

**A Plan to Implement an Alternative Dispute Resolution Approach at
The College of Applied Biology (British Columbia)**

Basia Bukowski

Master of Arts in Dispute Resolution Candidate, University of Victoria, 2011

Bachelor of Arts (Honours), Trent University, 2008

Author note:

Prepared for the College of Applied Biology; Suite #205 - 733 Johnson Street; Victoria, British Columbia; V8W 3C7, CANADA and the University of Victoria, School of Public Administration; Human and Social Development, Building, Room A302; 3800 Finnerty Road (Ring Road); Victoria, British Columbia; V8P 5C2, CANADA

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EXECUTIVE SUMMARY

The College of Applied Biology, as the governing body representing the profession of applied biology in British Columbia, is considering implementing the suggested Alternative Dispute Resolution (ADR) Approach into its framework in order to assist in meeting its public interest mandate. This ADR Approach will contribute to meeting this mandate by encouraging the use of ADR skills and processes as well as adopting an ADR Approach mindset throughout the Professional Integrity Maintenance System (which includes the Discipline Process, Audit Program and pending Practice Review). The College of Applied Biology expects the ADR Approach will complement the Professional Integrity Maintenance System by promoting appropriate, creative and flexible avenues for preventing, managing and addressing complaints and disputes associated with it. This project developed a series of recommendations that, if taken up by the College of Applied Biology, would implement the ADR Approach.

The following recommendations were developed after reviewing publicly available documents and literature, building upon a previous ADR design piece produced for the College of Applied Biology and interviewing staff from similar organizations throughout Canada. The recommendations are:

1. Adopt the umbrella term “Professional Integrity Maintenance System” (PIMS) to represent the Discipline Process (including the Investigation Phase, Discipline Hearing, Conditional Admission and Discipline Digest), Audit Program, ADR Approach and pending Practice Review

2. Adopt and enforce the new and revised policies and guidelines pertaining to the ADR Approach
3. Adopt and actively encourage the ADR skills, ADR processes and ADR Approach mindset outlined in this document
4. Implement the ADR Approach in stages; first by focusing on ADR skills and second by incorporating the ADR processes
5. Actively promote the ADR Approach with the goal of getting the College community on board
6. Develop a review/assessment method for the ADR Approach
7. Ensure ADR Approach surveys and the self-test are available in a secured and anonymous online format as well as in paper form when necessary
8. Hire an ADR specialist or company to design ADR skills workshops and training that reflects the specific needs of the College as outlined in this document
9. Incur the cost of and provide member auditors, Discipline Committee, Audit Committee and Discipline Panel members with training and workshops in ADR skills
10. Allow ADR skills training and workshops to count toward member Continuing Professional Development at cost to the given member
11. Cover the cost of ADR processes unless the Discipline Committee chooses to apply Rule 15.43, where the subject member may incur some (or all) of the costs of the ADR process.
12. Encourage creative and effective ways to manage costs pertaining to the ADR Approach
13. Ensure and maintain confidentiality in all ADR processes noting explicitly any limitations

- 14.** Ensure the Agreement to Participate (in an ADR process) including any limitations pertaining to confidentiality and disclosure in are reviewed by a legal professional
- 15.** Develop a roster of external ADR specialists
- 16.** Monitor the ADR Approach regularly
- 17.** Hire or designate an ADR Coordinator in the College office to administer, promote, monitor and review/assess the ADR Approach
- 18.** Revise the ADR Approach continually as the College gains familiarity with it and becomes aware of its needs

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MEANING OF ACRONYMS

ABC FP	Association of British Columbia Forest Professionals
ACR	Alternative Complaints Resolution or Alternate Complaints Resolution
Act	College of Applied Biology Act
ADR	Alternative Dispute Resolution
APBBC	Association of Professional Biology British Columbia
ASFP	Association of Saskatchewan Forestry Professionals
BC	British Columbia
CDRC	Canadian Dispute Resolution Corporation
CICIC	Canadian Information Centre for International Credentials
College	College of Applied Biology
ERCB	Energy Resources Conservation Board
EUB	Alberta Energy and Utilities Board
PIMS	Professional Integrity Maintenance System
Rules	College of Applied Biology Rules
TILMA	Trade, Investment and Labour Mobility Agreement
UVic	University of Victoria

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1. BACKGROUND AND CONTEXT

This report is the outcome of the College of Applied Biology (College) exploring the possibility of incorporating Alternative Dispute Resolution (ADR) into its existing Discipline Process. The College investigated a potential ADR design that was suggested in the form of an ADR Component by Bukowski (2010)¹ prior to this project. This theoretical piece investigated whether or not the College should adopt ADR and suggested what it might entail. Since that time, the exploration has expanded beyond the Discipline Process to include other College mechanisms; namely the Audit Program and pending Practice Review².

As a governing body, the College represents the self-regulated profession of applied biology³ in British Columbia (BC) and operates by way of the *College of Applied Biology Act* (Act). It enforces this title legislation by governing member applied biologists and technologists as well as protecting associated titles⁴ in the name of the public interest. The College is responsible for enforcing standards of admission, accountability as well as member conduct and performance (CAB, 2011). As an organization established by Provincial Statute, the types of

¹ This report is informed by Bukowski (2010) as well as the *College of Applied Biology Act* (2002) and College of Applied Biology Rules (2011f).

² The ADR Approach will likely be applied similarly throughout the Practice Review as it would in the Audit Program however at this point the Practice Review is not yet in place and therefore it is difficult to predict the applications of the ADR Approach for certain. Thus references to the pending Practice Review will be kept to a minimum and anything referring to it throughout this document is speculative.

³ Applied biology is to practice biology; for instance researching a particular species. According to the Act “applied biology” means: The application of the applied biological sciences, including collecting or analyzing inventories or other data or carrying out of research or assessments, to design, evaluate, advise on, direct or otherwise provide professional or technical support to projects, works, undertakings or field practices on public or private lands, but does not include (a) pure scientific research, or (b) teaching

⁴ Associated titles include: Professional Biologist, Biologist Technologist, Applied Biology Technician, Biologist in Training, Registered Biology Technologist in Training and Applied Biology Technician.

complaints and disputes the College faces are particular and must be addressed by focusing strictly on its public interest mandate⁵.

1.1 Types of Complaints/Disputes Associated with the College of Applied Biology

Typically when faced with complaints/disputes, the College encounters instances of “professional misconduct”, indicating a breach of the College Act or the College of Applied Biology Rules (Rules) (including the Code of Ethics). And, also “conduct unbecoming a practicing member”, like causing a member to be in disrepute; subverting scientific methods and principles foundational to the applied biological sciences and/or the principles of stewardship of aquatic and terrestrial ecosystems and biological resources; as well as, engaging in applied biology in an incompetent manner. Specific examples of such instances are: using information selectively; making comments that are unprofessional, factually misleading or incorrect; knowingly or unknowingly engaging in a conflict of interest; miscommunication(s); allowing emotions to obstruct professionalism; and, unprofessional use of email.

Krusell (2009) addressed tensions to good professional conduct for members of the College finding that what threatens their fulfillment of responsibilities to the public interest most are deteriorating ethical, behavioural and personal competencies. He also found that the central themes for complaints/disputes traditionally associated with the College are (p. 9-10):

⁵ The public interest mandate of the College is to uphold and protect the public interest first and foremost.

- The member's client's needs appear to place the member in conflict with their duty to fulfill and abide by the Code of Ethics;
- The member's professional opinion or approach differs from that of another applied biologist or member of another profession;
- Members feel their right or entitlement to an opportunity has been subsumed by a client or another professional; and/or
- Members feel they are obligated or being pressured to act in a way that does not accord with their [...] personal ethics, beliefs [...] and values.

Additionally, Grace (2010) highlights complaints/disputes having a tendency to emerge in the workplace. These are highly relevant to College members (whether in the field or an office setting) and include: role ambiguity; unknown or not agreed upon goals; missing or contradictory information; invalid or hidden assumptions; differing core values; turf protection; cultural differences; and, perceptions that differ from the original intent.

1.2 Alternative Dispute Resolution and the College of Applied Biology

Self-regulated professions in Canada seem to value ADR though its application has proven cumbersome. ADR application tends to be crowded with inconsistent terminology, limited explanatory materials, ambiguous references to one or many possible ADR processes, and/or limited ADR usage although the capacity exists. This is not to imply that there has been no success in incorporating ADR, only that implementation and application has been challenging. Despite this, it is evident that ADR is gaining momentum among governing bodies

in Canada⁶. Arguably the reason behind its popularity, ADR involves a range of flexible and creative ways to problem solve omitting solely a trial or hearing. Communication is enhanced and understanding stimulated giving participants ownership over their matter while acknowledging neither traditional nor ADR strategies are superior or inferior to one another⁷. This is why the College is exploring ADR within its context. In doing so, it must find a way to overcome the challenges faced by governing bodies in Canada in applying ADR without undermining its primary enforcement function.

Moreover, because there are a range of complaint/dispute possibilities associated with the College, it should develop a framework that functions ultimately to fulfill its public interest mandate in the most suitable and effective way. Thus, the College is focused on the fine line between public interest and member interest. For instance it could be argued that addressing member interest is in fact in the public interest, that they go hand in hand. A member whose interests have been addressed is a member more able to focus on the interests of the public. Although there is an opportunity for ADR to be applied in both the contexts of member interest and public interest, in developing its ADR Approach, the College has taken great caution to remain clearly within the boundaries of the public interest⁸. Also, in fulfilling its public interest mandate, the College maintains the professional integrity of its members through its Discipline Process, Audit Program, and pending Practice Review. For this reason, the author of this report

⁶ This statement is the result of research conducted by Bukowski (2010) who used the Canadian Information Centre for International Credentials (CICIC) (2011) and Trade, Investment and Labour Mobility Agreement (TILMA) (2011; 2011a) websites, which provide inventories of most all professional governing bodies in Canada, to explore their listed websites for evidence of well-established ADR strategies.

⁷ This definition of ADR has been adapted from the Canadian Bar Association (CBA, 1989; CBA, 1996).

⁸ For a more detailed discussion regarding public interest (represented by the College) versus member interest (represented by the Association of Professional Biology British Columbia, the APBBC) please see Appendix 1. Please note that this Appendix is informed by the Bukowski (2010, p. 2) report. It has been adapted to reflect the current ADR Approach suggested for the College.

suggests that these three mechanisms be captured within the umbrella of the Professional Integrity Maintenance System (PIMS).

The College continually monitors and reviews its practices and mechanisms by exploring new opportunities to maintain and improve them. An ADR strategy that takes existing and pending skills and processes into account will increase the capacity of the College to address the range of potential complaints/disputes associated with it. Such a strategy will also provide greater flexibility and creativity in maintaining the professional integrity of College members. The skills-process based ADR Approach suggested in this report compliments the PIMS by taking into account the public interest mandate of the College as well as its applicability in the College context.

1.3 The Professional Integrity Maintenance System

As noted in the previous section, the author of this document coined the umbrella term “Professional Integrity Maintenance System” to represent the already established Audit Program, Discipline Process and the pending Practice Review at the College. The PIMS maintains the professional integrity of College members by enforcing standards of accountability, admission into the profession as well as member conduct and performance. To carry out its enforcement function, the College has incorporated both proactive and reactive mechanisms into its PIMS. The proactive Audit Program is an anticipatory manoeuvre to prevent future complaints/disputes associated with the College while the reactive Discipline Process responds to potential

professional misconduct and conduct unbecoming. For a detailed visual depiction of the PIMS see Figure 1 and for a simplified version see Figure 2⁹.

⁹ Figure 2 includes the potential flow of the Practice Review.

Figure 1: Detailed Visual of the Professional Integrity Maintenance System

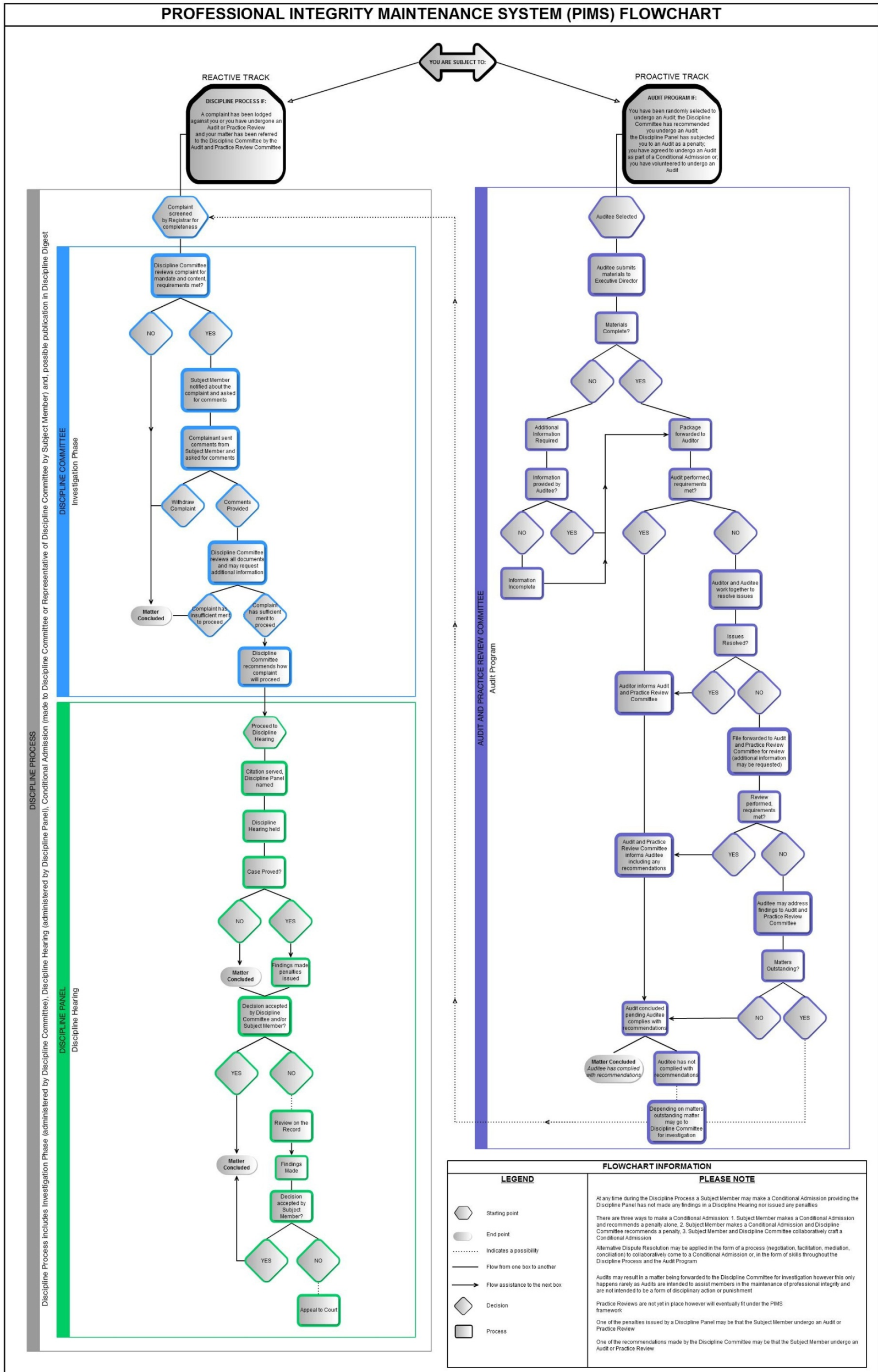
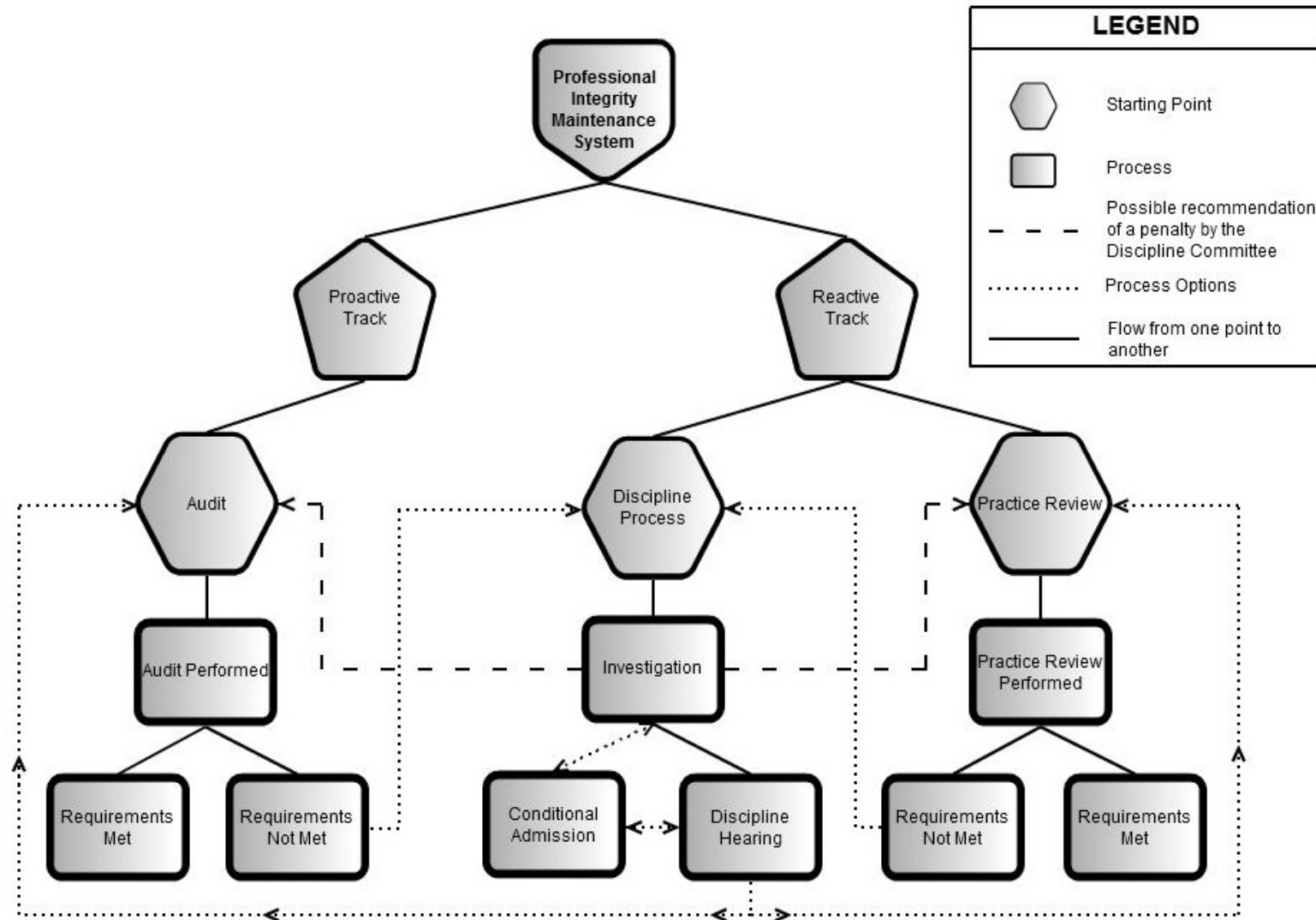


Figure 2: Simplified Visual of the Professional Integrity Maintenance System



1.3.1 Discipline Process

The College Discipline Process unfolds as follows. A formal complaint is made to the College by a member of the College or the public. To lodge a complaint the complainant should suspect that the member subject to the complaint (subject member) has engaged in any of the following as outlined in Section 23 (1) of the Act¹⁰ and Rule 15.3:

- practiced applied biology in an incompetent manner,
- been guilty of professional misconduct, conduct unbecoming a practicing/registered member, or
- has breached the Act or Rules

The complaint is first received by the Registrar who determines whether or not the subject member is or was a member of the College at the time of the suspected infraction. Then, the Registrar forwards the complaint in the proper format to the Discipline Committee. Upon receiving the complaint, the Discipline Committee determines if the complaint falls within the jurisdiction of the College through an investigation. It must decide whether or not the complaint has sufficient basis to proceed beyond the Investigation Phase to a Discipline Hearing. Here the Discipline Committee has the option of hiring an investigator, officer, employee or contractor to assist in the investigation. Upon satisfaction of the Discipline Committee with the complaint and its details, the Executive Director is notified and forwards the complaint to the subject member

¹⁰ The Act (2002) defines “conduct unbecoming a practicing member” as the “conduct of a practicing member that; (a) brings the college or its members into disrepute; (b) undermines the scientific methods and principles that are the foundation of the applied biological sciences, or; (c) undermines the principles of stewardship of aquatic and terrestrial ecosystems and biological resources”. And, “Professional misconduct”, as “misconduct by a member of the college relating to the performance of duties undertaken while engaged in applied biology, and includes a breach of the rules”.

for comments. At this point both the complainant and subject member have the opportunity to comment upon the remarks of the other with regards to the complaint and alleged infraction.

In order for a matter to proceed beyond the Investigation Phase, the Discipline Committee should find that the complaint falls within the jurisdiction of the College and that there is sufficient basis or evidence that the subject member has engaged in professional misconduct and/or conduct unbecoming of a member and/or has breached the College Act and/or Rules. If a complaint does not have sufficient basis to proceed past the Investigation Phase, it is concluded or dismissed and a report along with a summary of the matter (including the reasoning for not proceeding) is prepared by the Discipline Committee. The file is then closed, provided to the subject member and s/he may receive recommendations from the Discipline Committee. Where the Discipline Committee finds a matter has sufficient basis to proceed, the subject member will be charged, a citation served and the matter will continue to a Discipline Hearing for which a Discipline Panel¹¹ will be named. A Discipline Hearing unfolds much like court proceedings.

1.3.1.1 Conditional Admission

A Conditional Admission may be used by a College member who is subject to a complaint. The College of Applied Biology (2011a) defines Conditional Admission as "...the vehicle by which a member stipulates (admits) to an action or undertaking that has caused

¹¹ A Discipline Panel may not include any members from the Discipline Committee and is convened on a case by case basis.

concern sufficient to result in the laying of a complaint. It is the way a member demonstrates that they accept the responsibility for an activity or action and as such contains three parts:

1. This is what I did (identification of the action)
2. This is how it affected the complainant, College, and/or other parties (recognition of the impact of the action)
3. An apology for the action and the result (accepting responsibility)”

The Conditional Admission is voluntary and must be entered into as such. It may be made at any time throughout the Discipline Process providing the Discipline Panel has not made any findings in a Discipline Hearing nor issued any penalties. A Conditional Admission is made to the Discipline Committee and its terms must be accepted by both the Discipline Committee and the subject member. Once this occurs a summary of the matter is published in the Discipline Digest. If a Conditional Admission was not accepted, no record is kept and it cannot be used against the subject member as the matter continues its course.

