



## Consent Orders

### *Improved Public Interest Improved Regulatory Effectiveness and Efficiency*

To better protect the public, APEGA must have the ability to quickly and efficiently impose appropriate sanctions on Members and Permit Holders that have admitted to unskilled practice or unprofessional conduct.

#### Background

- Currently, if an investigation is not terminated and the investigated Member or Permit Holder has admitted to unskilled practice or unprofessional conduct, the Investigative Committee may recommend a Discipline Order. The draft Recommended Discipline Order (RDO) is presented to a Member of the Discipline Committee who acts as a case manager.
- The case manager can be any Member of the Discipline Committee and changes from case to case. The case manager reviews the RDO from the Investigative Committee, and if the case manager agrees with the proposed order, the case manager meets with the investigated Member or Permit Holder to discuss it.
- If the Member or Permit Holder agrees with the RDO, it has the same effect as a decision by the Discipline Committee following a formal hearing.
- If the case manager or the investigated Member or Permit Holder rejects the proposed RDO, the matter must be referred to the Discipline Committee for a formal hearing.

#### Why this is Important

- An admission of unskilled practice or unprofessional conduct, or an agreed statement of facts should not require a hearing.
- Negotiated agreements may involve disciplinary sanctions and should be approved by the appropriate disciplinary arm that has the authority to impose sanctions.

#### Proposed legislative change

It is recommended that the legislation be amended as follows:

- Include the definition of “Consent Order” to be a negotiated settlement between the investigative panel and the member or Permit Holder under

investigation that has admitted to unskilled practice or unprofessional conduct.

- A consent order will be forwarded to discipline panel for review and decision.
- The criteria for approval of consent orders will be set by the Discipline Committee, in policy, to ensure consistency.
- The Discipline Panel will have the express authority to review and approve proposed consent orders, reject proposed consent orders, refer the matter to the Discipline Committee for a formal hearing, or refer the matter back to the parties for further negotiation, with or without suggested amendments or other direction.
- Approved Consent Orders will not be open to appeal since they are negotiated agreements and the Member or Permit Holder has admitted to unskilled practice or unprofessional conduct.

#### Examples of Relevant Existing Legislation

Below are examples of similar provisions found in other pieces of legislation in Alberta and other provinces.

#### *Engineers and Geoscientists Act*, British Columbia Sections 32.1, 32.2

##### Consent orders

32.1 (1) After serving notice of an inquiry under section 32(2) to the person who is the subject of the inquiry, and before the commencement of the inquiry, the discipline committee, in writing, may propose to that person the making of a consent order under subsection (2)(a) of this section for the voluntary resolution of one or more matters to be dealt with at the inquiry.

(2) A consent order is made if

- (a) the person who is the subject of an inquiry under section 32(2) accepts the proposal of the discipline committee under subsection (1) of this section, or
- (b) an agreement is reached under section 32.2(2) between the person who is the subject of an inquiry under section 32(2) and the discipline committee.

#### *Architects Act*, British Columbia Section 51.1

##### Consensual resolution

51.1 (1) At any time before the commencement of an inquiry hearing under section 48, a person designated by the institute and the member, architectural

firm, licensee or associate that is the subject of the inquiry may agree to refer for consensual resolution, as provided in the bylaws, one or more issues relating to

- (a) an inquiry into a complaint against the member, architectural firm, licensee or associate, or
- (b) an inquiry into the conduct, capability or fitness to practise of a member, architectural firm, licensee or associate.

(4) A consensual resolution agreement

(a) may contain provisions respecting the issues referred for consensual resolution that

- (i) the person designated by the institute and the member, architectural firm, licensee or associate that is the subject of the inquiry consider appropriate, and
- (ii) are not inconsistent with this Act,

(b) has no effect unless it is approved by the consensual resolution review panel, and

(c) has the same effect as an order made under section 50 once approved by the consensual resolution review panel.

(5) In deciding whether or not to approve a consensual resolution agreement signed by the person designated by the institute and the member, architectural firm, licensee or associate that is the subject of the inquiry, the consensual resolution review panel must have regard to the public interest.

*Chartered Professional Accountants Act, Alberta*  
Section 74

Sanction agreements

74(1) At any time before a discipline tribunal starts to hear evidence about an allegation of unprofessional conduct, the complaints inquiry committee and the investigated party may, in accordance with this section, enter into an agreement

- (a) setting out the relevant agreed facts,
- (b) admitting the unprofessional conduct of the investigated party, and
- (c) stating the sanction to be imposed on the investigated party, including any one or more of the matters described in sections 95, 96 and 98.

(2) The CIC chair must select a panel consisting of 2 members of the complaints inquiry committee, the CIC chair and one public member from the public members roster established under section 23(1)(b) to recommend an agreement to the complaints inquiry committee.

(3) If a panel of the complaints inquiry committee is unable to recommend an agreement under subsection (2), the proceedings under this Part continue.

(4) A member of the panel may not vote as a member of the complaints inquiry committee.

- (5) The CIC chair may appoint a chair for a panel, but if the CIC chair does not do so, the members of a panel must choose a chair from among themselves.
- (6) The quorum for a panel is 3 members, which must include the public member.
- (7) Each member of the panel has a vote and the agreement recommended by the panel must be approved by a majority vote.
- (8) On receipt of the agreement recommended by the panel, the complaints inquiry committee may
- (a) approve the agreement, or
  - (b) reject the agreement and continue the proceedings under this Part.
- (9) If an agreement is made under this section,
- (a) each admission of unprofessional conduct is to be considered and treated, for all purposes, as a finding of unprofessional conduct made by a discipline tribunal, and
  - (b) the agreement is to be considered and treated, for all purposes, as a decision and order of a discipline tribunal.
- (10) The complaints inquiry committee must give the complainant written notification of any agreement made under this section.
- (11) An agreement made under this section may not be appealed to an appeal tribunal.
- (12) If the complaints inquiry committee is of the opinion that there are reasonable and probable grounds to believe that the investigated party has committed a criminal offence, the complaints inquiry committee must
- (a) direct the CIC secretary to send a copy of the agreement made under this section to the Minister of Justice and Solicitor General, and
  - (b) on request, send a copy of any other information related to the agreement to the Minister of Justice and Solicitor General, except information that is subject to solicitor-client privilege.