



**Discipline Process of
Forestry Professional Associations
Comparison Report**

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Acknowledgment to the Discipline Committee who prepared this report.

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1. Introduction

The Forestry Professions Act was passed in April 2006 creating The Association of Saskatchewan Forest Professionals (ASFP). The Association has many important responsibilities, including power to discipline members who are professionally incompetent or have committed professional misconduct. The Forestry Professions Act is typical of most legislation in that the Act provides the general framework for the discipline process. While the association's bylaws do provide more clarity, the association does not have policy and procedures for the discipline process. The ASFP Council has directed the committee chairs for the Professional Conduct Committee and Discipline Committee to develop policy and procedures for their respective committees. Both committees decided that cross jurisdictional review would provide important background information and the opportunity to learn from other jurisdictions.

This report is on the hearing and discipline processes of other jurisdictions. A companion report by the Professional Conduct Committee will address the complaint to investigation processes of other jurisdictions.

2. Current Process in Saskatchewan

Saskatchewan's Forestry Professions Act sections 24 to 38, describe the discipline process for professional incompetence or professional misconduct. Figure 1. portrays the key components of this process.

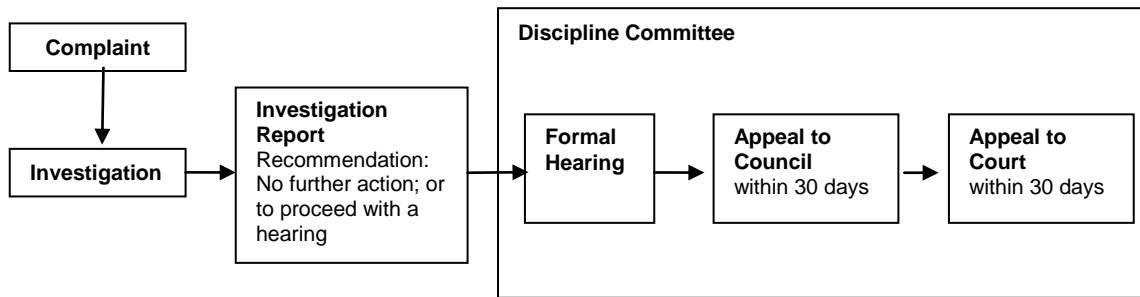


Figure 1.

Key elements from the Saskatchewan Forestry Professions Act about the Discipline process include:

- The Professional Conduct Committee consists of at least three persons appointed by council and whose duties include (sections 26(1) and 27):
 - Review complaints , Conduct investigations, Complete a written report to the Discipline Committee recommending either to proceed or not proceed to a formal hearing, Providing copies of the report to Council, the complainant, and to the member under investigation

- The Discipline Committee consists of at least three persons appointed by council and shall include the public member appointed by the Lieutenant Governor in Council pursuant to section 9 (section 28(1)). A member can not be a member of both the Professional Conduct Committee and the discipline committee. (sections 26(2) & 28(2))
- When proceeding with a hearing the Registrar shall at least 14 days before the date of the Discipline Committee hearing (section 29(1)) S
 - Send the formal complaint to the defendant
 - Serve notice of the hearing of the Discipline Committee
- At the Discipline Committee hearing:(section 29)
 - The Professional Conduct Committee shall lead or direct the prosecution.
 - The defendant may, at his own expense, be represented by counsel.
 - The discipline committee, at the expense of the association, may employ any legal or other assistance it considers necessary.
 - Testimony is under oath, with full right to examine, cross-examine and re-examine all witnesses and to present evidence. There are also powers to subpoena.
 - Discipline Committee can proceed if the member fails to attend the hearing
 - Discipline Committee may exclude members of the public or the person who made the complaint other than the member whose conduct is the subject of the hearing.
- Disciplinary powers of the Discipline Committee (section 30(1)):
 - Expel and remove the member from the association and strike the member's name from the register.
 - Suspend member from the association for a period of time.
 - Suspend the member pending the satisfaction completion of any conditions specified.
 - Allow the member to practice but;
 - Place restrictions on specific types of work,
 - Require successful completion of specified classes or courses.
 - Obtain medical treatment, other treatment or counseling
 - Reprimand the member.
 - Make any other order the Discipline Committee considers just.
- Additional powers to the above orders the Discipline Committee may order the member to pay (section 30(2)).
 - A fine not exceeding \$5,000, and
 - The cost of the investigation, hearing and the related costs, including the expenses of the professional conduct committee, the Discipline Committee and the cost of legal services and witnesses
- A member may appeal the decision or any order of the Discipline Committee to council with in 30 days. On hearing an appeal Council may (section 34):
 - Dismiss the appeal
 - Quash the finding of guilt
 - Direct a new hearing
 - Vary the order
 - Substitute the order with its own replacement decision