The use of Conditional Admission is in the jurisdiction of the College under Section 23(2) of the Act. This Section states, “The council may make rules governing the disposition of a complaint under subsection (1)”. A Conditional Admission can be considered an ADR process because it is an alternative resolution mechanism to the traditional Discipline Hearing. Under this same jurisdiction, the College has the ability to incorporate other ADR mechanisms.

1.3.1.2 Discipline Digest

Matters addressed by the Discipline Process that have proceeded past the Investigation Phase may be published in the Discipline Digest (available on the College website). This publication is intended to inform members and the public of issues brought to the attention of the College and can be used as an interpretive tool to reference when faced with a complaint or a difficult situation. The name of a complainant is never published in the Discipline Digest while the name of the subject member may be published. Publication of names is decided on a case by case basis and follows the “Publication of Discipline Related Decisions” Policy of the College that outlines the criteria for the publication of matters proceeding through the Discipline Process (CAB, 2011b).

1.3.2 Audit Program

The Audit Program (outlined in Schedule 6 of the Rules) contributes to the professional integrity maintenance of College members by functioning as a quality assurance tool that tracks and encourages members to practice with excellence and within the College standards. It randomly selects members for a review of how they generate and administer their work product, adhere to the Code of Ethics and undertake professional development activities. To audit a member’s professional practice the Audit Committee appoints another member who is in good standing with the College to serve as a volunteer in conducting the audit. Should there be any perceived or real issues between the pair, a new auditor is named. After a suitable auditor-auditee

pairing is confirmed, the audit commences with an introductory letter and audit form to the auditee. The auditee is to complete the form and submit their materials to the Executive Director who reviews the information for completeness, requesting additional information if required, then forwards the materials to the auditor for review.

If the opinion of the auditor is that the auditee has met the requirements of the Audit Program, the Audit Committee is informed and so informs the auditee in writing along with any recommendations arising. If the opinion of the auditor is that the auditee has not met the requirements of the Audit Program both the auditor and auditee will attempt to resolve collaboratively any issues emerging. If the pair cannot resolve the issues, the Audit Committee will conduct a review of the audit materials. After reviewing the materials, if the Audit Committee finds the auditee has fulfilled the requirements of the Audit Program, the auditee and auditor will be informed along with any additional recommendations to the auditee. If the Audit Committee finds the auditee has not met the requirements, the auditee has the opportunity to address this finding with the Audit Committee directly. Once the audit has been addressed by the auditee, the Audit Committee will either accept the filing or forward the matter to the Discipline Committee for review¹².

¹² It is noted that the Audit Program is intended to assist members in the maintenance of their professional integrity and is not intended to be a form of disciplinary action or punishment; thus the involvement of the Discipline Committee is rare.

2. METHODOLOGY

This project produced a plan to implement an ADR strategy that is most suited to the context of the College. The research and document review involved conducting interviews, using elements of a previously suggested ADR design and investigating publicly available documents and literature. The segments that comprise this deliverable are shaped by the background and context, methodology, and literature review sections; they include: a report; a complete guide to the ADR Approach; policies and guidelines; a template for an agreement to participate in an ADR process; a roster call for ADR specialists; an ADR process self-test; ADR Approach survey templates; logistics; and, presentations.

In achieving its purpose, staff members associated with the ADR in each of the following three organizations were interviewed and publicly available information on each was investigated (in no particular order):

1. The Energy Resources Conservation Board in Alberta (ERCB)
2. The Association of British Columbia Forest Professionals (ABCFP)
3. The Association of Saskatchewan Forestry Professionals (ASFP)

The above mentioned governing bodies and quasi-judicial body were selected as a result of research previously accomplished in the suggestion of an ADR design for the College. Bukowski (2010) used the Canadian Information Centre for International Credentials (CICIC) (2011) and Trade, Investment and Labour Mobility Agreement (TILMA) (2011; 2011a) websites, who provide inventories of most all professional governing bodies in Canada, to explore their listed websites for evidence of well-established ADR strategies. This exploration resulted in a

suggestion to investigate and probe the ABCFP, ASFP and ERCB further. These organizations were also selected for the following reasons:

1. The ERCB, ABCFP and ASFP are associated with the regulation of natural resources, as is the College; whether it is from the perspective of a profession or the resources themselves.
2. The College, as the governing body with the first legislation of its kind (the *College of Applied Biology Act*) in North America, is relatively new and thus is leading the way for the profession of applied biology on the continent. Due to its youth and unique position, there is no vast body of experience to draw upon in the field of applied biology. To fill this void, the ABCFP and ASFP, representatives of the forestry profession in BC and Saskatchewan, were selected. More specifically, the ABCFP was selected for its age, experience and location (BC like the College) and the ASFP for its youth (comparable to that of the College).
3. The ABCFP and ASFP were also selected for their ability to rely on other governing bodies of the forestry profession for guidance and support. The ASFP in particular conducted an investigation into the ADR practices of other forestry professions in Canada to inform its own strategy.
4. The ERCB has a very thorough, well established and sophisticated ADR strategy, a useful example for the College.
5. Last, these organizations in general seemed to have well-established ADR strategies that they could speak to and from which the College could learn.

Staff members in these organizations were asked to participate in an interview regarding the best practices of their already implemented ADR strategies. One participant from each

selected governing body was interviewed. The interviews required pre-approval from the Human Research Ethics Board (HREB) at the University of Victoria (UVic)¹³. While awaiting ethical approval, drafts of the background and context, methodology and literature review were written. To accomplish this, the search engine Google was used; books and various online journal databases such as JSTOR, EBSCO, Academic Search Complete, Gale, HeinOnline etc. were accessed through the UVic Libraries; the websites of and any public information on the selected governing bodies to be interviewed were scanned; and, College documents including its website and the previously suggested ADR design were investigated. Once ethical approval for the interviews was received they began.

¹³ An ethics application available through HREB was completed and submitted for approval. The ethics approval certificate is available in Appendix 2.

3. LITERATURE REVIEW

This review of literature informs the ADR Approach suggested for implementation by the College. Definitions for relevant terms and concepts are established, assessments of ADR strategies from various backgrounds are investigated and the ADR strategies of the ERCB, ASFP and ABCFP are examined. Grasping the information presented in the literature review will assist in understanding the ADR Approach suggested for the College.

3.1 Relevant Terms and Concepts

The following terms and concepts: ADR, negotiation, facilitation, mediation, conciliation and ADR skills, are integral to the understanding and application of the suggested ADR Approach. Each of these is defined in the sub-sections that follow.

3.1.1 Alternative Dispute Resolution

From the perspective of the Canadian Bar Association Task Force on Systems of Civil Justice (1996, p. 26) as quoted in Pirie (2000, p. 9) ADR should involve “a range of processes for resolving disputes discounting only a hearing or trial”. Additionally, the Canadian Bar Association Task Force on Alternative Dispute Resolution (1989, p. 77) noted as quoted in Pirie (2000, p. 8), “alternative dispute resolution will not be viewed as superior or inferior to, or

indeed even separate from, court adjudication [or hearings]”. This is why the ADR Approach is referred to as complimentary to the PIMS throughout this document; for a range of complaints/disputes requires a range of mechanisms in order to address most suitably the matter at hand.

These definitions of ADR are generally applicable to the traditional concepts of “alternative dispute resolution” and “dispute resolution” which are often used interchangeably. For the purpose of the College and its suggested ADR Approach, however, they have been adapted to incorporate ADR skills. Therefore the following definition will be used to reflect ADR from the perspective of the College and the suggested ADR Approach:

ADR involves a range of flexible and creative processes used to problem solve (omitting solely a trial or hearing) and skills applicable in most any situation to prevent, manage and address disputes/complaints. It gives participants ownership over the issue while acknowledging neither traditional nor ADR strategies are superior or inferior to one another.

3.1.2 Negotiation

Negotiation is an ADR process exercised in the form of ADR skills. It is a part of daily life and can occur intentionally or spontaneously at most anytime; for example it occurs in discussing a pay raise with an employer, deciding on where to have dinner, agreeing on a purchase price, etc. (Fisher & Ury, 1991). Chicanot and Sloan (2009) state, “Negotiation occurs

when differing perspectives are exchanged, expressed or shared in a mutual attempt to find an outcome that is regarded as satisfactory by those involved” (p. 11). From the perspective of the College, negotiation can occur between (but is not restricted to) an auditor and auditee, an auditee and the Audit Committee, an auditor and the Audit Committee or, the Discipline Committee and subject member at any point and should involve the application of ADR skills. For example, in instances of negotiation, the ADR skill of identifying interests and positions is of particular use.

3.1.3 Facilitation

Chicanot and Sloan (2009) have described facilitation as “a conflict resolution event in which a third party is involved in any way in helping the disputants, often by managing their discussions” (p. 66). The two terms facilitation and mediation (defined below) are often confused. To emphasize their distinction Mareschal (1998) notes, “First, facilitators primarily direct the group’s process, whereas mediators direct both the process and content of meetings. Second, the mediator interacts more closely with the group than the facilitator does” (p. 65).

3.1.4 Mediation

Folberg and Taylor (1984) explain mediation as “...the process by which the participants, together with the assistance of [...an impartial] person or persons, systematically isolate disputed

issues in order to develop options, consider alternatives, and reach a consensual settlement that will accommodate their needs” (p. 1036). It is also useful to view mediation as assisted negotiation (Chicanot & Sloan, 2010). Mediation is perhaps the most employed ADR process with the most recognition and acceptance¹⁴. Given its recognition and successful practice by a range of professions, including the health, planners, engineers, geoscientists, real estate, forestry etc. it is logical to include mediation as an ADR process option incorporated into the PIMS.

3.1.5 Conciliation

Conciliation was selected as an option for those complaints/disputes in which participants are unwilling or cannot meet. The Law Society of Upper Canada (1992) provides an insightful definition of the term from a Canadian perspective (p. 96):

An informal process in which a passive third party is positioned between the parties to create a channel for communications, usually by conveying messages between parties who are unwilling [or cannot] to meet face-to-face, to identify common ground and [perhaps] to eventually re-establish direct communications between the parties...

The concepts conciliation and mediation also tend to be confused due to the fact that mediation sometimes resorts to caucusing (separate meetings) and conciliation engages in face to face meetings from time to time (Morris, 2002). As well, a main goal of conciliatory efforts may

¹⁴ This statement is the result of research conducted by Bukowski (2010) who used the Canadian Information Centre for International Credentials (CICIC) (2011) and Trade, Investment and Labour Mobility Agreement (TILMA) (2011 & 2011a) websites, which provide inventories of most all professional governing bodies in Canada, to explore their listed websites for evidence of well-established ADR strategies.

be to enable face to face communication (or lead to mediation). To avoid confusion between conciliation and mediation, each ADR process should be characterized by its chief procedure.

3.1.6 Alternative Dispute Resolution Skills

ADR skills¹⁵ assist in promoting communication between people and shared meaning among them. They can be applied to encourage exploration, forge learning and understanding, and find suitable outcomes. Applying ADR skills is useful in dispute/complaint prevention, management and addressing issues arising. Practicing ADR skills is often intentional and aims to produce a helpful outcome. Although they can be practiced at any time to enhance communication among people, ADR skills are essentially techniques used in instances where issues are likely or have already surfaced. Specific ADR skills recommended for the College in its application of the suggested ADR Approach include:

Active Listening: involves listening wholly, accurately and completely. It can also be defined by what it is not. Inactive listening, the opposite of active listening, involves deficiencies in listening. Examples of inactive listening can include: going through the motions of listening rather than really listening; skimming the surface when listening rather than picking up essential points; having a lack of presence, repeating words and statements without communicating an understanding of deeper meaning; and, focusing on what to say next rather than listening. Active listening aims to avoid these communication pitfalls by engaging as fully as possible.

¹⁵ Section 3.1.6 “Alternative Dispute Resolution Skills” is informed by Chicanot and Sloan (2009), Egan (2006) as well as Fisher and Ury (1991), and is adapted to fit the needs of the College.

Body Language: the use of certain body language techniques promotes productive and good communication among individuals. There are things one can practice to achieve this. For example, using one's posture to face someone squarely, leaning in or toward someone to show interest, assuming an open posture by avoiding the crossing of arms and legs as well as sustaining good and direct eye contact demonstrate involvement and that one is paying attention.

Identifying interest and positions: a negotiation technique applicable in instances of negotiation. Negotiation is a part of everyday life; for example discussing a pay raise with an employer, deciding on where to have dinner, agreeing on a purchase price, etc. This technique explores a problem by deconstructing positions (often communicated as a preferred outcome) into the underlying interests (the things that are important) that inspire them. A position is a decision while interests contribute to/support the decision.

Probing and asking questions: assists in administering clarity and moving forward on a given matter. There are various probing techniques one can apply. Knowing when it is appropriate to apply a particular probe or question is a skill to be developed. For example *open questions* invite elaboration and provide additional clarification by demonstrating inquisitiveness and participation; yes or no cannot be the answer to an open question. *Closed questions* are the opposite: yes or no is the answer and they tend to lead to further questions to elicit necessary information. At times a perceptive closed question may achieve the right impact and help move from the general to the specific. *Making statements* shows the need for more clarity. One may also *make requests* for further information or clarity. *One word* or a *simple phrase* can achieve

this as well while *direct questions* are fixated on a certain subject, becoming increasingly specific with subsequent questions.

Verbal communication: Techniques such as paraphrasing, reflections, refocusing, and summarizing are helpful in enhancing communication during a discussion. *Paraphrasing* intends to check interests, forge understanding as well as clarify aims and expectations by pursuing clarity and confirmation. *Reflections* involve capturing and observing aloud something one said instantly. Reflections such as *restating* and *paraphrasing* are used to check the accuracy of what was heard, emphasize, acknowledge, clarify, de-escalate, encourage, create shared meaning etc. *Refocusing* redirects the discussion back to a productive state. *Summarizing* generates outcomes by assembling what has been verbalized. Choice of words and tone of voice are also valuable techniques to enhance verbal communication.

Written communication: some verbal communication techniques are transferable into written communication. The accuracy, detail, understanding, information, regard etc. that is conveyed in written communication can have a significant influence on face to face and verbal communication as well as on the prevention and/or outcome of a dispute. Choosing words and information carefully as well as conveying the intended message without face to face interaction are techniques that will assist in enhancing written communication.

3.2 Learning from the Assessments of other Alternative Dispute Resolution Strategies

There is a limited body of publicly available assessments pertaining to the application of ADR strategies conducted by self-regulated professions. As a result, the following information comes from a range of backgrounds. Regardless, valuable information¹⁶ was gathered for the purpose of informing the ADR Approach for the College.

The creation of an ADR strategy that is both strategically and thoughtfully designed is imperative (Szmania, Johnson & Mulligan, 2008) and its objectives should be logically in sync with its overall direction (Sharkey, 2009). Additionally, an ADR strategy should neither be monetarily prohibitive nor increase the workload involved in a matter. It should recognize that most all matters are suitable for ADR though not all participants are suitable for ADR processes; concrete information is essential for making decisions on the suitability of cases; an ADR process should commence quickly; and, cases, participants and ADR specialists should be matched appropriately. Additionally, success and satisfaction should be measured and monitored; processing time as well as providing feedback should be governed by specific methods; and, conditions for ADR specialists should be developed that include, the completion of monitoring information, having liability insurance, informing participants of confidentiality and limits to it as well as taking part in annual evaluations to ensure the quality of ADR specialists (Niemeijer & Pel, 2006).

¹⁶ Please note many resources referred specifically to the ADR processes used, like mediation for instance. For the purposes of the College these will simply be referred to as ADR processes. Similarly a mediator will be referred to as an ADR specialist.

All necessary materials should be created to ensure participants are well-informed, understand ADR and are participating with realistic expectations. Ample information should be provided about ADR processes and what is involved; the subject member must be sufficiently informed of the charges against him/her so as to make a knowledgeable decision of whether to participate in ADR; staff should be trained with ADR so they may better assist participants; ensuring procedures are in place informing participants and the ADR specialist of who is participating/attending the ADR process prior to its commencement is important; and, monitoring perceptions of fairness surrounding ADR processes is useful (McEwen, 1994). It is also helpful to provide ADR specialists with clearly established ADR processes to choose from in their application. The suitability of a particular ADR process to a particular case must be considered (McEwen, 1992). Most importantly, and highly relevant to the College, McEwen (1994) identified the need for an ADR strategy to be effective, however, at the same time not undermine the primary enforcement function of the organization.

A self-test for participants considering an ADR process is also useful. It can include a brief questionnaire to assist potential participants with assessing whether or not ADR is a viable option (Niemeijer & Pel, 2006). Additionally, contact prior to an ADR process is of high importance (Joseph Rowntree Foundation, 2002). When the ADR process is completely understood by participants, ways to move forward are more easily identified and overall satisfaction is more likely. Avoiding misconceptions is important as well. Meeting with participants before an ADR process to address such matters ensures participants are fully informed, understand the nature of the process as well as their role in participating and

motivations and expectations are realistic. Voluntary participation and balance in power are also key factors for success (ACAS & Fox, 2005; Joseph Rowntree Foundation, 2002).

With regard to ADR specialists, hiring those sufficiently trained is crucial and attempting to ensure consistency among them is helpful (McEwen, 1992). Additionally, ADR specialists with knowledge in a given subject area are beneficial in instances where specific knowledge is required (Bourdeaux, Thornburgh & O'Leary, 2001). Those who can draft agreements might also be preferred although this is not a must (Niemeijer & Pel, 2006). It is also important to consider whether a legalistic model, where lawyers are the primary decision makers, or mediation (ADR) model, where lawyers are intentionally excluded as leaders of the process, is preferred. Lawyer-mediators (lawyer-ADR specialists) tend to be settlement oriented while nonlawyer-mediators (nonlawyer-ADR specialists) tend to promote discussion and open communication. The ADR perspective is often preferred for its flexibility, range of options and equality of participants (Szmania et al., 2008). Although, allowing participants to include their representatives in the ADR process is favourable to ensure the opportunity for lawyer presence (Pitts & Bingham, 2002). Thus, hiring quality ADR specialists with the ability to appropriately control attorneys is useful (Bourdeaux et al., 2001). The benefits of an internal versus external ADR specialist should be considered as well (Sharkey, 2009). Perceived neutrality is an issue to consider in whether to hire independent ADR specialists or provide in-house specialists (Szmania et al., 2008). Training in-house ADR specialists can cut costs though the perception of neutrality may be compromised (McEwen, 1994). Another option, the use of volunteer mediators, minimizes costs considerably. If this route is utilized, acknowledging the time volunteer ADR specialists offer is important and can be accomplished through recognition and

respect for their time; for instance not overloading these individuals with work, promoting the given ADR strategy and confirming the attendance of participants in ADR meetings (Gomes, Paersch, Bertrand, & Gee, 2003).

The confidential nature of an ADR process should be approached with caution despite the fact that this may prevent others from learning from these experiences and limit the possibility for improvement (ACAS & Fox, 2005). The desire to tell one's personal story is highly valued in addition to open communication and assurance that it will not be repeated. There is a real necessity, however, to be realistic with assuring confidentiality as it is not always possible (Szmania et al., 2008); thus any limitations should be noted. Matters like confidentiality highlight the recommendation of signing an "agreement to participate" before commencing an ADR process and signing an agreement upon its conclusion to reinforce commitments made throughout as well as add formality and decorum to what was agreed upon (Sharkey, 2009; Gomes et al., 2003).

ADR processes practiced over the telephone are possible but require more time and preparation. There is also a higher risk participants will be less satisfied with the process (Clarke, Ellen & McCormick, 1995). Arguably, this is why face to face meetings in ADR processes are highly valued (Bourdeaux et al., 2001; Szmania et al., 2008; McEwen, 1994). Ensuring good communication and having key stakeholders at the table and participants present who are decision makers (who can commit to a resolution) or having readily accessible decision makers at the table, are key elements to successful ADR processes (Bourdeaux et al., 2001).

Where persistence in meeting deadlines and following up on matters is practiced, participation tends to be relatively high. At the same time, short deadlines and intense management of cases is cautioned against because there is a concern for failure to reach settlement if cases are brought into ADR too soon as participants may not be prepared to settle at that point (Clarke et al., 1995). Yet if participants are provided with sufficient opportunity to explain their perspective, are able to assist in shaping the outcome and the ADR specialist spends the time necessary ensuring the matter is addressed, participants tend to have a positive experiences. Also, interestingly, no significant difference exists between those participants who have experience with ADR and those who do not (Kwakwala, 2010).

With regard to monitoring and evaluating one's ADR strategy, instituting a system to manage its performance is useful to ensure quality. Creating a spreadsheet that includes information like the type of dispute, its background, key issues and status, the ADR process used, jurisdiction, region, number of meetings held, time spent by staff on the matter, any survey status and whether an agreement was implemented is beneficial (Sharkey, 2009). A survey to monitor and evaluate the satisfaction of participants with the quality and performance of the given ADR strategy is also recommended (Kwakwala, 2010; Sourdin & Balvin, 2008; Sharkey, 2009). Such a survey is useful for promoting a given ADR strategy; positive feedback from participants could be used for instance (with their permission of course). A Likert scale is suggested for the survey using statements like the following (Sharkey, 2009, p. 121):

- The process was flexible and dynamic;
- The process was open/honest;
- The process enhanced personal growth;
- The process promoted information sharing;
- The process was fair;

- Process guidelines and procedures were clear;
- Process alternatives were clear;
- Plain language was used throughout the process;
- Participants were committed to the process;
- I learned/improved my dispute resolution skills;
- My capacity to deal with conflict increased;
- The facilitator was reasonably informed and prepared;
- The meeting facility was appropriate;
- Meetings started and ended on time;
- Sufficient time was booked for meetings;
- The dispute was handled in a timely manner; and
- The impact of the process on my time and workload was acceptable.

To ease accessibility, an online survey is encouraged. This method also enables statistical analysis and tracking. To encourage and increase response rates, incentives, reminders and early notification of the survey are endorsed. A survey for ADR specialists is useful as well. Suggested questions for such a survey include (Sharkey, 2009, p. 125):

- What was the level of tension like between disputants at the beginning of the session?
- Which parts of the session went well/poorly?
- Was there a point where you felt a breakthrough? If so, describe.
- Were there areas you think you and your co-facilitator could improve on?
- What was your level of satisfaction with the process?
- Do you perceive a need for more training, refresher courses, or the integration of different methods?
- Are there particular experiences or ideas you would like to relate? and

- Do you have additional observations or recommendations?

Lastly, if concluding ADR process reports for monitoring purposes are required ensuring ADR specialists comply with this mandate is challenging (McEwen, 1992). Keeping the requirements for reporting to a minimum, focusing on key criteria and avoiding the duplication of information is suggested to encourage completion (Sourdin & Balvin, 2008).

