

The Association of the Chemical Profession of British Columbia

**DISCIPLINE POLICY**

In Support of Section 3 of the Association of the Chemical Profession of British Columbia By-Laws

Approved by the Board of Directors March 26, 2009

**Table of Contents**

1.0	INTRODUCTION .....	3
1.1	Discipline Committee Terms of Reference.....	3
2.0	FILING A COMPLAINT .....	5
2.1	Receipt of a Written Complaint .....	5
2.2	Discipline Committee .....	5
2.3	Referral to the Discipline Committee .....	5
2.4	Member Opportunity to Comment.....	6
2.5	Investigation.....	6
2.6	Disclosure of Complainant's Name .....	6
2.7	Deliberations of the Discipline Committee.....	6
2.8	Complaint not to Proceed.....	6
2.9	Complaint to Proceed.....	7
2.10	Notice of Hearing.....	7
2.11	Conditional Admission .....	7
2.12	Acceptance of Admission .....	7
2.13	Admission May Be Disclosed.....	8
2.14	Failure to Attend or Remain at a Hearing.....	8
2.15	Disclosure of Evidence .....	8
2.16	Hearing Proceedings to be Recorded .....	8
2.17	Proof of Posting of Notice of Hearing .....	8
2.18	Notice of Hearing to be an Exhibit .....	8
2.19	Scope of Hearing.....	9
2.20	Subject Member Compellable to Give Evidence.....	9

2.21	Decision of Majority .....	9
2.22	Notification of Member .....	9
2.23	Consent of Subject Member.....	9
2.24	Type of hearing (written or oral).....	9
3.0	<b>WRITTEN HEARING PROCEDURE POLICY</b> .....	9
3.1	Party Request for Written Hearing.....	10
3.2	Submission Schedule .....	10
3.3	Failure to File Submissions.....	11
3.4	Content of Submissions .....	11
3.5	Photocopies .....	11
3.6	Meetings of the Discipline Hearing Panel .....	11
3.7	Additional Information Requested by the Discipline Hearing Panel.....	11
3.8	Application to Cross-examine Witnesses.....	12
3.9	Role of Precedent (previous decisions of the ACPBC Discipline Committee) .....	12
3.10	Burden of Proof.....	12
3.11	Public Access .....	12
4.0	<b>ORAL HEARING PROCEDURE</b> .....	12
4.1	Setting the Date.....	12
4.2	Location .....	12
4.3	Statement of Points and Exchange of Documents .....	12
4.4	Witnessess.....	13
4.5	Postponement of the Hearing.....	14
4.6	Evidence.....	14
4.7	The Hearing .....	15
5.0	<b>DECISIONS</b> .....	18
5.1	Decision Rendered to the Discipline Committee .....	18
5.2	Penalties .....	19
5.3	Costs.....	19
5.4	Publication of Decision.....	20
5.5	Request for Review on the Record .....	20

## **1.0 INTRODUCTION**

Part 1, Section 6 of the Society Act [RSBC 1996] c.433 requires that bylaws of a society incorporated under the Act must contain provisions for the following:

- The admission of members, their rights and obligations and when they cease to be in good standing; and
- The conditions under which membership ceases and the manner, if any, in which a member may be expelled.

This policy specifically addresses the above two provisions. A Discipline Committee is established under the authority of Section 3 in the By-Laws of the Association of the Chemical Profession of British Columbia (ACPBC).

### *1.1 Discipline Committee Terms of Reference*

This section restates the Discipline Committee of ACPBC Terms of Reference (as approved by the Board of Directors on December 19, 2007).

#### **1.1.1 Objective**

To adjudicate allegations of unskilled practice or unprofessional conduct against professional members of ACPBC, and thereby maintain levels of competence and ethics in the practice of the chemical profession.

