ADR Institute of Alberta (ADRIA)
Interim Complaint Resolution Policy
Revision 3.2 April 2015

Purpose:

The purpose of this policy is to address, in an open and transparent fashion, all concerns, disputes and complaints that may arise regarding ADRIA functions, its governance, or the professional conduct of its members.

The ADR Institute of Canada (ADRIC) provides details regarding the Institute's Code of Ethics, the Code of Conduct for Mediators, and its Complaints & Discipline Policy at www.adrcanada.ca

Applicable to:

A complaint under this policy may be made verbally or in writing by any ADRIA member, or by any member of the public, noting that:

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- Internal ADRIA staff complaints, including complaints raised by those internally contracted to ADRIA, involving compensation, performance, interpersonal relations or HR issues are NOT addressed through this policy, although similar principles will apply;
- Complaints arising out of the Society's affairs or the application of its bylaws, involving disputes between Society members, recent members, Directors and/or Officers, will be resolved in accordance with ADRIA Bylaw 8.4, including recourse to binding arbitration. Throughout, the guiding principles described within this policy will apply.
- Members are obligated to comply with the Society's complaint resolution bylaws, policies and procedures as a condition of membership. The failure of a member to cooperate with ADRIA or ADRIC complaint, dispute resolution and/or discipline processes shall be considered an act of professional misconduct, and may result in disciplinary procedures.

Guiding Principles:

- *ADR First:* The skills and resources of ADRIA will be used to address and resolve complaints in a manner that is interest-based, understanding-based, facilitative, collaborative and fully participative whenever possible.
- *Personal Responsibility and Engagement:* All parties to a complaint will actively participate, and strive to achieve a collaborative resolution and outcome at the earliest possible stage of the process.

- *Confidentiality:* Information about a complaint will only be given to parties directly involved and to others on a need to know basis.
- *Timeliness*: Complaints will be dealt with promptly and resolved as quickly as possible.
- *Fairness:* Review of complaints will be fair, impartial and respectful, allowing all parties to have their perspectives heard.
- *Thoroughness:* Review of complaints will be thorough and as detailed as possible, based upon the information provided by the parties.
- *Accessible and User-Friendly*: The process will be easily accessible and communicated to members. It is designed to be clear and as simple to follow as possible.
- *Transparency:* The parties will be provided clear and understandable reasons for decisions relating to complaints. All parties will be provided with updates during review processes.

Definitions:

Complaint means a complaint against a member alleging:

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(a) misconduct in relation to dispute resolution work by the member, specifically involving a member's act or omission in the course of rendering services as a dispute resolution practitioner, as that term and profession are recognized in Canada, including but not limited to: "arbitrator", "mediator" and "investigator";

(b) inappropriate conduct in relation to operational activities including programs, policies, services, staff, contractors, volunteers or governance of the Institute;

(c) breach of the Institute's Code of Ethics, Articles, Bylaws, Regulations, or Board policies.

For ease of reference, all manner of concerns, disputes and/or complaints brought to the attention of ADRIA staff or Board members, formally or informally, shall be referred to as a complaint within this policy.

The ADRIA Complaint Resolution Process is a progressive effort to resolve a complaint in a confidential, timely fashion at the lowest practical level. The emphasis throughout this process is on personal responsibility, engagement, and constructive dialogue wherever possible. There are three (3) progressive options in the complaint resolution process: Informal, Assisted, and Written(Formal).

A Complainant is the individual lodging a complaint against another individual, policy or practice within ADRIA's jurisdiction.

A Respondent is an individual against whom a complaint has been made, and/or someone responsible for the policy or activity complained about.

A Registrar is an individual who has been appointed by the Board to act as an intermediary, convening authority, facilitator and/or mediator in the complaint resolution process, and to work with the parties to achieve a satisfactory outcome. The Board may appoint one or more Registrars, the appointments of which may be from the Board, the staff, or the general membership based on experience, personal reputation and neutrality.