Potential participants need encouragement and information about ADR (McEwen, 1994). Encouraging participants to buy-in to the ADR strategy is essential in order to avoid the perception that it is wasteful (Sharkey, 2009) while keeping in mind there is some evidence of underachievement in efficiency in the infancy stage (Kwakwala, 2010). Ensuring participants are well informed and understand what the ADR strategy involves as well as assuring participants address concerns throughout is integral to avoiding poor perceptions and raising awareness. ADR strategy details including objectives, aims, vision and relevant documents (available in print) should be visibly incorporated into the website. More specifically such details should highlight collaborative efforts in coming to a mutually acceptable outcome, normalizing disputes and problem solving using ADR, the benefits of addressing issues early, how a typical ADR process might evolve, requirements, types of ADR processes available and what to anticipate from an ADR specialist (Sharkey, 2009). Also, increasing public awareness by intensifying education through the media is useful (Kwakwala, 2010). Last, the likelihood of people participating in an ADR process is higher when there is no cost to them (McEwen, 1994).

3.3 Learning from Alternative Dispute Resolution at the ERCB, ASFP and ABCFP

The ABCFP, ASFP and ERCB have incorporated ADR into the framework of their organizations. The College will benefit from taking a close look into these ADR strategies in order to generally inform its implementation of an ADR strategy.

3.3.1 Association of British Columbia Forest Professionals

Regulating the profession of forestry since 1947, the ABCFP registers and regulates professional foresters and forest technologists in BC (ABCFP, 2011a). A key aspect of doing so is through their Complaints Resolution Process. Alternative Complaints Resolution (ACR), a diversion of terminology from ADR, is an option offered through the Complaints Resolution Process of the ABCFP. The Complaints Resolution Process supplements hearings, the traditional mechanism for addressing complaints/disputes, with the non-traditional mechanisms of ACR. The collection of appropriate complaint resolution options available are: admission by a member; fact finding; mediation; investigation; settlement negotiation between parties; arbitration; and, discipline hearings (ABCFP, 2011d).

ACR is firmly rooted in the administrative culture of the ABCFP. Section 23 of the *Foresters Act* (2003) gives the ABCFP explicit jurisdiction to apply ACR. ACR is part of their legislation, depicted throughout their bylaws (ABCFP, 2008) (specifically Bylaw 14) and noted

in policies where applicable¹⁷. The Complaint Process Bulletin (guideline) outlines ACR procedures, provides information regarding the role of a complainant, what is involved in lodging a complaint and what a subject member to a complaint should expect (ABCFP, 2009). Those involved in a member to member complaint are encouraged to “first try to resolve matters between themselves (whenever practical and appropriate)” prior to making a formal complaint to the ABCFP¹⁸ (ABCFP, 2011c). And, should a matter proceed to a hearing or through ACR, the ABCFP has a policy addressing when to publish the names of those members found guilty (ABCFP, 2009a). Although, there is no specific mention as to how this applies to ACR.

Furthermore, the method for determining complaints¹⁹ appropriate for ACR seems to occur on a case by case basis. Upon closer examination of the cases listed on the ABCFP website, however, it appears that cases tend to hold the following characteristics:

- The complaint surfaced years after the incident had occurred
- An informal resolution (could be considered ACR) took place outside of the ABCFP after which the complaint was to be withdrawn pending the completion of the course of action agreed upon by both the complainant and subject member
- An admission of guilt to most (if not all) assertions occurred, deep remorse was evident and the subject member was willing to amend the situation
- The violation was not a substantial threat to the public interest

¹⁷ See Appendix 3 for detailed ABCFP legislation, bylaws and policies pertaining to ACR

¹⁸ As this report for the College neared completion the ABCFP posted a draft of its Professional Accountability Process (ABCFP, 2011). This draft outlines the steps members are to take as they “first try to resolve matters between themselves...” prior to making a formal complaint to the ABCFP. Arguably this is an ADR strategy currently being developed by the ABCFP. It must be acknowledged despite the limited time to investigate it further.

¹⁹ The ABCFP Complaint Records suggest that since 1996 there have been approximately 14 complaints/disputes addressed using ACR and three Conditional Admissions out of 75 or so cases recorded. Of these 75 cases approximately 48 were dismissed; either they had insufficient basis to proceed or no basis to proceed. Three of the cases were withdrawn by the complainant, two of which had the assistance of ACR (ABCFP, 2011b).

- The violation held potential for significant safety repercussions or appropriate regard for the safety of others was not practiced
- A misrepresentation of facts or directing unauthorized actions occurred
- Personal life had a significant influence on professional conduct
- There was a failure to give credit for professional work where it was due
- An attempt to hurt the business of another member had transpired
- Due diligence was not practiced
- There was a financial issue – charging a client for services that were neither due nor owing
- An unintentional breach of the *Foresters Act* or ABCFP Bylaws transpired

Another useful practice by the ABCFP with regards to ACR is how the appropriateness of settlement proposals (a result of ACR) is determined. The ABCFP asks certain questions in deciding whether or not a settlement proposal meets the responsibility of the ABCFP to both the public and professional interests. Such questions are as follows (ABCFP, 2008a, p. 3-4):

1. Given the facts of the case, how serious are the infractions and what is the appropriate range of sanctions or remedies the Association might reasonably and fairly apply in order to meet its duties under the Act?
2. Is one or more of those sanctions, remedies, or actions present in the settlement?
3. In addition, does the settlement as a whole meet the following specific tests:
 - a. Does the settlement adequately reflect the harm caused to
 - i. the profession,
 - ii. the public, and
 - iii. the subject member's client?

- b.** Does the settlement remove any economic benefit the subject member may have gained as a result of the alleged activities?
 - c.** Is the settlement sufficient to provide a specific deterrent to the subject member and a general deterrent to other members?
 - d.** Is the proposal sufficient to rehabilitate the member?
- 4.** Is the severity of the sanctions in the negotiated settlement agreement commensurate with the relative degree of harm caused under 3(a)?

3.3.2 Association of Saskatchewan Forestry Professionals

The ASFP²⁰ regulates those forestry practitioners who choose to commit themselves to the profession of forestry as governed by the *Forestry Professions Act* (ASFP, 2009). Alternate Complaints Resolution (ACR), a variation of the term ADR, is a part of ASFP disciplinary measures and is apparent throughout their Policies²¹. These Policies suggest ACR may be applied in the context of the Professional Conduct Committee (analogous to the College of Applied Biology Discipline Committee) while the Discipline Committee (analogous to the College of Applied Biology Discipline Panel) reviews proposed settlements for suitability (ASFP, 2010a; ASFP, 2010).

A complainant's role with regard to ACR is that of potentially participating in negotiation, a conditional admission, arbitration and/or mediation. In order for ACR to take place

²⁰ Although there is sufficient information for the College to learn from regarding their Alternate Complaints Resolution (ACR), please note that many policies are still in their draft form due to the youth of the ASFP.

²¹ For a detailed view of ASFP Policies referring specifically to ACR please see Appendix 4.

the Chair of the Professional Conduct Committee, the complainant and subject member must all agree to it. Referral of a matter to ACR occurs case by case though there are some guiding questions for the Professional Conduct Committee to facilitate such decisions (ASFP, 2010a). The ASFP has chosen to reference the Law Reform Commission of Saskatchewan (2007) for these questions (p. 14):

1. Does an open conversation have the potential to repair a relationship or restore the confidence of the public (or a certain individual) in the profession?
2. Is it possible that an explanation, an apology, or commitments to future change will satisfy both the complainant and the public interest?
3. Has there been a breakdown in communication which has contributed to the problem?
4. Do the allegations include serious incapacity, incompetence, dishonesty or sexual abuse—or situations that might lead to the discovery of additional misconduct? (On most occasions, these situations will not be appropriate for mediation)

The Chair of the Professional Conduct Committee has the discretion as to whether professionals and/or legal counsel are required with ACR. The aim of the Professional Conduct Committee in referring ACR is to ensure an attempt has been made for parties to address and resolve the matter in an appropriate and reasonable way; particularly in instances where the dispute is between two members. In short, it is expected that parties to a complaint have attempted to address and/or resolve the matter if it is reasonable and appropriate to do so (ASFP, 2010a).

In its role of reviewing ACR settlement proposals the Discipline Committee may accept these at any time prior to the commencement of a discipline hearing. Two requirements the Discipline Committee looks for in reviewing an ACR settlement proposal are whether the public interest is met and whether the penalties and/or order are appropriate. In instances where complaints are addressed through ACR, built-in to the settlement documentation is the decision of whether or not to publish the name of the member(s). ACR settlement proposals that have been accepted with modifications of order or those that have been rejected may be appealed (ASFP, 2010).

The ASFP has produced two reports exploring the activities of other professional forestry organizations in Canada to assist in developing its own discipline and professional conduct processes; this includes ADR. There is much the College can learn from the findings of these two documents. In the report “A Comparison of Professional Conduct Processes of Canadian Forestry Professional Associations” it was found that most professional organizations have ADR incorporated into their disciplinary procedures, although some have not had the opportunity to apply it. There is also some evidence of success in addressing complaints through ADR thus halting the matter from proceeding to a hearing and ADR referral is mostly decided case by case (ASFP, 2010b).

The “Discipline Process of Forestry Professional Associations: Comparison Report” produced a list of questions regarding the discipline and hearing processes of a selection of professional forestry associations across Canada – one of which was the Association of British Columbia Forest Professionals. Responses to these questions were accomplished using

information available on the websites of given associations as well as follow-up interviews with representatives. There were several themes involved in the questionnaire, one of which was “Alternate Dispute Resolution” (ASFP, 2010c).

With regards to ADR two strategies were found most common among professional organizations; one being mediation/arbitration and the other being “...an approach where the member agrees with the complaint and accepts or proposes a settlement” (ASFP, 2010c, p. 5), analogous to the College Conditional Admission. The registrar tends to be involved in such ADR strategies along with conduct or advisory committees to determine whether suggested settlements are reasonable. Final settlements are then signed-off by the Chair of the Discipline Committee or simply the Discipline Committee. Whether settlements are accepted throughout a discipline process including the hearing or only before the commencement of a hearing varies from organization to organization. The ASFP also found that a number of organizations develop a permanent roster of individuals from a range of practices willing to work on discipline/hearing matters. Also, generally the Registrar or Executive Director monitor members found guilty to ensure orders have been completed though most organizations have not had any issues (ASFP, 2010c).

Lastly, forestry professions in most provinces have implemented ADR to achieve equitable solutions thus avoiding formal hearings; any final decisions in ADR should be signed off by individuals not involved in the process like a Discipline Committee. With regards to ADR and the publication of results, the ASFP came to the conclusion that they are to be published as digests on its website (ASFP, 2010c).

3.3.3 Energy Resources Conservation Board

The ERCB as an independent, quasi-judicial body part of the Government of Alberta regulates the development of Alberta's energy resources including oil, oil sands, natural gas, pipelines and coal. In Alberta, approval from the ERCB is required at most all stages of an energy project. The ERCB functions as an adjudicator and regulator to ensure all development, transportation and monitoring of these resources is in the best interest of the public. The ERCB fulfills this function through its application and hearing process as well as regulation, monitoring, surveillance and enforcement activities. In addition to this it functions as a provider of knowledge, information and advice regarding Alberta's energy resources (ERCB, 2010).

In applying what the ERCB calls Appropriate Dispute Resolution, the organization acknowledges its obligation to recognize its legislative requirements. These include "ensuring potentially affected parties the right to fairness and due process" and "ensuring the broader interest of the public is taken into account" (ERCB, 2000, p. 6). "The EUB [Alberta Energy and Utilities Board, now ERCB] has some flexibility, notwithstanding its statutory constraints, to use alternative dispute mechanisms" (ERCB, 2000, p. 5). In doing so, ADR as defined in this document is referred to simply as dispute resolution while Appropriate Dispute Resolution means options for the resolution of disputes/complaints are viewed as residing along a continuum and the "appropriate" option should be selected to address the issue at hand. These options include negotiation, facilitation and mediation, where parties are allotted more control over the process, at one end and arbitration and administrative tribunals (an ERCB hearing or court), where decisions are (more or less) out of the parties' control, at the other (ERCB, 2011).

A solid effort is made to provide the public and those the ERCB regulates with thorough information about appropriate dispute resolution (available on the ERCB website) including:

- the purpose of the Appropriate Dispute Resolution initiative, what appropriate dispute resolution is, its benefits, principles addressed by the program (ERCB, 2011);
- the reason behind the involvement of the ERCB in dispute resolution, the goal of appropriate dispute resolution, how it works, the chief options (ERCB, 2011a);
- when appropriate dispute resolution can be used, the location of meetings, the time involved, what stakeholders (from the perspective of each) should bring to the table, who is to attend such meetings, if a written agreement will be produced, who pays associated costs, what happens should issues go unresolved, the value of participating in dispute resolution despite a hearing, initiating dispute resolution, confidentiality, what happens should a party remove its objection (ERCB, 2008) etc.

The ERCB website also makes it clear that anyone requiring further information about their Appropriate Dispute Resolution program should contact them (ERCB, 2011a). Useful documents are offered outlining instructions for mediators, participants and service providers (meaning staff at the ERCB) (EUB, 2007; EUB, 2007a; EUB, 2007b). An evaluation/debrief form regarding the Appropriate Dispute Resolution program is also available including a glossary of terms.

Additionally, the ERCB website discusses its role in appropriate dispute resolution, the use of independent, neutral and third parties, confidentiality, technical, scientific and other information, timing, the binding nature of the final agreement and how it will be enforced (EUB, 2006; ERCB, 2001).

A mandated versus voluntary approach was also considered. Advocates of a mandated approach note that concerns over mandating dispute resolution are outweighed by the benefits of having parties come together face to face (CDRC, 2000). The ERCB chose the more cautious approach, however, noting that if necessary the system may be changed in the future to mandatory (CDRC, 2000). Further, the ERCB recognizes that not all matters are appropriate for dispute resolution and thus should be addressed by a formal hearing. Though, it also acknowledges that dispute resolution processes may clarify the matter at hand thus reducing the amount of issues to be addressed at a formal hearing. Keeping this in mind, the ERCB has developed questions to assist in determining the most appropriate route. These questions include (ERCB, 2000, p. 7):

- Is there a dispute and can it be clarified?
- Who are the main parties and are there incentives to be involved?
- Are the real issues addressable at this time?
- Are the issues negotiable?
- Can the interested parties be effectively represented?
- Do the effective parties have adequate resources to negotiate?
- Are there meaningful deadlines?
- Are there outstanding issues that must be addressed before starting the processes?
- Can a viable process be structured?
- How much information will the Mediator need or get?

The Canadian Dispute Resolution Corporation (2000) prepared a report for the then EUB. This report is a good example of what is involved in producing a plan to implement ADR into an organization. It addresses topics such as “policy and legislative options”, “awareness and education”, “communication options”, “EUB Staff Training”, “Mediation Screen Criteria”,

“Timelines and Requirements”, “Roster”, “Confidentiality and Enforcement” as well as “Database and Performance Measures”. The importance of the achieved and maintained perception of neutrality and fairness, the establishment of trust and balance by the public and stakeholders as well as how parties will view their rights are also highlighted. To accomplish these, a preliminary meeting is held to choose the most “appropriate” way in which to address a matter using their Appropriate Dispute Resolution program. This gives all stakeholders agency in how to approach their issue (CDRC, 2000).

An appropriate dispute resolution roster of mediators and service providers who have noted their interest in assisting parties experiencing energy-related disputes is available on the ERCB website as well (ERCB, 2005). The roster is a flexible and cost-effective means that promotes the use of third parties to maintain perceived and real impartiality. Additionally, participants are able to identify a specialist satisfactory to them and any geographic limitations can be addressed. Dispute resolution specialists on the roster should be subscribed to a relevant professional body or a code of ethics, have training and knowledge in interest-based dispute resolution, references, the proper insurance coverage and experience that is documented. The roster should provide names and contact information, references as well as a description of experience and credentials (CDRC, 2000).

In producing a final agreement through dispute resolution, the ERCB emphasizes the necessity of producing one that is complete and includes reviews (if required) to ascertain what was agreed upon is being achieved, should certain conditions go unfulfilled what happens and how to address new and/or unexpected occurrences. A word of caution for agreements reached

through dispute resolution is that some may result in aspects unenforceable by the legislative mandate of the ERCB or are in overlapping jurisdiction(s). As long as parties are aware of this limitation when it occurs they are able to make an informed decision as to whether to include it in their agreement or not. To reinforce this, a disclaimer is noted stating that the ERCB only has the authority to enforce those aspects within its jurisdiction (ERCB, 2001).

The ERCB also investigated the concerns of stakeholders and participants revealing the following: greater emphasis should be placed on helping participants understand the interests and options of one another; procedures should be outlined clearly; preparatory work achieved during preliminary meetings should be utilized; and, proper support materials should be provided. Additionally, equal opportunity to speak (meaning lawyers should not do most of the talking) should be ensured for participants; discussions should not bounce from topic to topic; focusing on a solution proposed too early by one participant should be avoided; and, having the appropriate background so as to avoid slowing the process and closure of final agreements should be ensured (EUB, 2001).

Additional concerns included: an opportunity to assess costs is necessary before committing fully to payment of these costs; avoiding time delays is important; costs associated with science and technology should be managed with caution to avoid the necessity of duplication and waste; and matters of payment should be limited to the appropriate parties. The expected costs to be associated with dispute resolution include (CDRC, 2000):

- ADR or other professional costs or fees
- Facility and associated expenses
- Travel and associated expenses
- Legal counsel

- Expert advisor costs and associated expenses
- Costs for scientific or technical information or issues

Encouraging creative and effective ways to manage such costs is recommended (CDRC, 2000).

For instance, should a matter proceed to a hearing the ERCB has made it possible to use technical and scientific information acquired in dispute resolution to reduce the costs and time of the hearing (ERCB, 2001). With regard to the time saving aspect of dispute resolution “It should be remembered that ADR, as well as expediting decisions in the ideal situation, also offers the promise of “better” decisions. There may be situations where it is preferable to take additional time to reach a better decision” (CDRC, 2000, p. 21).

Participation in dispute resolution should allow participants to discuss issues freely and suggest possible solutions openly. Such essential disclosure tends to occur only in an environment where the information disclosed is protected. One possibility is to give the power of decisions regarding confidentiality to participants, while another is to provide a process where confidentiality is applied in the same way to all cases. Legislation like the Freedom of Information and Protection of Privacy Act however, may have an impact on confidentiality. Although this has proven unlikely, it is information participants should be aware of. Also, the effectiveness of parties participating in person as opposed to over the phone or through other means is noted although the fact that this is not always possible is acknowledged (CDRC, 2000).

Lastly, the ERCB highlights the necessity of educating its stakeholders in their dispute resolution processes for it to continue gaining acceptance. It notes the importance of both an education and communication strategy in the development and implementation of its Appropriate

Dispute Resolution program as well as a monitoring system (ERCB, 2001; CDRC, 2000). The friction that likely arises during introduction and implementation is viewed as growing pains. The ERCB cautions against falling back on previously rooted procedures rather than beginning to rely on the new aspects of the system. Another caution is to beware of those who, out of frustration in their situation or result of their actions, will chastise the new system. Thus it is important to address issues of operation and enforcement in a productive way like through the creation an appropriate dispute resolution coordinator position. Such a coordinator would for instance (CDRC, 2000, p. 30):

- Monitor ADR activities and complete associated reporting to appropriate bodies
- Recommend and/or implement related any changes
- Monitor related training initiatives
- Oversee service providers
- Identifying instances when ADR can be used and encouraging participation in ADR
- Organizing attendees
- Communicate with media on related matters
- Arrange representation and input on technical matters
- Ensure follow-up to settlements
- Conduct ongoing research with regards to new decision-making practices

Additionally, the coordinator could execute assessments of the system a crucial factor in exhibiting results and promoting its use (CDRC, 2000).

3.4 Discussion: Lessons Learned from the Literature Review

Focusing on Sections 3.2 and 3.3 of this literature review, there are a number of lessons the College can learn in implementing its ADR Approach. For instance, designing and implementing a strategic and thoughtful ADR strategy that is concurrent with its overall direction is crucial for successful dissemination. Thorough and accessible information, a communication strategy and addressing any frictions surfacing during implementation are also useful. Preliminary meetings with participants, accessible guidelines, staff trained in ADR and a self-test for those considering an ADR process are handy mechanisms in ensuring participants are well-informed, understand ADR and a given process, have realistic expectations and have ownership over the ADR process in which they are participating.

Participation in ADR processes should (at least) initially be voluntary. Cases, participants and ADR specialists should be matched appropriately. Participants should be allowed to include their representatives in the ADR process in question. In the alternative, a knowledgeable individual may have the discretion as to whether professionals and/or legal counsel are required. A roster of individuals from a range of practices (including ADR) willing to work on discipline/hearing matters should be developed. Hiring ADR specialists who are sufficiently trained should be a priority. To do so, conditions for the participation of ADR specialists in the roster should be developed. In ensuring perceived neutrality and impartiality, consideration must also be given to whether or not to hire internally or externally. The use of volunteer mediators is a cost effective option as well. Regardless, consistency between ADR specialists should be maintained and providing them with clearly chosen and established ADR processes is helpful in

this regard. Additionally, a decision should be made as to whether a legalistic or mediation model is preferred and whether the College would like ADR specialists who can draft agreements.

This literature review also seems to indicate that cases appropriate for ADR should be determined case by case, with criteria and questions developed in advance to assist in decision making. Additionally, consideration should be given as to whether or not to encourage member to member disputants to first attempt to resolve the dispute on their own and whether a complainant has a role in ADR processes. ADR processes must not be monetarily prohibitive as the likelihood of people participating is higher when there is no cost to them. Encouraging creative and effective ways to manage costs is also useful. Furthermore, an agreement to participate should be signed before commencing an ADR process while drawing caution to its confidential nature including noting any limits. Face to face meetings are preferred and should be encouraged though acknowledging this is not always a possibility is important. And, all key stakeholders should be present including decision makers who can commit to a resolution or otherwise are readily accessible.

In an ADR process, finding a balance between efficiency (saving time) and reaching a suitable resolution for all involved is important. Questions and criteria can be developed to assist in deciding whether or not a settlement proposal meets the responsibility of the organization. Consideration should be given as to who will have the authority to finalize (meaning sign off) such settlements; should it be those directly involved in the process or someone outside of the process? Other factors to consider in finalizing settlements include meeting the public interest

and the appropriateness of penalties and orders. Additionally, included in the settlement should be the decision as to whether or not the name of the member(s) will be published.