- Make an order to costs as it considers appropriate.
- A member whose conduct is subject to an order of Council pursuant to section 34 may appeal that order to a judge of court within 30 days after the date of the order of council.(section 35)

3. Approach Used in Comparing Jurisdictions.

Objectives:

The objectives for comparing other professional forestry association’s discipline policies and procedures include:

- Compare and contrast policies and procedures that might be suitable for adoption or modification for use by the ASFP.
- Ensure that discipline policies and procedures developed by the ASPF are within the general norms of the forestry profession in Canada.
- Provide an educational reference tool for ASFP members.

Selection of Jurisdictions:

The review team decided that provinces to include in review should cover a range from well established associations with large memberships, to smaller and younger associations. A secondary criteria was several members of the review team had practiced forestry in other provinces and were familiar with that province’s forest management systems and professional associations.

The Provinces selected for the review were:

British Columbia

This province’s association was established in 1947 and has about 5,300 members with “right to practice” legislation for many decades. The codified approach of the Forest Practice Code, which often outlined what was required by Forest Professionals, has now been replaced with a results base management approach. This shift has created new challenges for their association and members.

Alberta

This association (college) has about 750 members and was established in 1985 with voluntary registration and protection of title. In 2000, changes included mandatory registration, protection of title, and continuing competence program requirements.

Ontario

Originally established in legislation in 1957 this association has about 1,000 members. In 2000, the 1957 legislation was replaced with the Professional Forester Act. The new act requires that practitioners of professional forestry in Ontario be licensed “right to practice” and established in the Ontario Professional Foresters Association (OPFA) as the regulatory body.

New Brunswick

There are about 300 members as defined in New Brunswick Forester Act of 2001, the Act provides for “right to title” and replaced the 1958 Act. This association is actively moving towards “right to practice”. The responses recorded in this report are based on a draft copy of a proposed new Act.

Nova Scotia

Established in legislation 2001, Nova Scotia Association, is an organization of about 100 members with “right to title” legislation.

Newfoundland

Not established in legislation, the Registered Professional Forest Program is closely linked to the CIF program for this province. Those in the program (about 60) are required to meet requirements similar education and experience requirements as other professional forestry associations in other provinces. Successful applicants then receive a certificate designating them as a Registered Professional Forester in Newfoundland and Labrador.

Method

A standard list of questions about the discipline and hearing process was prepared by the review team. Each researcher would complete the questionnaire using information available from the association’s website. Follow-up interviews were then scheduled usually with the registrar or key council member to review the questions. Key questions from the completed questionnaires were then compared. The completed comparisons and questionnaires are included in appendix 1.

4. Discussions of Themes from the Questionnaire:

Theme - Alternate Dispute Resolution:

After the initial screening of a complaint or conclusion of an investigation, most jurisdictions have a mechanism to resolve the situation without moving on to a formal hearing. The two most common approaches to reach a resolution include: a mediation/arbitration approach which seeks an agreeable resolution; and an approach where the member agrees with the complaint and accepts or proposes a settlement.

In these alternate dispute resolution approaches, the registrar is involved along with a conduct committee or an advisory committee to determine if the proposed settlement is reasonable. The final settlement is then “officially” signed-off by the Discipline Committee or the Discipline Committee Chair.

Practices of note.

In some jurisdictions settlements are accepted anytime including during the hearing, but before the hearing makes its final ruling. In others jurisdictions once the hearings commence this alternate resolution avenue is closed.

Theme - Discipline Committee Membership:

Provinces with large memberships and those with right to practice legislation tend to have more formalized roles for committee chairs and committee members. Examples include written terms of reference and detailed documented policy & procedures manuals.

Discipline Committee members and the hearing committee members tend to be the same individuals. For a given hearing, the hearing panel members are selected from the Discipline Committee pool and/or a standing discipline sub-committee list. In most jurisdictions the hearing panels include a public member and the committee has access to their own lawyer. This lawyer is not part of the hearing panel but is available to assist the hearing/discipline chair with procedural elements of the hearing and on points of law.

Practices of note.

Many jurisdictions develop a standing list of individuals willing to participate for discipline/hearing work. This list is composed of seasoned professionals from a wide range of practice areas and may be restricted to individuals with a minimum number of years of forestry experience. More than one association provides training in natural justice for discipline/hearing members and has developed terms of reference documents for their discipline committee.

