



# POLICY – Discipline Panel Hearing

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## **DISCLAIMER**

*The legislation referred to in this policy document is subject to amendment from time to time and to judicial interpretation. This document may not reflect recent amendments to the legislation and should not be relied upon as an accurate statement of the existing law. It is to be used as a guide only to the practices of a Discipline Panel. An official version of the legislation referred to herein may be obtained from Crown Publications.*

## 1. Introduction

Discipline Panels are established under the authority of Division 2, *College of Applied Biology Act*, SBC 2002, c. 68. The formal requirements of the hearing process are contained in the Act and Rule 15 of the College of Applied Biology. This policy contains information on what generally happens following the issuance of a Notice of Citation from the Council. Matters related to who can appeal, what can be appealed, and to whom appeals are made are set out in the Act at S34. Where any matter arises during the course of a hearing that is not addressed in these places, the Panel will do whatever is necessary to enable it to adjudicate fairly, effectively and completely on the matter.

## 2. Panels

Discipline Panels are appointed by the Discipline Committee and must consist of an odd number of persons, but cannot consist of one person. Panels may be made up of members and non-members who use and apply the College Act, Rules, any relevant practice standards, and information submitted during a hearing when making decisions. When determining who will be on a particular Panel, the Discipline Committee will consider the background, qualifications and availability of potential Panel members.

### **2.1 Withdrawal or disqualification of a Panel Member on the grounds of bias**

Where the Chair or a member of a Panel becomes aware of any facts that would lead an informed person, viewing the matter reasonably and practically, to conclude that a member, whether consciously or unconsciously, would not decide a matter fairly, the member must withdraw from further participation.

### **3.0 TYPE OF HEARING**

A hearing may be conducted by way of written submissions, oral presentations, or a combination of both. Discipline hearings will generally be conducted by way of an oral hearing. When a hearing by written submission is being considered, the Panel may request input from the parties before making a decision on whether to proceed in this manner.

A hearing will generally be conducted as a written hearing where

- credibility is not a significant factor
- the material facts are not in dispute, and/or
- where the issues to be decided
  - i. have been dealt with at a previous hearing,
  - ii. are not complex, and/or
  - iii. are purely legal in nature.

Where a party to a hearing wants the matter to be considered by way of written submissions, the party should make a request in writing to the Discipline Panel as soon as possible in the process and provide reasons in support of the request. Whether or not the matter proceeds as a written hearing will be a decision of the Discipline Panel.

Procedures for hearings will be guided by the information set out below.

## **4.0 ORAL HEARING PROCEDURE**

### **4.1 Setting the Date**

The Chair is required to set the date, time and location of the hearing and to notify

the subject member. This is done through the issuance of a Notice of Hearing. The parties will be consulted on their availability and a reasonable attempt will be made to accommodate the parties' scheduling needs. However, if the parties cannot agree on a specific date, the Chair may proceed to set the date for a hearing without further consultation with the parties.

### **4.2 Location**

Hearings will normally be conducted in either the Greater Vancouver Regional District or in the Capital Regional District, with the specific location determined by the Panel Chair.

### **4.3 Statement of Points and Exchange of Documents**

In order to facilitate identification of the main issues and arguments in a hearing and

ensure an orderly and efficient proceeding, the Panel will request that each party present in advance of the proceeding a Statement of Points and associated documents. The information will normally be required to be presented within 2 weeks of the Panel request.

#### 4.3.1 Statement of Points

The following information is to be contained in the Statement of Points: College

- the substance of the complaint
- the Investigator's Report and information relied on to bring the matter forward to a hearing
- any legal authority or precedent supporting the College's position
- the names of witnesses the College intends to call (if any), and copies of any statements relied upon.

#### Subject Member

- the substance of the subject member's responses to the complaint
- the arguments the subject member will present at the hearing
- any legal authority or precedent supporting the subject member's position
- the names of witnesses the subject member intends to call (if any), and copies of any statements relied upon.

#### 4.3.2

##### Documents

With their Statement of Points, the parties are requested to disclose all relevant documents to the Panel and other parties in advance of the hearing so that all

parties will be prepared. “Documents” include correspondence, reports, articles, photographs, maps, charts and any other materials that may be referred to or relied upon at the hearing.

#### 4.3.3 Failure or Refusal to Produce Documents

If a party refuses to produce documents, the Panel may, under the authority of the Act, require the production of documents at the hearing.

### **4.4 Notification of Expert Evidence**

An expert witness is a person who, through experience, training and/or education,

is qualified to give an opinion on certain aspects of the subject matter of the hearing. To be an “expert” the person must have knowledge that goes beyond “common knowledge”.