Monitoring and assessment of an ADR strategy was also highlighted as imperative throughout the literature review including follow-up contact with participants to ensure orders have been completed. A post-process survey to monitor the satisfaction of participants, a survey and/or report to be completed by ADR specialists, and annual reports are good tools for assessment and monitoring. Providing surveys online is encouraged. Survey responses (with permission from the respondent) can also assist with the promotion of an ADR strategy, avoiding poor perceptions and raising awareness.

The Association of British Columbia Forest Professionals legislation, bylaws and policies (Appendix 3) as well as the Association of Saskatchewan Forestry Professionals policies (Appendix 4) are useful examples for the College in developing its own. The ADR strategy must not undermine the primary enforcement function of the organization and legislative requirements must be recognized. Further, explicit acknowledgment that some agreements reached may result in aspects unenforceable by the legislative mandate or are overlapping in jurisdiction is important for participants to make informed decisions. Last, the ADR information available on the Energy Resources Conservation Board website is a thorough example of how a successful ADR strategy should be disseminated.

4. THE ALTERNATIVE DISPUTE RESOLUTION APPROACH

The Alternative Dispute Resolution Approach complements the Professional Integrity Maintenance System by increasing the capacity of the College to address the range of potential complaints/disputes associated with it and by providing greater flexibility and creativity in maintaining the professional integrity of its members without undermining the primary enforcement function of the College or its public interest mandate.

4.1 Adopting an Alternative Dispute Resolution Approach Mindset

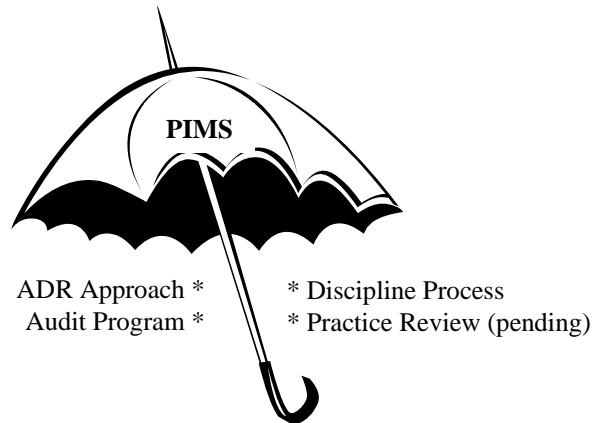
Adopting an ADR Approach mindset involves practicing ADR skills regularly, identifying opportunities to apply specific ADR skills, recognizing when an ADR process would be useful and using ADR processes when appropriate. Simply put, it involves keeping ADR processes and skills available through the ADR Approach at the back of one's mind so as to recognize opportunities to apply them.

4.2 The Professional Integrity Maintenance System and the Alternative Dispute Resolution Approach

The College Discipline Process, Audit Program, pending Practice Review and ADR Approach are mechanisms existing under the umbrella of the PIMS (see Figure 3). The creation

of an umbrella term isolates the practices the College has undertaken to ensure and maintain the professional integrity of its members and its public interest mandate.

Figure 3: Mechanisms existing under the Professional Integrity Maintenance System



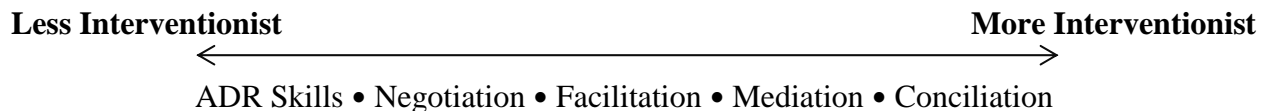
Under the PIMS, implicit ADR practices are made explicit by classifying those features already utilized but not labeled as such; e.g. the Conditional Admission. The ADR Approach also builds upon aspects of the PIMS by incorporating additional ADR possibilities as well as refining and contributing opportune ADR skills. With the implementation of the ADR Approach, ADR may be applied in the form of a process to collaboratively come to a Conditional Admission and in the form of skills throughout the Discipline Process and the Audit Program. A detailed visual representation of the PIMS framework is available in Figure 1 (p. 16, Section 1.3 of this document). For a simplified version of this framework please see Figure 2²² (p. 17, Section 1.3 as well).

²² Figure 2 includes the potential flow of the Practice Review.

4.3 Alternative Dispute Resolution Approach: Skills and Processes

The use of ADR skills and processes throughout the PIMS assists in enhancing its effectiveness. ADR skills identified as useful throughout the PIMS include: active listening, body language, verbal and written communication, the identification of interests and positions as well as probing and asking questions. Such skills are transferable beyond the PIMS into the everyday professional (even personal) lives of members. Designated ADR processes include negotiation, facilitation, mediation and conciliation. These skills and processes exist along a continuum ranging from ADR skills and negotiation, which are less interventionist, to mediation and conciliation, which are more interventionist²³. ADR skills are dependent on personal application while conciliation is heavily reliant on the assistance of a third party for instance. A visual representation of this continuum appears in Figure 4 below.

Figure 4: Alternative Dispute Resolution Skills and Processes Continuum



Members of the Audit Committee, Discipline Committee, Discipline Panels, the College and auditors can acquire ADR skills through ADR workshops and training to build upon the skills they apply in accomplishing duties as representatives of the College and practicing professionals. With regard to ADR processes, opportunities for negotiation under the PIMS can occur at any time and are manifested through the application of ADR skills. The ADR processes of facilitation, mediation and conciliation are available when third party assistance from an ADR

²³ Less and more interventionist means less and more assistance/involvement from a third party (ADR specialist).

specialist is necessary to collaboratively craft a Conditional Admission; ADR skills can also supplement these. Opportunities and instructions for the application of the abovementioned ADR skills and processes under each mechanism of the PIMS are outlined in the sections below.

4.3.1 Audit Program

With regard to the Audit Program, the ADR Approach is to be applied in the form of ADR skills and the ADR process of negotiation whenever opportunities arise. Opportunities for negotiation²⁴ may arise at any time throughout the Audit Program. The application of ADR skills will assist in an audit generally and with any negotiations occurring throughout. For instance, ADR skills may generally be applied throughout any written and verbal communication between the auditor, auditee and/or the Audit Committee. Potential opportunities for negotiation include (but are not limited to), when finding a suitable auditor-auditee pairing, when an auditor and auditee craft a work plan or produce recommendations for the auditee; when an auditor, auditee and the Audit Committee refine an appropriate work plan or recommendations for the auditee; before deciding to send a matter that has surfaced through an audit to the Discipline Committee for consideration under the Discipline Process; or, if an auditee fails to meet the requirements/recommendations of an audit.

²⁴ Recall the definition of negotiation. It is an ADR process exercised in the form of ADR skills. It is a part of daily life and can occur intentionally or spontaneously at most anytime; for example it occurs in discussing a pay raise with an employer, deciding on where to have dinner, agreeing on a purchase price, etc. (Fisher & Ury, 1991). Chicanot and Sloan (2009) state, "Negotiation occurs when differing perspectives are exchanged, expressed or shared in a mutual attempt to find an outcome that is regarded as satisfactory by those involved" (p. 11).

Auditors and the Audit Committee are encouraged to adopt an ADR Approach mindset by practicing ADR skills regularly, identifying opportunities to apply specific ADR skills and recognizing when opportunities for negotiation arise. Adopting an ADR Approach mindset will assist in ensuring an efficient audit and help prevent, manage as well as address any disputes/complaints arising.

4.3.2 Discipline Process

The ADR Approach is to be applied throughout the Discipline Process by adopting an ADR Approach mindset as well. This involves practicing ADR skills regularly, identifying opportunities to apply specific ADR skills, recognizing when an ADR process (facilitation, mediation and conciliation) would be useful and using ADR processes when appropriate. The Discipline Process includes the Investigation Phase, Discipline Hearing, Conditional Admission and Discipline Digest.

Once a complaint is made, the College must address the complaint so as to fulfill its duty in upholding and protecting the public interest. In addressing the complaint, it is up to the discretion of the Discipline Committee whether or not to proceed through the Investigation Phase, meaning investigate the complaint. In this phase, the manner in which the Discipline Committee communicates between the subject member and complainant - in terms of the questions asked, information requested, language used, interpretations of the complaint/dispute made, opportunities for resolution recognized, etc. - can make a significant difference in how

many complaints are withdrawn, how many Conditional Admissions are made and how clearly a complaint is understood by both the subject member and complainant. This is of vital importance considering the fact that the Discipline Committee is the avenue for communication between the subject member and complainant. Providing the Discipline Committee with the opportunity to learn or enhance their ADR skills and maintaining an ADR Approach mindset could prove to be invaluable in the number of cases that proceed past the Investigation Phase.

Similarly, should a matter proceed to a Discipline Hearing, providing the Discipline Panel with the opportunity to learn or enhance their ADR skills and adopting an ADR Approach mindset can prove useful in minimizing the number of cases that are appealed as parties will know and feel they have been heard and understood. Additionally, in publishing matters in the Discipline Digest, the way in which a matter is presented and the language that is used can assist in how a message is communicated and whether or not others will learn from it. The Discipline Committee and Discipline Panels should practice ADR skills regularly and identify opportunities to apply specific ADR skills. Adopting an ADR Approach mindset will contribute to ensuring an efficient Discipline Process and help prevent, manage as well as address any disputes/complaints arising.

4.3.3 Conditional Admission

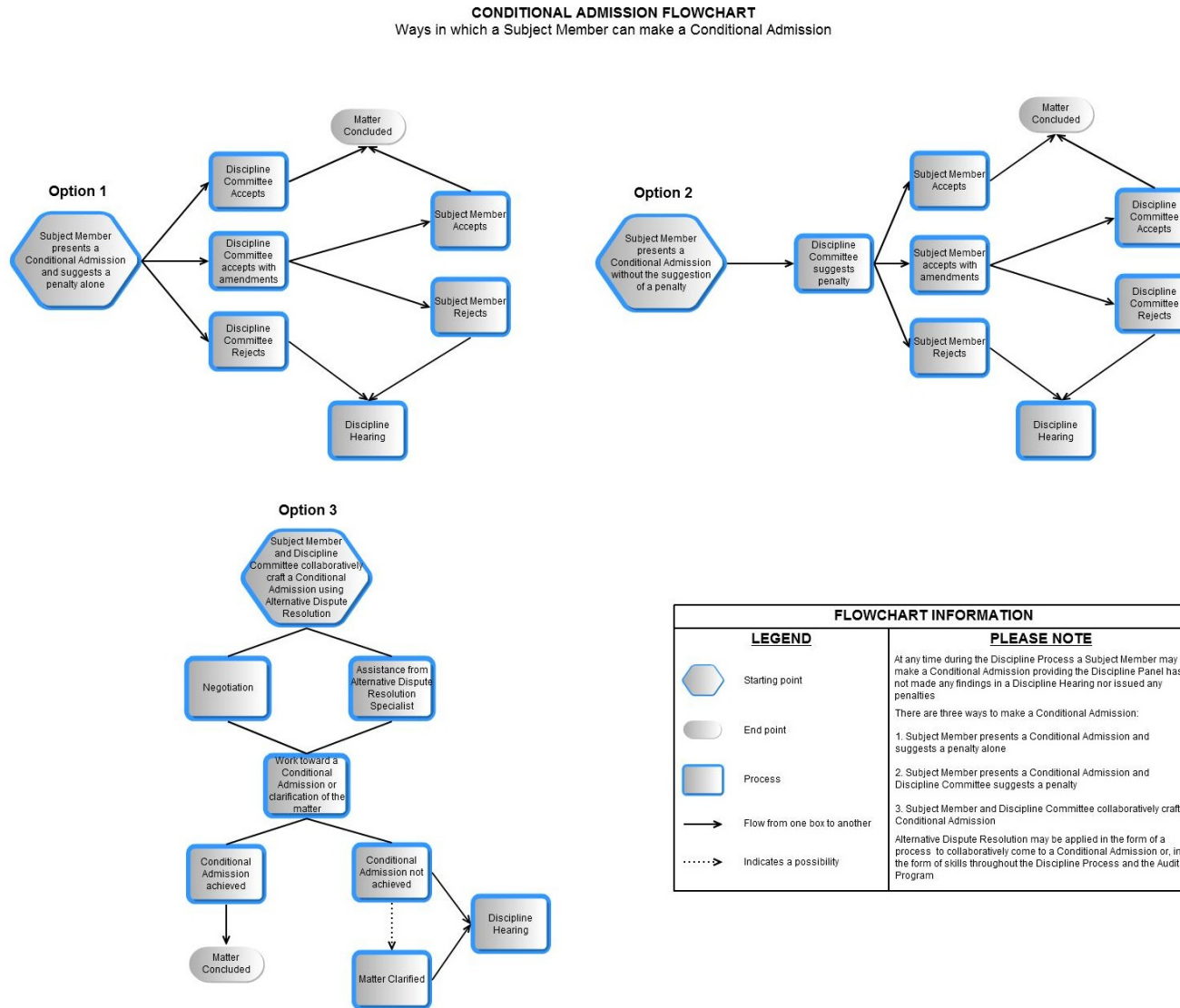
A Conditional Admission is by nature voluntary because the subject member is voluntarily admitting to having engaged in “professional misconduct, conduct unbecoming a professional member [and/]or incompetent performance of duties undertaken while engaged in applied biology, or a breach of this Act [and/] or the Rules” as stated in Rule 15.8.1.1. The Discipline Committee and subject member must both accept the proposed Conditional Admission and associated penalty for it to move forward. Thus the Discipline Committee and subject member are considered participants to a Conditional Admission at all times. There are a few ways in which a subject member can make a Conditional Admission²⁵:

1. the subject member presents one alone along with the suggestion of a penalty;
2. the subject member presents one alone without the suggestion of a penalty; or,
3. the subject member and Discipline Committee (represented by a member of the Discipline Committee) craft a Conditional Admission and penalty collaboratively.

For a visual representation of these options see Figure 5.

²⁵ Although a part of the Discipline Process, the Conditional Admission requires its own sub-section due to the number of ways the ADR Approach may be applied.

Figure 5: Ways in which a Subject Member can make a Conditional Admission



A Conditional Admission can be considered an ADR process in itself because it is an alternative resolution mechanism to the traditional Discipline Process. If a subject member pursues Conditional Admission options 1 or 2, maintaining an ADR Approach mindset and the application of ADR skills can be integral to coming to a Conditional Admission and an associated penalty that is most effective and suitable for both the College and subject member. Each of options 1 and 2 could also transpire into a negotiation where ADR skills and an ADR Approach mindset are useful as well. With regards to option 3, where both the subject member and Discipline Committee²⁶ agree to craft a Conditional Admission and penalty collaboratively, an additional ADR process (facilitation, mediation or conciliation) will be used. An ADR Approach mindset and the application of ADR skills in option 3 are equally as valuable to its effectiveness and suitability of the outcome.

Should a subject member request option 3 or the Discipline Committee suggest it, both participants must voluntarily agree to participate in an additional ADR process (facilitation, mediation or conciliation). If both agree, the Discipline Committee will choose a representative from amongst themselves to participate in the given ADR process and will have the authority on behalf of the Discipline Committee to decide whether or not to accept a Conditional Admission and penalty that has been crafted collaboratively. A Discipline Committee representative should be selected by the Discipline Committee case by case, should have no significant prior relationship with the subject member and have enough knowledge in the Discipline Process and Conditional Admission in order to be a trustworthy and viable option. After holding preliminary

²⁶ This means the subject member and Discipline Committee who is represented by a Discipline Committee member.

meetings with the subject member and Discipline Committee representative individually, the ADR specialist hired will recommend the most suitable of the three ADR processes to use.

In crafting a Conditional Admission and penalty under any of the options (option 1, 2 or 3) participants should follow the College Conditional Admission Guidance (CAB, 2011a) and Policy (CAB, 2011e), Guidance: Penalty Determination Associated with Discipline-Related Matters (CAB, 2011d) and Guidance on the Imposition of Costs in Discipline Matters (CAB, 2011c). If a Conditional Admission and penalty is reached it will become the final agreement and a description of the complaint, how it came to be and how it was addressed is printed in the Discipline Digest. The name of the subject member may be published.

The policy on Publication of Discipline Related Decisions (CAB, 2011b) should be adhered to for all matters pertaining to the publication of cases in the Discipline Digest. If however, the subject member and a representative of the Discipline Committee came to a Conditional Admission and penalty collaboratively (in option 3) using an ADR process (facilitation, mediation or conciliation), the details which transpired during the additional ADR process are to remain confidential (between the ADR specialist, Discipline Committee and subject member) and must not be a part of what is published in the Discipline Digest. Only the fact that the Conditional Admission was achieved collaboratively using an ADR process may be disclosed; the type of ADR process used may be disclosed as well. In printing cases in the Discipline Digest, the College must be diligent and consistent with the language it uses with regards to the ADR Approach and in general so as to avoid the confusion of its readers as well as

the College in applying the ADR Approach; for example, conforming with ADR terminology as defined by this document.

Lastly, if an attempt was made at a Conditional Admission and none resulted, at the least, these efforts are likely to result in clarification of the issues at hand to proceed to a Discipline Hearing potentially saving time and costs. Confidentiality of the ADR process must be respected, and no mention of the failed Conditional Admission should be made.

4.3.3.1 When is an ADR Process Appropriate?

The following questions²⁷ are useful in determining whether or not an ADR process (facilitation, mediation or conciliation) is appropriate:

- Are the issues addressable at this time?
- Are the issues negotiable?
- Can participants be effectively represented?
- Do participants have adequate resources to participate?
- Are there any meaningful deadlines to consider?
- Are there outstanding issues that must be addressed before starting the ADR process?
- Can a viable ADR process be selected?
- How much information will the ADR specialist need or get?

²⁷ These questions have been informed by the ERCB (2000, p. 7) and the Law Reform Commission of Saskatchewan (2007, p. 14); they have been adapted to reflect the needs of the College.

- Does an open conversation have the potential to repair a relationship or restore the confidence of the public (or a certain individual) in the profession?
- Is it possible that an explanation, an apology or commitments to future change will satisfy the public interest?
- Has there been a breakdown in communication which has contributed to the problem?
- Do the allegations include serious incapacity, incompetence, dishonesty or sexual abuse—or situations that might lead to the discovery of additional misconduct? (On most occasions, these situations will not be appropriate for an ADR process)

Figure 6²⁸ also represents a depiction of when ADR is generally appropriate i.e. applicable to the matter at hand. Additionally, if the Discipline Committee finds it is having difficulty in determining whether an ADR process is appropriate for the matter at all, it may choose to hire an ADR specialist to assist in this determination; much like it is able to hire an investigator in the Investigation Phase of the Discipline Process. If it is determined that the matter can proceed through an ADR process, however, another ADR specialist (acceptable to the subject member) should be hired to perform the actual ADR process in order to avoid any bias.

²⁸ The information presented in Figure 6 is intended only as a guide and decisions should be made on a case by case basis.

Figure 6: When is an Alternative Dispute Resolution Process Appropriate?

ADR Appropriate	ADR Inappropriate
<p>Indications an ADR process may be appropriate include:</p> <ul style="list-style-type: none"> ▪ Participants are unwilling or able to meet face to face although show willingness to overcome the issue ▪ Participants are in a situation where they must ultimately re-build trust and respect between one another to function professionally ▪ Intensity of participant emotions about the issue are low to moderate ▪ Participant issues are not extremely polarized ▪ Participants have enough trust in each other to work together to develop a mutually acceptable solution ▪ Participants are in a common predicament and will benefit from a jointly acceptable outcome ▪ Participants will benefit from ownership over the matter and learning skills that can be applied in future situations ▪ Brainstorming and/or the improved flow of information will likely resolve or contribute to settling the issue ▪ The matter is based primarily on procedural issues ▪ Prompt settlement is required ▪ A need to restore community values between the professionals exists ▪ There is a possibility to address the issue creatively and participants will benefit from it ▪ Participants require a transformation in attitude as well as personal growth ▪ It is crucial that fairness and perception of fairness be maintained ▪ Participants must foster an ongoing relationship in the future ▪ It is reasonable to believe participants can work together to come to a resolution or settlement 	<p>Indications an ADR process may be inappropriate include:</p> <ul style="list-style-type: none"> ▪ An indication exists that ADR will only prolong the issue ▪ There is an indication that participation in ADR would not be genuine or taken seriously ▪ Legal rights are at issue ▪ There is a legal, public policy or interpretive issue necessitating clarification on the record ▪ Public involvement or accessibility in the outcome requires an adjudicative approach ▪ A possibility exists that individuals not participating will be prejudiced by the resolution or settlement ▪ The constitutional validity of an Act or law is challenged ▪ There is a possibility of fear or violence amid the participants ▪ Participants have a history of personal conflict indicating an inability to resolve or settle issues constructively ▪ The issue is one of conflicting values, ideologies and/or worldviews which are too closely held to permit individuals to adopt a change on the matter

The willingness of the subject member to participate in an ADR process through option 3 of making a Conditional Admission should be respected by the Discipline Committee as this shows that the subject member is open to taking ownership over and learning from the situation. Subject members may determine whether or not to participate in an ADR process by taking a self-test (available in Appendix 5) and using the questions aforementioned and guidelines presented in Figure 6. The Discipline Committee may also use these questions and guidelines to determine whether an ADR process is appropriate in coming to a Conditional Admission collaboratively in option 3.

The Discipline Committee must only recommend or participate in an ADR process if they believe (given the context of the situation) that it will benefit both the public interest and the subject member. After holding preliminary meetings with the subject member and Discipline Committee representative individually, the ADR specialist hired, considering the info acquired from the meetings, will recommend the most suitable of the three ADR processes (facilitation, mediation or conciliation) to use.

4.3.3.2 Confidentiality and Disclosure

All matters transpiring in coming to a Conditional Admission are to remain confidential (among the subject member, ADR specialist and Discipline Committee) and must not be a part of what is published in the Discipline Digest. Only the fact that the Conditional Admission was made and what it entails may be disclosed. The ADR process used to collaboratively reach the

Conditional Admission (option 3) may also be noted. Prior to the commencement of an ADR process (facilitation, mediation or conciliation) an agreement to participate that includes matters pertaining to confidentiality and its limitations should be signed by all participants (CDRC, 2000). A template for the Agreement to Participate is available in Appendix 6²⁹.

If the matter does proceed to a Discipline Hearing, information from the ADR process is non-compellable. The only exception to this is that any technical and/or scientific information acquired in the ADR process is admissible to the Discipline Hearing if necessary to avoid waste and reduce costs. The agreement should also state that if a Conditional Admission is achieved it is final, that a participant should only sign the agreement if they understand it and the ADR process in which they are to participate, that participants are to participate in a respectful, honest, proactive and genuine manner, if the matter continues to a Discipline Hearing any information which has transpired in the ADR process is inadmissible, and neither the ADR specialist nor the Discipline Committee are to be called as witnesses in a future proceeding. A breach of confidentiality will result in the individual(s) being held accountable under the agreement.