Theme - Hearing Proceedings.

Association hearings are designed to be less formal than court, allowing participants to present their case and evidence to a panel of peers. Most associations allow for the use of lawyers in three roles.

- Association lawyer to assist the hearing panel with procedural issues, points of law questions and similar legal advice. This individual is not part of the panel or involved in the decision making of the panel, but may be used to review the written judgment for legal clarity before being released.
- Association lawyer to support and/or lead the prosecution against the member. The prevailing practice is not to use the same lawyer to assist the association's prosecution and the hearing panel.
- The defendant's lawyer.

Most associations do not have lawyers on staff, they use their lawyers on retainer and/or hire lawyers for work in respect to a discipline hearing. In jurisdictions with large memberships and with "right of practice" legal representation is common at hearings.

Most associations support the concept of discipline hearings being open to the public. However, in practice most hearings while technically open have not generated much interest with only the participant's involved attending. Concerns about damaging a defendant's livelihood, with a public hearing have not become an issue as most associations because of potential cost issues will only take forward strong cases to the hearing phase.

The original complainant is usually not involved in the hearing unless providing testimony. The official formal complaint severed by the registrar, is between the Association and the defendant.

Hearings usually accept written and oral testimony with the proceeding recorded by a professional court recorder.

Some jurisdictions have written detailed procedures on how to conduct the hearing while others rely on the legal professionals involved.

Practices of note.

Most jurisdictions have by-laws, policy and procedures associated with the hearing process. The level of detail varies between provinces, but all include some basic timeline information. Typical topics include:

- Number of days notice required in advance of hearing date
- The exchange of evidence, documents and information between parties
- Agreed statement of facts.
- Use of witness statements and affidavits
- Procedures during the hearing.
- Adjournments (reasons and length)
- Subpoena abilities, compelling the accused to testify.

Theme - Hearing Findings & Orders.

All jurisdictions provide a written decision and usually include the order or sentence at the same time. When the association has employed a lawyer to assist the hearing panel, the lawyer may be asked to review the decision before it is released for legal clarity. This lawyer is not part of the decision making process.

Most associations do not have guidance documents to assist the hearing panel on making its decision or in determining penalties. Most rely on general principles, such as public good, sense of fairness and whether the finding and order would stand up to appeal. One jurisdiction does have guidance on what factors to consider when making the order.

When making orders the options are clearly found in the association's legislation along with which costs can be assigned. In the generic model when a defendant is found guilty his order will include paying for the hearing and costs of the association. One jurisdiction is required to consider financial hardship when assigning costs.

Conversely, if the defendant is found not guilty, the association will be responsible for their own costs and in one jurisdiction the association may be ordered to cover some or all of the defendant's costs.

What is included in the costs varies between jurisdictions. Hearing costs usually include the cost of the room, hearing recorder cost and may include the cost of the association lawyers and experts, the wages and expenses of the witnesses and hearing panel members. In some jurisdictions assignable costs can also include the investigation costs.

The magnitude of potential costs of a discipline hearing can greatly influence the number of cases that are brought forward by the association or are settled early before a formal hearing or investigation.

Practices of note.

Some jurisdictions have expanded their by-laws or code of ethics to define what constitutes professional misconduct, professional incompetence and the accepted standards of practice. This can help with determining if a complaint is founded and with the interpretation of what constitutes an offense during a discipline hearing.

A few jurisdictions reserve the option to reconvene the hearing panel to hear recommendations/arguments from the defense and prosecution on the appropriate penalty/sentencing. This option is made available for when the offense is particularly serious. Some jurisdictions have defined in writing what costs are associated with the discipline process and if these costs may or will be routinely be part of the decision order.

Theme - Appeal Process:

The appeal process varies between provinces but most jurisdictions only allow appeal to court within 30 days. Alberta and Saskatchewan allowed appeal to council and the member can then appeal council's decision to court.

Appeals do not appear to be an important process, with the exception being Alberta who developed a detailed flow chart and procedures. This is likely a reflection of the small number of actual hearings in most provinces.

Practices of note.

In jurisdictions where appeal can only be made to court there are often constraints listed in their Acts describing what items can be appealed such as: points of law only, magnitude of the penalty, and if new evidence be presented.

For Saskatchewan it is recommended that the appeals process be more fully described and mirror the appeal process of The *Court of Queen's Bench*.

Theme - Publication of Results:

Publication of results is important as both a deterrent and in education of the membership who can then apply this knowledge to their everyday work.