Any party that intends to present expert evidence at a hearing is required to provide the Panel, the College and all other parties, with 30 days advance notice that an expert will be called to give an opinion.

The notice should include:

- a brief statement of the expert’s qualifications and areas of expertise
- the opinion to be given at the hearing, and
- the facts on which the opinion is based.

If a party intends to produce a statement or report at a hearing that has been prepared by an expert, a copy of the statement or report should be provided to the Panel and all parties before the statement or report is given into evidence.

### **4.5 Obtaining a Summons**

It is the responsibility of the parties to arrange for the attendance of witnesses,

production of documents and other evidence at a hearing. It is up to the parties to ask people to attend a hearing voluntarily to give evidence and/or ask for certain documents to be provided.

Where a proposed witness refuses to attend a hearing voluntarily or refuses to testify, a party may ask the Panel to issue a summons. Also, if a party refuses to produce, or does not have access to, certain relevant documents, a party may ask the Panel to issue a summons in accordance with Section 31 of the *College of Applied Biology Act*.

If production of documents or other items is requested, the Panel may request the party to provide:

- a reasonably detailed description of the documents or items that would enable a reasonable person to know what documents or information is being sought; and
- the reasons why such materials are relevant to the subject matter of the hearing.

In deciding whether to issue a summons, the Panel will consider:

- whether the party has requested voluntary attendance/compliance before making the request to the Panel
- whether the information sought is relevant to the hearing

- whether the person is reasonably likely to be able to supply the information, and
- any other factors the Panel considers relevant.

If a summons is granted, the party requesting the summons will be responsible for serving it on the witness within a reasonable time before the witness is required to appear.

A person who is subject to a summons may object to the summons by applying to the Panel to have it vacated. The application may be made before or during the hearing. If the Panel is satisfied that the evidence sought from the person is not relevant, is protected by a privilege at law or the person is not able to supply the evidence sought, the Panel may cancel or vary the summons.

#### **4.6 Postponement of the Hearing**

All parties to a hearing are entitled to a hearing in a timely fashion.

Accordingly,

the Panel will only grant a postponement of a hearing when all parties agree to the postponement, or when the party requesting the postponement can show that special circumstances exist which justify postponing the hearing to a later date.

A request for postponement must be made in writing and should include the following information:

- the reasons for the request
- the length of the proposed postponement (what is the next available date); and
- whether the other parties to the hearing consent to the postponement.

In deciding whether to grant this request, the Panel will consider a variety of factors including:

- the adequacy of the reasons provided and the adequacy of any objections to the postponement
- the number of postponements that have already been requested or granted
- whether the postponement will needlessly delay or impede the conduct of the hearing
- whether the purpose for which the postponement is sought will contribute to the resolution of the matter
- whether the postponement is required to provide a fair opportunity to be heard
- the degree to which the need for the postponement arises out of the intentional actions or the neglect of the participant seeking the postponement
- the prejudice to the other party if a postponement is granted, balanced against the prejudice to the applicant if the postponement is not granted
- any other factors that may be relevant.

## 4.7 Evidence

Each party will have an opportunity to present evidence to support their case.

“Evidence” is anything that has the potential of establishing or proving a fact in issue. Evidence includes oral testimony, written records, demonstrations, physical objects, etc.; it does not include argument or submissions made by a party for the purpose of persuading or convincing the Panel to decide the case a particular way. The general rule is that the burden or responsibility for proving a fact is on the person who asserts it. The standard used is that of reasonableness.

If a witness is unable to appear at the hearing to give oral testimony, the Panel may allow affidavit evidence.

### 4.7.1 Reopening a hearing on the basis of new evidence

Once the record is closed, no additional evidence will be accepted from the parties unless the Panel decides the evidence is material to the issues, there are good reasons for the failure to produce it in a timely fashion, and acceptance of such evidence is in accordance with the principles of natural justice and procedural fairness.

## 4.8 The Hearing

### 4.8.1 Role of the Panel Chair

The Panel member designated Panel Chair will be responsible for the general conduct of the hearing.

### 4.8.2 Record of the Hearing

All proceedings at a hearing will be recorded and any person may obtain, at his or her own expense, a transcript of any part of the hearing. Taping of the proceeding by anyone other than the official recorder is not permitted unless approved in advance by the Panel.

### 4.8.3 Attendance of the Public

The Hearing is open to the public.