4.3.3.3 Time

It is difficult to estimate the time an ADR process will take in coming to a Conditional Admission or to clarify the issues at hand before proceeding to a Discipline Hearing. This is due

²⁹ The Agreement to Participate for the College has been adapted from the following reference (p. 80-81): Chicanot, J. & Sloan, G. (2010). *The Practice of Mediation: Encouraging Solutions with Skilled Help* (2nd ed.). Victoria, BC: ADR Education.

to the range of issues that can be addressed through ADR processes and because the College has not yet gained the experience necessary with the ADR Approach to make an accurate assessment; this will come with time and familiarity with the ADR Approach.

To ensure efficiency of the process, however, a time limit should be imposed on the application of ADR processes to avoid participants stalling and to promote productivity. A general rule of thumb should be that an ADR process should not take any longer than two months (or 40 business days) from the date participants commit to the process to the time the Conditional Admission and penalty have been reached. If necessary the ADR specialist may recommend an alternate yet reasonable time frame to the Discipline Committee. If the deadline is not met, the matter should proceed on its traditional path.

4.3.3.4 Alternative Dispute Resolution Process Requirements

Requirements for participants and the ADR specialist throughout the application of an ADR process include:

- The Agreement to Participate must be understood and signed by all participants
- The public interest must be at the core of all decisions at all times
- The College Conditional Admission Guidance and Policy, Guidance: Penalty Determination Associated with Discipline-Related Matters and Guidance on the Imposition of Costs in Discipline Matters (CAB, 2011a; 2011e; 2011d; 2011c) must be followed

- Conditional Admissions are required to be in accordance with the *College of Applied Biology Act*, the College of Applied Biology Rules and the College of Applied Biology Member Code of Ethics
- A preliminary meeting must be held by the ADR specialist with each individual participant to ensure s/he understands the details of participation, to ensure an ADR process is appropriate and to inform the decision of the specialist regarding which ADR process (facilitation, mediation or conciliation) to recommend
- The ADR specialist must learn the organizational structure of the College and about the ADR Approach
- All participants (including the ADR specialist and the representative of the Discipline Committee) must participate in good faith, maintain the integrity of the process and not intentionally hinder its progress
- The representative of the Discipline Committee should not abuse their authoritative power. If this occurs it should be recognized and addressed by the ADR specialist.
- The Conditional Admission and penalty must be put in writing by participants and is to be considered the final agreement in the ADR process
- ADR processes must address complaints/disputes with as much authority/severity as a Discipline Hearing.

4.4 Alternative Dispute Resolution Approach Logistics

The following subsections address logistics relevant to the overall ADR Approach. They include: the ADR specialist roster; ADR skills training; budgetary impacts; promoting the ADR Approach and getting the College community on board; the ADR coordinator position; ADR Approach policies and guidelines; as well as, other outstanding logistics.

4.4.1 Alternative Dispute Resolution Specialist Roster

The College does not currently have the internal resources necessary to administer ADR processes nor training or workshops. Therefore it should hire ADR specialists externally in order to maximize on their expertise and experience, and to avoid the perception of bias. ADR specialists can be hired to provide the following ADR services:

1. The ADR processes of facilitation, mediation or conciliation
2. ADR skills training and workshops including: active listening; body language; identifying interests and positions; probing and asking questions; as well as, verbal and written communication
3. Determining whether or not an ADR process is appropriate in a matter of discipline in an investigator role

Eventually the College might reconsider training staff and/or hiring a permanent specialist as it becomes more familiar with its ADR Approach. The use of volunteer ADR specialists is another cost effective option. The workload and costs associated with hiring externally versus internally

should be considered as well. Regardless of which option the College chooses, ADR specialists hired, whether they are included in a roster or not, should meet the following qualifications and requirements:

- A subscription to a relevant professional body or code of ethics
- Training and knowledge in interest-based dispute resolution
- A resume or CV that demonstrates training and knowledge in interest-based dispute resolution
- Two references
- Disclosed their insurance coverage status
- Experience performing facilitations, mediation and/or conciliations
- Knowledge of the College's organizational structure and ADR Approach
- Those interested in applying to perform ADR skills training and workshops must have documented experience in delivering/instructing the following ADR skills: active listening, body language, identifying interests and positions, probing and asking questions, verbal communication and/or written communication

For organizational purposes and efficiency, a roster of ADR specialists willing to work on matters associated with the College should be developed. In the future this roster could expand to include individuals from a range of practices to fulfill a variety of purposes. To compile such a roster a call should be put out for ADR specialists that invites such individuals to be listed on the College roster and outlines the specific qualifications and requirements necessary to be considered. The call could be put out to the Mediate BC Civil Roster, in the College Matters, to the Dispute Resolution Office, on the College website, through email notifications,

word of mouth etc. A template for the roster call for ADR specialists can be found in Appendix 7. This roster should include qualified ADR specialists who are willing to perform facilitations, mediations and/or conciliations as well as those willing to conduct ADR skills training and workshops.

This roster should be available on the College website along with an ongoing invitation for applications. The roster should include contact information and a summary of qualifications, specializations, services offered through the College and any specific subject area with which s/he is familiar related to the profession of applied biology. The ADR specialist selected must be acceptable to the subject member attempting the Conditional Admission in order to avoid the perception of bias as s/he will be facing a representative of the Discipline Committee who holds a position of authority.

4.4.2 Alternative Dispute Resolution Skills Training

In order to effect the successful application of ADR skills, the appropriate individuals or groups must first receive training. These include auditors, the Discipline Committee, the Audit Committee as well as potential members of Discipline Panels. Initially auditors should be required to complete an ADR skills workshop prior to performing an audit. Eventually this may become a requirement to become an auditor. The Discipline Committee and Audit Committee should participate in such training as soon as possible and each new committee member should be required to take an ADR skills workshop. Due to the way in which a Discipline Panel is

convened and its nature it may be challenging at first to ensure all members of a Discipline Panel have taken an ADR skills workshop. Regardless, a significant effort should be made in attempting to have all members of a Discipline Panel undergo such training.

Such committee and auditor related training should be funded by the College and may count toward one's Continuing Professional Development. If a member would like to take an ADR skills workshop specifically to fulfill the requirements of their Continuing Professional Development this option is available at cost to the member. Using this method, eventually much of the College membership will have ADR skills training and this will not only assist in matters of discipline and audit but also in the overall maintenance of the professional integrity of College members.

4.4.3 Budgetary Impacts

As noted in the above section, ADR skills training and workshops related to the fulfillment of duties under PIMS should be funded by the College. If a member would like to take an ADR skills workshop to fulfill the requirements of their Continuing Professional Development, the member would pay for the training. Costs associated with hiring an ADR specialist to perform ADR process functions (facilitation, mediation or conciliation) should generally be borne by the College as well; however, Rule 15.43 still applies in that the subject member may have to incur some (or all) of the costs. Should the subject member be required to pay or not pay for some or all of the ADR process costs, s/he should be notified prior to

committing to participation in option 3, creating a Conditional Admission collaboratively with a Discipline Committee representative.

Arguably most ADR specialists who perform ADR processes do mediation and simultaneously are familiar with facilitation and conciliation; therefore the following rough cost assessment for hiring an ADR specialist is based on the price of hiring a mediator. The Ministry of Attorney General (2011) Dispute Resolution Office in BC provides current information in this regard. Typically such costs vary depending on reputation and the length of the mediation. Those mediators who are experienced and have legal training range between \$125 to \$225 per hour. Those who do not have legal training often charge similar or lower rates; although, at times these rates are negotiable. Private mediation services offer a flat rate of approximately \$800. This fee includes a full array of services such as set up, planning and the mediation itself lasting up to four hours. Volunteers are also a viable cost effective option.

Other expenses might include: rental of a facility if the ADR process cannot occur at the College office; cost of food; travel and related expenses; documentation, administration, other professional costs and fees, investigator costs and related expenses, costs for scientific or technical information, etc.

4.4.4 Getting the College Community on Board

An integral part of successfully implementing the ADR Approach is getting the College community on board. The College may face some barriers in its attempt to do so. For example, some people are unfamiliar with ADR, others may have had negative experiences with it and others may have difficulty accepting the new approach. The following will assist in encouraging acceptance by the College community:

- Clear, thorough and summarized information about the ADR Approach should be readily available on the College website
- Consistent language and terminology as identified in this document should be used with regards to all disseminations of the ADR Approach
- The Discipline Digest should be explicit about the application of an ADR process to promote the realities of ADR processes at the College
- Informative emails and information should be sent to College members introducing the ADR Approach as well as reminding them of its existence
- Public announcements may be made about the implementation of an ADR Approach highlighting its purpose in upholding and protecting the public interest while meeting member needs
- Members in general, and in particular auditees and subject members, should be directed to information regarding the ADR Approach (a complete guide to the ADR Approach is available in Appendix 8)
- Education is integral in the implementation of the ADR Approach and a variety of methods to disseminate information about the ADR Approach should be explored

- The development of a full communication plan/strategy should be considered
- Offering informative presentations at relevant conferences
- With permission from survey participants, using positive survey feedback to promote the ADR Approach

4.4.5 Alternative Dispute Resolution Approach Coordinator

The College should hire or designate a coordinator to deal with all matters pertaining to the ADR Approach. Doing so will ensure that the ADR Approach receives the attention necessary, in terms of operation and enforcement, for its success among the College community.

Such a coordinator would:

- Monitor ADR activities
- Recommend and/or implement related any changes
- Oversee service providers and ADR specialists
- Encourage participation in ADR
- Develop a communications plan and promote the ADR Approach
- Organize and monitor ADR processes and workshops
- Communicate with media on related matters
- Arrange representation and input on technical matters
- Administer, follow-up on and gather information from ADR Approach surveys
- Conduct ongoing research with regards to new problem-solving practices
- Address any frictions arising with implementing the ADR Approach

- Review and assess the ADR Approach annually
- Respond to any inquiries or questions pertaining to the ADR Approach

4.4.6 ADR Approach Policies and Guidelines

Outlined in the following section are new and changed College policies and new guidelines pertaining to the ADR Approach.

4.4.6.1 Policy: Conditional Admission

This Conditional Admission Policy has been revised to include the three options available when making a Conditional Admission.

- A Conditional Admission may be made at any time throughout the Discipline Process providing the Discipline Panel has not made any findings in a Discipline Hearing nor issued any penalty.
- 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 inquiry. In presenting a Conditional Admission, the subject member is admitting to having engaged in the matters which are so named.
- There are three ways in which a subject member can make a Conditional Admission:

1. The subject member presents a Conditional Admission which includes a suggested penalty.
 - The Discipline Committee may:
 - accept the Conditional Admission and penalty,
 - accept the Conditional Admission and penalty with amendments, or
 - reject the Conditional Admission
 - Where the Discipline Committee decides:
 - to accept the Conditional Admission and penalty, the Admission and penalty will be published in the Discipline Digest and/or any other means deemed satisfactory to the Discipline Committee.
 - to accept the Conditional Admission and penalty with amendments, the subject member will have the opportunity accept or reject the Conditional Admission and penalty with the proposed amendments.
 - Where the subject member:
 - accepts the amendments, the Conditional Admission and penalty will be published in the Discipline Digest and/or any other means deemed satisfactory to the Discipline Committee.
 - does not accept the amendments, the matter will proceed to a Discipline Hearing
 - to not accept the Conditional Admission and penalty, the matter will proceed to a Discipline Hearing
2. The subject member presents a Conditional Admission without a suggested penalty.
 - The Discipline Committee may:

- accept the Conditional Admission and suggest a penalty,
- accept the Conditional Admission with amendments and suggest a penalty,
or
- reject the Conditional Admission
- Where the Discipline Committee decides:
 - to accept the Conditional Admission and suggest a penalty, the subject member will have the opportunity accept or reject the suggested penalty.
 - Where the subject member:
 - accepts the suggested penalty, the Conditional Admission and penalty will be published in the Discipline Digest and/or any other means deemed satisfactory to the Discipline Committee.
 - does not accept the suggested penalty, the matter will proceed to a Discipline Hearing
 - to accept the Conditional Admission with amendments and suggest a penalty, the subject member will have the opportunity accept or reject the Conditional Admission with the proposed amendments and suggested penalty.
 - Where the subject member:
 - accepts the amendments and suggested penalty, the Conditional Admission and penalty will be published in the Discipline Digest and/or any other means deemed satisfactory to the Discipline Committee.

- does not accept the amendments and/or suggested penalty, the matter will proceed to a Discipline Hearing
 - to not accept the Conditional Admission, the matter will proceed to a Discipline Hearing
- 3. The subject member and Discipline Committee (represented by a member of the Discipline Committee) craft a Conditional Admission collaboratively.
 - A representative for the Discipline Committee is selected by the Discipline Committee
 - An ADR specialist acceptable to the subject member is selected to assist in recommending and conducting an ADR process (facilitation, mediation or conciliation) to address the matter at hand
 - The subject member and Discipline Committee representative collaboratively craft a Conditional Admission and penalty
 - Both the subject member and Discipline Committee representative must accept the Conditional Admission and penalty for it to be considered satisfactory
 - where the Conditional Admission and/or penalty:
 - are not accepted by either party, the matter will proceed to a Discipline Hearing
 - are accepted by both parties, the Conditional Admission and penalty will be published in the Discipline Digest and/or any other means deemed satisfactory to the Discipline Committee.

- If the matter proceeds to a Discipline Hearing, information from the attempt to craft a Conditional Admission and penalty is non-compellable. Any information that transpired in an ADR process is inadmissible as well.
 - Neither the ADR specialist nor Discipline Committee are to be called as witnesses in a future proceeding.
 - A breach of confidentiality will result in the individual(s) being held accountable.
 - Only technical and/or scientific information acquired in the attempt to craft a Conditional Admission is admissible to a Discipline Hearing

4.4.6.2 Policy: Crafting a Conditional Admission Collaboratively

This is a new Policy that directs the crafting of a collaborative Conditional Admission between the subject member and a representative of the Discipline Committee.

- An “ADR Process” for the purposes of this policy means: facilitation, mediation or conciliation.
 1. A Conditional Admission and penalty may be crafted in a collaborative effort by a subject member and a representative member of the Discipline Committee, selected by the Discipline Committee, using an ADR process.
 2. Both the subject member and Discipline Committee must be voluntary participants in an ADR process used to craft a Conditional Admission and penalty collaboratively.

3. Rule 15.43 may be applied with notification to the subject member that s/he may have to incur some (or all) of the costs of the ADR process prior to committing to participation in an ADR process.
4. The Discipline Committee must choose a representative from amongst its current members to decide, on behalf of the Discipline Committee, whether or not to accept a Conditional Admission and penalty reached collaboratively.
5. An impartial ADR specialist acceptable to the subject member must be selected to assist with the ADR process
6. A preliminary meeting must be held by the selected ADR specialist to determine the appropriate ADR process
7. An ADR process should not take any longer than two months or 40 business days from the date participants commit to the process voluntarily to the time the Conditional Admission and penalty are reached. The selected ADR specialist may recommend an alternate and reasonable time frame to the Discipline Committee. If the deadline is not met, the matter should proceed to a Discipline Hearing.
8. Participants may include their representatives an ADR process.
9. Details transpiring in an ADR process must remain confidential unless otherwise determined by all participants and the limitations must be made explicit to participants.
Limitations include:
 - publishing discipline related decisions,
 - using technical and/or scientific information acquired in an ADR process in a subsequent Discipline Hearing, and
 - the additional ADR process used may be disclosed.

4.4.6.3 Policy: Publication of Discipline Related Decisions

The Conditional Admission section of this Policy has been revised to reflect the ADR Approach. See Appendix 9 for the complete policy.

Conditional Admissions:

The Conditional Admission and penalty accepted by the Discipline Committee and the subject member will be posted in full on the website for 2 years from the date of acceptance of the Admission and penalty, or from 2 years after the member has met any conditions set out in that Admission, whichever is longer. On conclusion of the stated time frame, the member is responsible for contacting the office to effect the change.

After two years, a summary of a Conditional Admission will be posted at the website, and the subject member's name will be removed from that on-line summary. On conclusion of the stated time frame, the member is responsible for contacting the office to effect the change.

Where a subject member chooses to surrender voluntarily his or her membership in response to a complaint by way of Conditional Admission, the summary Conditional Admission will generally be posted indefinitely on the website, and the full Conditional Admission will be removed after a period of 2 years. On conclusion of the stated time frame, the member is responsible for contacting the office to effect the change.

Should the subject member and Discipline Committee representative come to a Conditional Admission collaboratively using an ADR process (facilitation, mediation or conciliation):

- the additional ADR process used may be disclosed,
- discipline related decisions may be published
- all other details transpiring during the ADR process must remain confidential between the ADR specialist, Discipline Committee and subject member

In printing cases in the Discipline Digest, the College must be diligent and consistent with the language and terminology it uses with regards to the ADR Approach.

4.4.6.4 Policy: Alternative Dispute Resolution Specialist Requirements

This is a new Policy that concerns ADR specialists involved with the ADR Approach.

ADR specialists must meet the following qualifications and requirements to be considered for opportunities associated with the College:

- Be subscribed to a relevant professional body or code of ethics
- Have training and knowledge in interest-based dispute resolution
- Provide a resume or CV that demonstrates training and knowledge in interest-based dispute resolution
- Provide two references
- Have disclosed their insurance coverage status
- Have experience performing facilitations, mediation and/or, conciliations
- Have knowledge of the College's organizational structure and ADR Approach

- Complete surveys corresponding to the ADR Approach up to two weeks after having:
 - conducted an ADR process, and/or
 - run an ADR skills workshop and training

4.4.6.5 Policy: Alternative Dispute Resolution Skills Workshop and Training

This is a new Policy that concerns ADR skills workshops and training pertaining to the ADR Approach.

1. All auditors and members of the Discipline Committee, Audit Committee and Discipline Panels must undergo ADR skills workshop and training with costs covered by the College
2. College members for whom it is not a requirement wishing to undergo ADR skills workshop and training may do so at cost to the member
3. ADR skills workshop and training may count toward the Continuing Professional Development of a member

4.4.6.6 Guidance: Crafting a Conditional Admission Collaboratively

1. The Discipline Committee must only participate in an ADR process if given the context of the situation it believes both the public interest and the subject member will benefit

- In most cases, however, the willingness of the subject member to participate in an ADR process should be respected by the Discipline Committee as this shows that the subject member is open to taking ownership over and learning from the situation.
2. If the Discipline Committee finds it is having difficulty in determining whether an ADR process is appropriate for a matter, it may choose to hire an ADR specialist to assist in this determination; just as it is able to hire an investigator in the Investigation Phase of the Discipline Process.
- If the Discipline Committee decides:
 - the matter may proceed through an ADR process, another ADR specialist acceptable to the subject member should be hired to perform the actual ADR process, and
 - the matter may not proceed through an ADR process, the matter will proceed to a Discipline Hearing.
3. A Discipline Committee representative should be selected by the Discipline Committee case by case, should have no significant prior relationship with the subject member and have enough knowledge in the Discipline Process and Conditional Admission in order to be a trustworthy and viable option.
- If the Discipline Committee cannot agree on a representative a vote must be held by the Committee. The Discipline Committee member with the most votes will become the representative

4. An impartial ADR specialist acceptable to the subject member must be selected to assist with the ADR process. This can be accomplished using the ADR Specialist Roster developed by the College.
5. The ADR process and its participants must meet the following requirements:
 - Participants must understand and sign the Agreement to Participate
 - The public interest must be at the core of all decisions at all times
 - The College Conditional Admission Guidance and Policy, Guidance: Penalty Determination Associated with Discipline-Related Matters and Guidance on the Imposition of Costs in Discipline Matters must be followed
 - Conditional Admissions are required to be in accordance with the *College of Applied Biology Act*, the College of Applied Biology Rules and the College of Applied Biology Member Code of Ethics
 - All participants (including the ADR specialist and the representative of the Discipline Committee) must participate in good faith, maintain the integrity of the process and not intentionally hinder its progress
 - The representative of the Discipline Committee should not abuse their authoritative power. If this occurs it should be recognized and addressed by the ADR specialist.
 - If reached, the Conditional Admission and penalty must be put in writing by participants and is to be considered the final agreement in the ADR process
 - ADR processes must address complaints/disputes with as much authority/severity as a Discipline Hearing.
 - Those interested performing ADR skills training and workshops must have documented experience in delivering/instructing the following ADR skills: active

listening, body language, identifying interests and positions, probing and asking questions, verbal communication and/or written communication

An ADR specialist must fulfill the following when engaging in an ADR process (facilitation, mediation or conciliation):

- help participants understand the interests and options of one another;
- outline clearly procedures all procedures;
- utilize preparatory work achieved during preliminary meetings;
- provide the proper support materials;
- ensure participants equal and fair opportunity to speak;
- guide discussions in a manner that is productive;
- avoid focusing on a solution proposed too early by one participant;
- have the appropriate background so as to avoid slowing the process; and,
- ensure closure of the final agreements.

4.4.7 Other Logistics

The ADR Approach must meet the public interest mandate of the College and maintain the perception of this as well as not undermine its primary enforcement function. Although this ADR Approach has been envisioned, researched and specifically tailored for the College, in its implementation the College may find it necessary to make adjustments to better suit its needs. The College should continually be monitoring, assessing and revising the ADR Approach (at

least annually) to reflect its changing needs as it becomes more familiar with the ADR Approach and its applications. Discovering and determining new applications of ADR skills and processes throughout the PIMS is encouraged. In order to begin monitoring and assessing the ADR Approach, surveys should be available for ADR specialists and participants to ADR processes as well as for ADR training and workshops. Templates of such surveys are available in Appendix 10.

5. PROJECT LIMITATIONS, STRENGTHS AND CONTRIBUTIONS

Outlined in the sub-sections below are the limitations, strengths and contributions of this project. Overall this project has been a success in outlining a plan to implement an ADR strategy at the College and in developing a solution to the challenges faced by governing bodies in Canada in ADR application; although, arguably the true success of the ADR Approach will be determined after its implementation.