#### **1.1.2 Specific Goals**

- To demonstrate that the Discipline Committee is an effective vehicle in the adjudication of allegations of unskilled, unprofessional or unethical practice in the chemical profession.
- To implement adjudication procedures that reflect an emphasis on natural justice and judgment by peers.
- To act in congruence with the recognized standards of comparable professional organizations in BC and with the Association of the Chemical Profession of Alberta.
- To ensure an efficient, prompt and cost effective adjudication process.

#### **1.1.3 Principal Activities**

- In response to cases forwarded by the Registrar, adjudicate allegations of unskilled practice of the profession or unprofessional conduct by professional members of the ACPBC.
- Recommend to the Board actions to be taken as a result of the findings of the Discipline Committee.
- Prepare for publication the results of discipline cases in formats designed to deter future infractions and to educate the membership.
- Maintain accurate and thorough records of discipline cases to guide the committee members in assessing sanctions.

#### 1.1.4 Structure and Operation

- The Discipline Committee shall consist of:
  - one professional chemist who is a member of the Board; and
  - four other professional chemists who are not members of the Board.
- The Board shall designate one professional member as Chair of the Discipline Committee.
- The term of office of each member of the Discipline Committee shall be three years.  
Members may be re-appointed to a subsequent term.
- A quorum of the Discipline Committee shall consist of the Chair or acting Chair and two professional members.
- The Chair, or in the absence of the Chair, a majority of the Discipline Committee may appoint an Acting Chair who shall have all the powers of the Chair in the absence of the Chair.
- At the end of term, the Chair member will continue in the following year as Past Chair of the Discipline Committee.
- The Discipline Committee shall meet at the call of the Chair.
- The Discipline Committee Chair, or designate, shall report to the ACPBC Board as frequently as necessary to obtain any required approvals of policy, and in any case not less than quarterly.
- A Discipline Hearing Committee will decide any matter by a majority and the decision of the majority is the decision of the Committee. The Chair of the Committee is a voting member. The decision of the Committee will be in writing. The decision of the minority will be in writing.
- Once a decision has been made by the Discipline Committee that a complaint shall precede (see Section 2.9), a Discipline Hearing Panel may be appointed by the Discipline Committee to provide assistance with ensuring the policy as described in this document is implemented efficiently and fairly.
- The Discipline Hearing Panel:
  - shall consist of a minimum of three persons, one of whom must be a member of the Discipline Committee. Any one of the three Panel members can be selected as the Chair by mutual consent.
  - the other two members of the Discipline Hearing Panel must be Professional Chemists;
  - shall report to the Discipline Committee;
  - for implementation of this policy, the Discipline Hearing Panel may be asked to assist with tasks or responsibilities assigned to the Discipline Committee, however the members of the Discipline Committee are responsible for all decisions made.

### 1.1.5 Withdrawal or disqualification of a Committee or Panel Member on the grounds of bias

Where a member of the Discipline Committee or Discipline Hearing 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 will be prohibited from participating in the hearing.

## 2.0 FILING A COMPLAINT

A person may make a complaint in writing where the complainant believes that an ACPBC member has:

- Practiced chemistry in an incompetent manner; or
- Been guilty of professional misconduct, conduct unbecoming a registered member, or a violation of ACPBC's code of ethics.

### 2.1 *Receipt of a Written Complaint*

Upon receipt of a written complaint, the person receiving the complaint shall forward the complaint to the Registrar.

### 2.2 *Discipline Committee*

As per Section 1.1 (above), and in support of Article 13 of the ACPBC By-Laws, the Board shall ensure that the Discipline Committee has been appointed consisting of one professional chemist who is a member of the board, and four other professional chemists who are not members of the board.

### 2.3 *Referral to the Discipline Committee*

The Registrar shall review the complaint to ensure that the complaint concerns a member of ACPBC and where the complaint meets this criterion, forward the complaint within 7 days of making this determination to the Discipline Committee.

