

NAMIBIAN COUNCIL FOR ARCHITECTS AND QUANTITY SURVEYORS

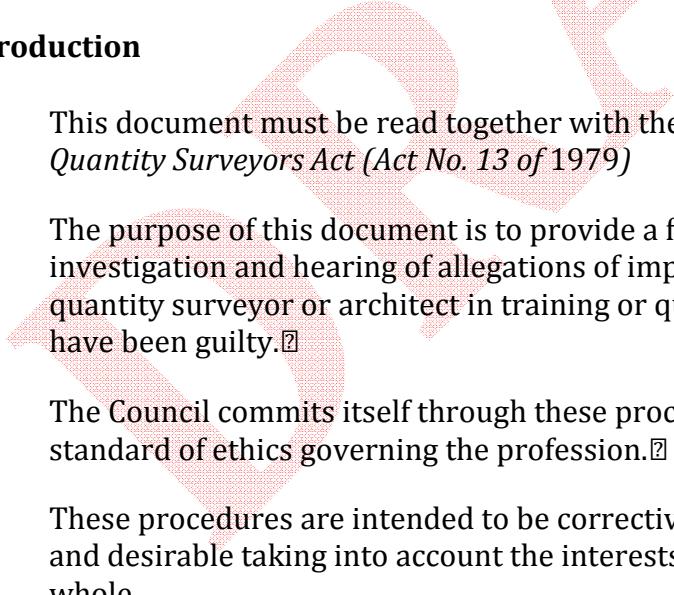
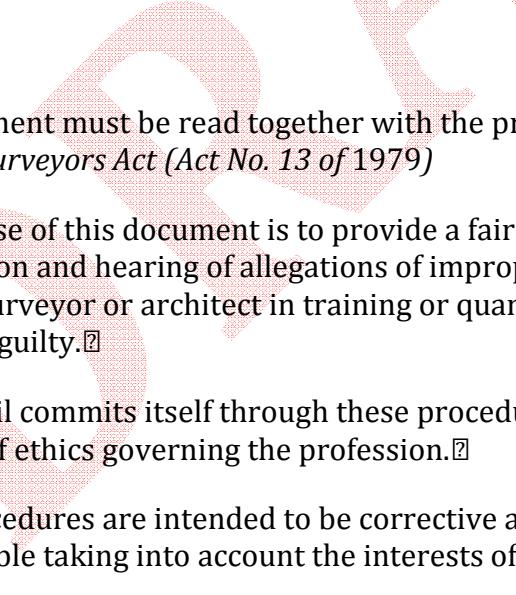
METHOD OF ENQUIRING INTO ALLEGATIONS OF IMPROPER CONDUCT

(Sector 7 (1) (n) and 15 of the Architects and Quantity Surveyors Act (Act No. 13 of 1979)

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Introduction

- 1.1 This document must be read together with the provisions of the *Architects and Quantity Surveyors Act (Act No. 13 of 1979)*
- 1.2 The purpose of this document is to provide a fair procedure governing the investigation and hearing of allegations of improper conduct of which any architect or quantity surveyor or architect in training or quantity surveyor in training is alleged to have been guilty.
- 1.3 The Council commits itself through these procedures to the development of a high standard of ethics governing the profession.
- 1.4 These procedures are intended to be corrective and not punitive, where this is possible and desirable taking into account the interests of the construction profession as a whole.

2. The Powers of Council

In terms of section 7(1)(n) of the Architects' and Quantity Surveyors' Act, 1979 (hereafter called the A&QS Act), the Council has the power:

"subject to the provisions of the Act, to determine the method of enquiry into allegations of improper conduct of which any architect or quantity surveyor or architect in training or quantity surveyor in training is alleged to have been guilty".

Section 15 of the A&QS Act determines:

- "(1) The council shall have the power to enquire into cases of improper conduct of which is registered in terms of this Act is alleged to have been guilty at the enquiry, to impose upon him any punishment prescribed under section 18 (1) (f) and to recover from him any cost incurred by the council in connection with the enquiry: Provided that in the case of alleged improper conduct which forms or which the council has reason to believe is likely to form the subject of criminal or civil proceedings in a court of law, the council may postpone the enquiry until such proceedings have been determined. Provided further that nothing in this section contained shall effect the right of any institute referred to in section 3(1) (a) or (b) from taking disciplinary or other action against any of its members in accordance with its constitution and rules.*
- (2) Whenever any punishment imposed under subsection (1) consist of, or includes, any fine, the amount thereof shall be recoverable by the council from person concerned, and any amount so recovered shall be paid into the funds of the council".*