### 4.8.4 Legal Counsel

The Panel and any of the parties can be represented by legal counsel at the individual party's cost. The Panel may direct its legal counsel to

- advise the Panel on matters of law and procedure and on such other matters as the Panel requests
- ask questions of the witnesses retained by the Panel
- question witnesses of other parties.

### 4.8.5 Sworn Testimony

When a witness and/or party is called upon to testify, the person may be asked to give their evidence under oath or affirmation that the evidence given will be true. One of two formats may be used:

- Do you swear that the evidence to be given by you shall be the truth, the whole truth and nothing but the truth, so help you God? (witness holds a Bible or other holy book in the hand of their choice)

- Do you solemnly affirm that the evidence to be given by you shall be the truth, the whole truth and nothing but the truth? (witness holds their hand of choice forward in front of them)

#### 4.8.6 Documents as Evidence

If a party will be referring to a document that was not provided to the Panel and all other parties prior to the hearing, sufficient copies of the document must be brought to the hearing for each member of the Panel, all other parties and the official recorder.

If sufficient copies are not brought to the hearing, it is the responsibility of the party submitting the documents to arrange and pay for copies to be produced during the hearing.

Documents entered into evidence at the hearing will be marked as exhibits to the hearing.

#### 4.8.7 Hearing Procedure

The hearing is conducted in accordance with a formal court proceeding, and will generally follow the following format:

- 1) The Chair of the Panel will begin the hearing by identifying the Panel members and the official recorder. The Chair will swear in the official recorder.
- 2) The Chair will state the statutory authority for the Panel to conduct the hearing and identify the subject matter of the hearing.
- 3) The Chair will invite those parties in attendance to introduce themselves for the record.
- 4) The Chair will review the procedures that will apply at the hearing in connection with the presentation of evidence. The Chair may make a statement regarding the scope of evidence that will be acceptable and other limitations as may be applicable.
- 5) The parties will be given an opportunity to confirm or to clarify their understanding of the matter at hand and to make any preliminary objections or requests.
- 6) The Chair will then ask the parties for their opening statements in the following order:
  - i) College - The opening statement is to include the grounds for the complaint, the remedy (decision) sought, the names of witnesses (if any) to be called and the approximate time required to put its case before the Panel.
  - ii) Subject Member - The opening statement should include the remedy (decision) sought, the names of witnesses (if any) to be called and the approximate time required to put his or her case before the Panel.
- 7) The Chair will advise the College to proceed with the presentation of evidence. The presenter and witnesses will be sworn in. The College representative and his or her witnesses may be cross-examined by the subject member. Members of the Panel may also ask questions of the witnesses. New

information given in response to questions asked by the Panel is subject to re- examination by the parties.

- 8) The Chair will advise the subject member to proceed with the presentation of evidence. The subject member and his or her witnesses may be cross- examined by the College representative. Members of the Panel may also ask the witnesses questions. New information given in response to questions asked by the Panel is subject to re-examination by the parties.
- 9) The College representative will have the opportunity to call "reply evidence" (e.g. a witness to respond (reply) to evidence tendered by the other party).
- 10) The Chair will request the parties to present a closing statement (argument) at the conclusion of all the evidence. In their closing statements, the parties may wish to suggest alternatives for the Panel to consider when making its decision, provided that the evidence presented in the hearing supports the proposed alternatives. The order of presentation is as follows:
  - i) College
  - ii) subject member
  - iii) reply by College
- 11) No new evidence will be accepted in the closing statement.
- 12) The Chair will advise the parties that the hearing of evidence is concluded and the record is closed.

#### 4.8.7.1 Objections

If a party wishes to object to something in the hearing (e.g. questions or evidence), that party may raise an objection. An objection should be made in a courteous fashion stating the reasons for the objection. The Panel will provide the other party with an opportunity to respond before making a decision on the objection.

#### 4.8.7.2 Adjournments

An adjournment is a temporary halt of a hearing in progress. The Panel will make every effort to complete a hearing within the time scheduled. However, if a hearing is not concluded within the allotted time, if a party is "surprised" by previously undisclosed evidence, or if another problem arises, the Panel may exercise its discretion to adjourn the proceeding until a later date.

If a party requests an adjournment, the Panel will consider the following:

- any views expressed by the other party;
- the adequacy of the reasons provided for the adjournment and the adequacy of any objections to the adjournment;
- the number of adjournments or postponements that have already been granted;
- whether the adjournment will needlessly delay or impede the conduct of the hearing;
- whether the purpose for which the adjournment is sought will contribute to the resolution of the matter;
- whether the adjournment is required to provide a fair

opportunity to be heard;

- the degree to which the need for the adjournment arises out of the intentional actions or the neglect of the participant seeking the adjournment;
- any prejudice to the other parties if an adjournment is granted, balanced against the prejudice to the applicant if the adjournment is not granted;
- any other factors which may be relevant.

