



Policy Category:	Policy Title:	Policy #:
Discipline	Electronic Discipline Hearings	POL-INQ-04
Regulation   Bylaw Reference:		HPA Reference:
Bylaw 178		Section 38
Authorization:	Date Approved:	Last Revised:
CSHBC Board	June 12, 2020	

## PURPOSE

To provide a process for conducting electronic discipline hearings, subject to further directions from the Discipline Committee.

## SCOPE

All registrants with the College of Speech and Hearing Health Professionals of British Columbia (the “College”) who are the subject of a discipline hearing, as well as their counsel, witnesses and public attendees.

## POLICY

### 1.0 OVERVIEW

A hearing panel of the Discipline Committee (the “Hearing Panel”) conducts discipline hearings pursuant to s. 38 of the *Health Professions Act*, R.S.B.C. 1996, c. 183 (“HPA”).

Subject to the requirements of the HPA, the College’s bylaws and procedural fairness, the Discipline Committee may at its discretion, determine that a discipline hearing will proceed by way of electronic hearing, including on a video conference platform.

All existing bylaws or policies regarding hearings continue to apply and are only modified insofar as is necessary to accommodate the specific guidance of this policy regarding electronic hearings.

This policy is subject to further directions provided by the Hearing Panel of the Discipline Committee or the Discipline Committee generally.

### 2.0 DEFINITIONS

“Electronic communication devices” include all computers, personal electronic and digital devices, and mobile, cellular and smart phones.

“Parties” means the respondent and the College pursuant to section 38(2) of the HPA.

“Participants” means all persons participating in a hearing, including

- a) the hearing panel of the Discipline Committee, and their independent legal counsel if any;
- b) the respondent, and their legal counsel if any;
- c) representative(s) of the College, and their legal counsel, if any;

- d) witnesses, and their legal counsel if any; and
- e) staff of the College supporting or facilitating the hearing process.

“Observers” are members of the public or the press who have been granted access to observe the electronic hearing in accordance with this policy.

### **3.0 PRE- HEARING PROCESS**

The Discipline Committee may provide notice that a discipline hearing is to proceed by way of electronic hearing with the use of a video conferencing platform.

#### **3.1 Notice**

The Discipline Committee will provide at least 21 days’ notice of the electronic hearing including:

- a) the electronic communication device system requirements in order to participate in the electronic hearing;
- b) for the purposes of circulating materials, the contact information (including a physical delivery address, and an email address if available) for:
  - 1. The Hearing Panel;
  - 2. The College and / or its counsel;
  - 3. The respondent, and his or her legal counsel if applicable;
  - 4. The court reporter retained by the Discipline Committee to complete a transcript of the hearing.

At least 14 days prior to the commencement of the electronic hearing, the College must provide to the Hearing Panel, by email if possible,

- a) an email address to which access instructions will be sent, and
  - b) a telephone number at which a person may be reached during the hearing,
- for each witness being called by the College, and their legal counsel, if any.

#### **3.2 Respondent Confirmation**

At least 14 days prior to the commencement of the electronic hearing, the respondent must provide to the Hearing Panel, by email if possible,

- a) an email address to which access instructions will be sent, and
  - b) a telephone number at which a person may be reached during the hearing,
- for each of
- i. the respondent,
  - ii. the respondent’s legal counsel, if any; and
  - iii. any witnesses being called by the respondent, and their legal counsel, if any.

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### **3.3 Material Delivery**

At least 7 days prior to the commencement of the electronic hearing all Parties must deliver to all other Parties and to the court reporter all materials that the Party intends to rely upon at the hearing. The materials may be delivered in electronic or in paper format, unless the court report requests materials in a specific format, but they must be page numbered and tabbed where appropriate in order to allow all Parties to locate references during the electronic hearing.

One exception, to this 7 day time limit is that Parties may deliver opening and closing submissions by no later than the completion of the electronic hearing.

### **3.4 Public Application to Observe**

If a member of the public wishes to attend the hearing they must at least 7 days prior to the hearing, contact the College to request access to the electronic hearing and provide:

- a) Full legal name of each Observer;
- b) Email address that the access instructions to the hearing will be sent; and
- c) Telephone number that they will be available at during the hearing.

The Discipline Committee may then grant Observer status to the member of the public. In granting Observer status, the Discipline Committee considerations may include privacy concerns and the technological capacity of the video conferencing platform.

