

## REGULATION 3 - DISCIPLINARY PROCEDURES

In the event of a dispute or complaint, what can you expect from the Institute?

The Institute Rules cover the following:

- 1.3(d) To promote and encourage proper conduct among Building Surveyors and to suppress dishonourable and/or objectionable practices.
- 1.6(b) If any member does not abide by the Rules of the Institute, or shall not comply with any resolution, regulations, agreement or contract that may be passed, adopted or entered into by the Institute, the Executive by resolution may request in writing such member to resign and in the event of such member refusing or neglecting to resign, within ten (10) days of the delivery of such notice, such member may be expelled by a majority vote of the Executive present and voting.

Such member shall have a right to appeal against such expulsion to a Special General Meeting of members called for such purpose, a bare majority of the members then present and voting will be binding on such member and on the Institute.

Notice of any appeal shall be given by the member to the Secretary within fourteen (14) days of the posting to the address of the member held by the Institute, a copy of the resolution of the Executive.

- 1.17 In case any matter at any time arises not provided for in the Rules or any doubt arises as to the interpretation of these Rules, that shall be determined by the Executive, whose decision shall be final.

Regulation 2 - Code of Ethics outlines the issues of competence, conflict of interest and conduct. The Executive has the power and sole discretion to order a fine, additional professional training, suspension, expulsion, or other course of action deemed appropriate.

The procedures in this Regulation are in place to deal with substantive issues of conduct and performance. The Institute will not become involved in matters of commercial management, accounting claims, charges for services and any individual Member's office procedure.

The Institute will not deal with claims made against members by parties who do not have a direct contractual relationship with the member **unless a complaint is made regarding the Member's ethical conduct as identified in Regulation 2, Section 4. If a client has an issue with a Member.**

The Institute is in a position to receive a complaint from affected contract-related parties and deal with it through its elected Executive, when these matters relate to issues of competence, conflict or professional conduct.

If a *Claim* does not involve a contractual matter, but is relevant to the conduct of a member in relation to ethics (Regulation 2), then the executive can also stay any complaint in these circumstances, until resolution of the *Claim*.

The Institute will not consider any complaint relating to the actions of a member if there has been a claim lodged and pending before the Disputes Tribunal, District Court or High Court, or before any other Arbitral Tribunal, relating to the resolution of a dispute arising out of a contractual relationship between the member and the complainant party until these actions have been finalised.

### **If a member has an issue with a client**

Our Institute is not in a position to represent its Members in matters of general dispute. It shall only deal with the issues of conduct of Members that may be placed before it.

### **If a complaint has been made regarding the serious misconduct of a Member**

The Executive, at its discretion, is in a position to receive a complaint from individual or collective parties whether contract-related or otherwise, and deal with it through its elected Executive, when these matters relate to professional conduct as identified in Regulation 2.

When considering and agreeing to action the complaint, the Executive will follow the procedure outlined in a) to g) below.

The Executive will not consider any claim made under this heading unless it regards the complaint as being of a serious nature and/or of a type that clearly relates to the ethical conduct of the member when measured against the standards of behaviour listed in Section 4, a) to h) of Regulation 2.

#### The Executive has the following procedures in place:

- a) Complaint received: - This must be writing, together with full explanatory detail of the issues raised and entire copies of the supporting documents which the complaint relies upon. Receipt of the complaint is acknowledged to the complainant once the complying complaint is received in writing. At that stage, the member is notified in writing.
- b) The Executive or any delegated Disciplinary Committee, comprising not less than three (3) Executive members are advised of the complaint. They make an initial decision as to whether the complaint is likely to breach one or more of the standards of behaviour in Regulation 2.

- c) If so, a letter and copy of the written complaint is forwarded to the Member concerned, advising that the complaint is to be heard, as it is regarded as potentially being of a serious nature and specifying the conduct standards in Regulation 2, which have potentially been breached. The letter from the Executive or Disciplinary Committee must also state the relevant penalties that could be imposed on the Member if the complaint is upheld. The letter will include a request for a written reply from the member within ten (10) working days or such other reasonable time extension, as agreed between the Executive or Disciplinary Committee and the member. The complainant will be advised of any such time extension.
- d) Following the Member's written response a copy is forwarded to the Complainant, with a request for any final response within ten (10) working days, or such reasonable time extension, as agreed by the Executive or Disciplinary Committee. The parties will be advised any such time extension.
- e) Following the complainant's written final response, if any, a copy of that is forwarded to the Member, with a request for a final response within ten (10) working days, or such reasonable time extension, as agreed by the Executive or Disciplinary Committee. The parties will be advised any such time extension. If the Executive or Disciplinary Committee decides the matter does involve serious misconduct, the Member is notified of that at this stage, and informed of the disciplinary action being considered, including the severest penalty. The Member is to be informed in writing that the member may make a final submission and provide any relevant additional information (s)he thinks should be considered before a final decision is made by the Executive or Disciplinary Committee.
- f) The Executive will then consider the submissions and responses from each party and advise their findings to both the Complainant and the Member within ten (10) working days, or such other reasonable time as agreed by the Executive or Disciplinary Committee, which be communicated to all parties.
- g) The Appeal Process:
  - a) If it is decided that the appropriate action against the Member is expulsion, a right of appeal in accordance with Ruled 1.6(b) follows with a fourteen (14) day appeal period, and then a Special General Meeting.
  - b) If the action is anything less than expulsion, the appeal shall be decided by an Arbitrator, nominated by agreement between the parties, or failing agreement, nominated by the President of the Arbitrators and Mediators Institute of New Zealand (AMINZ).

The process will be governed by the Arbitration Act 1996.

## **DISCIPLINE**

The Executive, in dealing with any matters deemed to require disciplinary action, may in its discretion;

- (a) Impose a fine in respect thereof not exceeding \$15,000.00 (fifteen thousand dollars), to be paid in a specified time period.
- (b) Order the Member to carry out specified professional research, training, course attendance, professional writing or other such professional development, within a specified time period.
- (c) Suspend for a specified period, or expel the Member.
- (d) A combination of any of the above.

If the Member fails to comply with the Ruling, this will require the Executive to address this at the next convenient time.

Subject to any right of appeal provided by the Rules or Regulations, the Executive's decision shall be final and binding in all matters.