#### 4.8.7.3 Burden of Proof

The general rule is that the burden or responsibility for proving a fact is on the person who asserts it. The standard used is that of reasonableness.

#### 4.8.7.4 Attendance by Media

Radio, television, filming, video-taping or recording of proceedings may be permitted at the discretion of the Panel, subject to any terms and conditions the Panel may impose. Permission should be sought prior to the commencement of the hearing.

#### 4.8.7.5 Conditional Admission

The rules provide that a subject member may, at any time before the conclusion of complain process, tender a conditional admission (see the College Rules and the Conditional Admission Policy for more information).

## **5.0 WRITTEN HEARING PROCEDURE**

### **5.1 Submission Schedule**

The Panel will provide the parties with a submission schedule. In making the schedule the Panel will ensure that each party is given an opportunity to review and respond to the written submissions of other parties. The submissions will normally be scheduled to proceed in the following order:

- a. College submissions
- b. Subject Member's response and submissions
- c. College response
- d. Subject Member concluding remarks (NB: no new information)

All submissions must be delivered to the College office by the dates specified. Once the deadlines have expired for making submissions, the hearing shall be considered concluded.

### **5.2 Extension Requests**

If a party is not able to deliver its submissions by the date specified by the body hearing the matter, the party can request an extension of time to file its written submissions. The request should be made, in writing, prior to the specified deadline. The request should include the following information:

- a. the reasons for extension
- b. the length of the extension, and
- c. whether the other parties to the matter consent to the extension

If the other parties do not consent, they may be provided with an

opportunity to make submissions on their position with respect to the request.

In deciding whether to grant an extension, the Panel will consider the adequacy of the reasons given for the extension, and any prejudice that may result from an extension.

If an extension of time is granted to one party, the submission schedule for the other parties will be similarly extended. The Panel will inform all parties of the revised schedule, in writing.

### **5.3 Failure to file Submissions**

If the subject member fails to deliver written submissions by the specified date, the Panel may make a decision without hearing from the subject member, and no further notice will be provided.

### **5.4 Content of Submissions**

Where a hearing is conducted by written submissions, the parties are required to present their **entire** cases in writing. This means that all evidence (which includes all means of proof including correspondence, maps, charts, graphs, affidavits, studies, reports etc.), as well as any legal authorities and argument that the party wants the Panel to consider must be included in the submissions.

Where there is more than one evidentiary document or legal authority provided with the written submission, the documents and authorities should be numbered consecutively and the number should be referenced, where applicable, in the written text.

The written submissions should contain all evidence and argument in support of their position on the matter and explain why the matter under consideration should be decided in a certain way.

Prior to making a decision, the Panel will consider each party's submissions, weigh the evidence provided and make decisions using the standard of reasonableness.

### **5.5 Number of copies**

Four copies of all documents that are to be considered by the Panel must be submitted by the parties. Photocopying of legislation or policies should be limited to the sections considered pertinent.

### **5.6 Discipline Panel Meetings**

The Panel may meet in person, and/or electronically to consider the submissions and render the decision in the matter.

Once the draft decision has been written, it may be distributed and assented to electronically by the Panel members. The only persons who shall receive information on the matter electronically shall be the Panel members and College staff. Distribution of the decision to all others will be by way of hard copy post.

### **5.7 Additional Information Requests**

Upon receipt of the written submissions, the Panel may find that further information is required from one or more of the parties in order to make an

informed decision. If the Panel requests additional information from one party, the other party will have an opportunity to respond to that information.

### **5.8 Change in Process**

If it becomes apparent that credibility is a significant factor in the hearing, the Panel, on its own initiative or at the request of a party, may require evidence to be presented at an oral hearing to allow cross-examination of some or all of the witnesses.

## **6.0 DECISIONS**

Only those who sat on the Panel that considered the matter will make the decision. In making its decision, the Panel members are required to determine, using a standard of reasonableness, what occurred. In coming to this determination, the Panel will evaluate the evidence presented and apply the Code of Ethics and any relevant practice/conduct standards.

In making decisions pertaining to penalty and costs, the Panel will adhere to the Act and Rules, and take notice of any policies of the College.

Decisions will be published in accordance with College Rules and Policies.