A few jurisdictions are currently publishing the outcomes of their hearings by providing short digests and posting these digests on their website. These digests are short documents outlining the nature of complaint and the final outcome. Names are usually withheld, except in the case of a guilty verdict. Most of the jurisdictions interviewed indicated that they plan to publish outcomes in the future. One province publishes the whole decision complete with names of everyone involved.

Practices of note

Some jurisdictions who publish hearing outcomes also publish complaints and investigations that were dismissed.

Digests tend to have a standardized format with instructions provided to the registrar for the creation and distribution of digests to the membership.

Theme – Monitoring

The monitoring of the individuals that have been found guilty and completion of an order can be as important as the case itself. The Registrar or Executive Director are usually assigned the task of monitoring the completion of an order. It appears most jurisdictions have not experienced any problems with members completing the orders.

Practices of note.

In one interview it was suggested that the Registrar may need to go to council or the Discipline Committee for additional direction when dealing with a member delinquent in completing the conditions of an order.

It maybe problematic for Saskatchewan with Right to Title to enforce orders as it doesn't affect the person's ability to work as opposed to Right to Practice provinces.

Theme - Miscellaneous Practices:

In many associations the Registrar is the gate keeper of the entire process. The Registrar's role often begins with receiving an inquiry about a possible complaint and depending on jurisdiction the Registrar takes either a leadership or supportive role to ensure the entire process is on track. Responsibilities of the Registrar often include making arrangements for investigations, interviews and arrangement for the hearing and in supporting the various committees. Roles also include issuing the formal correspondence of the association, such as the official charge of the association against the member and publishing summaries of completed cases.

Practices of note.

Where the Registrar does the initial screening of a complaint he has access to guidelines for acceptance and access to the Professional Conduct Committee Chair, or other committee members for advice.

Where alternate dispute resolution is used and a proposed settlement is reached, usually the settlement is reviewed and/or approved by another group of the membership to ensure fairness (i.e. Discipline Committee Chair or committee).

Monitoring of the association general membership for professional misconduct or professional incompetence is an important role. Some jurisdictions in addition to continuing education audits, are experimenting with "practice reviews" of members.

Most jurisdictions have flowcharts outlining their discipline processes. It is common to have a generic overview flowchart, followed by more detailed flowcharts for individual steps in the process. In these flowcharts the registrar's role in the discipline process is well documented.

5. Conclusion and Recommendations.

The comparison of jurisdictions it has revealed that provinces with large memberships and provinces with "right to practice" legislation tend to have formalized documentation of their discipline process. They treat hearings as serious affairs often with legal counsel present. Smaller jurisdictions and those with only "right to title" tend to have less detailed documentation and

consequently more flexibility. The lack of detailed documentation is also a reflection of the infrequency of complaints actually reaching the hearing stage.

There are several practices and approaches from other jurisdictions ASFP should consider for use. Doing so would mean developing some generalized policies and guidance information as well as a few amendments to the existing bylaws. Policy and guidance documents developed for Saskatchewan should not be overly detailed or complex and should fit the Saskatchewan context. The following are the authors recommendations based on the themes presented.

Alternative Dispute Resolutions:

1. Most provinces have an alternative dispute resolution process in place to try and reach an equitable solution without the need for a formal hearing. This alternative dispute resolution system should be developed by the Professional Conduct Committee as this committee would be the ones recommending the use of the alternative dispute resolution process (or even perform the mediation)
2. The final decision from an alternative dispute resolution process should be signed off by those who were not involved in the negotiations or mediation process, such as the Discipline Committee.

Discipline Committee Membership

3. ASFP should develop a pool (8-10 people) of seasoned professionals (with over a minimum of 10 years of forestry experience) to be available for hearings.
4. Develop a policy outline the qualifications to become member of this pool, etc .
5. Provide training and refresher training in natural law for the pool members.
6. Develop a Terms of Reference for the Discipline Committee.

Pre/Hearing, Hearing Proceedings

This is the most important work of the Discipline Committee and some general guidance and procedures should be developed.

7. Develop procedure process for conducting the hearing similar to New Brunswick's 10-12 procedures. Some generic single paragraph descriptions similar to Ontario association's website (disclosure, accepting new evidence during a hearing) would also be desirable. This document will be very helpful as it would be unlikely in the near term that a Saskatchewan discipline hearing panel would hire its own legal assistance for a hearing.
8. Hearings should be open to public and policy should be developed to more fully described/expand on what are the grounds for exclusions of individuals or the public (privacy/financial reason for example).
9. Change ASPF bylaws 92 & 93 to provide clarity on who writes and issues the "official charge" after the conclusion of the investigation. It should be the Professional Conduct Committee not the Discipline Committee (as currently in the bylaws). The Discipline

Committee believes they should arrive at a hearing without any prior knowledge of the case or preconceived opinions.

