exceeded its *jurisdiction* by acting outside its statutory authority.

The *Chandler v. The Alberta Association of Architects* issue before the Alberta Court of Appeal in 1985 provides an example of a jurisdictional issue. In this case, the Court determined the Act did not grant the Practice Review Board the authority to discipline members. In other words, the Board acted outside of the jurisdiction granted to it by the Act. The court quashed the decision because the Board had made a jurisdictional error.

Another example of a jurisdictional error is where there has been a denial of natural justice. Courts believe that when the legislature grants powers to a delegate it is understood that these powers are to be exercised fairly. Therefore, when a delegate exercises them in a way that violates natural justice, it is a jurisdictional error that can be dealt with on judicial review.

Judicial review is a flexible tool as there are many remedies the court may grant. One of these remedies is *certiorari*, in which a court orders a tribunal to present to it the record of a prior proceeding. If the court finds an error on the face of this record, it may set aside the tribunal’s ruling. Another remedy is an *injunction* where an individual or organization is prohibited from performing certain actions. Judicial review is a very complicated remedy and any further analysis is beyond the scope of this booklet. The purpose in mentioning it here is to let members know that it may be available in certain situations. Those who wish further information on this topic and how it relates to professional regulation are advised to consult Casey’s *The Regulation of Professions in Canada*.<sup>5</sup>



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38 and 39

39(1)

1(j)

39(1)(b)

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## Practice Review

Practice review is defined as the review of *“the practice of an authorized entity.”* However, while the review of the practices of individual members is the primary function of the Board, it also has other more general functions.

The Board is empowered to review the following matters and advise Council of its findings:

- It may assess existing standards of education and experience required for registration and consider the development of new standards.
- It can evaluate the desired standards of competence for the professions of architecture and interior design as a whole.
- It may inquire into any other matter Council believes appropriate to its mandate of ensuring the competent practice of architecture and interior design.
- It may review the practice of an authorized entity.

### i. Practice Review of an Individual

#### a. Review

The Practice Review Board must conduct an individual practice review in the following circumstances:

- When the review is part of a program of regular or periodic reviews of the practice of all authorized entities established by the Council,
- or
- if the authorized entity, the Complaint Review Committee or Council requests in writing that the review be conducted and the Practice Review Board considers that the authorized entity should be the subject of a practice review.



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## ii. Review Procedures

### a. Appointment and Powers of a Reviewer

The Council must designate the chair and vice-chair of the Practice Review Board. After the Board has decided that a review should be conducted, it may appoint a person to conduct a review of the practice of an authorized entity.

- In order for them to carry out their duties, reviewers are authorized to request production of, review and copy “**any plan, drawings, detail drawings, specifications, books, papers and other documents in the possession, custody or control of the authorized entity**”.

### b. Procedures Prior to Sending the Report to the Board

When a review is completed, the reviewer must prepare a report in the form established under the bylaws. Before sending the report to the Board, the reviewer must do the following:

- provide a copy of the report to the authorized entity;
- discuss the report with the authorized entity
- note on or attach to the report any comments or responses that the authorized entity wishes to have noted.

### c. Recommendations or Directions

The Board must consider the report provided by the reviewer together with the member’s representations, and then may either:

- determine that it has no recommendations to make with respect to the practice of the authorized entity, or
- make directions or recommendations to improve the practice of the authorized entity.

### d. Inconsistencies in the Act and General Regulation Regarding Role of Practice Review Board

Unfortunately, there are mixed signals within the Act itself as to whether the Board can discipline members. For example, s. 39 speaks of procedures for inquiries held by the Board and ss. 50-53 of the Act, state that a “review panel” may make any of the orders included in those sections. As mentioned earlier, s. 29(d) of the Act states that a “review panel” can refer to either the Committee or the Board. Therefore, the Act is unclear as to whether the Practice Review Board may discipline members.

The Alberta Court of Appeal resolved this issue in *Chandler v. The Alberta Architects Association*.<sup>6</sup>



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This decision confirmed the role of the Practice Review Board is that of an investigatory and advisory body; it is to investigate matters and advise Council of its findings. If the PRB believes that a member has acted in a way which may constitute unprofessional conduct or unskilled practice, its only recourse is to forward the matter to the Complaint Review Committee. Section 60(1)(b) of the GR provides for such referral to the CRC for serious matters including:

- a lack of co-operation of an authorized entity in the course of a practice review or a follow-up review,
- a failure to comply with the Act, the GR or the bylaws,
- a failure to adopt and implement the recommendations respecting desired improvements in the practice of the entity concerned, and
- any apparent fraud, negligence or misrepresentation, or any disregard of the generally accepted standards of practice.

55(1)

## Can Practice Review Board Recommendations Be Appealed?

As mentioned above, the Board cannot make orders regarding unskilled practice or unprofessional conduct, or costs and fines - it has no authority to discipline. Therefore, there is likely no right to appeal its recommendations. The right of appeal appears to apply only to decisions of the Complaint Review Committee.

Please click [here](#) to complete the Question and Answer for this chapter.

1. See *Spectra Architectural Group v. St. Michael's Extended Care* (2001), 10 C.L.R. (3d) 286.
2. *Furnell v. Whangarei High Schools Board*, [1973] A.C. 660 at 669.
3. 110 D.L.R. (3d) 311 (S.C.C.).
4. *Casey*, supra. note 1 at 7-3.
5. *Casey*, supra. note 1 (see Chapter 15).
6. *Chandler v. The Alberta Association of Architects* (1985), 62 A.R. 72.