5.1 Limitations

In producing a plan to implement an ADR strategy at the College this project encountered some limitations. Time for instance had an impact in how many organizations who have implemented ADR could be investigated in depth and interviewed. Also, there were limited publicly available assessments of implemented ADR strategies among governing bodies. This limitation was overcome by broadening the scope to assessments of ADR strategies in a range of organizations. Another factor that could be considered a limitation to this project is the pending Practice Review. Because it is not yet in place, a description of how the ADR Approach is to be applied in its context was not possible; though it is suspected to be applied in a similar way as to the Audit Program. Last, as this report for the College neared completion the ABCFP posted on its website a draft of its Professional Accountability Process (ABCFP, 2011). This draft outlines the steps members are to take as they attempt to resolve matters among themselves prior to making a formal complaint to the ABCFP. Arguably this is an ADR strategy currently being

developed by the ABCFP. It may be considered a limitation to the report due to the time constraints preventing further investigation.

Additionally, there are some limitations the ADR Approach will encounter during implementation. For instance a limitation is the low number of complaints/disputes that have been brought to the College's attention and addressed to date. As a result it is difficult to gauge the range of complaints/disputes that the College will encounter in the future, not to mention those that would be best suited for ADR processes available through the ADR Approach. This challenge also raises another limitation. Due to the reliance of ADR processes on complaints/disputes being brought to the attention of and addressed by the College, there is a strong possibility that all aspects of the ADR Approach will not have the opportunity to be attempted for some time after this report is complete and implemented. Thus, it will be a while before the College will be able to experience and assess the full effectiveness of its ADR Approach. This may be a limitation for a few reasons:

- The excitement and motivation contributing to the success of the ADR Approach may be lost or clouded with time.
- Any major changes or adjustments necessary for the ADR Approach to be implemented successfully will likely not surface for some time.
- This time factor will be the determinant of when a complete assessment of the ADR Approach can be conducted.

Nonetheless, these limitations can be minimized by recognizing and addressing them at the onset. For example the "assessment limitation" could be minimized through regular

monitoring and by conducting reviews on a smaller scale, meaning on a case by case basis until there is enough information to complete a full assessment of the entire ADR Approach.

Maintaining excitement and motivation with regards to the ADR Approach can be accomplished through its promotion and by implementing it in stages so as to highlight progress and success; first by focusing on ADR skills and second by incorporating the suggested ADR processes.

5.2 Strengths

This project has successfully developed a strategy of incorporating an ADR into the framework of the College without undermining its primary enforcement function, by focusing clearly on upholding and protecting the public interest, by considering College member needs and by developing a strategy that overcomes the challenges faced by governing bodies in Canada in ADR application. Further, staff from the organizations selected for interviews were accessible, the project deadline was met and an ADR strategy unique to governing bodies in Canada was developed.

5.3 Contributions

The skills-process based ADR Approach will contribute to the field of Dispute Resolution and governing bodies in Canada by introducing an innovative way to apply ADR among self-regulated professions. This project has developed an ADR strategy that is unique to

governing bodies in Canada. It takes into account the primary enforcement function of the College, its public interest mandate, College member needs and has developed a strategy to overcome the challenges faced by governing bodies in Canada in ADR application. Those involved in Dispute Resolution and those associated with the governing bodies of self-regulated professions might be interested in and benefit from this ADR Approach.

RECOMMENDATIONS

The following recommendations are intended to assist the College in implementing the ADR Approach. It is recommended that the College adopt each of these.

1. Adopt the umbrella term “Professional Integrity Maintenance System” (PIMS) to represent the Discipline Process (including the Investigation Phase, Discipline Hearing, Conditional Admission and Discipline Digest), Audit Program, ADR Approach and pending Practice Review
2. Adopt and enforce the new and revised policies and guidelines pertaining to the ADR Approach
3. Adopt and actively encourage the ADR skills, ADR processes and ADR Approach mindset outlined in this document
4. Implement the ADR Approach in stages; first by focusing on ADR skills and second by incorporating the ADR processes
5. Actively promote the ADR Approach with the goal of getting the College community on board
6. Develop a review/assessment method for the ADR Approach
7. Ensure ADR Approach surveys and the self-test are available in a secured and anonymous online format as well as in paper form when necessary
8. Hire an ADR specialist or company to design ADR skills workshops and training that reflects the specific needs of the College as outlined in this document

9. Incur the cost of and provide member auditors, Discipline Committee, Audit Committee and Discipline Panel members with training and workshops in ADR skills
10. Allow ADR skills training and workshops to count toward member Continuing Professional Development at cost to the given member
11. Cover the cost of ADR processes unless the Discipline Committee chooses to apply Rule 15.43, where the subject member may incur some (or all) of the costs of the ADR process.
12. Encourage creative and effective ways to manage costs pertaining to the ADR Approach
13. Ensure and maintain confidentiality in all ADR processes noting explicitly any limitations
14. Ensure the Agreement to Participate (in an ADR process) including any limitations pertaining to confidentiality and disclosure in are reviewed by a legal professional
15. Develop a roster of external ADR specialists
16. Monitor the ADR Approach regularly
17. Hire or designate an ADR Coordinator in the College office to administer, promote, monitor and review/assess the ADR Approach
18. Revise the ADR Approach continually as the College gains familiarity with it and becomes aware of its needs

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APPENDICES

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APPENDIX 1: Public Interest versus Member Interest

In light of the College considering complementing its PIMS with the suggested ADR Approach, it is important to address the difference in mandate between the APBBC and the College. The College purpose is to uphold and protect the public interest, while the APBBC purpose is to uphold and protect the interest of its members. The fact that member to member disputes can be viewed as ‘member interest’ related does not mean that there is no public interest element. To a certain extent, it is in the interest of the public to uphold and protect member interests. The better members are able to address disputes/complaints within the profession and amongst themselves the better off the public interest is because professionals are then able to return to the main objective of their existence, the public interest. Simply put, where the members of a profession are able to function as productively as possible, they are able to fulfill their duty in upholding and protecting the public interest.

As the APBBC fulfills its member interest mandate, it could be reasoned that resolving or settling disputes/complaints between members not captured by a formal College process, should be addressed by the APBBC since it seems to be primarily a member issue. So as to promote harmony within the profession and assist the individuals to foster an improved understanding of underlying interests, it could be feasible for the individuals involved to take part in an ADR process perhaps sponsored by the APBBC (so long as they have also chosen to be members of the APBBC). In responding to this difference in mandate, the suggested ADR Approach is outlined specifically in the context of the College by focusing ultimately on the public interest. In doing so, the ADR Approach exhibits how to benefit the public interest by incorporating ADR into the College framework while at the same time exposing the potential value of ADR in addressing member interests.

APPENDIX 3: ABCFP Legislation, Bylaws and Policies Relevant to ACR

Foresters Act

Definitions

1 In this Act:

"alternative complaint resolution" means a procedure established under the bylaws to assist in appropriate circumstances in the resolution of complaints without completion of a discipline hearing;

Verbatim, the Section 23 of the *Foresters Act* (2003) states:

Alternative complaint resolution

23 (1) With the consent of the person who made the complaint, the registrar and the member concerning whom the complaint was made, one or more issues relating to the complaint may be referred for alternative complaint resolution as provided in the bylaws.

(2) The fact that issues have been referred under subsection (1) for alternative complaint resolution does not bar

- (a) the registrar from accepting the complaint under section 22 (6),
- (b) an investigation or the issue of a citation under section 24 concerning the complaint,
- (c) an application under section 25 to the Supreme Court arising from the complaint, or
- (d) a discipline hearing under section 27 into the matters set out in the citation,

unless the person who made the complaint, the registrar and the member concerning whom the complaint was made agree in writing that the issues giving rise to the complaint are resolved.

(3) Despite subsection (2), until the outcome of the alternative complaint resolution proceeding,

- (a) the registrar may delay the decision whether or not to act under section 22 (6),
- (b) the agent may delay proceeding with an investigation or the registrar may delay deciding whether or not to issue a citation under section 24, or
- (c) a discipline hearing under section 27 may be adjourned.

ABCFP Bylaw 14

Bylaw 14 of the ABCFP bylaws refers to Complaint Resolution Procedures. Specifically, the following sub-sections refer to ACR (Association of BC Forest Professionals, 2008):

Definitions

14.1 In these procedures:

14.1.1.3 A person or persons designated by the complaints resolution committee to investigate a matter or act as a fact finder to assist with attempts at alternative complaint resolution;

14.1.2 “alternative complaint resolution” means a process or processes established under these bylaws to assist in appropriate circumstances in the resolution of complaints without completion of a discipline hearing and includes without limitation:

14.1.2.1 Negotiation of a resolution;

14.1.2.2 Conditional admissions;

14.1.2.3 Investigation or fact finding;

14.1.2.4 Mediation;

14.1.2.5 Arbitration; or

14.1.2.6 A combination of the above;

14.1.12 “panel” means members of the discipline committee designated by the chair of the discipline committee:

14.1.12.2 to hear and decide upon alternative complaint resolution proposals pursuant to Bylaw 14.13 through to Bylaw 14.16.

Selection of Appropriate Complaint Resolution Mechanism

14.11 If the complaints resolution committee determines that one or more alternative complaint resolution processes are appropriate in the circumstances, and the parties to a complaint agree to engage such complaint resolution processes, the complaints resolution committee will identify which process or processes shall be attempted and shall make a recommendation to the Registrar accordingly. At any time the Registrar, with the consent of the parties to a complaint, may refer a complaint to be resolved by alternative complaint resolution.

Association May Be Party to Alternative Complaint Resolution Processes

14.12 The association, at its option, may be a party to any alternative complaint resolution process undertaken.

Arbitration

14.13 Should the Registrar and the parties to a complaint agree to resolve that complaint by arbitration, the Registrar shall request that the chair of the discipline committee designate a panel to act as a board of arbitration to arbitrate the complaint.

14.14 The board of arbitration designated to arbitrate the complaint:

14.14.1 May be a panel of one (1);

14.14.2 Shall, in addition to the duties, powers and functions agreed to by the parties to the complaint, have all of the powers of a panel granted under the Foresters Act, including, without in any way limiting the generality of the foregoing, the power to determine remedy and costs; and

14.14.3 To the extent not otherwise provided for in the Foresters Act, and these bylaws, shall have the power to determine its own procedures.

14.15 The board of arbitration's decision shall be binding on the parties and shall be subject only to those appeal provisions granted under the Foresters Act, for decisions of a panel under Section 30 of the Foresters Act.

Settlement Proposals Must Be Approved by Panel

14.16 Any proposed resolution of a complaint arrived at through alternative complaint resolution, other than cases in which, with the consent of the Registrar, the complaint is withdrawn or in cases resolved through arbitration as set out above, must be approved by a panel.

Referral of Complaints Back to Registrar

14.17 The complaints resolution committee may refer the matter back to the Registrar with or without recommendations if:

14.17.1 They determine that alternative complaint resolution processes are not appropriate in the circumstances; or

14.17.2 One (1) or more alternative complaint resolution processes directed by the complaints resolution committee have been attempted and the matter has not been resolved.

14.17.3 They believe further investigations are required.

14.17.4 They believe there are insufficient grounds to support a citation.

Registrar to Consider Referrals by Complaints Resolution Committee

14.18 Within fifteen (15) business days of receipt, the Registrar will consider referrals of complaints by the complaints resolution committee under Bylaw 14.17 along with the recommendations, if any, of the complaints resolution committee and may either:

14.18.1 Forward the complaint and any comments received from the subject member to the chair of the standing investigations committee for investigation under Section 24 of the Foresters Act; or

14.18.2 Issue a citation, if the matter has been investigated as part of an alternative complaint resolution process, and the Registrar is satisfied that:

14.18.2.1 The investigation is complete; and

14.18.2.2 The investigation report is in the form of an agreed statement of facts; or

14.18.2.3 Where not in the form of an agreed statement of facts, the subject member has had an opportunity to review and comment on the investigation report; and

14.18.2.4 All other criteria set out in Section 24(4) of the Foresters Act for issuance of a citation have been met.

Standing Investigations Committee Processes and Procedures

14.21 To the extent not already provided for in the Foresters Act and these bylaws, council may, by resolution, establish processes/procedures and decision making criteria for the standing investigations committee and for agents designated to investigate a complaint, either under the provisions of Section 24 of the Foresters Act or in aid of alternative complaint resolution.

Designation of Panel to Conduct Discipline Hearing

14.44 No member of the discipline committee who has served as a panel member to consider alternative complaint resolution proposals for the same matter subject to a citation may be a panel member designated to conduct the discipline hearing into that same matter.

Settlement Proposals

14.49 A subject member may, at any time after the referral back to the registrar under bylaw

14.17, and before the conclusion of a discipline hearing tender a settlement proposal or conditional admission of the allegations against him or her to the Registrar.

14.50 The settlement proposal or conditional admission, including proposed penalty against the subject member, if any, may then be negotiated between the Registrar and the subject member.

Acceptance of Settlement Proposals

14.51 If the Registrar and the subject member reach agreement on the terms of the settlement proposal or conditional admission, the Registrar will, within seven (7) business days of reaching such agreement, request that the chair of the discipline committee designate a panel to decide whether to accept the conditional admission or settlement proposal.

14.52 For the purpose of Bylaw 14.51 the panel designated to decide settlement proposals or conditional admissions may be a panel of one (1).

14.53 The Registrar will inform the subject member whether the panel accepts the settlement proposal or conditional admission within five (5) business days of receiving the decision of the panel.

14.54 If no agreement can be reached between the Registrar and the subject member, or the panel does not accept the terms agreed to by the Registrar and the subject member, the matter will continue in accordance with these procedures.

Settlement Proposal or Conditional Admission May Be Published

14.55 The association may publish the decision of the panel struck to consider a settlement proposal or conditional admission pursuant to Bylaw 14.51.

Settlement Proposal or Conditional Admission Not Proof

14.56 If the settlement proposal or conditional admission is not accepted, the fact that a settlement proposal or conditional admission was made will not be used against the subject member in a discipline hearing nor may it be disclosed to the panel struck to conduct the discipline hearing.

Policy: Role of the Registrar with Regards to Consultation and Interaction with the Complaints Resolution Committee (CRC) and the Standing Investigation Committee (SIC)

(a) For each complaint received by the ABCFP the registrar should:

1. Consult with the CRC prior to making a decision to refer any complaint to alternate complaint resolution under subsection 23(1) of the *Foresters Act*.
2. Where the registrar disagrees with the CRC on whether a complaint should be referred to alternate complaint resolution under subsection 23(1) of the *Foresters Act*, provide a written rationale to the CRC that describes why the registrar disagrees with the recommendations of the CRC (Association of BC Forest Professionals, 2009).

APPENDIX 4: ASFP Policies Relevant to ACR**ASFP Draft Policy:** Professional Conduct Process

Association of Saskatchewan Forestry Professionals. (2010a).

2. Complainants role in the complaint review process:

- (iii) The complaint may be referred to alternate complaint resolution (ACR) which includes negotiating a resolution, conditional admission, mediation, arbitration or a combination of the above. The complainant will be notified if the Chair believes that arrangements should be made for ACR. No ACR can take place without agreement by the complainant, the Chair and the member who is subject to the complaint.
- (iv) The question of whether ACR is appropriate is one that has to be considered on a case-by-case basis. Some factors to consider are:
 - a. Does an open conversation have the potential to repair a relationship or restore the confidence of the public (or a certain individual) in the profession?
 - b. Is it possible that an explanation, an apology, or commitments to future change will satisfy both the complainant and the public interest?
 - c. Has there been a breakdown in communication which has contributed to the problem?
 - d. Do the allegations include serious incapacity, incompetence, dishonesty or sexual abuse—or situations that might lead to the discovery of additional misconduct? (On most occasions, these situations will not be appropriate for mediation).
- (v) If ACR is not agreed to or is unsuccessful then the complaint becomes a matter between the ASFP and the subject member. The complainant has no further role to play other than providing evidence to an investigation committee or at a hearing.
- (vi) The registrar will inform the complainant of the status of the complaint in terms of whether it is going to an investigation or hearing and what the outcome of these activities may be.

3. The Professional Conduct Committee:

- (iv) Will undertake ACR at the discretion of the Chair and can acquire assistance of professionals and/or legal counsel in the process.
- (vii) The Professional Conduct Committee will try to ensure that the parties have attempted to resolve the matter on a reasonable and appropriate basis. In cases where this is not appropriate, then it is not required. However, in cases that involve disputes between two members the Chair will attempt to get the parties to resolve the complaint outside of the complaint review process.

4. What an ASFP member who is subject to a complaint should expect:

- (iii) Before accepting a complaint the registrar will want to ensure that the parties have attempted to resolve the complaint on a reasonable and appropriate basis. This means that the parties are expected to have made an attempt to resolve the complaint if it is appropriate to do so. The registrar may help to facilitate this process.

- (vii) The complaint may be referred to alternate complaint resolution (ACR) which could mean negotiation of a resolution, conditional admission, mediation, arbitration or a combination of the above. Each subject member will be notified of the decision of the registrar and arrangements will be made for ACR if all parties are in agreement to do so. No ACR can take place without agreement by the subject member(s), the complainant and the Chair.
- (viii) If ACR is not deemed to be appropriate or if ACR fails, the complaint may be recommended for investigation. Each subject member will be informed prior to the start of an investigation.

ASFP Discipline Committee Policy and Guidance Manual (Working Draft 1)

Association of Saskatchewan Forestry Professionals. (2010).

Duties of the Discipline Committee:

- The review and approval of a settlement proposal where the member in question through mediation or a dispute resolution system have reach equitable solution with the ASFP.

3.0 Dispute Resolution without a Discipline Hearing

The formal discipline hearing process is a potentially costly process for all parties involved. Alternatives to the formal discipline hearing process have the ability to reach an equitable solution for all parties involved.

The Discipline Committee role is to review the final proposed settlement package from Alternate complaint resolution (ACR) for suitability and if acceptable, issue the “official order” as per section 30 of the Act.

Procedures:

1. The ACR settlement proposal is to be submitted to the Discipline Committee chair by the chairman of the Professional Conduct Committee.
2. The ACR settlement proposal will be received at anytime up to start of a discipline hearing, but not after the hearing has commenced.
3. A Discipline Committee meeting will convene (of at least 3 members) to review the ACR settlement proposal for suitability. The meeting will consist of the discipline committee chairman and two other disciplines committee members, of which one should (if available) be the public appointee person subject to section 9(7)).
4. The ACR settlement proposal should include sufficient information to confirm the proposal is in the public interest, and that the order and/or penalties are appropriate.
5. The Discipline Committee may:
 - a. Accept the proposal, or
 - b. Accept the proposal, with a modified official order.
 - c. Rejects the proposal, and may provide recommendation for improvement.

6. Discipline Chair on behalf the committee informs the Chair of the Professional Conduct committee if the settlement proposal is approved or rejected.
7. If approved the Discipline Chair then prepares and signs the official order on behalf of the Association.

Proposal accepted with modified order, or proposals that are rejected can be appealed by going to a formal Discipline Hearing.

9.0 Publication & Commenting on cases

Should a complaint of professional misconduct or professional incompetency was unproven there is a real risk the members reputation could still be significantly tarnished. Therefore it is important that a high level of confidentiality and discretion be used. Likewise, any active compliant file should not be openly discuss[s] as it may influence and introduce bias into the Discipline Hearings and Appeals to Council process.

Conversely reporting of completed decisions, or at least a summary of its reasons behind the decisions and outcome helps educate the profession and the public regarding the types of conduct considered appropriate by the association

Internal Restrictions:

- When a complaint first received all information is kept confidential and is known only to the Registrar, and key members Professional Conduct Committee, during the course of their investigation.
- Council and Members the Discipline Committee are only informed that a complaint of misconduct or incompetence has been received and is under investigation. Names and particulars are not discussed.
- Should the Investigation report recommend a hearing, Council at that time, may learn of
 - The name of member.
 - Name of complainant or source of the complaint
 - The allegation as described in the “official charge”
 - The investigation report submitted to council is held in trust by the registrar until the appeal to council period is expired.
- Should a mediated settlement be reached, or complaint found to be unfounded (no investigation started). Council at that time may learn of all the particulars of the complaint/case.

Publication of Discipline Outcomes.

The ASFP will produce individual summary digests for publication on the Associations Website for each complaint received and concluded.

Where the discipline process finds a member guilty of professional misconduct or professional incompetence the name of the member involved will be included in the digest except when.

- the penalty imposed does not include suspending or rescinding a member's enrolment, and
- publication will cause grievous harm to the subject member or another identifiable individual that outweighs the interest of the public and the association in full publication.
- Where the harm is more than damage to the member's reputation or simple embarrassment that normally stems from a guilty finding.

In complaints resolved through [sic] mediation or other processes, the choice to publish or not to publish the members name will be included in the settlement documentation.

APPENDIX 5: ADR Process Self-Test**ADR PROCESS SELF-TEST**

The following self-test will assist you in determining whether or not an ADR process (facilitation, mediation or conciliation) is an appropriate avenue to pursue in attempting to come to a Conditional Admission collaboratively with a representative of the Discipline Committee.

This self-test is intended simply as a guide and must be considered with discretion and in the context of your case. After doing so you should have an inclination of whether or not your case is suitable for an ADR process. For each question mark “yes” or “no” as your response.

Questions	Response	
	Yes	No
Are you subject to a complaint made to the College of Applied Biology?		
Is a miscommunication or misunderstanding likely the cause for your alleged infraction?		
Are procedural issues one of the main factors contributing to your alleged infraction?		
Is a prompt settlement important to you?		
Would you like to have an open conversation about the complaint made against you?		
Are you interested in discussing your alleged infraction in depth?		
Are you interested in gaining a deeper understanding of your alleged infraction?		
Are you interested in exploring how to address your alleged infraction in a flexible and creative way?		
Would you like to have ownership over the outcome of the complaint made against you?		
Is making a Conditional Admission a possibility you might consider?		

Evaluating the results of your self-test:

- Now that you have completed the self-test, consider whether or not you are inclined to address your case using an ADR process.
- If the majority of your responses were “yes” addressing your matter through an ADR process is a viable option.
- If the majority of your responses were “no” you may want to consider the other available options. These options include:
 - Presenting a Conditional Admission and a suggested penalty to the Discipline Committee alone;

- Presenting a Conditional Admission without a suggested penalty to the Discipline Committee; or,
- Proceed to a Discipline Hearing
- If your results indicated a relatively equal number of “yes” and “no” responses and you have not done so already please see the sections titled “How do I know if my case is right for an ADR process?”, “When are ADR processes appropriate?” and “When are ADR processes inappropriate?” in the Complete Guide to the ADR Approach. If after considering all of this information you are still unsure, an ADR process may not be appropriate for your case. Although it may still be worth attempting in order to gain clarification and a deeper understanding of your matter.