10. Define clearly the boundaries and responsibilities between the professional conduct committee discipline committee, and the ASFP Executive in the decision process to proceed (or not) to with a case. Part of this decision is based on the likelihood of success and the financial risk to the Association. The Discipline Committee believes they should not be involved in this decision, rather is should act as the jury of peers. This decision should be made by the Professional Conduct Committee Chairman and the ASFP Executive Director.

Findings and Orders.

11. In lieu of any formal professional standards developed by the ASFP, both those conducting investigations and those sitting on the discipline hearing panel would benefit from some generic guidance. This generic guidance document for ASFP would mimic the information as found on the Ontario Association's website. This consists of single paragraphs on topics such as:
 - a. What is the nature of misconduct, competency.
 - b. Things to consider when making a ruling (ie offense severity, defendant's past history, financial hardship, etc)
 - c. The punitive purpose behind the various options available (i.e. suspension, coursework, restricted practice).
12. Develop a written cost recovery policy where:
 - a. The Association may pay defendants legal costs if the defendant is found not guilty. This would add fairness/balance to the system, but might require the creation of a legal fund for hearings.
 - b. The Association may recover some or all costs if a defendant is found guilty.

Appeals

13. For Saskatchewan it is recommended that the appeals process be more fully described and mirror the appeal process of The *Court of Queen's Bench*.

Publication of Results

14. Develop a policy document that describes how decisions are publicized and that the Association will:
15. Produce digests of all completed cases and publish them on the ASFP website.
16. Post the entire judgment on the ASFP Associations website.
17. Mediated disputes are published on the ASFP Associations website as digests.
18. Describes when and if names will be protected.(usually not protected)

Monitoring Orders.

19. It is assumed the ASFP registrar will conduct the monitoring of orders (payment of fines, fulfillment of hearing conditions, etc). Recommend no further action.

Miscellaneous Practices

20. After current priorities are completed, the Professional Conduct Committee should develop a member practices review program.
21. A generic flow chart which outlines the entire discipline process (from the initial complaint, investigation, hearing, appeal) should be provided to the membership. Detailed flowcharts should be developed for some key process. These should be placed publicly online for transparency reasons.

Finally, some internal debate existed between the authors over whether the discipline hearing has the ability to make any restricted practice orders. On the one hand the Act provides these powers to the Discipline Committee, however in a “right to title” environment, can any decisions be made over a member’s “right to practice” (i.e. to perform forestry work) ? The answer to this question impacts the need for many of these recommendations.

- (end)-

Appendix 1.

Key Questions Comparison

a) What are the key Functions of the discipline committee

- Hearing investigations
- Making orders
- Ordering an investigation (if so when)
- Other? i.e., meetings, training, etc.

New Brunswick

Discipline Committee conducts hearing to review findings of the complaints committee, conducts hearing with the complainant and the member for determining misconduct, and assigns penalties when appropriate.

Nova Scotia

The purpose of the Discipline Committee shall be to conduct hearings to review the findings of the Investigation Committee with the complainant and with the Member; determine misconduct of the Member; and where necessary, to assign appropriate penalties against the Member.

Alberta

Hearing investigations, making orders, make requests for further investigations. There is training offered to members of tribunal list and is recommended but not required (hasn't been an issue with folks not attending)
No meetings as it isn't a formalized committee many members of the list actually don't know each other. This is intended to help prevent bias.

Newfoundland

No committee. The Registered Professional Forester Executive retains the right to deny, revoke, suspend or otherwise act upon the Registered Professional Forester status of an individual when that person is not in compliance with stated requirements and procedures. Any Registered Professional Forester whose registration has been denied, revoked or suspended has the right to appeal the decision of the Registered Professional Forester Executive, with the exception of appeals based on the nonpayment of fees.