### **3.5 Hearing Access Instructions**

One day prior to the electronic hearing, the instructions to access the video conferencing platform will be provided to the email addresses of each of the Participants and those members of the public granted Observer status.

The access details, including the link, must not be shared with anyone.

## **4.0 HEARING PROCESS**

### **4.1 General**

Participants must enter their full name and email address when accessing the video conferencing platform. Failure to do so may result in them not be granted full access to the electronic hearing.

Each participant should login to the electronic hearing individually with the exception of co-counsel, in which case just one counsel may login. This is in part to address feedback technical issues.

All participants must keep their electronic communication device on mute, except when speaking as part of the electronic hearing.

### **4.2 No recording of electronic hearing proceeding**

As with in-person oral hearings, no person except a court reporter may record any component of the electronic hearing. Any audio or video recording of the proceeding including screen shots or other photographs is prohibited.

### **4.3 Privacy and Confidentiality Concerns**

The Discipline Committee may consider any privacy and confidentiality concerns of the parties, and provide further direction on the hearing process to address such concerns.

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Pursuant to s. 38(3) of the HPA, the Hearing Panel of the Discipline Committee, may direct that portions of the electronic hearing not be public if:

- (a) the complainant, the respondent or a witness requests the discipline committee to hold all or any part of the hearing in private, and
- (b) the discipline committee is satisfied that holding all or any part of the hearing in private would be appropriate in the circumstances.

In these circumstances, the Hearing Panel of the Discipline Committee, may provide further direction, including to:

- a) modify Observer access to the electronic hearing or the hearing materials, including such measures as blocking the visual component of testimony if technically possible, or removing access entirely for sensitive portions of the electronic hearing;
- b) remove the user identification for witnesses from the video conferencing platform and the transcript and only have the full name available to Discipline Committee members, their staff and legal counsel, and the respondent and their legal counsel.

#### **4.4 Public Access Restrictions**

The discipline hearing is an open hearing process.

However, pursuant to s. 38(3) of the HPA, as set out above, Observer access to the electronic hearing may be limited in a variety of manners to address privacy concerns, including by:

- Permitting only audio observation;
- Removing the full names of witnesses from the electronic hearing and user identification;
- Removing access to the hearing during highly sensitive or confidential portions of the hearing, such as during witness testimony in sexual misconduct matters or where sealing orders apply.

Further, if at any point bandwidth or technological issues arise with the number of Observers, the Discipline Committee may direct that an Observer be removed from the electronic hearing.

#### **4.5 Non-attendance by the respondent**

If a respondent does not attend an electronic hearing whether due to technical issues or otherwise, the Discipline Committee may at its discretion proceed with the hearing in the respondent's absence, and may, without further notice to the respondent, proceed to address the discipline matter, pursuant to 38(5) of the HPA.

#### **4.6 Witness testimony on oath or affirmation:**

The testimony of a respondent or a witness must occur on oath or affirmation, as required by section 38(4)(a) of the HPA, which oath or affirmation the Court Reporter may administer electronically.

#### **4.7 Attendance by witnesses at the hearing**

A witness who has not testified may not see or hear the testimony of other witnesses, with the exception of the respondent and any representative(s) of the College, either of whom may observe the entire hearing.

A witness must be alone in a secure room, unless the Hearing Panel permits otherwise, with any doors closed to minimize external noise or interruptions. A witness must make all reasonable efforts to prevent interruptions or distractions during their appearance at the hearing.

A witness must sit at a desk or table that is clear, except for documents relating to the hearing.

A witness must not use a virtual background.

When giving evidence, the witness must keep their camera and microphone on at all times unless the Hearing Panel instructs otherwise. The witness should position the camera so that the Hearing Panel and the parties will see the witness clearly, including the witness's face, and the witness's hands (if possible).

A witness must not communicate with anyone outside of the electronic hearing room during their appearance at the hearing.

When giving evidence, a witness must only have and refer to copies of documents or document briefs circulated to all parties and to the court reporter, unless the Hearing Panel permits otherwise.

If requested by the Hearing Panel, a witness must show the panel any document the witness is viewing.

If requested by the Hearing Panel, a witness must move the camera to allow the Hearing Panel to observe any part of the room where the witness is giving evidence, including the materials before the witness.

Once a witness is excused, the witness must leave the electronic hearing room, unless the witness is the respondent or a representative of the College, or unless the Hearing Panel permits otherwise.

After giving evidence, a witness other than the respondent or a representative of the College may view the electronic hearing, if and while it is open to the public, through any access available to the general public.