The Board refers to the ADRIA Board of Directors, as elected by the membership.

Society refers to the ADR Institute of Alberta, a society registered under the Societies Act of Alberta.

A Policy is any policy that has been approved by the ADRIA Board of Directors. Anything else should be referred to as a practice.

ADRIA staff refers to employees and contractors directly employed or engaged by ADRIA to deliver core functions.

Discipline refers to the corrective action taken in respect to an individual when a complaint is upheld and found to have substance, or agreed to as a consequence of a negotiated or mediated outcome. Disciplinary measures are normally considered confidential, and the details are usually not shared with other parties to the conflict, except when considered necessary to advise other Regional Affiliates or safeguard the public.

A Hearing Committee is a review body of 1-3 members convened by the Board to review, investigate, and decide the complaint.

Referrals:

Matters that cannot be resolved by the ADRIA complaint resolution process, or are referred to ADRIC by the ADRIA Board of Directors, may be handled by means of the ADRIC's Discipline Procedure: www.adrcanada.ca/rules/complaints.cfm

Complaint resolution processes initiated by one Regional Affiliate of ADRUIC may be referred to another if the respondent's membership changes provinces.

Documenting Complaints:

A record will be kept of any Written/Formal complaint under this process. Information about such complaints will include the parties involved, a description of the complaint, who handled it, what was done to resolve the complaint, the

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timeframe, and a description of the resolution or an explanation for non-resolution. These records will be maintained by the Executive Director in a confidential file.

A summary of complaints, including total number of formal complaints and the nature of complaints received, will be prepared by the Executive Director and reported to the Board of Directors regularly.

Responsibility for Implementation:

This policy respects the accountability framework of ADRIA which provides that:

- Operational and Educational activities are the responsibility of the Executive Director; and
- matters relating to Board policy, activities, decisions and governance are the responsibility of the Board of Directors.

Legal Counsel & Accompanying Parties:

While most ADRIA complaint resolution processes do not require the parties to be accompanied by or have legal representation, the following provisions do apply:

- The complainant or respondent may be accompanied by a support person or represented by legal counsel, but are individually responsible for all expenses incurred on their behalf.
- Where a complainant or respondent is to be accompanied by a support person or represented by legal counsel, notification is to be provided to the Registrar and/or the Hearing Committee five (5) working days prior to the meeting or hearing date.
- Final approval for the presence of other parties or representatives, aside from legal counsel, shall be at the discretion of the Registrar or Hearing Committee.
- The Registrar or Hearing Committee may utilize ADRIA staff in presenting information or in an advisory capacity, or may also retain legal counsel.

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Documentation & Witnesses:

The Registrar may request, and a Hearing Committee may require the production of documents from any member.

Complainants and Respondents are responsible for ensuring the attendance of witnesses they or their council intend to call to give evidence at a hearing. Any expenses incurred will only be reimbursed by ADRIA in exceptional circumstances, and only with express approval of the Hearing Committee, preferably in advance.

All witnesses giving evidence may be cross-examined on issues relevant to the complaint. Witnesses other than the Complainant and Respondent shall be excluded from the Hearing unless the Hearing Committee otherwise orders.

ANNEX A:

ADRIA's Progressive Complaint Resolution Process Options:

(A) Informal

An informal complaint resolution effort is characterized by an individual's personal efforts to seek information and express their concern(s) without recourse to a formal or written complaint. Early, Local and Informal (ELI) engagement is the best approach to most conflict situations, as it is important to ensure that the respondent, or the responsible person, is made aware of the concern and be allowed the first opportunity to offer an explanation or remedy. When appropriate, or in preparation, the complainant could also speak with any person who is most familiar with or responsible for the matter of concern. Such expectations are often incorporated into contracts signed by ADRIA members with their client(s), and any Complainant's first recourse should usually be in accordance with their contractual undertaking. Informal resolutions are thus often achieved without recourse to, or without the knowledge of any ADRIA staff or Board member.