The Discipline Committee:

- shall ensure that the matter is within the jurisdiction of the ACPBC in that the complaint alleges professional misconduct, conduct unbecoming a professional member, or incompetent performance of duties undertaken while engaged in their professional capacity, or a breach of ACPBC's Code of Ethics;
- shall ensure the complaint contains sufficient particulars to refer the matter for investigation; and
- may, within 30 business days of receipt of the complaint, request the Registrar to request further information or clarification as required by the Discipline Committee from the complainant.

#### *2.4 Member Opportunity to Comment*

Upon the Discipline Committee being satisfied that there are sufficient particulars set out in the complaint, the Discipline Committee shall request the Registrar forward the information to the Subject Member and request a written response to the complaint, including any information or records in the possession of the member relevant to the complaint, to be received within 30 business days of receipt of the material.

Within 7 business days of receipt of the Subject Member's response, or no later than 3 business days after the time for receiving comments from the Subject Member has expired, the Discipline Committee shall request the Registrar forward the information to the complainant and request if the complainant wishes to make any reply to the member's response, or if the complainant is satisfied with the member's response to the complaint and wishes to withdraw the complaint. All information is to be received by the Registrar within 30 business days of receipt of the material.

#### *2.5 Investigation*

The Discipline Committee may appoint an individual, subject to approval of the Board, to undertake an investigation.

During such an investigation, the person undertaking the investigation:

- may separately interview the complainant, Subject Member and third parties regarding questions relevant to the complaint;
- may gather any additional information or documents relevant to the complaint;
- must pass the information gathered on to the Discipline Hearing Panel (if and when convened);
- may not make an assessment of the credibility of witnesses; and
- may not assess whether or not the member had been guilty of professional misconduct, conduct unbecoming a professional member or incompetent performance of duties, but may decide whether there is sufficient basis to proceed with the complaint, and so inform the Discipline Committee.

#### *2.6 Disclosure of Complainant's Name*

The identity of the complainant may be withheld from the Subject Member during the information collection and investigation procedures to protect the identity of the complainant.

#### *2.7 Deliberations of the Discipline Committee*

The Chair of the Discipline Committee shall bring the complaint and comments forward for consideration at the next scheduled Discipline Committee meeting, or may call a special meeting of the Discipline Committee to discuss the complaint and any comments received.

Notwithstanding the preceding statement, the Discipline Committee must meet to consider the complaint and any comments not more than thirty business days from the expiry date for receiving comments from the Subject Member stipulated above.

#### *2.8 Complaint not to Proceed*

Where the Discipline Committee decides that the complaint is:

- not within the jurisdiction of the Discipline Committee;
- is unfounded; or
- is trivial, frivolous or vexatious and should be dismissed;
- the Committee shall prepare a written report describing the information used to make its decision and stating the reasons for not proceeding to a Discipline Hearing;
- the Committee shall direct the Registrar to:
  - report to the complainant the basis for not proceeding with the complaint; and
  - send a copy of the report to the Subject Member;
- the file shall be closed and sealed;
- the Committee may make recommendations to the Subject Member.

#### *2.9 Complaint to Proceed*

Where the Discipline Committee considers that the complaint should proceed to a Discipline Hearing, the Committee shall:

- issue a citation against the Subject Member in the name of ACPBC.
- inform the Subject Member of its decision and provide the names of the persons appointed to Discipline Hearing Panel (see Section 1.1.4) and its Chair.
- serve the Subject Member with the citation; and
- publish the particulars of the citation, including but not limited to the name of the Subject Member and the nature of the proceeding once the Subject Member has been notified of the direction to issue the citation and the citation has been served.

#### *2.10 Notice of Hearing*

The Discipline Committee, through the Registrar shall issue a Notice of Hearing to the Subject Member. The Notice of Hearing shall be sent via registered mail not less than 30 calendar days prior to the date of the hearing and shall include:

- time and place of the hearing;
- particulars of the complaint or matter of inquiry; and
- membership of the Discipline Hearing Panel and its Chair.

Receipt of the Notice of Hearing, or any other document mentioned in these procedures is deemed to occur 10 days after proof of posting.