The above should be read with regulations 6 and 7 of the Regulations of AG No.91 of 1981 (see below under rule 3)

3. Rules: General Rules (regulation 6)

- 3.1 In respect of an enquiry into a case of improper conduct under section 15(1) of the A&QS Act, the Council may require any person making an allegation of improper conduct to file further particulars of any matter complained of and may require the complaint or any part thereof to be verified by affidavit.
- 3.2 If the Council deems it necessary to give further consideration to the complaint, it shall finish the person against whom the allegation or improper conduct has been made with a statement of the complaint and call upon him/her to reply thereto within 14 days or such longer time as the Council may, in its discretion, allow.
- 3.3 If, after due consideration of the matter or matters complained of, the Council deems it necessary to institute an enquiry into the conduct of the architect or quantity surveyor or architect in training or quantity surveyor -in-training complained of, he/she shall be duly charged within reasonable time with the alleged improper conduct.
- 3.4 The Council shall set down the date and time for the enquiry and shall give the person charged at least 14 days notice thereof.
- 3.4.1 Furnish the person (member) concerned with a certified copy of any affidavit made in support of the claim and shall give the person (member) an opportunity to inspect any document lodged with the disciplinary committee in relation to the claim.

- 3.5 An architect or quantity surveyor or architect in training or quantity surveyor -in-training against whom a complaint is lodged shall be entitled to appear by him/herself or to be represented by some other person duly authorized, in writing, on his/her behalf and to produce evidence, call and examine witnesses on his/her behalf and cross-examine witnesses.
- 3.6 Verbal evidence shall be taken on oath or on affirmation administered by the President and shall be recorded in such manner as the Council may determine.
- 3.7 The Council, after having enquired into the alleged improper conduct of an architect or quantity surveyor or architect –in –training or quantity surveyor-in-training, may-
- (a) take no further action; or
 - (b) impose a punishment provided for under regulation 7; and
 - (c) make such order as to costs incurred in connection with the enquiry as it may deem fit.
- 3.8 Any enquiry that is commenced during the tenure of office a Council shall continue until its completion by that Council, and its President shall continue to preside notwithstanding that a new Council and President may have been elected after the commencement of such enquiry and before the enquiry is concluded.
- 3.9. The finding of the Council may be made public in part or in full at the discretion of the Council.

4. Establishment of the Disciplinary Committee, Investigating Panel, Disciplinary Panel and Appeals Committee

In terms of the Architects' and Quantity Surveyors' Act, 1979 (hereafter called the A&QS Act), the Council has the power:

to establish a Disciplinary Committee, Investigating and Disciplinary Panel in terms of Section 10(1)(a)(b) and 10(2) of the A&QS Act for the purpose of exercising disciplinary control over architects or quantity surveyors or architects in training or quantity surveyors in training in accordance with the provisions of the A&QS Act.

Section 10(1)(a)(b) and 10(2) of the A&QS Act determines:

"(1)(a) The council may establish committees to assist it in the performance of its functions and duties and may appoint such of its members and such architects and quantity surveyors who are not members of the council as it may deem fit to be members of any such committee".

(b) One of the members of a committee shall be designated by the council as chairman of the committee.

(2) The council may assign to a committee so established such of its powers as it may deem fit, but shall not be divested of any powers which may have assigned to a committee, and may amend and withdraw any decision of any such committee: Provided that if the council has

assigned to such a committee the power to determine whether or not any person shall be registered as an architects or quantity surveyors or architects in training or quantity surveyors in training, or the power to cancel the registration of any person as an architects or quantity surveyors or architects in training or quantity surveyors in training, or the power to enquire into any case of alleged improper conduct and to impose a punishment in the respect thereof in accordance with the provision of section 15, the council shall not amend or withdraw any decision arrived at or anything done by such committee under the power so assigned except that it may mitigate any punishment so imposed: Provided further that any member of a committee to which the power has been assigned to enquire into any case of alleged improper conduct and impose a punishment in respect thereof, shall, notwithstanding the expiration of his period of office as member of the council, continue to serve on such committee until the conclusion of the enquiry."

5. Functions of the disciplinary committee

- 5.1 The disciplinary committee must:
 - 5.1.1 ensure that alleged improper conduct is investigated;
 - 5.1.2 establish investigating panels to investigate the alleged improper conduct;
 - 5.1.3 establish disciplinary panels to conduct disciplinary hearings into alleged improper conduct;②
 - 5.1.4 ensure that disciplinary hearings are fair and comply with the procedures set out in this document; and②
 - 5.1.5 on the basis of recommendations received from disciplinary panels, recommend findings and appropriate penalty if any, to the Council in respect of improper conduct under section 15(1) of the A&QS Act.
- 5.2 The members of investigating and disciplinary panels established by the disciplinary committee needs not be members of the Council.
- 5.3 One of the members of a committee shall be designated by the disciplinary committee as chairman of the committee.