British Columbia

From Terms of reference

- Meet as needed, but at least once annually
- Over site function of the discipline hearing process, and may report back to council the effectiveness of process policies, The Act and bylaws
- Hearing panel may be drawn from DC for hearing or ruling/acceptance of settlement proposal from Alternative complaint resolution. ~ practice is always from DC
Panel writes determination for the Chair of the DC to review and comment and then to the registrar when finalized (*also reviewed by lawyer*)

Ontario

- hearing, considering and deciding on matters requiring disciplinary action against members and former members of the Association;
- imposing penalties where deemed appropriate;
- directing the Registrar to implement actions/penalties; and
- hearing and deciding appeals against penalties and on applications for reinstatement of licensed privileges.

b) Do you have an agreed statement of facts process (i.e., both parties formally agree on key information, and points of evidence before the hearing)

New Brunswick

Nothing stated

Nova Scotia

I don't believe so. See below.

6.02 - DISCIPLINE PRE - HEARING

When a complaint is deemed to be one that requires a Disciplinary Hearing (the "Hearing"), the President shall engage a lawyer (legal counsel) who shall assist in the wording of the charge. The charge must be specific in regards to the offence, time and place. The charge shall be signed by the President and sent to the accused Member by registered mail with Notice that a hearing shall be held at a specified time and place. The accused Member shall be given at least two weeks (14 days) from the date of the Notice of Hearing before the hearing is held. The accused Member is entitled to their own legal counsel. All proceedings after the pre-hearing shall be recorded by a qualified individual as determined by the President. All witnesses must be sworn before giving evidence.(again it would seem to be logical to provide for agreement on key points of evidence, but it is not currently provided for)

Alberta

Yes there is a process for agreed statement of facts. Similar process to ACR.

Newfoundland

N/A

British Columbia

Yes

Ontario

Not prior to the hearing. Section 33 of the Professional Foresters Act, 2000, requires that findings of fact by the Discipline Committee be based exclusively on evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the Statutory

Powers Procedure Act. These sections mean that rules of evidence for Discipline hearings under the Professional Foresters Act, 2000, are more relaxed than rules of evidence for civil trials or for discipline hearings for some other professions including the health professions. For example, s. 16 of the Statutory Powers Procedure Act enables the Committee to take notice of facts and opinions (without receiving evidence) including any generally recognized scientific or technical facts, information or opinions within its scientific or specialized knowledge.

c) What does the Discipline Committee do with the decision once it is made?

New Brunswick

Forwards to the Registrar

Nova Scotia

The accused is informed in writing. As follows:.

(s)The accused Member is informed in writing regarding the decision and penalty;

(t)The Registrar is instructed by the Discipline Committee Chairperson to see that the penalty, if any, is carried out.

Alberta

The Decision is given to the hearings director and from there to all applicable parties: complaints director, registrar, IP, complainant and the Minister of Justice and Attorney General if directed

Newfoundland

N/A

British Columbia

Registrar forwards to the member, and publishes a digest

Ontario

The discipline committee is required to serve its decision, with reasons, on the parties and the complainant. If the hearing was closed, the decision can be served on the complainant without reasons, at the discretion of the committee

d) What guidance is used when making an order (i.e. any sentencing guides)

New Brunswick

8.00 - PENALTIES AND SANCTIONS

The Discipline Committee may assign, but is not limited to, the following penalties on Members at the conclusion of the Discipline process:

- (a) Suspension (1-3 years);
- (b) Expulsion;
- (c) Probation (with/without mandatory supervision) - from one to three years;
- (d) Fines (from \$500.00 to \$10 000.00);
- (e) Costs of proceedings including hearings and investigation;
- (f) Costs of legal counsel;
- (g) Public apology;
- (h) Education/training; and
- (i) Payment for costs of investigation

Nova Scotia

Nothing in the act provides for guidance; however, there is a number of sentencing options detailed including reprimands, fines to a max of 10,000, suspension, revoke the right to practice...

Alberta

An order is solely the responsibility of the hearings tribunal. However, orders must make sense and be fair. They must withstand the scrutiny of lawyers.

Newfoundland

Unknown

British Columbia

No guidelines

- Try to be reasonable and fair
- Full cost recovery

Ontario

There is quite a bit of guidance on witness credibility as “witness credibility is often the basis of the committee’s decision”

There are three things a member can be found guilty of: professional misconduct, unskilled practice of forestry, and incapacity.

There are several possible orders that can be given: revocation of registration; suspension; terms, conditions, and limitations; reprimands; fines; or a postponed imposition of penalty.

Several factors need to be considered in making an order: nature of the Misconduct or Incompetence; Prior Decisions; Prior Conduct by Practitioner; Subsequent Conduct of Practitioner; Conduct of Practitioner’s Defense; Character of Practitioner; or, Effect of Order on Practitioner;

e) Who does the monitoring of the order?

New Brunswick

Does not state in the Act; however, this would likely be the Executive Director.