After a Notice of Hearing has been issued and served on the Subject Member, the Registrar may disclose to the public and to ACPBC members the notice of inquiry and its status.

#### *2.11 Conditional Admission*

A Subject Member may, at any time before the conclusion of an inquiry, tender to the Registrar, or to legal counsel for ACPBC, a conditional admission of the allegations against him or her.

#### *2.12 Acceptance of Admission*

If a conditional admission is tendered, the Registrar, will, within 7 calendar days of receipt, forward the conditional admission to the Discipline Committee. The Discipline Committee will

decide whether to accept it and will suggest the penalty. The Registrar, will inform the Subject Member of the suggested penalty.

If the Discipline Committee does not accept the conditional admission, or the Subject Member does not accept the suggested penalty the matter will continue in accordance with these rules.

#### *2.13 Admission May Be Disclosed*

Where the conditional admission is accepted by the Discipline Committee and the Subject Member agrees to the suggested penalty, ACPBC shall publish the decision of the Discipline Committee, as the case may be, based on the fact of the Subject Member's admission of the offence(s) and the penalty imposed.

If the conditional admission is not accepted, or the Subject Member does not accept the suggested penalty, the fact that a conditional admission was made shall not be used against the Subject Member in the hearing.

#### *2.14 Failure to Attend or Remain at a Hearing*

If the Subject Member fails to attend or remain at a hearing, the Discipline Hearing Panel, on proof of posting of the Notice of Hearing by registered mail, may proceed with the inquiry in the Subject Member's absence and may make its findings and its decisions without further notice to the Subject Member.

#### *2.15 Disclosure of Evidence*

At any time after the Notice of Hearing is issued and before the Hearing commences, the Subject Member may request in writing to the Registrar, that ACPBC disclose the evidence that it intends to introduce at the Hearing. Upon receipt of a request for disclosure, the following must be disclosed:

- a copy of every document that ACPBC intends to put into evidence;
- a copy of any statement made by a person whom ACPBC intends to call as a witness;
- the report of the investigation arising from the Discipline inquiry; and
- any other evidence that ACPBC intends to rely on which is not included above.

#### *2.16 Hearing Proceedings to be Recorded*

All proceedings at a hearing will be recorded and any party to the proceeding may obtain, at his or her own expense, a transcript of any part of the hearing.

#### *2.17 Proof of Posting of Notice of Hearing*

Before hearing any evidence respecting the allegations set out in the notice of Hearing, the Discipline Hearing Panel will determine whether the notice of Hearing was served in accordance with these rules.

#### *2.18 Notice of Hearing to be an Exhibit*

If the requirements of the rules have been met, or have been waived by the Subject Member, the notice of hearing and proof of service will be filed as an exhibit at the hearing and the hearing shall proceed.

#### *2.19 Scope of Hearing*

The Discipline Hearing Panel may consider at one hearing a Notice of Hearing which contains one or more allegations.

#### *2.20 Subject Member Compellable to Give Evidence*

ACPBC may require the Subject Member to give evidence at the discipline hearing. If ACPBC requires the Subject Member to give evidence, the Registrar will give the Subject Member notice of this fact no less than 5 calendar days prior to the date of the Discipline Hearing.

#### *2.21 Decision of Majority*

A Discipline Hearing Panel will decide any matter by a majority and the decision of the majority is the decision of the Panel. The Chair of the Panel is a voting member. The decision of the Panel will be in writing. The decision of the minority will be in writing. The decision of the Panel will be provided to the Discipline Committee in the first instance and prior to the decision being sent to the Subject Member.

#### *2.22 Notification of Member*

Where the hearing proceeds in the absence of the Subject Member, the Discipline Hearing Panel will notify the Discipline Committee and the Board of its decision. The Board will notify the Subject Member of the decision by registered mail. The Subject Member is deemed to have received notice of the decision 10 days after proof of posting. This section expands the provisions of s.2.14 where a hearing can be held in the absence of a member, and provides a mechanism to notify the member of the results of the hearing.