6. Investigation into allegations of improper conduct

- 6.1 Any person who believes that an architect or quantity surveyor or architect in training or quantity surveyor -in-training are guilty of an alleged improper conduct may lodge a complaint with the Council.②
- 6.2 The complaint should preferably:
 - 6.2.1 be in writing; and②
 - 6.2.2 clearly disclose the alleged breach of the code.
- 6.3 The disciplinary committee may investigate any alleged improper conduct, whether or not a complaint has been lodged.

- 6.4 The Council must, as soon as practicable after receiving a complaint, refer it to the disciplinary committee for consideration.~~②~~
- 6.5 require any person making an allegation of improper conduct to file further particulars of any matter complained of and may require the complaint or any part thereof to be verified by affidavit
- 6.6 The disciplinary committee must refer an alleged improper conduct to an investigating panel for investigation.
- 6.7 An investigating panel may, in investigating any alleged improper conduct by an architect or quantity surveyor or architect in training or quantity surveyor -in-training:
 - 6.7.1 interview complainants and other possible witnesses;
 - 6.7.2 subject to clause 6.8, interview the person who is alleged to have been guilty of improper conduct;~~②~~
 - 6.7.3 notify the person of the alleged improper conduct and, subject to clause 6.8, Give the person an opportunity to respond within the period specified in that notice;
 - 6.7.4 gather evidence relevant to the alleged improper conduct; and~~②~~
 - 6.7.5 if necessary, cause summons to be served on any person who may assist the panel in its investigation as contemplated in~~②~~section 16(1) of the Act.
- 6.8 Before interviewing the person as contemplated in clause 6.6.2, and in any notice contemplated in clause 6.6.3, the investigating panel must warn the person:
 - 6.8.1 of the person's right against self-incrimination; and~~②~~
 - 6.8.2 that any admission or explanation given by the person may be~~②~~used as evidence against the person at a disciplinary hearing.
- 6.9 The investigating panel must keep a record of the investigation.~~②~~
- 6.10 If an investigating panel is satisfied that there is sufficient evidence of an alleged improper conduct by a person, the disciplinary committee may refer the matter to a disciplinary panel for hearing.~~②~~
- 6.11 A member of a panel that has investigated an alleged improper conduct cannot serve as a member of the disciplinary panel, which hears the matter.

7. The disciplinary hearing

- 7.1 Once a matter has been referred for hearing by a disciplinary panel, the President or the chairperson of the disciplinary committee must issue a summons to the person who has allegedly been guilty of improper conduct.
- 7.2 The summons must disclose:
 - 7.2.1 the nature of the alleged breach;~~②~~

- 7.2.2 the date, time and venue of the disciplinary hearing;②
 - 7.2.3 the accused person's right to be represented at the disciplinary hearing, including the right to legal representation;②
 - 7.2.4 the accused person's right to call witnesses to give evidence and to produce books, documents and other items in support of the②person's case; and②
 - 7.2.5 the accused person's right to make written submissions against any recommendation of the disciplinary panel to the disciplinary②committee.
- 7.3 The summons must be served to the relevant postal, employment and/or residential address appearing on the NCAQS register by way of:
- 7.3.1 delivery by hand;
 - 7.3.2 telefax; or
 - ②7.3.3 registered post.
- 7.4 The date on which the summons is served is regarded as, in the case of:
- 7.4.1 service by hand, the date of delivery;②
 - 7.4.2 service by telefax, the dispatching date reflected on the telefax; and②
 - 7.4.3 service by registered post, the date on which the letter was signed for in the absence of proof to the contrary.
- 7.5 The summons must be served on the accused at least fourteen (14) days before the date of the disciplinary hearing.②
- 7.6 If in the opinion of the panel, the offence committed is of such a nature that the accused person could commit said similar offence or worse, the panel may decide to proceed with the matter in the absence of proof of delivery of the summons.②
- 7.7 The President or the chairperson of the disciplinary committee may issue a summons to any other person to attend the②disciplinary hearing in order to give evidence or to produce any books, documents or other items.②
- 7.8 If the accused person fails to attend a disciplinary hearing, the disciplinary panel may deal with the matter in the absence of the accused person.②
- 7.9 A witness who attends a disciplinary hearing is entitled to such allowance as the Council may from time to time determine.②
- 7.10 Any person who fails to attend a disciplinary hearing when summoned to do so, or fails to stay in attendance until excused by the disciplinary panel, commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding six (6) months.