APPENDIX 6: Template for the Agreement to Participate**AGREEMENT TO PARTICIPATE IN [NAME THE ADR PROCESS]**

Between; [include name of subject member]
(in this agreement, referred to as one of the “parties”)

And; College of Applied Biology
(in this agreement, referred to as one of the “parties”)

And; [include name of ADR specialist]
(in this agreement, referred to as the “ADR specialist”)

The parties agree as follows:

1. The parties retain the ADR specialist to assist them in the crafting of a Conditional Admission and penalty
2. The parties understand that [name the ADR process] is a process in which they will be assisted by the ADR specialist, as an impartial third party, to identify and address the matters of disagreement and develop a jointly acceptable Conditional Admission and penalty
3. It is understood that, during the [name the ADR process], the parties may meet jointly with the ADR specialist and the parties may meet privately with the ADR specialist. Where the parties are accompanied by lawyers, they may meet privately with their lawyers at any time and may meet with their lawyers and the ADR specialist.
4. The ADR specialist may make procedural suggestions or recommendations at any time before or during the [name the ADR process] and the parties are free to follow or reject the ADR specialist’s advice.
5. Since [name the ADR process] relies on the accuracy of information, the parties agree that information that is relevant to the matters of disagreement will be disclosed by each party honestly, in good faith and without deception.
6. The parties agree that the full disclosure described in paragraph 5 is subject to either party’s express request to the ADR specialist the s/he keep a particular piece of information in confidence. In the absence of such a request, the ADR specialist is free to fully disclose to either party any information provided by the other party or any information of which s/he becomes aware that is relevant to the matters of disagreement.
7. The parties acknowledge that the ADR specialist is a [here insert any professional designation where the given ADR process being conducted separate from the conventional practice of that profession; e.g. psychologist, lawyer]. However, it is understood that s/he is impartial and is not acting for any party in the [name the ADR process]. The parties will seek whatever legal or other advice they may desire before, during and after the [name the ADR process] session and hereby give the ADR specialist permission to communicate with

any lawyer identified as acting for any party. The ADR specialist may draft a document to record or report on a consensus reached by the parties and may provide a copy to any party's lawyer who has been identified.

8. The parties acknowledge that [name the ADR process] is undertaken in an effort to settle the matters of disagreement and/or craft a Conditional Admission and penalty. Accordingly, all communications during [name the ADR process], whether made while parties are present with the ADR specialist or in private meetings of any party with the ADR specialist, are made without prejudice. The parties intend that all such communications should be confidential and non-compellable in any legal or other adjudicative proceedings.
9. The parties agree that neither the ADR specialist nor the Discipline Committee will be asked or required by or on behalf of any party to the [name the ADR process] to give evidence, provide information or produce documents in any legal or other adjudicative proceeding concerning the content of the [name the ADR process] session.
10. The parties agree that paragraphs 8 and 9 will not apply where:
 - a. The ADR specialist is obliged by law to report to a third party
 - b. A Court orders information, documents or evidence to be given, or
 - c. The ADR specialist determines that personal safety requires that a report be made to a third party
11. The [College of Applied Biology and/or name of subject member] agree that the ADR specialist will be paid the rate of [\$ insert price] per hour plus all direct out of pocket expenses and all applicable taxes. Fees will be charged for the actual time spent in preparation, pre-[name the ADR process] communications, the [name the ADR process] session, any reporting or drafting of consensus and any other work specifically requested by the parties. Unless otherwise agreed at the [name the ADR process] session, the [College of Applied Biology and/or name of subject member] agree to pay their portion [name portion of charges in percentages] ADR specialist's charges within 30 days of the date of the [name the ADR process] invoice. Where the parties are represented by lawyers, the ADR specialist's invoice will be sent to the parties lawyers.

This agreement entered into on the _____ day of, 201__ at, British Columbia.

[insert name of subject member]

For the College of Applied Biology

[insert name of ADR specialist]

APPENDIX 7: Roster Call for ADR Specialists

As a governing body, the College represents the self-regulated profession of applied biology in British Columbia and operates by way of the *College of Applied Biology Act*. It enforces this title legislation by governing member applied biologists and technologists as well as protecting associated titles in the name of the public interest. The College is responsible for enforcing standards of admission, accountability as well as member conduct and performance. As an organization established by Provincial Statute, the types of complaints and disputes the College faces are particular and must be addressed by focusing strictly on its public interest mandate.

The skills-process based ADR Approach developed by the College is a problem solving strategy that involves using ADR processes and skills to enhance and expand opportunities to prevent, manage and address complaints/disputes associated with the College in a way that takes into account its public interest mandate and the professional integrity of its members.

In implementing the ADR Approach the College is developing a roster of ADR specialists interested in being listed as providers of ADR services for the College. An ADR specialist on the roster may choose to be listed as providing any or all of the following ADR services:

1. The ADR processes of facilitation, mediation or conciliation
2. ADR skills training including: active listening; body language; identifying interests and positions; probing and asking questions; as well as, verbal and written communication
3. Determining whether or not an ADR process is appropriate in a matter of discipline in an investigator role

Qualified ADR specialist will have:

- Membership in a relevant professional body
- Training and knowledge in interest-based dispute resolution
- A resume or CV that demonstrates training and knowledge in interest-based dispute resolution
- Two references
- Experience performing facilitations, mediation and/or conciliations
- Knowledge of the College's organizational structure and ADR Approach
- Disclosed their insurance coverage status
- Those interested in applying to perform ADR skills training and workshops must have documented experience in delivering/instructing the following ADR skills: active listening, body language, identifying interests and positions, probing and asking questions, verbal communication and/or written communication

Interested ADR specialists should apply to:

College of Applied Biology
Suite #205 - 733 Johnson Street
Victoria, British Columbia
V8W 3C7, CANADA

Telephone: (250) 383-3306 | Fax: (250) 383-2400
Email: officeadmin@cab-bc.org

APPENDIX 8: Complete Guide to the ADR Approach

COMPLETE GUIDE TO THE ADR APPROACH



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INTRODUCTION

This Complete Guide to the Alternative Dispute Resolution (ADR) Approach at the College of Applied Biology (College) is intended to assist those interested in or involved with any aspect of the ADR Approach. The College explored the possibility of incorporating ADR into its framework and came up with the ADR Approach. The ADR Approach meets the public interest mandate of the College and accommodates the needs of the College community.

Should you have any questions, comments or require further information about the ADR Approach please feel free to contact the College.

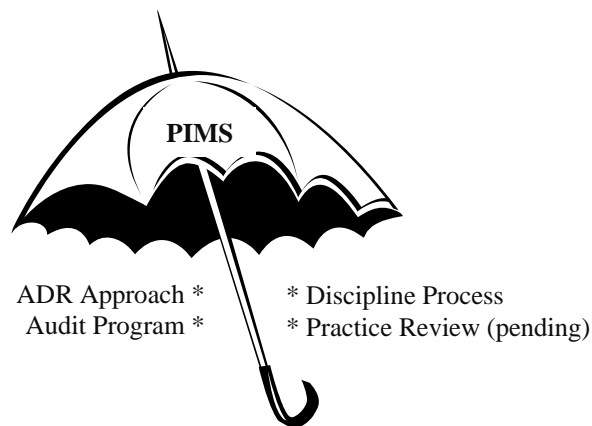


ADR APPROACH

This skills-process based ADR Approach developed for the College should be considered complementary to as opposed to a replacement of traditional complaint/dispute mechanisms. By encouraging a mindset in the Professional Integrity Maintenance System (PIMS) toward problem solving that involves ADR processes and skills, opportunities to prevent, manage and address complaints/disputes are enhanced and expanded in a way that takes into account first and foremost the public interest mandate of the College, the professional integrity of College members as well as the applicability of ADR within the College context.

What is the PIMS?

The College Discipline Process, Audit Program and ADR Approach are mechanisms existing under the umbrella of the Professional Integrity Maintenance System. Speculatively the Practice Review, once in place, will be included as well. The PIMS helps members of the College maintain their professional integrity in the name of the public interest. A detailed depiction of the PIMS is available in Attachment 1¹ and a simple depiction is available in Attachment 2.



What is ADR?

ADR involves a range of flexible and creative processes used to problem solve (omitting solely a trial or hearing) and skills applicable in most any situation to prevent, manage and address disputes/complaints. It gives participants ownership over the issue while acknowledging neither traditional nor ADR strategies are superior or inferior to one another.

What are the benefits of ADR?

ADR encourages creativity, flexibility and ownership over the issue when problem solving where appropriate. Communication is enhanced and understanding is stimulated. Participants are

¹ Please note that for the purposes of submitting this Complete Guide to the ADR Approach as an Appendix in a larger report, the Attachments will not be included; for they are already a part of the broader report. The Attachments will, however, be included in a version prepared for distribution beyond the purposes of this report.



able to communicate effectively with one another thus promoting a deeper understanding of each other's perspective.

Why is the College involved in ADR?

Continually exploring and evaluating options for improvement and growth has led the College to value the addition of its ADR Approach. A thorough investigation was completed in order to explore the appropriateness of ADR for the College and to find the most suitable ADR strategy. This resulted in the development of the skills-process based ADR Approach. The ADR Approach takes existing and pending skills and processes into account to increase the capacity of the College to address the range of potential complaints/disputes associated with it and provide greater flexibility and creativity in maintaining the professional integrity of its members.

How does ADR compliment the PIMS?

The ADR Approach compliments the PIMS by taking into account the public interest mandate of the College, the professional integrity of College members as well as its applicability within the College context. The ADR Approach compliments the existing mechanisms under the PIMS by adding an ADR Approach mindset focused on ADR skills and ADR processes that enhance and expand these mechanisms and aid in understanding while problem solving.

What ADR options are available through the ADR Approach?

The ADR options available through the ADR Approach come in two forms: skills, and processes. ADR skills include: active listening, body language, identifying interests and positions, probing and asking questions, as well as both verbal and written communication. ADR processes include: negotiation, facilitation, mediation and conciliation.

When can ADR skills and processes be used?

ADR skills and processes are applicable throughout the PIMS. Practicing ADR skills regularly and maintaining an ADR Approach mindset is encouraged in order to identify opportunities to use ADR skills and processes.

ADR skills can be applied at any point in time to most any situation. They should be practiced regularly and are useful in the professional practice of members. From the College perspective ADR skills can be applied in the context of the Discipline Committee, Discipline Panels, Audit Committee, as an auditor (even auditee) and by members in both practice and dispute related situations. For the purposes of the College, ADR processes can be applied in the context of a Conditional Admission with the exception of negotiation in which one can engage at any time.

What is an "ADR Approach mindset"?

Adopting an ADR Approach mindset involves practicing ADR skills regularly, identifying opportunities to apply specific ADR skills, recognizing when an ADR process would be useful and using ADR processes when appropriate. Simply put, it involves keeping ADR processes and



skills available through the ADR Approach at the back of one's mind so as to maximize opportunities to use them.

What types of complaints and disputes are typical for College members?

Typically when faced with a complaint and/or dispute, College members encounter instances of:

- **professional misconduct**, indicating a breach of the College Act or the College of Applied Biology Rules (Rules) (including the Code of Ethics); and/or,
- **conduct unbecoming a practicing member**, like:
 - causing a member to be in disrepute;
 - subverting scientific methods and principles foundational to the applied biological sciences and/or the principles of stewardship of aquatic and terrestrial ecosystems and biological resources; and/or,
 - engaging in applied biology in an incompetent manner

Specific examples of *professional misconduct* and *conduct unbecoming a practicing member* are:

- using information selectively;
- making comments that are unprofessional, factually misleading or incorrect;
- knowingly or unknowingly engaging in a conflict of interest;
- miscommunication(s);
- allowing emotions to obstruct professionalism; and,
- unprofessional use of email

Reasons for becoming involved in a complaint and/or dispute tend to include:

- a client's needs seem to place a member in conflict with their duty to abide by the College Member Code of Ethics;
- professional opinion or approach is different from that of another applied biologist or member of another profession;
- a member feels their right or entitlement to an opportunity is subsumed by a client or another professional;
- a member feels they are obligated or pressured to contradict their personal ethics, beliefs and values;
- role ambiguity; unknown or not agreed upon goals; missing or contradictory information;
- invalid or hidden assumptions; differing core values; turf protection;
- cultural differences; and/or, perceptions that differ from the original intent

Regardless of the types of complaints/disputes, as members of a regulated profession, professionals will likely find themselves subject to a complaint or an audit and/or be in a situation of professional practice where problem solving is necessary where applying ADR skills or engaging in an ADR process would be useful.



ADR SKILLS

ADR skills assist in promoting communication between people and shared meaning among them. They can be used to encourage exploration, forge learning and understanding, and find suitable outcomes. Applying ADR skills is useful in dispute/complaint prevention, management and addressing issues arising. Practicing ADR skills is often intentional and aims to produce a helpful outcome. Although they can and should be practiced at any time to enhance communication among people, ADR skills are essentially techniques used in instances where disputes are likely or have already surfaced.

What are ADR skills?

Specific ADR skills included in the ADR Approach include:

Active Listening: involves listening wholly, accurately and completely. It can also be defined by what it is not. Inactive listening, the opposite of active listening, involves deficiencies in listening. Examples of inactive listening can include: going through the motions of listening rather than really listening; skimming the surface when listening rather than picking up essential points; having a lack of presence, repeating words and statements without communicating an understanding of deeper meaning; and focusing on what to say next rather than listening. Active listening aims to avoid these communication pitfalls by engaging as fully as possible.

Body Language: the use of certain body language techniques promotes productive and good communication among individuals. There are things one can practice to achieve this. For example, using one's posture to face someone squarely, leaning in or toward someone to show interest, assuming an open posture by avoiding the crossing of arms and legs as well as sustaining good and direct eye contact demonstrate involvement and that one is paying attention.

Identifying interests and positions: a negotiation technique applicable in instances of negotiation. These authors argue that negotiation is a part of everyday life; for example discussing a pay raise with an employer, deciding on where to have dinner, agreeing on a purchase price, etc. This technique explores a problem by deconstructing positions (often communicated as a preferred outcome) into the underlying interests (the things that are important) that inspire them. A position is a decision while interests contribute to/support the decision.

Probing and asking questions: assists in administering clarity and moving forward on a given matter. There are various probing techniques one can apply. Knowing when it is appropriate to apply a particular probe or question is a skill to be developed. For example open questions invite elaboration and provide additional clarification by demonstrating inquisitiveness and participation; yes or no cannot be the answer to an open question. Closed questions are the opposite: yes or no is the answer and they tend to lead to further questions to elicit necessary information. At times a perceptive closed question may achieve the right impact and help move from the general to the specific. Making statements shows the need for more clarity. One may also make requests for further information or clarity. One word or a simple phrase can achieve this as well while direct questions are fixated on a certain subject, becoming increasingly specific with subsequent questions.



Verbal communication: Techniques such as paraphrasing, reflections, refocusing, and summarizing are helpful in enhancing communication during a discussion. Paraphrasing intends to check interests, forge understanding as well as clarify aims and expectations by pursuing clarity and confirmation. Reflections involve capturing and observing aloud something one said instantly. Reflections such as restating and paraphrasing are used to check the accuracy of what was heard, emphasize, acknowledge, clarify, de-escalate, encourage, create shared meaning etc. Refocusing redirects the discussion back to a productive state. Summarizing generates outcomes by assembling what has been verbalized. Choice of words and tone of voice are also valuable techniques to enhance verbal communication.

Written communication: some verbal communication techniques are transferable into written communication. The accuracy, detail, understanding, information, regard etc. that is conveyed in written communication can have a significant influence on face to face and verbal communication as well as on the prevention and/or outcome of a dispute. Choosing words and information carefully as well as conveying the intended message without face to face interaction are techniques that will assist in enhancing written communication.

Why are ADR skills useful?

ADR skills gained through training and workshops are a useful way for members to accomplish their Continuing Professional Development. They can assist in one's professional practice and help the Discipline Committee, Audit Committee, Discipline Panels and auditors to accomplish their College duties. ADR skills provide the techniques and tools necessary for the maintenance of professional integrity – a crucial factor in maintaining the public trust in the profession and its members.

Who provides ADR skills training and workshops?

ADR skills training and workshops are available through the College. An ADR specialist is either hired from the ADR roster (developed by the College available on its website) or a qualified ADR specialist is hired specifically to perform ADR skills workshop and training for the purposes of the College. To find out dates for ADR skills workshop and training please contact the College directly.

Who should attend ADR skills training and workshops?

Members of the Discipline Committee, Audit Committee, Discipline Panels and auditors must attend ADR skills training and workshops as these will assist in the performance of their College governance related duties. College members could also benefit from ADR skills training and workshops for assistance in their professional practice.



ADR PROCESSES

ADR processes are structured mechanisms that assist in communication, exploration, understanding and addressing issues among participants. With the exception of negotiation, ADR processes generally involve assistance from an ADR specialist who directs the given ADR process. Negotiation, as noted above, is the exception in that no ADR specialist is involved in assisting the participants and it may occur at any point. Additionally, negotiation may either be planned or occur spontaneously whereas other ADR processes tend to be planned. ADR processes in the ADR Approach are available for subject members (members subject to a complaint) wishing to make a Conditional Admission in collaboration with a representative of the Discipline Committee.

Please note that the ADR Approach is structured to ensure that the use of ADR processes will not undermine the primary enforcement function of the College.

What are the ADR Processes Available?

Specific ADR processes available through the ADR Approach include:

Negotiation: is a part of daily life and can occur intentionally or spontaneously at most anytime; for example it occurs in discussing a pay raise with an employer, deciding on where to have dinner, agreeing on a purchase price, etc. It transpires when differing interests and positions are shared in the joint pursuit of an acceptable outcome for those involved. For instance, negotiation between an auditor and auditee, an auditee and the Audit Committee or the Discipline Committee and a subject member may occur at any point and should involve the application of ADR skills.

Facilitation: involves discussion management and focuses on directing the procedural aspects of that discussion.

Mediation: involves assistance by a neutral third party with both the procedural and content aspects of issues so as to reach a solution that accommodates the needs of all participants. A mediator (ADR specialist) is more involved than a facilitator (also an ADR specialist) in the discussion. It is also useful to view mediation as assisted negotiation.

Conciliation: involves a neutral who provides an avenue for communication by conveying messages between participants who cannot or are reluctant to meet face to face. The aim is to find common ground, and perhaps re-establish face to face communication.

How do I know if my case is right for an ADR process?

Matters suitable for ADR processes (facilitation, mediation or conciliation) are decided on a case by case basis because the context is highly relevant. Indicators of when ADR processes might be appropriate and when they might be inappropriate can be found in this guide under “When are ADR processes appropriate?” and “When are ADR processes inappropriate?” Additionally, below are some questions to reflect upon when considering an ADR process. And, a self-test is available should a subject member require further assistance.



The indicators, questions and self-test are intended simply as guidelines and must be considered with discretion and in the context of the matter at hand (case by case). After considering them in the context of a given situation one should have an inclination of whether or not the matter is suitable for an ADR process. Lastly, please note that depending on your role in the ADR process not all of the following questions may be applicable to you:

- Are the issues addressable at this time?
- Are the issues negotiable?
- Can participants be effectively represented?
- Do participants have adequate resources to participate?
- Are there any meaningful deadlines to consider?
- Are there outstanding issues that must be addressed before starting the ADR process?
- Can a viable ADR process be selected?
- How much information will the ADR specialist need or get?
- Does an open conversation have the potential to repair a relationship or restore the confidence of the public (or a certain individual) in the profession?
- Is it possible that an explanation, an apology or commitments to future change will satisfy the public interest?
- Has there been a breakdown in communication which has contributed to the problem?
- Do the allegations include serious incapacity, incompetence, dishonesty or sexual abuse—or situations that might lead to the discovery of additional misconduct? (On most occasions, these situations will not be appropriate for an ADR process)

When are ADR processes appropriate?

Aside from negotiation which can be practiced at any time, ADR processes can be applied in the context of a Conditional Admission when the subject member and a Discipline Committee representative attempt to craft collaboratively the member's Conditional Admission. Indications an ADR process is appropriate include:

- Participants are unwilling or able to meet face to face although show willingness to overcome the issue
- Participants are in a situation where they must ultimately re-build trust and respect between one another to function professionally
- Intensity of participant emotions about the issue are low to moderate
- Participant issues are not extremely polarized
- Participants have enough trust in each other to work together to develop a mutually acceptable solution
- Participants are in a common predicament and will benefit from a jointly acceptable outcome
- Participants will benefit from ownership over the matter and learning skills that can be applied in future situations
- Brainstorming and/or the improved flow of information will likely resolve or contribute to settling the issue
- The matter is based primarily on procedural issues
- Prompt settlement is required



- A need to restore community values between the professionals exists
- There is a possibility to address the issue creatively and participants will benefit from it
- Participants require a transformation in attitude as well as personal growth
- It is crucial that fairness and perception of fairness be maintained
- Participants must foster an ongoing relationship in the future
- It is reasonable to believe participants can work together to come to a resolution or settlement

When are ADR processes inappropriate?

Indications an ADR process may be inappropriate include:

- An indication exists that ADR will only prolong the issue
- There is an indication that participation in ADR would not be genuine or taken seriously
- Legal rights are at issue
- There is a legal, public policy or interpretive issue necessitating clarification on the record
- Public involvement or accessibility in the outcome requires an adjudicative approach
- A possibility exists that individuals not participating will be prejudiced by the resolution or settlement
- The constitutional validity of an Act or law is challenged
- There is a possibility of fear or violence amid the participants
- Participants have a history of personal conflict indicating an inability to resolve or settle issues constructively
- The issue is one of conflicting values, ideologies and/or worldviews which are too closely held to permit individuals to adopt a change on the matter

How will the type of ADR process be selected?

The type of ADR process (facilitation, mediation or conciliation) to use will be selected by the ADR specialist after individual preliminary meetings with the subject member and representative of the Discipline Committee. The ADR specialist will select the most appropriate ADR process for the matter at hand by considering the information acquired in the preliminary meetings. Once a decision is made the ADR specialist will inform the Registrar who will contact the participants to inform them of the decision and arrange a meeting time for the ADR process.

How do I initiate an ADR process?

Aside from negotiation which can be initiated at any time, an ADR process can be initiated if a subject member would like to make a Conditional Admission collaboratively with a Discipline Committee representative. The Discipline Committee or registrar may also suggest this option to the subject member. A subject member is not required to participate in an ADR process in order to make a Conditional Admission; it is one of three options available when making a Conditional Admission. These options include (a visual representation of the three options is available in Attachment 3):

1. The subject member makes a Conditional Admission alone along with the suggestion of a solution



2. The subject member makes a Conditional Admission alone without the suggestion of a penalty at which point the Discipline Committee makes a proposed solution that the subject member may accept, reject or, propose amendments to (that the Discipline Committee may accept or reject)
3. The subject member and a Discipline Committee representative craft a Conditional Admission collaboratively.

