



New Zealand Institute of Landscape Architects

Code of Conduct and Complaints Procedure

1 Code of Conduct

1.1 Introduction

Ethical, responsible, professional behaviour toward the public, other members of the Institute, the profession, clients, contractors, and other involved consultants results not from rules but from a positive attitude to these relationships. The most effective code of conduct is to be found in a positive, consistent and personal commitment to ethical actions in the practice of their profession by members of the Institute.

1.2 Members' commitment

Accordingly membership of the Institute entails commitment to the following conduct:

- (a) The Landscape Architect shall have a primary responsibility to seek to reconcile human needs in harmony with the natural environment and its systems, and with reference to environmental, social, cultural and economic sustainability.
- (b) The Landscape Architect shall seek to provide the highest standard of professional service.
- (c) The Landscape Architect shall conduct his or her professional affairs with creativity, integrity and competence.
- (d) The Landscape Architect shall immediately declare any personal interests that may be in conflict with a fully professional service.
- (e) The Landscape Architect shall be honest and fair in all dealings and communications.
- (f) The Landscape Architect shall act always in a manner which brings credit to the profession.

In the event of a possible breach of this Code, a complaints procedure has been developed by the Institute to ensure that any questions may be resolved in a fair and expeditious manner. The procedure is outlined in the following sections of this document.



2 Complaints Procedure

2.1 Introduction

There are two types of complaint that may be made to the Institute:

- (a) Those from the public against a member of the Institute;
- (b) Those from one member against another member.

2.2 *Complaints from the public against a member of the Institute, or from one member against another member*

These complaints are considered by the Institute's Disciplinary Committee. The procedure should give emphasis to informality, and to resolving the complaint between the parties satisfactorily and promptly. Evidence from both the member(s) and complainant(s) should be heard.

The procedure preparatory to Disciplinary Hearings for complaints from the public against a member of the Institute or from one member against another member is as follows:

- (a) The Complainant writes to the Secretary, NZILA outlining the general nature of the matter of concern, including who is involved and the circumstances which have given rise to the complaint.
- (b) The Secretary refers the matter to the Chairperson of the Disciplinary Committee who conducts a preliminary investigation to establish whether or not the Institute will take any further action.
- (c) If further action is required the Complainant is asked to submit full details in writing.
- (d) The Chairperson of the Disciplinary Committee notifies or arranges for the Institute Secretary to notify the Respondent (the member whose conduct is being complained about) that a formal complaint has been made. The Respondent is sent a copy of the complaint and asked to respond within a specified time but not less than 14 days as provided in Article 2.14 (c) of the Constitution. When the complaint is forwarded to the Respondent it is accompanied by a Notice setting out the nature of the alleged misconduct as identified by the Chairperson of the Disciplinary Committee including reference to the particular provision(s) of the Code of Conduct or of the Constitution which may have been breached. After the Respondent has been given the required opportunity to respond to the complaint within the time provided in the relevant Notice then the Chairperson shall convene or cause the Secretary to convene a Disciplinary Committee for the purpose of hearing and determining the complaint.

2.3 *Disciplinary Committee and the Procedure at Disciplinary Committee Hearings*

The Disciplinary Committee comprises the President, or his/her nominee or in the event of the President being the subject of a complaint a person nominated for the purpose by a majority of the members of the Executive Committee – except any Executive Committee member in relation to whom the relevant complaint has been laid (provided however that in any case where



because of application of these provisions or otherwise a quorum of the Executive Committee cannot be had then by a majority of all those Branch Chairpersons for the time being available and in office together with all those members of the Executive Committee available in response to usual notice of Executive Committee meetings regardless of whether any of the Officers referred to in this proviso is/are the subject of a relevant complaint) as Chairperson and two Registered members of the Institute with the Institute's Executive Officer in attendance. This is an ad hoc Committee formed as required except that where the circumstances require it a decision may be made in advance of any formal convening of the Disciplinary Committee as to who should act as Chairperson to undertake any of the steps required of the Chairperson by these rules preparatory to Disciplinary Committee hearings.

Hearings before the Disciplinary Committee should be informal. The following procedures will be followed:

- (a) Recognising that disciplinary matters are between the Institute and the Respondent member and not a matter of dispute between the Complainant and the Respondent, the Complainant should have no right to be present at the hearing nor to add anything to the initial complaint. The Disciplinary Committee is, however, empowered to seek further information from any Complainant and where appropriate, to invite a Complainant to attend at the hearing for the purpose of providing clarification or further information. There is no rule of natural justice entitling a Complainant to be represented by a lawyer.
- (b) Legal representation for the Respondent should not be permitted as of right, although the Disciplinary Committee should consider in complex or very serious cases whether legal representation might be permitted as an exception. As a general rule, however, it is suggested that permitting legal representation would be likely to prolong and unduly formalise any hearing. There is no rule of natural justice entitling a Respondent member to be represented by a lawyer. Because of the possibility of expensive delay in dealing with new material, Respondents should be encouraged to provide all of their supporting material in advance of the hearing wherever possible.
- (c) There should be no right to examine or cross-examine witnesses at the hearing. In general, supporting material from other persons should be provided by the Complainant or the Respondent in writing, but the Disciplinary Committee has the power to invite any person who has provided any supporting material to attend the hearing for the purpose of providing clarification or further information.
- (d) Any questions of the Respondent, or any other witnesses attending the hearing, will be conducted through the Chair.
- (e) Should the Complainant be invited to attend the hearing, they may be permitted to produce new material at the hearing subject to the power of the Disciplinary Committee to adjourn the hearing for such time as may be necessary to investigate or deal with any such new material.
- (f) In view of the fact that it is the Executive Committee and not the Disciplinary Committee which makes the decision in any disciplinary matter, and in view of the limited right of appeal, the proceedings of any disciplinary hearing should be recorded by the Institute's Executive Officer. It is not suggested that a verbatim account is necessary but a reasonably accurate note of the proceedings should be taken and referred to the Executive Committee along with all other papers when the Disciplinary Committee makes its recommendation.
- (g) As more particularly defined in Article 2.14 of the Constitution, the Executive Committee's disciplinary power includes the right to suspend members for up to three years, the right to