8. Procedure at the disciplinary hearing

- 8.1 The disciplinary panel may exclude any person or category of persons from attending a disciplinary hearing:
- 8.1.1 on reasonable grounds; or²
 - 8.1.2 if the orderly conduct of the inquiry so requires.
- 8.2 The disciplinary panel may postpone or adjourn a disciplinary hearing:
- 8.2.1 at its discretion; or²
 - 5.2.2 on the request of any party to the hearing, prior to the date set for hearing;
- 8.3 A postponement will not be granted where a particular accused person's representative is otherwise engaged on the hearing date.²
- 8.4 The disciplinary committee may appoint one or more suitably qualified person to be present at a disciplinary hearing, and to advise the disciplinary panel on matters of law, procedure and evidence, or other matters requiring specific expertise.²
- 8.5 A person charged with an alleged improper conduct is entitled to representation, including legal representation at any disciplinary hearing.
- 8.6 The disciplinary panel must:
- 8.6.1 record the evidence at a hearing; and²
 - 8.6.2 administer an oath or affirmation to any witness at a hearing.
- 8.7 At the commencement of the hearing, the disciplinary panel must:
- 8.7.1 put the charge to the accused person and ask him/her to plead to the charge;²
- 8.7.2 inform the accused person of his/her rights:²
- (a) to representation, including legal representation;²
 - (b) against self-incrimination;²
 - (c) to an interpreter; and²
 - (d) to present evidence and challenge evidence at the hearing.
- 8.8 If the accused person:
- 8.8.1 pleads guilty to the charge, the disciplinary panel must decide whether or not to hear evidence regarding the charge;²
 - 8.8.2 pleads not guilty, the disciplinary panel must hear the evidence regarding the charge;²
 - 8.8.3 refuses or fails to plead, the disciplinary panel must enter a plea of not guilty and must hear evidence regarding the charge.

- 8.9 If the person charged with an alleged improper conduct fails to attend the disciplinary hearing, and the disciplinary panel decides to proceed with the matter in the absence of the accused person, it must enter a plea of not guilty and hear evidence regarding the charge.
- 8.10 If the disciplinary panel decides to hear evidence pertaining to the charge, every party to a hearing or the party's representative is entitled to:
 - 8.10.1 lead evidence in support of their case;
 - 8.10.2 cross-examine any witness of an opposing party; and
 - 8.10.3 re-examine any witness led by that party.
- 8.11 Members of the disciplinary panel may question any witness at the hearing.
- 8.12 The record of any evidence of a alleged improper conduct in any criminal proceedings or disciplinary proceedings by an employer constitutes prima facie evidence of such breach by the accused person for purposes of a disciplinary hearing in terms of the Act.

9. Recommendation of the disciplinary panel

- 9.1 The disciplinary panel must make its recommendation on whether or not there has been improper conduct only after:
 - 9.1.1 evidence has been completed; and
 - 9.1.2 every party to an inquiry has been given a fair opportunity to be heard.
- 9.2 If the disciplinary panel recommends that the accused person has been guilty of improper conduct, the panel must request the parties to make representations on an appropriate sanction. This may include the leading of further evidence, including evidence on any previous convictions of the accused person for breaches of the code. A certificate issued by the President containing details of any previous convictions constitutes prima facie evidence of such previous convictions.
- 9.3 If the disciplinary panel recommends that the accused person has breached the code and recommends a penalty it must:
 - 9.3.1 record its recommendations;
 - 9.3.2 inform the accused person in writing of its recommendations; and
 - 9.3.3 submit the record of the hearing and its recommendations to the disciplinary committee.

10. Recommendation of the disciplinary committee

- 10.1 On the basis of the recommendation of the disciplinary panel the disciplinary committee must recommend a finding and appropriate penalty, if any, to the Council and inform the accused person concerned accordingly.

- 10.2 An accused person who is dissatisfied with a recommendation of the disciplinary committee may make written submissions to the Council within fourteen (14) days of his or her knowledge of the recommendation of the disciplinary committee.
- 10.3 The written submissions must set out the grounds on which the accused believes the recommendation to be wrong.