Nova Scotia

The Registrar is instructed by the Discipline Committee Chairperson to see that the penalty, if any, is carried out.

Alberta

Registrar as representative of the college

Newfoundland

Unknown

British Columbia

Registrar

Ontario

Not defined

f) When terms of the order are met, does the professional or discipline committee sign off?

New Brunswick

Does not state

Nova Scotia

This is not specified, but there should be a written decision of the committee that the terms of the discipline have been met before reinstatement etc. This should be sent to the Registrar.

Foresters Act Re-instatement

26 (1) A person whose membership has been cancelled pursuant to this Act may apply to the Discipline Committee for re-instatement as a member and the Discipline Committee shall, subject to subsection (2), hear the application and make such order as the Committee considers proper.

(2) No application pursuant to subsection (1) shall be heard before the fulfillment of the penalty assigned by the Discipline Committee or the date of the final disposition of an appeal, whichever is later.

(3) Upon a hearing for re-instatement as a member pursuant to subsection (1), the Discipline Committee shall follow, as far as is practicable, the procedure provided for in the case of a complaint pursuant to this Act, and a former member has the same right of appeal from an order made by the Discipline

Committee as is provided pursuant to Section 24. *1999 (2nd Sess.), c. 6, s. 26.*

Alberta

Registrar as representative of the college

Newfoundland

Unknown

British Columbia

Left to Registrar – only brought back if problems arise.

Ontario

Not defined

g) What is the role of the Registrar in the process?

New Brunswick

The Registrar is provided the ruling and then provides the decision to the parties and sends the member written notice of the revocation or suspension. The Registrar also monitors that sentencing conditions are being met.

Nova Scotia

23(2) The Registrar shall, upon completion of the discipline hearing and the presentation of the findings of the Discipline Committee,

- (a) serve any order the Discipline Committee makes, together with written reasons for making the order, on the investigated person;
- (b) inform the complainant in writing of the disposition of the complaint; and
- (c) impose and collect any penalties as prescribed in the decision. *1999 (2nd Sess.), c. 6, s. 23.*

Appeal Foresters Act

24 An investigated person in respect to whom a decision has been made pursuant to subsection 23(2) may, within thirty days after the decision, appeal to a judge of the Supreme Court of Nova Scotia from such decision, giving ten days notice of the appeal to the Registrar, and may require the evidence taken to be filed with the proper officer of the Court, whereupon the judge shall decide the appeal, either on the evidence taken or by a trial de novo, and confirm or set aside the order and, where the order is confirmed, the costs of the appeal shall be borne by the investigated person. *1999 (2nd Sess.), c. 6, s.24.*

Foresters Act

25 (1) Unless a decision of suspension or cancellation is set aside on appeal or the judge or the Discipline Committee otherwise orders, the person suspended or whose certificate of registration as a member has been cancelled shall, upon receiving the order of suspension or cancellation, surrender to the Registrar the certificate of registration.

Alberta

Represents college, reports to council, member of council, can be expert, does follow-up tracks orders and money collections. The Registrar can initiate investigations if he believes on reasonable and probable grounds that the member is guilty of professional misconduct.

Newfoundland

Not described.

British Columbia

Very detailed powers and formally described in the by-laws

Ontario

The Registrar has a much bigger role prior to the discipline committee meeting. The Registrar can initiate investigations if he believes on reasonable and probable grounds that the member is guilty of professional misconduct or unskilled practice of forestry or is incapacitated. There is a whole section of the Act which deals with Registrar Investigations.

- h) For an individual who has a complaint filed and hearing set, is there anything you can recommend to make the system fair for this individual, or to help the individual prepare?**

New Brunswick

No response recorded

Nova Scotia

No response recorded

Alberta

The natural law of justice process is followed in proceedings so IP should become familiar with that. As well most of this process is clearly defined in the Act so they should become familiar with legislation and hire council.

Newfoundland

No response recorded

British Columbia

- The Registrar contacts the member by phone very early on in the process, usually to ask for more information. Often the member's response and provided information resolves the issue before going any farther i.e. dismissed and avoids investigations and hearings.
- Strongly recommend that Saskatchewan process have something upfront, and mechanics to avoid going to hearing as they are very expensive and time consuming

Ontario

No response recorded

- i) What other information do you feel is important for the Discipline Committee? Hearing Panel, Appeal Process.**

New Brunswick

No response recorded

Nova Scotia

No response recorded

Alberta

No response recorded

Newfoundland

They are revamping the entire process because they feel the process is weak and unclear.