censure an offending member and the right to give such recommendations or directions as may be appropriate concerning future conduct.

- (h) The Executive Committee has the authority to order the offending member to pay such reasonable amount as it may think appropriate towards the costs of the inquiry. It must be remembered however, that the Disciplinary Hearing is between the Institute and the Respondent, not the Complainant and the Respondent. While the Complainant makes the complaint it is the Institute which decides whether this should be pursued. Accordingly there should be no provision for costs to be ordered against a Complainant.

2.4 *Onus and standard of proof*

In all disciplinary proceedings there should be a presumption that the Respondent is innocent until found otherwise; the Respondent should not be under the burden of proving that the complaint is not justified. As a matter of strict law the standard of proof required in disciplinary proceedings of this type is a balance of probabilities. The Courts have indicated that the degree of certainty required to weigh the balance in favour of a finding of misconduct should be substantial and in practice disciplinary bodies tend to the view that they must be satisfied beyond reasonable doubt before making a finding of misconduct. This is the safer and fairer course to adopt and it is recommended that in practice the Disciplinary Committee should be sure that a breach has occurred before making any such finding.

2.5 *Unjustified complaints*

A member who has been the subject of a complaint which is not upheld does not have recourse against the Complainant, whether the Complainant is another member, or a member of the public. In an extreme case a willful false complaint by another member of the Institute may itself amount to misconduct and the Institute would be empowered to employ the disciplinary procedures to deal with any such case.

It should be noted that Article 5.8 of the Constitution provides that “all communications, correspondence, reports, minutes and other papers and documents relative to ... the suspension or forfeiture of membership of any member or to other proceedings under Article 2.12 shall be privileged ...” This provision would appear to preclude any Respondent member from taking defamation proceedings against a Complainant which might otherwise arise from a formal complaint. Such a provision is common so as not to discourage complaints solely through fear of some form of Court proceedings. Since the Chairperson and/or Disciplinary Committee are empowered to screen complaints before the formal hearing stage, Respondent members should feel reasonably satisfied that any complaints which did proceed to a hearing were, at least *prima facie*, of sufficient merit to justify some form of disciplinary proceeding. The Executive Committee has the power to make directions or recommendations as to future conduct, which adequately deals with this aspect (e.g. the Complainant may be required to make an apology to the Respondent).

2.6 *Respective roles of the Executive Committee and Disciplinary Committee*

It is important to note that in terms of Article 2.14(d) of the Constitution a subcommittee (i.e. Disciplinary Committee) appointed to investigate a disciplinary matter has only the power of recommendation: it is the Institute’s Executive Committee which makes the final decision. As a matter of law, the Executive Committee must make up its own mind on disciplinary matters and not slavishly follow the recommendations of the Disciplinary Committee in every case.

Matters of inference or interpretation are essentially matters of opinion, and the Executive Committee should feel free to disagree with the Disciplinary Committee on whether or not particular conduct should be described as misconduct, and indeed must be free to disagree if it



is to exercise its duty properly. However, one would expect the Executive Committee's view to differ only rarely from that of the Disciplinary Committee, especially on matters of fact.

Accordingly, it is important that if the Executive Committee declines to follow the recommendation of the Disciplinary Committee it should do so only on proper grounds.

2.7 *Expulsion or suspension*

The NZILA Constitution makes provision for an appeal against a decision of the Executive Committee, where this decision means expulsion or suspension of the member. A General Meeting of the Institute may support or overrule the Executive Committee's decision; see Article 2.14(i) of the Constitution for details.

2.8 *Publicity*

The Constitution provides for all disciplinary proceedings to be confidential. However, if the use of the disciplinary procedures is to have the desired effect of deterring others from this conduct, then it seems to be necessary that some publicity should be given to the outcome of any disciplinary proceeding. Furthermore, it is likely that where disciplinary action is taken, members will become aware of the proceedings by word of mouth, and where a complaint was held to be unjustified it would be unfair to the Respondent that his or her name should not be cleared.

The Executive Committee may therefore publish the outcome of any disciplinary hearing provided that the Committee may limit disclosure of the identity of the parties and such other details as and when it considers it appropriate to do so; see also Article 5.8 of the Constitution.