11. Decisions of the Council

- 11.1 The Council, after considering the recommendation by the disciplinary committee and submissions by the accused person concerned, if any, may:
 - 11.1.1 accept, reject or substitute the recommendation of the disciplinary committee wholly or in part; or
 - 11.1.2 refer the matter to the appeals committee for review.
- 11.2 The Council may impose the following penalties on an accused person who is found guilty of improper conduct:
 - 11.2.1 take no further action; or
 - 11.2.2 impose a punishment provided for under regulation 7; and
 - 11.2.3 make such order as to costs incurred in connection with the enquiry as it may deem fit.
- 11.3 The Council must inform the accused person in writing of its decision.
- 11.4 The Council's decision is final.
- 11.5 The Council:
 - 11.5.1 may publish such information relating to the hearing as it deems reasonable; and
 - 11.5.2 must not publish information relating to a hearing, which reveals or may reveal the identity of any person affected by the proceedings who is under the age of eighteen (18) years.

12. Appeal against the recommendation/s of the Disciplinary Committee

- 12.1 Any accused person who is found guilty of improper conduct under section 15(1) of the A&QS Act, appeal to the Council against the recommended findings or penalty of the disciplinary committee or against both.
- 12.2 The appeal must be lodged with the President, within 14 days after the disciplinary committee has informed the accused of its recommendation.
- 12.3 The Council may:
 - 12.3.1 dismiss the appeal against the recommendation of the disciplinary committee and confirm the recommended findings or the penalty or both; or

- 12.3.2 uphold the appeal against the recommendation of the disciplinary committee wholly or in part and it must, in this instance refer it to the appeals committee within 30 days of its decision reaching the accused referred to in 12.1.
- 12.4 The Council must appoint an Appeals Committee of at least 3 persons to hear the appeal.②
- 12.5 A person hearing an appeal must not have been a member of the Investigation Panel or Hearing Panel, which dealt with the matter.②
- 12.6 Persons appointed to the Appeals Committee should not be members of the disciplinary committee or Council.②
- 12.7 The appeal should be based on the record of the proceedings of the disciplinary panel. In exceptional cases, the Appeals Committee may hear new evidence in relation to the appeal but only where such evidence was not reasonably available at the time of the disciplinary hearing may have had a material impact on the outcome of the disciplinary hearing.②
- 12.8 The Appeals Committee must consider the appeal within 30 days after the notice is delivered to the President.②
- 12.9 An accused whose appeal was dismissed by the Council may appeal to the appropriate High Court.②
- 12.10 A person referred to in 12.4 must, after giving notice to the Council, lodge a notice of appeal with the registrar of the appropriate High Court within one month from the date of the decision of Council
- 13. The Appeal**
- 13.1 The appeal referred to in Section 12 above must specify the grounds upon which the accused believes the finding/s and penalties to be wrong.②
- 13.2 The appellant, the Council and the complainant or their representatives should be given an opportunity to present argument on the appeal before the Appeal Committee reaches a decision.
- 13.3 The Appeals Committee will make a recommendation to the Council based on their findings.
- 13.4 The Council, after considering the finding and penalty recommended by the Disciplinary Committee or the Appeals Committee, may-
- 13.4.1 confirm or set aside the finding;②
- 13.4.2 confirm or set aside the penalty; or②
- 13.4.3 refer the matter back to the Disciplinary Committee or Appeals Committee as case may be for further deliberations.
- 13.5 A disciplinary finding and sanction only takes effect on confirmation by the Council.

14. Amendment of Rules

14.1 These Rules may at any time in writing be amended by the Council.

15. Definitions

In this document, unless the context indicates otherwise, any word or phrase defined in the Architects and Quantity Surveyors Act (Act No. 13 of 1997) has that meaning and:

- 11.1 'Act' means the Architects and Quantity Surveyors Act (Act No. 13 of 1997);
- 11.2 'Appeals Committee' means the disciplinary committee of the Council contemplated in section 10 of the Act;
- 11.3 'accused person' means an architect or quantity surveyor or architect in training or quantity surveyor in training accused of improper conduct contemplated in section 14(1)(a) – (f) of the Act;
- 11.4 'Council' means the Namibian Council for Architects and Quantity Surveyors;
- 11.5 'disciplinary committee' means the disciplinary committee of the Council contemplated in section 10 of the Act;
- 11.5 'disciplinary panel' means the disciplinary panel of the Council contemplated in section 10 of the Act;
- 11.6 'investigation panel' means the disciplinary panel of the Council contemplated in section 10 of the Act;
- 11.7 'accused person' means any architect or quantity surveyor or architect in training or quantity surveyor in training registered with the Council;
- 11.8 'president' means the president of the Council;
- 11.9 'register' means the register contemplated in section 7(1)(k) of the Act; and
- 11.10 'registered address' means the address of an architect or quantity surveyor or architect in training or quantity surveyor in training as it appears in the register.
- 11.11 'Rules' means these Enquiry Procedural Rules