Notice of  
Hearing  
IN THE MATTER OF THE COLLEGE OF APPLIED BIOLOGY OF BC  
  
and

A. MEMBER, (category). (Member's ID No.)

TO: A. Member, (category).

**TAKE NOTICE** that a Discipline Panel of the College of Applied Biology of the Province of British Columbia will meet at (insert address), in the City of (insert name), \_\_\_\_\_, \_\_\_\_\_, British Columbia, on \_\_\_\_\_ day \_\_\_\_\_, 20\_\_ at the hour \_\_\_\_\_ for the the \_\_\_\_\_ of \_\_\_\_\_ of \_\_\_\_\_ purpose of taking evidence or otherwise causing an inquiry to be made with respect to the allegation(s) herein pursuant to the *College of Applied Biology Act*, S.B.C. 2002, Chapter 68.

**AND TAKE NOTICE** that the allegations against you are as follows:

that you are in breach of the *College of Applied Biology Act*, S.B.C. 2002, Chapter 68; specifically, (statement of the charges being made)

**AND FURTHER TAKE NOTICE** that you, A. Member, (category)., have the right, at your own expense, to be represented by counsel at the Hearing by the Discipline Panel above-mentioned and that you or your counsel shall have the full right to cross-examine all witnesses called and to call evidence in defence and reply in answer to the aforesaid allegation.

**AND TAKE FURTHER NOTICE** that in the event of your non-attendance at the said Hearing that the Discipline Panel may, upon proof of service of this Notice of Hearing upon you, proceed with the taking of evidence or otherwise ascertaining the facts concerning the said allegation, your absence notwithstanding, and may make its findings on the facts and its decision thereof without further notice to you.

**DATED** at the City of \_\_\_\_\_, in the Province of British Columbia, \_\_\_\_\_ day of \_\_\_\_\_ this \_\_\_\_\_, 20\_\_.

The Discipline Panel of the  
College of Applied Biology  
of the Province of British Columbia.

Per: \_\_\_\_\_

I. M. Chair, RPBio., Chairman

**RE: Professional Conduct – A. Member, (category).**

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Enclosed for service pursuant to section 24(1)(c) of the *College of Applied Biology Act*, S.B.C. 2002, Chapter 68, is a Notice of Hearing setting (Set out dates) as the date such Hearing is to be held at (set out the location). This date has been selected without consultation and, as such, we do not necessarily expect the Hearing to proceed on that date. Please contact the Registrar if you need to discuss the date.

You are also advised that you may, now or at any time before the completion of the matter, present a Conditional Admission to the Discipline Committee. Information on a Conditional Admission follows:

1. The Conditional Admission must be clear as to whether it is intended to address all or only some of the matters which are the subject of the Hearing. In presenting a Conditional Admission, the subject member is admitting to having engaged in the matters which are so named.
2. The Discipline Committee will review the Conditional Admission, and if it is acceptable to the Committee, shall decide the penalty to recommend to the Subject Member. Where the Subject Member accepts the penalty, the admission is recorded and the matter concluded, subject to the terms of the penalty. Where the Subject Member declines to accept the penalty, the hearing process will continue.
3. Where the Discipline Committee decides not to accept the Conditional Admission, the Subject Member will be so advised and the hearing process will continue.
4. If the conditional admission is not accepted, the fact that a conditional admission was made shall not be used against the Subject Member in the hearing.

Copy to: College of Applied Biology  
Attention: Registrar

CITATION  
IN THE MATTER OF THE COLLEGE OF APPLIED BIOLOGY OF BC

and

A. MEMBER, (category). (Member's ID No.)

TO: A. Member,  
(category).

**TAKE NOTICE** that a Discipline Panel of the College of Applied Biology of the Province of British Columbia will be convened for the purpose of taking evidence or otherwise causing an inquiry to be made with respect to the allegation(s) herein pursuant to the *College of Applied Biology Act*, S.B.C. 2002, Chapter 68.

**AND TAKE NOTICE** that the allegations against you are as follows:

that you are in breach of the *College of Applied Biology Act*, S.B.C. 2002, Chapter 68, specifically, (statement of the charges being made)

**AND FURTHER TAKE NOTICE** that you, A. Member, (category)., have the right, at your own expense, to be represented by counsel at the Hearing by the Discipline Panel above-mentioned and that you or your counsel shall have the full right to cross-examine all witnesses called and to call evidence in defence and reply in answer to the aforesaid allegation.

**AND TAKE FURTHER NOTICE** that in the event of your non-attendance at the said Hearing that the Discipline Panel may, upon proof of service of the Notice of Hearing upon you, proceed with the taking of evidence or otherwise ascertaining the facts concerning the said allegation, your absence notwithstanding, and may make its findings on the facts and its decision thereof without further notice to you.