If a subject member would like to come to a Conditional Admission collaboratively with a Discipline Committee representative, the subject member must make this proposal to the Discipline Committee. The Discipline Committee may then accept or reject this option because participation in an ADR process is voluntary for both the Discipline Committee and subject member. Another avenue is for the Discipline Committee to suggest this option when a subject member would like to make a Conditional Admission and the Discipline Committee finds the matter suitable for an ADR process to be applied. The subject member may either accept this option or reject it making a Conditional Admission using other available options or not at all thus proceeding to a Discipline Hearing.

What is a Conditional Admission?

A Conditional Admission is the vehicle by which a member stipulates (admits) to an action or undertaking that has caused concern sufficient to result in the laying of a complaint. It is the way a member demonstrates that they accept the responsibility for an activity or action. The Conditional Admission is voluntary and must be entered as such. Additionally it cannot have any conditions or justifications as the subject member is demonstrating that her/his actions have or may have compromised the reputation of the College and/or its members. A Conditional Admission may be made to the Discipline Committee at any time throughout the Discipline Process providing the Discipline Panel has not made any findings in a Discipline Hearing nor issued any penalty. For the Conditional Admission and penalty to be accepted as a final resolution to the complaint lodged, it must be accepted by the Discipline Committee (or a representative of the Discipline Committee) and the subject member.

A Conditional Admission can be considered a type of ADR because it is an alternative resolution mechanism to the traditional Discipline Hearing. Once a Conditional Admission is accepted by the Discipline Committee (or a Discipline Committee representative) and the subject member a summary of the matter is published in the Discipline Digest as if the matter had proceeded fully through a Discipline Hearing. If a Conditional Admission was not accepted it cannot be used against the subject member as the matter continues its course.

As a subject member, why would I wish to make a Conditional Admission in collaboration with a representative of the Discipline Committee?

There are various reasons a subject member might wish to make a Conditional Admission in collaboration with a representative of the Discipline Committee. For example, a subject member might wish to gain a deeper understanding of their alleged infraction (the complaint made against him or her), the subject member might prefer to craft a Conditional Admission with assistance from a knowledgeable member of the Discipline Committee, the subject member may wish to



discuss in detail his/her perspective with the Discipline Committee or the subject member may wish to explore their options through the Conditional Admission.

How might a typical ADR process evolve?

A typical ADR process (facilitation, mediation or conciliation) evolves as such:

1. A complaint is made against a subject member (a member subject to a complaint)
2. The Discipline Committee begins an investigation into the complaint in the Investigation Phase of the Discipline Process
3. The subject member chooses to make a Conditional Admission collaboratively with a representative of the Discipline Committee
4. The Discipline Committee selects a representative to participate in the ADR process
5. An ADR specialist who is acceptable to the subject member is selected
6. The ADR specialist holds separate preliminary meetings with the subject member and Discipline Committee representative
7. The ADR specialist informs the Registrar who informs the subject member and Discipline Committee representative of the chosen ADR process (facilitation, mediation or conciliation)
8. A date and time is set for the ADR process meeting to be held
9. An Agreement to Participate is signed by each participant prior to the beginning of the meeting
10. The meeting is held using the best means of communication (preferably face to face)
11. A Conditional Admission and penalty is reached or not reached

What can I expect from an ADR Specialist?

An ADR specialist is an impartial third party to an ADR process (facilitation, mediation or conciliation) who assists in creating an opportunity for productive discussion to occur among participants with the aim of helping them address issues and interests among themselves.

Why a hold preliminary meeting?

A preliminary meeting is held for the following reasons:

- to ensure participants understand the ADR process they will be participating in voluntarily
- to inform the ADR specialist of the individual perspectives of participants prior to meeting as a group
- so the ADR specialist may make a decision as to with which type of ADR process (facilitation, mediation or conciliation) to address the matter by taking into consideration the perspectives participants and the matter generally
- to prepare for the actual ADR process to occur between the subject member and the Discipline Committee representative



How do we know if a Conditional Admission has been crafted appropriately?

In crafting a Conditional Admission under any circumstance the College Conditional Admission Guidance, Conditional Admission Policy, Guidance: Penalty Determination Associated with Discipline-Related Matters and Guidance on the Imposition of Costs in Discipline Matters should be followed. Additionally, a Conditional Admission must contain three parts:

1. Identification of the action - this is what I did
2. Recognition of the impact of the action - this is how it affected the complainant, College, and/or other parties
3. Accepting responsibility - an apology for the action and the result

What is required and expected in an ADR process?

With the exception of negotiation, requirements to adhere to throughout the application of an ADR process (facilitation, mediation or conciliation) in order to come to a Conditional Admission collaboratively include:

- Participants must understand and sign the Agreement to Participate
- The public interest must be at the core of all decisions at all times
- The College Conditional Admission Guidance and Policy, Guidance: Penalty Determination Associated with Discipline-Related Matters and Guidance on the Imposition of Costs in Discipline Matters must be followed
- Conditional Admissions are required to be in accordance with the *College of Applied Biology Act*, the College of Applied Biology Rules and the College of Applied Biology Member Code of Ethics
- A preliminary meeting must be held by the ADR specialist with each individual participant to ensure s/he understand the details of participation and to inform the decision of the specialist regarding which ADR process (facilitation, mediation or conciliation) to recommend
- The ADR specialist must learn the organizational structure of the College and about the ADR Approach
- All participants (including the ADR specialist and the representative of the Discipline Committee) must participate in good faith, maintain the integrity of the process and not intentionally hinder its progress
- The representative of the Discipline Committee should not abuse their authoritative power. If this occurs it should be recognized and addressed by the ADR specialist.
- The Conditional Admission must be put in writing by participants and is to be considered the final agreement in the ADR process
- ADR processes must address complaints/disputes with as much authority/severity as a Discipline Hearing.

Who attends ADR processes?

With the exception of negotiations, a subject member, a representative of the Discipline Committee and an ADR specialist attend ADR processes. With regard to negotiation, they may occur at any point in time and do not require the assistance of an ADR specialist.



Are ADR processes voluntary?

Yes. ADR processes are entirely voluntary. They are an option to assist in coming to a Conditional Admission or in addressing other matters throughout the PIMS. Please note, negotiation is the only ADR process applicable throughout the entire PIMS.

Where do ADR specialists come from?

To assist with the selection of an ADR specialist, the College has compiled a roster. The ADR specialist must be acceptable to the subject member. In order to be part of the roster ADR specialists must apply and fulfill specific requirements. These include:

- A subscription to a relevant professional body
- Training and knowledge in interest-based dispute resolution
- A resume or CV that demonstrates training and knowledge in interest-based dispute resolution
- Two references
- Disclosed their insurance coverage status
- Experience performing facilitations, mediation and/or, conciliations
- Knowledge of the College's organizational structure and ADR Approach
- Those interested in applying to perform ADR skills training and workshops must have documented experience in delivering/instructing the following ADR skills: active listening, body language, identifying interests and positions, probing and asking questions, verbal communication and/or written communication

How will a Discipline Committee representative be selected to participate in an ADR process?

In order to participate in an ADR process (aside from negotiation), the Discipline Committee must select a representative. This representative will be a current member of the Discipline Committee and represent it in the given ADR process. The Discipline Committee selects an individual who is suitable and has no previous significant relationship with the subject member. If the Discipline Committee cannot decide who the representative shall be through a discussion, a vote will be held to determine the Discipline Committee member with the most votes. Representatives are selected on a case by case basis.

How much time is involved in an ADR process?

It is difficult to estimate the time an ADR process will take in coming to a Conditional Admission due to the range of issues that can be addressed by ADR processes. However, to ensure efficiency of the process, a general rule of thumb is that an ADR process (aside from negotiation) is not to take any longer than two months (or 40 business days) from the date participants commit to the process to the time the final Conditional Admission and penalty is reached. If necessary the ADR specialist may recommend an alternate yet reasonable time frame to the Discipline Committee. If the deadline is not met, the matter should proceed on its traditional path. At this time, at the very least, issues will have been clarified.



Where do ADR processes occur?

ADR processes will occur at a time and place selected and agreed to by the Discipline Committee representative, subject member and ADR specialist. Possibilities include: the College of Applied Biology office, at another neutral location and/or via Skype or conference call; this should be a last resort as face to face communication is the preferred option.

What happens if issues go unresolved in an ADR process?

Should an ADR process fail to assist the subject member and Discipline Committee representative in coming to a Conditional Admission and penalty collaboratively, the matter will resume on its original path to a Discipline Hearing. At this time, at the very least, issues will have been clarified. If a Conditional Admission and/or penalty was not accepted it cannot be used against the subject member as the matter continues its course.

Confidentiality and limitations

All matters transpiring in coming to a Conditional Admission are to remain confidential (between the subject member, ADR specialist if present and Discipline Committee) and must not be a part of what is published in the Discipline Digest. Unless agreed to otherwise by the participants, only the offence, the fact that the Conditional Admission was made and what it will entail may be disclosed. If an additional ADR process was used to collaboratively reach the Conditional Admission it may also be noted; including the type of process used. Prior to the commencement of an ADR process (facilitation, mediation or conciliation) an Agreement to Participate (available in Attachment 4) should be signed by all participants. This agreement addresses matters pertaining to confidentiality and its limitations; for instance issues of safety that may have an impact on confidentiality.

If the matter does proceed to a Discipline Hearing, information from the ADR process is non-compellable (meaning inadmissible). The only exception to this is that any technical and/or scientific information acquired in the ADR process is admissible to the Discipline Hearing if necessary to avoid waste and reduce costs. Neither the ADR specialist nor the Discipline Committee (including a Discipline Committee representative) are to be called in as a witness. A breach of confidentiality will result in the individual(s) being held accountable.



ADR LOGISTICS

Other logistics relevant to the ADR Approach include cost as well as policy and guidelines.

Cost

ADR skills training and workshops are funded by the College for those identified as requiring ADR skills – Discipline Committee, Audit Committee, Discipline Panel and auditors. College members may also choose to undertake ADR skills training and workshop as part of their Continuing Professional Development, at cost to the member. In reference to hiring an ADR specialist to perform ADR process functions the College generally incurs this cost as well; especially if there is a clear benefit to the public interest. However Rule 15.43 of the College Rules still applies in that the subject member may have to incur some (or all) of the costs. Should the subject member be required to pay or not pay for some or all of the ADR process costs, s/he is notified prior to committing to participation in the ADR process.

ADR Process and Workshop/Training Surveys

ADR process surveys are available on the College website. They may be completed on a voluntary basis. These surveys are anonymous for participants. Surveys for ADR workshop and training will be distributed at the end of each workshop and or training program. These remain anonymous as well. They may also be filled out online through the College website.

Completing surveys is encouraged as they will assist with the overall success and applicability of the ADR Approach; your input is important in this regard.

Policy and Rules

College policy and rules pertaining specifically to the ADR Approach include the following:

- Policy: Conditional Admission
- Policy: Crafting a Conditional Admission Collaboratively
- Policy: Publication of Discipline Related Decisions
- Policy: ADR Specialist Requirements
- Conditional Admission Guidance
- Guidance: Crafting a Conditional Admission Collaboratively
- Guidance: Penalty Determination Associated with Discipline-Related Matters
- Guidance on the Imposition of Costs in Discipline Matters



ATTACHMENTS

ATTACHMENT 1: Detailed depiction of PIMS

ATTACHMENT 2: Simple depiction of PIMS

ATTACHMENT 3: Depiction of the option available when making a Conditional Admission

ATTACHMENT 4: Agreement to Participate

APPENDIX 9: Policy: Publication of Discipline Related Decisions**Policy – Publication of Discipline Related Decisions****Purpose:**

When and how discipline and related decisions are made public and posted at the College website is addressed in this policy.

Scope:

This policy applies to the following decisions:

- Decisions by the Discipline Committee to dismiss a complaint
- Conditional Admissions agreed to by the Discipline Committee and the subject member
- Citations issued by the Discipline Committee and Notices of Hearing issued by a Discipline Panel
- Final decisions of a Discipline Panel following a discipline hearing.

Balance of Interests:

In making the above noted decisions public in print or electronically, the College is:

- demonstrating that members are held to account by the College,
- providing learning opportunities for the profession and the public, and
- sensitive to the privacy interest of third parties, and of its members.

In all cases when a decision is being made public, every effort will be made to protect the privacy of third parties.

Only in cases where, in the opinion of the deciding body (the Discipline Committee, a Discipline Panel, or Council in the case of a Review on the Record), “grievous harm” could result, will the subject member name not be made public or posted at the College website. In all cases where a subject member’s name is used in an on-line publication, a web robot exclusion protocol will be employed to preclude searching by a member’s name. (See “Grievous Harm” below.)

Discipline Committee Decisions to Dismiss/Reject a Complaint:

Decisions to dismiss/reject a complaint are of interest to the professions and to the public.

Consequently, where a complaint is dismissed or rejected by the Discipline Committee, the Committee will prepare a statement setting out in brief terms the nature of the complaint and the reasons for its dismissal/rejection. All care will be taken to ensure the complainant and subject member remain anonymous in these circumstances. The statement will be posted on the website.

Citations:

Citations issued by the Discipline Committee will be posted at the College website. Citations will remain posted until a Conditional Admission has been agreed to by the subject member and the Discipline Committee, or until a final decision is released by a Discipline Panel.

Notice of Hearing:

A Notice of Hearing issued by the Discipline Panel will be posted on the website and will remain until a Conditional Admission has been agreed to by the subject member and the Discipline Committee, or until a decision is released by the Panel.

Conditional Admissions:

The Conditional Admission and penalty accepted by the Discipline Committee and the subject member will be posted in full on the website for 2 years from the date of acceptance of the Admission and penalty, or from 2 years after the member has met any conditions set out in that Admission, whichever is longer. On conclusion of the stated time frame, the member is responsible for contacting the office to effect the change.

After two years, a summary of a Conditional Admission will be posted at the website, and the subject member's name will be removed from that on-line summary. On conclusion of the stated time frame, the member is responsible for contacting the office to effect the change.

Where a subject member chooses to surrender voluntarily his or her membership in response to a complaint by way of Conditional Admission, the summary Conditional Admission will generally be posted indefinitely on the website, and the full Conditional Admission will be removed after a period of 2 years. On conclusion of the stated time frame, the member is responsible for contacting the office to effect the change.

Should the subject member and Discipline Committee representative come to a Conditional Admission collaboratively using an ADR process (facilitation, mediation or conciliation):

- the additional ADR process used may be disclosed,
- discipline related decisions may be published
- all other details transpiring during the ADR process must remain confidential between the ADR specialist, Discipline Committee and subject member

In printing cases in the Discipline Digest, the College must be diligent and consistent with the language and terminology it uses with regards to the ADR Approach.

Discipline Panel Decisions:

The full text of a Discipline Panel final decision will be provided to the subject member and the complainant. A copy of the full decision will be kept in the member's file indefinitely.

a. Cancellation / resignation

The full decision of a Discipline Panel involving a member whose membership was cancelled or who has resigned as a result of a discipline action will be posted at the College the website for a period of 2 years after which time the full decision will be removed. After 2 years, a summary of such a Discipline Panel decision will be posted on the website indefinitely. On conclusion of the stated time frame, the member is responsible for contacting the office to effect the change.

b. Suspension

The full decision of a Discipline Panel involving a member who has been suspended will be posted at the website until the member has been reinstated and for approximately 2 years thereafter, at which time the full decisions will be removed. After this time, a summary of such a decision with the member's name removed will remain on the website indefinitely. On

conclusion of the stated time frame, the member is responsible for contacting the office to effect the change.

c. Other penalties or conditions

For all other Discipline Panel decisions that do not involve a cancellation or suspension, the full decision will be posted at the website for 2 years from the date of the decision or from 2 years after the member has met any conditions set out in that decision, whichever is longer. After this time, a summary of the decision with the member's name removed will remain on the website indefinitely. On conclusion of the stated time frame, the member is responsible for contacting the office to effect the change.

Distribution of a decision:

The distribution of Discipline Panel decisions will generally be restricted to college print and electronic publications unless the Discipline Panel, in its decision, directs otherwise. Subject members may address the issue of nature and manner of decision publication and distribution during a Discipline Panel hearing.

A Discipline Panel will, at the time of writing the full decision, also prepare a summary of its decision. The full decision and the summary decision will be available upon their release.

Notices to the General Membership:

An electronic notice will be issued to the general membership upon the issuance of a Conditional Admission that has been accepted by the subject member and the deciding body, or of a decision of a Discipline Panel. Where the notice regards the issuance of a Discipline Panel decision, the notice will contain the summary of the decision as prepared by the Discipline Panel.

Grievous Harm:

For the purposes of this policy, "grievous harm" includes harm that can occur only in rare and exceptional circumstances with the focus on the member's personal circumstances. The harm must be exceptional, unusual, onerous, injurious to the member and cause the member to experience catastrophic loss both personally and professionally. The harm must involve significantly more than the normal damage to reputation or embarrassment that would normally flow from being found guilty of professional wrongdoing.

Where the decision body is of the opinion that publication of the subject member's name will cause grievous harm that outweighs the interest of the public and the College in full publication, the decision body may direct that the subject member's name not be included in any published account of the decision.

APPENDIX 10: ADR Approach Survey Templates**ADR PROCESS PARTICIPANT FEEDBACK SURVEY**

For each ADR process quality and performance statement identified below, circle a corresponding number. Use the scale to select the number that best fits your judgment. Additional comments may be provided at the end of the survey.

ADR process quality and performance statements	Scale				
	1 = No	2	3 = Somewhat/Maybe	4	5 = Yes
The ADR process guidelines and procedures were clear	1	2	3	4	5
Plain language was used throughout the ADR process	1	2	3	4	5
Alternatives to the ADR process were clear	1	2	3	4	5
Participants were committed to the process	1	2	3	4	5
I had the opportunity to state my concerns and be heard	1	2	3	4	5
The ADR process was flexible and dynamic	1	2	3	4	5
The ADR process was fair	1	2	3	4	5
The ADR process was open/honest	1	2	3	4	5
The ADR process promoted information sharing	1	2	3	4	5
I have a better understanding of my own issues and concerns	1	2	3	4	5
I have a better understanding of the issues and concerns of the other parties	1	2	3	4	5
The ADR process enhanced my professional and personal growth	1	2	3	4	5
I learned/improved my problem solving skills	1	2	3	4	5
My capacity to deal with disputes/complaints increased	1	2	3	4	5
The ADR specialist was effective	1	2	3	4	5
The ADR specialist was reasonably informed and prepared	1	2	3	4	5
The meeting facility was appropriate	1	2	3	4	5
Meetings started and ended on time	1	2	3	4	5
Sufficient time was booked for the meeting(s)	1	2	3	4	5
The dispute/complaint was handled in a timely manner	1	2	3	4	5
The impact of the ADR process on my time and workload was acceptable	1	2	3	4	5
I would participate in an ADR process again	1	2	3	4	5
I would recommend participating in an ADR process to others	1	2	3	4	5

Additional Comments:

- Check this box if you consent to your anonymous feedback being used in the promotion of the ADR Approach

ADR SPECIALIST ADR PROCESS FEEDBACK SURVEY

For each ADR process quality and performance statement identified below, circle a corresponding number. Use the scale to select the number that best fits your judgment.

ADR process quality and performance statements	Scale				
	1 = No	2	3	4	5 = Yes
The meeting facility was appropriate	1	2	3	4	5
Meetings started and ended on time	1	2	3	4	5
Sufficient time was booked for meetings	1	2	3	4	5
The dispute/complaint was handled in a timely manner	1	2	3	4	5
The impact of the ADR process on my time and workload was acceptable	1	2	3	4	5
Participants were responsive to the ADR process	1	2	3	4	5

Please respond to the following questions using your best judgement and without disclosing any information about the ADR process that is to remain confidential among the participants. This can be accomplished by focusing on the procedural aspects of the ADR process rather than the information that was discussed.

- On a scale from 1 to 5 (1 = low; 3 = moderate; 5 = high), circle the level of tension between the participants at the beginning of the session.

1 2 3 4 5

- Which parts of the ADR process went well/poorly?

- Was a Conditional Admission and penalty reached collaboratively? YES NO

If yes, what helped or what went well? If no, what prevented the participants from reaching a Conditional Admission or what did not go well?

4. On a scale from 1 to 5 (1 = low; 3 = moderate; 5 = high), circle the level of your satisfaction with the process?

1 2 3 4 5

5. Do you perceive a need for the integration of different methods?

6. Are there particular experiences or ideas you would like to relate?

7. Do you have additional observations or recommendations?

ADR SKILLS WORKSHOP AND TRAINING PARTICIPANT FEEDBACK SURVEY

For each ADR skills workshop and training quality and performance statement identified below, circle a corresponding number. Use the scale to select the number that best fits your judgment.

ADR process quality and performance statements	Scale				
	1 = No	2	3 = Somewhat/Maybe	4	5 = Yes
The meeting facility was appropriate	1	2	3	4	5
The tools available for carrying out the workshop and training were utilized	1	2	3	4	5
The ADR skills workshop and training materials were appropriate	1	2	3	4	5
The objectives of the course were clear	1	2	3	4	5
The objectives of the ADR skills workshop and training were achieved	1	2	3	4	5
The content of the ADR skills workshop and training was useful in fulfilling your role at the College	1	2	3	4	5
The information presented was clear	1	2	3	4	5
The instructor was knowledgeable and helpful	1	2	3	4	5
I am satisfied with the ADR skills workshop and training	1	2	3	4	5
Will you recommend this ADR skills workshop and training to other College members?	1	2	3	4	5

Please respond to the following questions using your best judgement.

Check this box if you consent to your anonymous feedback being used in the promotion of the ADR Approach

1. Which parts of the ADR skills workshop and training went well/poorly?

2. What were the strengths of the ADR skills workshop and training?

3. What were the weaknesses of the ADR skills workshop and training if any?

4. Are there particular experiences or ideas you would like to relate?

5. Do you have additional observations or recommendations?

ADR SPECIALIST ADR SKILLS WORKSHOP AND TRAINING FEEDBACK SURVEY

For each ADR skills workshop and training quality and performance statement identified below, circle a corresponding number. Use the scale to select the number that best fits your judgment.

ADR process quality and performance statements	Scale				
	1 = No	2	3	4	5 = Yes
The meeting facility was appropriate	1	2	3	4	5
The tools necessary for carrying out the workshop and training were available	1	2	3	4	5
The objective of the course was perceived as useful by participants	1	2	3	4	5
Participants were responsive to the content presented	1	2	3	4	5

Please respond to the following questions using your best judgement.

1. Which parts of the ADR skills workshop and training went well/poorly?

2. What were the strengths of the ADR skills workshop and training?

3. What were the weaknesses of the ADR skills workshop and training if any?

4. Are there particular experiences or ideas you would like to relate?

5. Do you have additional observations or recommendations?