British Columbia

- Wished his process was a little more streamlined, and mediation was used more often. His Act requires everyone to agree to mediation ~ never happens,
- Saskatchewan's process of appealing to council may be problematic.
- Try to provide an option up front early in the process.

Ontario

Ontario has a formal Notice of Hearing. The notice should include: The time and place of the hearing;

1. A statement that the purpose of the hearing is for a discipline proceeding, and not merely a preliminary or investigative meeting;
2. The possible orders that can be made by the Discipline Committee;
Reference to the statutory authority under which the hearing will be held; and,
3. A statement that, if the member does not attend at the hearing, the Discipline Committee may proceed in his or her absence, and he or she will not be entitled to any further notice in the proceedings.

The Discipline Committee is confined to matters raised in the notice of hearing, and may not make findings or receive evidence regarding matters that were not alleged. The notice of hearing should be served personally on the member in a reasonable amount of time before the hearing, normally at least a month.

In order to ensure the member knows the case he or she has to meet and defend against, the member is entitled to reasonable information regarding the allegations. This is normally provided with the notice of hearing, in the form of a statement of allegations containing an outline of the material facts, and the legal conclusion to be drawn from the facts (i.e. unskilled practice of forestry)

j) Present anything else you see as important

New Brunswick

In talking with Jennifer Hacking, Executive Director of the ARPFNB, the association plans to transition to Right To Practice. Their current timeline would have this completed in June. As part of this, they have done a number of changes to their current Act and have plans to revamp their bylaws. They were advised by a lawyer that the Discipline Process should be in the Act and not the Bylaws. Their new Discipline Process is modeled after the Professional Agrologists of New Brunswick

Nova Scotia

No response recorded

Alberta

Might have some issues with bias if there is a standing committee rather than a director and a pool of individuals to draw from for hearing tribunals. Having single director rather than committee and list to select from helps prevent bias

Don't necessarily concentrate on how to do hearing more on what to do with complaint and how to resolve it as there are other processes for resolution and few get to hearing. Therefore, it is better to concentrate on process of how to deal with complaints. Also, want to make sure processes are clear and transparent in order to prevent bias.

The process is not like a court of law. The law of natural justice is followed no swearing in, no oath taken. Things like hearsay evidence can be used, and the standard of proof follows balance of probabilities rather than reasonable doubt as in criminal standard. Similar fact evidence (he/she has done this before) can also be used but it has to be looked at in the sense that does the value outweigh prejudice. In court this can not be used. All information provided in hearings, statements, interviews, decisions, etc. can not be used and is not admissible in court. If criminal activities are expected the case can be passed to Justice and authorities to deal with but findings or testimony in hearings can not be used.

The whole process seems to be geared to resolving before hearings and is strongly built on laws of natural justice (fairness, impartiality and reasonableness) to prevent even the perception of bias. The main goal of the process is to protect the public and not necessarily punish IP.

The whole process is set to prevent bias so even if IP is member of council, the complaints director, registrar, hearings director, etc. there are avenues to deal with it so there isn't bias.

Newfoundland

Registered Professional Foresters are required to adhere to a professional code of ethics and to comply with all Registered Professional Forester policies and procedures, including timely payment of fees and any other registration requirements. The Newfoundland Registered Professional Forester Certificate, the name "Registered Professional Forester" and other designations related thereto remains the property of the CIF Newfoundland Section and may not be used in any way except as described by the CIF - Nfld. Section.

Applicants and Registered Professional Foresters are expected to cooperate with any investigation of any disciplinary matters brought to the Registered Professional Forester Executive. Each Registered Professional Forester and Registered Professional Forester applicant will bear the burden for documenting and maintaining compliance with all registration requirements.

The Registered Professional Forester Executive retains the right to deny, revoke, suspend or otherwise act upon the Registered Professional Forester status of an individual when that person is not in compliance with stated requirements and procedures. Any Registered

Professional Forester whose registration has been denied, revoked or suspended has the right to appeal the decision of the Registered Professional Forester Executive, with the exception of appeals based on the nonpayment of fees.

British Columbia

- Found some complaints are really just professional disagreements
- Consider use of practice reviews or fireside chat process as it relates to discipline issues, especially for members with on-going problems ~ but use caution
- BC doesn't have statute of limitations, it would be useful. In one case the Forest Service did its investigations and enforcement on the incident, it then was appealed to the Forest Service District Manager. The District Manager then made his ruling and now a complaint against the forest professional has just began on an incident that is now 5 years old. Now experiencing memory and perfect hindsight issues with this discipline case.

Ontario

No response recorded