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The first person a complainant should talk to is the person with whom he or she has the conflict, or is responsible for the activity (the respondent). If the complainant is unable to resolve the matter with the respondent, and/or is unsure about who to talk to, he or she is encouraged to consult with an ADRIA staff member or the Executive Director. He or she may be able to assist the complainant in directing the concern towards a satisfactory outcome.

Complaints regarding the **Ethics, Conduct, or Professionalism of ADRIA members** in their practice should first be addressed with the member directly. Both complainant and respondent are encouraged to refer to this policy and its guiding principles as they work together to achieve a resolution.

Complaints about practices pertaining to **Professional Development & Educational activities, Equivalencies, Membership, or Designations** will initially be dealt with by the Executive Director or staff member responsible for this activity.

If approached with an informal complaint, the ED will usually inquire about any initial resolution efforts, and will consult as appropriate with ADRIA staff to assist. Every attempt should be made by the complainant to resolve a matter informally within the first two (2) weeks after the concern is first voiced. To this end, direct dialogue and negotiation between the parties involved is strongly encouraged.

(B) Assisted

If the informal approach does not resolve the matter to the satisfaction of the complainant, the complainant can refer their complaint, **verbally or by e-mail** to the ADRIA Responsible Contact (see table below). This might be the first occasion that an ADRIA staff or Board member becomes aware of the complaint.

This step in the Complaint Resolution Process is **NOT** characterized by a formal, written complaint, but instead by a genuine interest in further ADR resolution efforts to address issues that have not been resolved though initial, informal efforts. The premature submission of a written formal complaint and supporting documentation does NOT, by definition, escalate the complaint to the status of a Formal complaint, unless such action is requested, or is considered in the best interests of the Society.

The ADRIA Responsible Contact will maintain a personal record of any complaint received, including established facts and details of all informal efforts made by the complainant to achieve an early resolution. Whenever practical, complainants will be encouraged to pursue their informal options, and be assisted as appropriate.

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Subject/Type of Complaint	ADRIA Responsible Contact
Complaints regarding ethics, conduct or professionalism of an ADRIA member	**Executive Director**
Complaints regarding ADRIA services, programs, activities, operations, education & professional development activities, contractors or volunteers	**ADRIA Staff** – the staff member responsible for the service area relating to the complaint or, if necessary, the Executive Director.
Complaints regarding ADRIA staff members	**Executive Director**
Disputes between ADRIA staff members	**Executive Director** (other policies apply)
Complaints concerning the Executive Director	**Board Officer –** Vice-President
Complaints regarding Board Policies, Board actions/decisions and governance of the Society	**Board Officer** –Vice-President
Matters related to Board/staff relations	**Board Officer -** Vice-President (or President if the concern relates to the VP)
Complaints concerning a Board Member	**Board Officer –** Vice President (or President if the concern relates to the VP)

Complaints raised in this manner will be addressed in a timely fashion by the ADRIA Responsible Contact, and a response can be expected within two (2) weeks. Specific facilitation processes or outcomes are not defined, except to note that they must strive to achieve resolution from the perspective of the complainant and any other parties engaged. Facilitation, mediation, or arbitration options may be offered, although arbitration is not an option for complaints regarding member Code of Conduct or Ethical breaches. Upon conclusion, the Responsible Contact will summarize the outcome and conclusions in an e-mail or letter to the complainant and other parties as appropriate.

(C) Written/Formal

If early resolution efforts do not achieve an acceptable outcome in a timely fashion, or to the satisfaction of the complainant, a written formal complaint may be appropriate. The submission of a written complaint, however, is **NOT** a mechanism to simply bypass the informal options favoured in this policy. The complainant will always be asked to detail all prior efforts to achieve a resolution, and informal resolution options may be still recommended if deemed appropriate.