#### *2.23 Consent of Subject Member*

When Notice of Hearing is provided to the Subject Member, written consent by the Subject Member stating that he or she has read the Disciplinary Policy and agrees to be bound by its conditions in the hearing process, including an assessment of costs, must be obtained before further proceedings can occur.

#### *2.24 Type of hearing (written or oral)*

A disciplinary 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 written submissions (Section 3.0 below). When a hearing by written submission is being considered, the Chair of the Discipline Hearing Panel may request input from the parties before making a decision on whether to proceed in this manner.

Where the Chair decides, after consulting all parties, that a hearing is to proceed by way of written submissions, the Written Hearing Proceeding Policy will apply (Section 3.0 below).

### **3.0 WRITTEN HEARING PROCEDURE POLICY**

The 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:
  - have been dealt with at a previous hearing;
  - are not complex; and/or
  - are purely legal in nature.

### *3.1 Party Request for Written Hearing*

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 Committee as soon as possible in the process and provide reasons in support of this type of procedure being adopted for the particular matter. Whether or not the matter proceeds as a written hearing will be a decision of the Discipline Hearing Panel.

### *3.2 Submission Schedule*

Where the Discipline Panel determines that the matter can be heard fairly by way of written submissions, it 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 the written submissions from the other parties and is given an opportunity to respond to those submissions from parties adverse in interest. The submissions will normally be scheduled to proceed in the following order:

- Applicant's submissions;
- Discipline Hearing panel response;
- Applicant's submissions in reply; and
- Closing comments (no new material to be included).

All submissions must be delivered to the ACPBC office by the dates specified. Once the deadlines have expired for making submissions, the written hearing is over.

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:

- the reasons for extension ;
- the length of the extension; and
- 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 Discipline Hearing 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.

### *3.3 Failure to File Submissions*

If the applicant fails to deliver their written submissions by the specified date, the Discipline Hearing panel may consider the hearing abandoned and so report to the Discipline Committee. If the Subject Member fails to deliver written submissions by the specified date, the Discipline Hearing Panel may make a decision without hearing from the Subject Member.

### *3.4 Content of Submissions*

If a hearing is conducted by written submissions, the parties are required to present their entire cases in writing. The hearing is a "new hearing" of the matter. This means that all evidence (which includes all means of proof including correspondence, maps, charts, graphs, affidavits, studies, reports etc.), legal authorities and argument that the party wants the body hearing the matter 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 Discipline Hearing Panel will consider each party's submissions, weigh the evidence provided and apply the correct burden of proof (see "Burden of Proof", below).

### *3.5 Photocopies*

Three copies of all documents that are to be considered by the body hearing the matter must be submitted by the parties. Photocopying of legislation or policies should be limited to the sections which are considered pertinent and necessary to the Discipline Hearing Panel's decision on the issues raised.

### *3.6 Meetings of the Discipline Hearing Panel*

The Discipline Hearing Panel may meet in person, and/or via teleconference 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 members of the Panel. The only other persons who shall receive information on the matter electronically shall be the members of the Discipline Committee and the ACPBC Board.

### *3.7 Additional Information Requested by the Discipline Hearing Panel*

Upon receipt of the written submissions, the Discipline Hearing Panel may find that further information is required from one or more of the parties in order to make an informed decision. If the body hearing the matter requests additional information from one party, the other party will have an opportunity to respond to that information.

### *3.8 Application to Cross-examine Witnesses*

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

### *3.9 Role of Precedent (previous decisions of the ACPBC Discipline Committee)*

Although the ACPBC and the Discipline Hearing Panel may be bound by the decisions of certain courts, it is not required to follow (is not bound by) its past decisions or the decisions of other administrative agencies. While prior decisions of ACPBC may indicate how the body hearing the matter will view particular types of cases, as a matter of law, each matter must be decided on its merits.