**DATED** at the City \_\_\_\_\_, in the Province of British Columbia, \_\_\_\_\_ day of \_\_\_\_\_ of \_\_\_\_\_ this \_\_\_\_\_, 20\_\_.

The Discipline Committee of the  
College of Applied Biology  
of the Province of British Columbia.

Per: \_\_\_\_\_

I. M. Chair, RPBio., Chair

**RE: Professional Conduct – A. Member, (category).**

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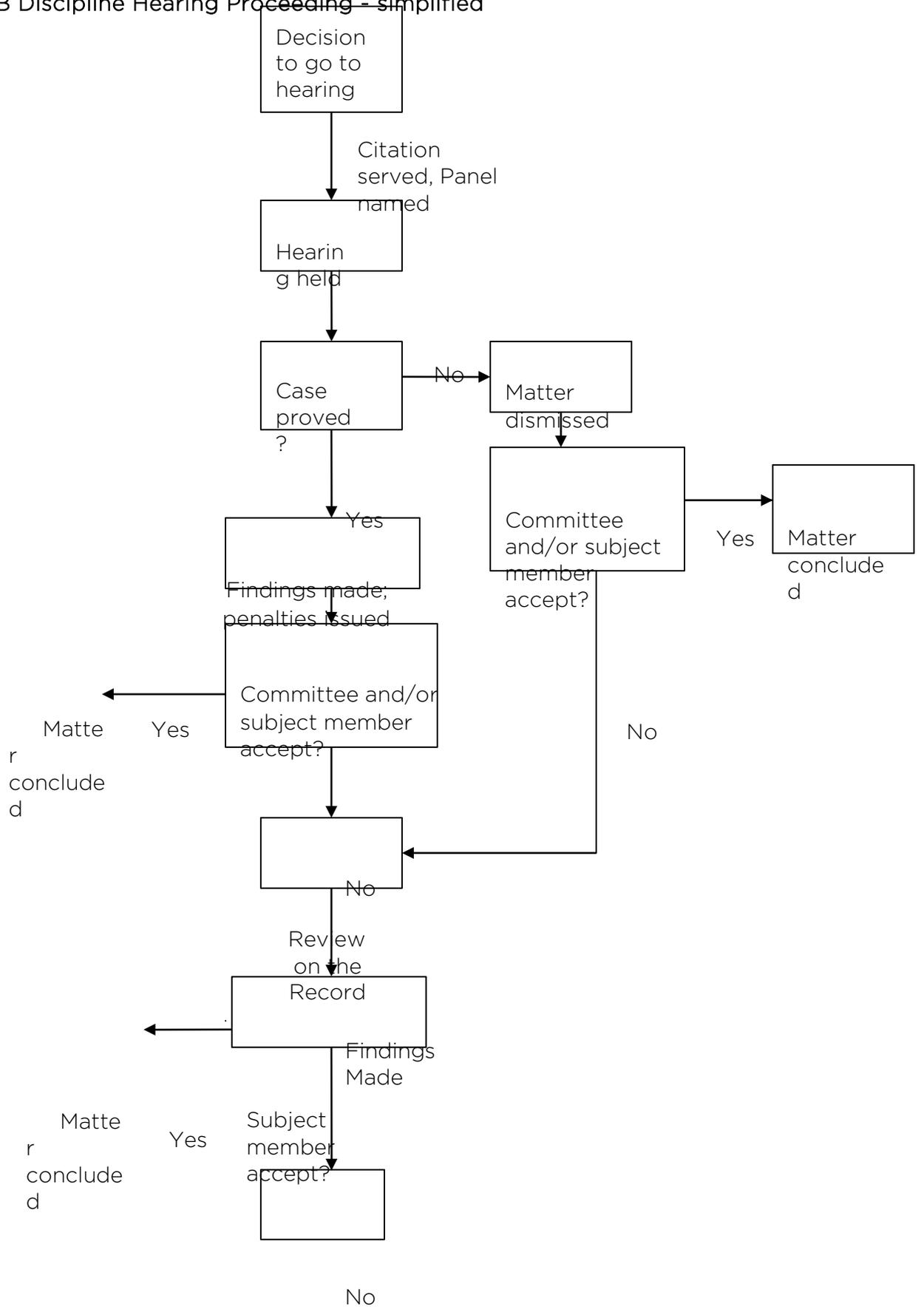
Enclosed for service pursuant to section 24(1)(c)) of the *College of Applied Biology Act*, S.B.C. 2002, Chapter 68, is a Citation advising that a Hearing is to be held at the offices of the College of Applied Biology (CAB). You will be advised shortly as to the date and time of the proceeding, and of the names of the Panel members