A formal complaint is characterized by a written submission, including a clear statement of the complaint, resolution efforts to date, and the outcome(s) desired. Where there are allegations of professional misconduct, specific reference must be made to relevant passages of ADRIC's Code of Ethics and/or Code of Conduct for Mediators http://www.adrcanada.ca/index.cfm . The Respondent and ADRIA Responsible Contact must be clearly identified. Written complaints are usually accompanied by supporting documentation, and may be submitted to:

- The **ADRIA Executive Director** for all operational and professional development issues, and for any complaint regarding the ethics, conduct or professionalism of an ADRIA member;
- The **Vice President of the Board** for any issue pertaining to Board policies or conduct of the Society; or
- The **President of the Board** (only in rare circumstances).

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Initial Process for Review of a Written Formal Complaint

Any written formal complaint will first be referred to the Registrar who will review the complaint to ensure that:

(a) It concerns a current Member of the Institute;

(b) On its face, the complaint meets the definition of a complaint as defined in this policy;

(c) It is in writing, and:

(i) is received from a direct participant in a dispute resolution process conducted by the member, or by a person authorized in writing on the complainant's behalf; or

(ii) is received from a person who appears to have direct knowledge of a Member's non-compliance with the Institute's Code of Ethics or Code of Conduct for Mediators or

(iii) has been commenced by motion of the Board, which may of its own motion initiate a complaint;

(d) It contains sufficient details and particulars to enable a response;

(e) In the instance of a dispute resolution process, the respondent has completed the dispute resolution mandate (or matter or action) or the mandate (or matter or action) has been terminated by the parties.

The Registrar will inform the complainant that the Institute's complaint resolution process:

(a) is set out in this policy, a copy of which shall be provided to the complainant;

(b) is a discernment process (defined as the activity of obtaining sharp perceptions and/or to judge well);

(c) may involve Informal, assisted or formal resolution options as set out in this policy;

(d) is not a substitute for an appeal, judicial review or other court action in relation to any dispute resolution process undertaken by the respondent for the complainant;

(e) cannot change the outcome of any dispute resolution process undertaken by the respondent for the complainant or result in an order for a new dispute resolution process;

(f) cannot result in an award of damages or compensation to the complaint, respondent or anyone else;

(g) may result in disciplinary measures against the respondent.

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Process for Handling of Written/Formal Complaints

Notice to Respondent (Offer of Informal Dispute Resolution))

When the appointed Registrar is satisfied the requirements outlined above are met, and has determined that disclosure will not jeopardize the potential for an Informal Dispute Resolution process, the Registrar will send to the respondent:

(a) a copy of the complaint;

(b) any supporting materials;

(c) a copy of this policy;

(d) a request for a response within 30 days;

(e) an offer to provide Informal Dispute Resolution (if appropriate).

If there is no response within 30 days, the complaint will be sent to the ADRIA President to initiate Formal Dispute Resolution.

Initial Response to the Complainant (Offer of Informal Dispute Resolution)

Upon receipt of a timely response, the Registrar will send to the complainant:

(a) a copy of the response;

(b) any supporting materials;

(c) an offer to provide Informal Dispute Resolution.

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If both parties accept the offer of Informal Dispute Resolution, the Registrar will facilitate the Informal Dispute Resolution process, which may include such options as informal meetings, negotiation, facilitated meetings or mediation. In consultation with the Executive Director and/or President, he Registrar may engage other ADR Professionals in this process if confidentiality is assured.

If both parties do not accept the offer of Informal Dispute Resolution, or if Informal Dispute Resolution does not resolve the complaint, the Registrar will forward the complaint and the response, if any, to the President to initiate Formal Dispute Resolution.

Any agreed resolution of the complaint arrived at through Informal Dispute Resolution shall be confidential, although the parties must determine what elements, if any, need to be shared or conveyed to the Registrar, Staff, Board, legal counsel and/or other parties. These considerations should include: Is the agreement realistic and durable? Does the agreement in any way compromise ADRIA or the profession? Are there elements of the agreement that impact on ADRIA operations, policies, reputation, external relationships or public perceptions?