### *3.10 Burden of Proof*

The general rule is that the burden or responsibility for proving a fact is on the person who asserts it. The fact is to be proved on a "balance of probabilities".

### *3.11 Public Access*

In written hearings, the evidence, written submissions and decisions arising from the hearing may be available to the public upon request at cost of \$.25 per page.

## **4.0 ORAL HEARING PROCEDURE**

### *4.1 Setting the Date*

The Chair of the Panel 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 Vancouver or Victoria, BC at a venue to be established by the Chair of the Panel in consultation with affected parties.

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

Where matters are complex, in order to facilitate identification of the main issues and arguments in a hearing and ensure that things proceed in an efficient fashion, the Panel may send a letter to the parties asking for a summary of each party's case (Statement of Points) and their documents.

#### *4.3.1 Statement of Points*

The Panel will request the following information to be contained in the Statement of Points:

- ACPBC:

- The substance of the complaint;
- The results of any investigation and information relied on to bring the matter forward to a hearing;
- Any legal authority or precedent supporting ACPBC's position; and
- The names of witnesses the ACPBC intends to call (if any).

•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; and
- The names of witnesses the Subject Member intends to call (if any).

#### 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. A time limit may be issued with the request for documents. Generally, documents will be required to be presented within two weeks of the request being made.

#### 4.3.3 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 and all other parties, with at least two weeks 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 written statement or report at a hearing, 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.

#### 4.4 Witnesses

Arranging for the attendance of witnesses, production of documents and other evidence at a hearing is the responsibility of the parties. 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.

If production of documents or other items is requested, the Discipline Hearing Committee 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.

#### *4.5 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 their 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; and
- Any other factors that may be relevant.

#### *4.6 Evidence*

Each party will have an opportunity to present evidence to support that party's 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 "clear, cogent and convincing".

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

##### *4.6.1 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.

#### 4.7 *The Hearing*

##### 4.7.1 Role of the Discipline Hearing Panel Chair

The member of the Discipline Committee who has been designated as the Chair of the Panel will be responsible for the general conduct of the hearing.

##### 4.7.2 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 or 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.

##### 4.7.3 Attendance of the Public

The Hearing is open to the public.

##### 4.7.4 Legal Counsel

The Panel on behalf of the ACPBC and any of the parties can be represented by legal counsel. 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 Committee;
- Question witnesses.

##### 4.7.5 Swearing-In

When a witness and/or party is called upon to testify, the person may be asked voluntarily 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 of their choice in their right hand); or
- 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 right hand palm forward in front of them).

##### 4.7.6 Documents as Evidence

If a party will be referring to a document that was not provided to the Committee 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 for, 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.

#### 4.7.7 Procedure at Hearing

The hearing is conducted in a formal manner generally following the procedures used in a court proceeding. The following format will generally be followed:

- The Chair of the Panel will begin the hearing by identifying the Panel members conducting the hearing and the official recorder appointed to record the proceedings. The Chair will swear in the official recorder.
- The Chair will state the authority for the Panel to conduct the hearing and identify the subject matter of the hearing.
- The Chair will invite those parties in attendance to introduce themselves for the record.
- 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.
- 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.
- The Chair will then ask the parties for their opening statements in the following order:
  - ACPBC - 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 Committee.
  - The Subject Member's 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.
- The Chair will advise ACPBC to proceed with the presentation of evidence. The presenter and witnesses will be sworn in. The ACPBC 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.
- 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 ACPBC 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.

- The ACPBC representative will have the opportunity to call "reply evidence" (e.g. a witness to respond (reply) to evidence tendered by the other party).
- 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:
  - ACPBC;
  - Subject Member; and
  - reply by ACPBC.
- No new evidence will be accepted in the closing statement.
- The Chair will advise the parties that the hearing of evidence is concluded and the record is closed.

#### 4.7.8 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.

#### 4.7.9 Adjournments

An adjournment is a discontinuation of a hearing which is 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; and
- any other factors which may be relevant.