You are also advised that you may, now or at any time before the completion of the matter, present a Conditional Admission to the Discipline Committee.. Information on a Conditional Admission follows:

1. The Conditional Admission must be clear as to whether it is intended to address all or only some of the matters which are the subject of the Hearing. In presenting a Conditional Admission, the subject member is admitting to having engaged in the matters which are so named.
2. The Discipline Committee will review the Conditional Admission, and if it is acceptable to the Committee, shall decide the penalty to recommend to the Subject Member. Where the Subject Member accepts the penalty, the admission is recorded and the matter concluded, subject to the terms of the penalty. Where the Subject Member declines to accept the penalty, the hearing process will continue.
3. Where the Discipline Committee decides not to accept the Conditional Admission, the Subject Member will be so advised and the hearing process will continue.
4. If the conditional admission is not accepted, the fact that a conditional admission was made shall not be used against the Subject Member in the hearing.

Copy to: College of  
Applied Biology  
Attention: Registrar

CAB Discipline Hearing Proceeding – simplified

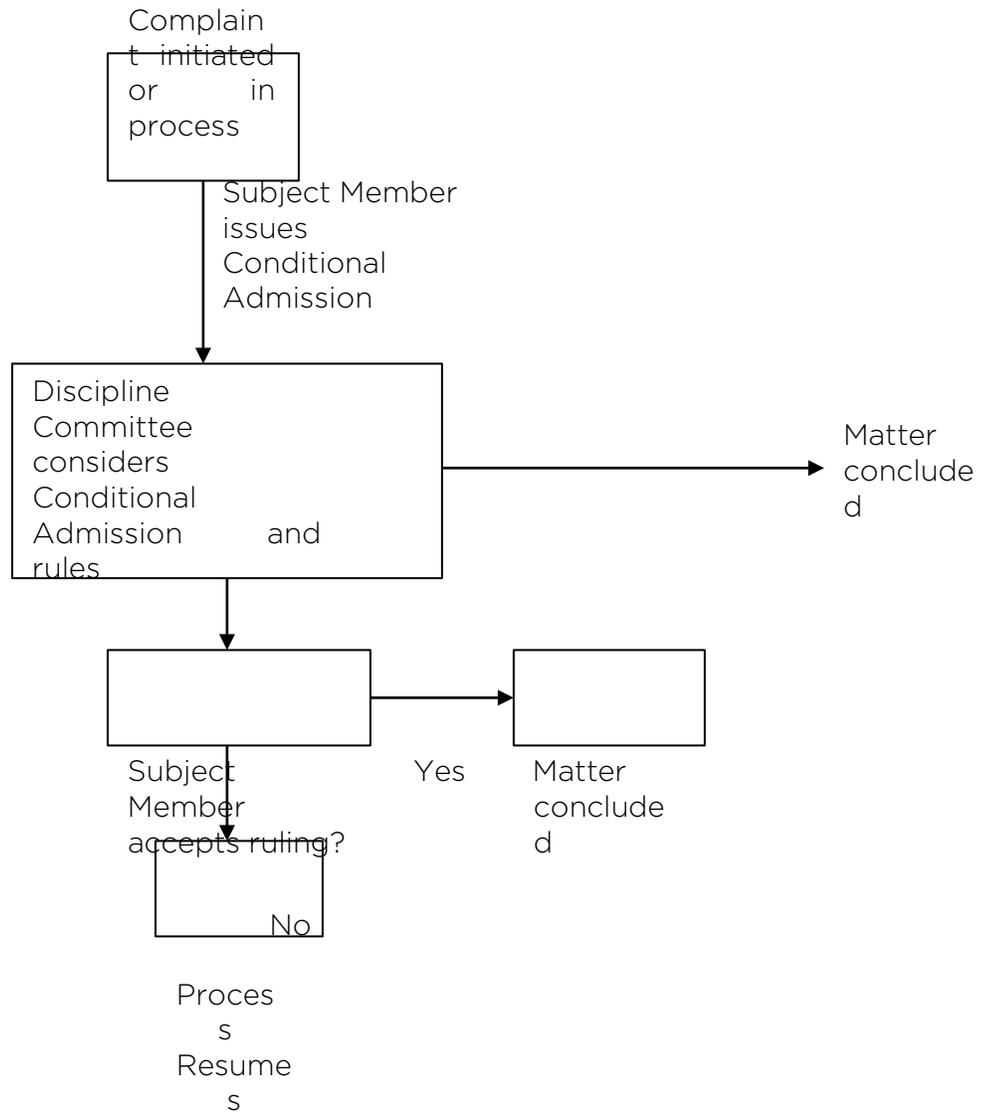


**RE: Professional Conduct – A. Member, (category).**

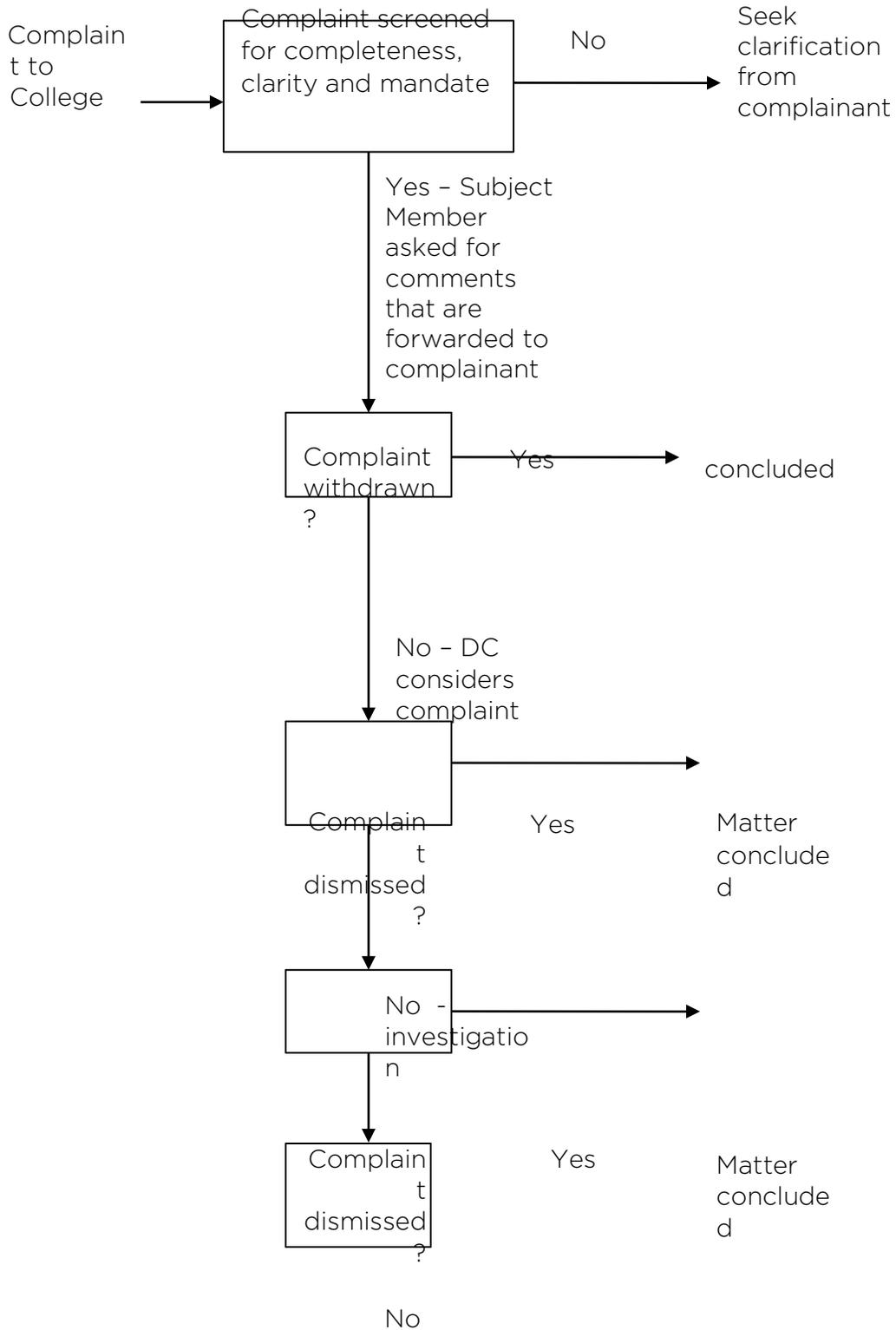
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Appeal to Court  
NB. Appeal limited to law or jurisdiction

At any time prior to the findings being set down, a subject member can make a **Conditional Admission**



## CAB Discipline Complaint Process (Simplified Version)



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issued