Formal Dispute Resolution (Hearing Committee)

When a complaint is sent to the President for Formal Dispute Resolution under any of the circumstances outlined in this policy, the President will appoint an ad hoc

committee (the “Hearing Committee”) to review, investigate, and decide the complaint. The Hearing Committee may consist of either:

(a) One Board member acting as a single member Hearing Committee; or

(b) A three person Hearing Committee to be chaired by a Board member and to include two other Members who may or may not be Board members.

The Hearing Committee will determine the procedure for the review and investigation of the Complaint and will ensure that each party is provided a fair opportunity, in writing or otherwise, to present their case.

The Hearing Committee will act as expeditiously as possible in carrying out the following steps:

(a) Receive and review the complaint and the response, if any;

(b) Review any additional materials received;

(c) Seek additional information, if needed, from the complainant, the respondent, the Institute, or any other source the Hearing Committee deems appropriate;

(d) Assess the complaint;

(e) Prepare a written decision including:

i. A description of the process the Hearing Committee followed;

ii. A summary of the information considered by the Hearing Committee;

iii. A finding as to whether the Complaint has been substantiated in whole or in part;

iv. Reasons for the Hearing Committee’s conclusions;

v. If the complaint is substantiated in whole or in part, directions as to the appropriate remedial action to be taken in the circumstances. The Hearing Committee may choose from a wide range of remedial options, including but not limited to remediation, a simple warning, training, review, mentoring, observation or temporary or permanent removal from the Institute’s membership list. Recommendations can also be

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made to ADRIC, if endorsed by the Board, regarding the respondent's ADRIC membership and national designations.

(f) Deliver the Hearing Committee's decision to the President with a copy to the complainant and the respondent, explicitly on a confidential basis.

If no party commences an appeal under section 6 of this Policy, the decision of the Hearing Committee is considered final. The President will report the Hearing Committee decision to the next meeting of the Board, and the Hearing Committee decision will be implemented.

Appeal Process

The complainant and the respondent have the right to appeal the Hearing Committee decision to the Board.

Any appeal must be launched by a Request for Appeal in writing delivered to the Registrar within 30 days of the date the Hearing Committee decision was delivered to the parties.

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The Request for Appeal shall include a statement of the grounds for the appeal.

Upon receipt of a Request for Appeal, the Registrar will inform the other party and the Board of the request for appeal.

The Board will consider the Request for Appeal at its next regular meeting or, at the discretion of the Board, at a special meeting set by the Board.

The Board will determine the procedure for each appeal and will ensure that each party is provided a fair opportunity, in writing or otherwise, to present their case.

Any Board member who has participated as a member of a Hearing Committee may not participate in the appeal in any way.

The Board will render its decision, with reasons, to the parties in a timely manner.

The Board's decision on appeal shall be final and the decision will be implemented immediately.

Annex B:

ADRIA Bylaw Provision 8.4

8.4 DISPUTE RESOLUTION

1. This Section applies to any dispute arising out of the Society's affairs or the application of these bylaws.
2. A dispute may be between:
    a. members, or
    b. the Society and its Directors or its Officers, or
    c. the Society or its Directors or its Officers and either
        i. a member, or
        ii. a former member who was a member within the previous 6 months.
3. Any dispute subject to Subsection 1 and 2 will be resolved by:
    a. Direct negotiation between the parties, with or without assistance and/or facilitation. If resolution is not achieved, then by:
    b. Mediation pursuant to the National Mediation Rules of ADRIC, or to mediation practices agreed upon by the parties. The language of the mediation will be English. If resolution is not achieved, then by:
    c. Arbitration pursuant to the National Arbitration Rules of ADRIC, or to arbitration practices agreed upon by the parties. The language of the arbitration will be English, and the decision will bind all parties.
4. Members are obligated to comply with the Society's complaint resolution bylaws, policies and procedures as a condition of membership. The failure of a member to cooperate with ADRIA or ADRIC complaint, dispute resolution and/or discipline processes shall be considered an act of professional misconduct, and may result in disciplinary procedures.

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