#### 4.7.10 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 “clear, cogent and convincing”.

#### 4.7.11 Attendance by Media

Radio, television, filming, video-taping or recording of proceedings may be permitted at the discretion of the Panel in consultation with the ACPBC Board, subject to any terms and conditions that may be imposed. Permission should be sought prior to the commencement of the hearing.

#### 4.7.12 Conditional Admission

The rules provide that a Subject Member may, at any time before the conclusion of an inquiry, tender a conditional admission.

### **5.0 DECISIONS**

Only those who sat on the Discipline Hearing panel that heard the complaint will make the decision. In making its decision, the Panel members are required to determine, based on clear, cogent, convincing evidence, what occurred. The Panel will evaluate the evidence presented and apply the Code of Ethics and any relevant practice standards. The Panel must provide written reasons for a determination about the conduct or competence of the Subject Member, and so record any order for costs.

A Panel must do one of the following in its decision:

- Dismiss the citation;
- Determine that the respondent has committed one or more of the following:
  - professional misconduct;
  - conduct unbecoming a practicing member, or;
  - incompetent performance of duties.

#### *5.1 Decision Rendered to the Discipline Committee*

The Discipline Hearing Panel will provide its majority decision to the Discipline Committee copied to the ACPBC Board of Directors as a written report, and any minority opinion will also be included in a written report. The determination of Penalties shall be the responsibility of the Discipline Committee which will make a recommendation to the ACPBC Board of Directors for action based on their recommendation the decision of the Discipline Hearing Panel.

## *5.2 Penalties*

Where the Subject Member, other than a Chemist-in-Training, is found liable for any of the allegations in the Notice of Hearing the Discipline Committee must recommend one or more of the following:

- Reprimand the respondent;
- Impose conditions on the respondent's registration as a member of ACPBC;
- Suspend the respondent's membership in the Association:
  - for a specified period of time;
  - until the respondent complies with a requirement under paragraph (f), or;
  - for a specified minimum period of time and until the respondent complies with a requirement;
- Rescind the respondent's membership in ACPBC;
- Require the respondent to:
  - complete a remedial program to the satisfaction of the Discipline Committee, or
  - appear before the Discipline Committee and satisfy the committee that the respondent is competent to practice chemistry.

Where a Chemist-in-Training is found liable for any of the allegations in the Notice of Hearing the Discipline Committee may recommend one or more of the following:

- reprimand the Chemist-in-Training; and
- rescind the enrolment of the Chemist-in-Training.

## *5.3 Costs*

Costs that can be assigned to a Subject Member include the costs of any or all of the following:

- a discipline investigation;
- the hearing; and
- the review.

The costs assessed must not exceed the actual costs incurred by ACPBC during the course of the investigation, hearing and review, and may include the salary costs for employees or officers engaged in the process.

The amount of costs assessed against a Subject Member may be recovered as a debt owing to ACPBC and, when collected, such costs are the property of ACPBC.

### *5.3.1 Considerations in Assigning Costs*

Factors the Committee will consider in deciding on an order for costs, can include the following circumstances:

- Where the action of the Subject Member, or the failure of the Subject Member to act in a timely manner, results in prejudice to the Association or the complainant;
- Where a Subject Member unreasonably delays the proceeding; and
- Where a Subject Member has acted incompetently or unprofessionally.

#### *5.4 Publication of Decision*

The Discipline Committee's decision will be published by ACPBC upon its acceptance by the Board of Directors.

#### *5.5 Request for Review on the Record*

##### **5.5.1 Subject Member**

The Subject Member may within 30 days of receiving notice of a determination, order or decision of the Discipline Committee apply in writing to the ACPBC Board for a review on the record.

##### **5.5.2 Discipline Committee**

Within 30 days of the date of the determination, order or decision of the Discipline Committee, the Discipline Committee may refer the matter to the ACPBC Board for a review on the record.