



## Professionalism and Personal Conduct: Charting a Course for a new Profession By Murray Rankin, Q.C.

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As members of the College of Applied Biology, I think all of you are well aware that you must take particular care not to debase the currency of this newly minted profession. But just what does that mean in practice? What can your self-governing profession legitimately discipline you for?

What is the line between what you can do as an individual without attracting discipline and your duty to the profession? What about your rights to free expression, which are guaranteed under the *Canadian Charter of Rights of Freedoms*: do they not still apply? That is what I would like to address in this short article.

As everyone should be proud to recall, the College of Applied Biology was established under a BC statute that is unique in North America.

The College is now on an equal footing with other self-governing professions in this province -- doctors, lawyers, dentists and the like. All of these professions have one thing in common: they have been given a license by the Legislative Assembly, by law, to govern their members.

And courts will be reluctant to second-guess the good faith efforts by self-governing colleges to regulate their members. Any court that is called upon to review the discretion conferred by the statute upon your College would do so in a deferential way, interfering only if it concluded that the decisions made by the College or discipline tribunal were considered unreasonable. Therefore, even if a Court were to disagree with a particular disciplinary decision, it would have to take note of the fact that the Legislature did not confer this power upon the Courts – rather, it conferred this power upon the College and the committees to which the College has delegated these powers.



The Act creating the College contemplated several committees. One of them is the Discipline Committee and the Council has the authority to delegate a wide range of its powers for discipline to this committee. One of the powers that the Council cannot delegate is the power to make rules. And Council has in fact made rules governing discipline. [Rule 15](#) sets out an elaborate code for investigation and discipline. This Rule is intended to comply with the rules of procedural fairness that the common law provides to all members. In addition, [Schedule 2](#) of the Rules sets out nine principles that constitute the College's "[Code of Ethics](#)". Several of these principles relate to professionalism.

But just what is professionalism? Among other things, most agree that the main criteria for a "professional" are the following:

- a) Expertise and specialized knowledge in a field which one is practicing;
- b) High quality work;
- c) A high standard of professional ethics, behavior and work activities while carrying out one's profession. Often the professional is required to put the interest of the client ahead of his or her own interests;
- d) Appropriate treatment of relationships with colleagues: an example must be set to perpetuate the attitude of one's business without doing it harm;
- e) A professional is an expert who is master in a specific field.

The College's Code of Ethics makes many references to professionalism. For example, it requires members to "provide a professional standard of service ... by conducting business practices fairly, avoiding conflicts of interest and respecting client/employer confidentiality" (Principle 4).

It requires members to "uphold professional obligations to the College while they are in the workplace" (Principle 6) and to "maintain a standard of personal and professional conduct that does not reflect adversely on the College or its members" (Principle 7).

Principle 9 states that members must "recognize the duty to address poor conduct and/or practice of another member in order to protect the public interest, the profession, and the reputation of the College. In addition, the



Code of Ethics contains several principles in which professionalism is at the core. For example, a member must “provide a professional standard of service to clients and employers by conducting business practices fairly, avoiding conflict of interest and respect client/ employer confidentiality” (Principle 4).

Similarly, a member must “uphold professional obligations to the College while in the workplace” (Principle 6) and “maintain the standard of personal and professional conduct that does not reflect adversely on the College or its members (Principle 7).

How do these lofty Principles, however, come to apply to members? First, the Act specifically enables the Council to make rules establishing “standards of professional and ethical conduct, including a [Code of Ethics](#)”. In other words, the College has explicit legal authority, conferred by the Legislature, to make these rules. Rules are also contemplated for standards of competence.

Discipline proceedings may be authorized by the Council “if there is reason to believe that the member may have been guilty of one or more of the following:

- 1) Professional misconduct;
- 2) Conduct unbecoming a practicing member; and
- 3) Incompetent performance of duties undertaken while engaged in applied biology.”

Members are also required by the statute to cooperate with any disciplinary investigation, to answer questions, produce relevant information and provide explanations where called upon. Penalties are contemplated for failure to do so. Ultimately, discipline hearings can be held by panels appointed under the Act and penalties may be imposed and membership in the College suspended if a member is found to have transgressed these Rules.

But what do these phrases mean? Firstly, the phrase “professional misconduct” is defined simply as misconduct by a member “relating to the performance of duties undertaken while engaged in applied biology”. This is in turn defined to include a breach of the Rules, including, of course, the Code of



Ethics. It must be stressed that in your profession, professional misconduct only applies in relation to the performance of applied biology. Technically, other forms of misconduct that may occur when you are not performing such duties are not subject to discipline.

As noted at the outset, the Legislature does not take a position on what such duties entail or what misconduct may be. It is content to confer this responsibility on the College. That is the hallmark of a self-governing profession such as yours. However, the Legislature will not hesitate to remove these powers should it conclude that the College is not protecting the public. A recent example came with the amendments to the BC *Teachers Act*. The Legislature concluded, after a notorious report by consultant Don Avison, that the College of Teachers was simply not doing its job in adequately disciplining its members.

What about the phrase “conduct unbecoming a practicing member”? This is much more subjective. Three categories of activity are defined to constitute “conduct unbecoming”:

- a) Firstly, if the member brings the College or its members into disrepute; or
- b) If he or she “undermines the scientific methods and principles that are the foundation of the applied biological sciences” or
- c) lastly, if he or she “undermines the principles of stewardship of aquatic and terrestrial ecosystems and biological resources”.

The phrase “stewardship” is nowhere defined in the College Act. However, there are many definitions available, most of which convey the concept of responsible resource management, entailing a commitment to the needs of ecosystems and their components. Just as beauty is in the eye of the beholder, it is the College, in the professional judgment of those members delegated the authority to discipline, that is called on to determine what “stewardship” may mean in a particular instance.

For some members, the most interesting area of professional discipline will be determining exactly what conduct the Council (and potentially the panel of the discipline committee that has to pass judgment on particular conduct)



believes will “bring the College or its members into disrepute”. What about one’s rights as an individual outside of the workplace? It seems beyond doubt that all professionals must conduct themselves outside the workplace in such a manner as not to debase the currency of their profession. Again, the Legislature explicitly conferred on the College the ability to police such conduct that is found “unbecoming a practicing member”. Every fact situation will be different and it is impossible to provide “cut and dried” standards.

Let’s take a few examples derived from other professions. It is likely that the harm to the public would be by far the most crucial consideration. Therefore, dishonest conduct would no doubt be considered more serious than conduct that might be considered disgraceful. But do we not all have private lives? How far can private conduct be relevant in disciplinary matters? A famous case from Ontario involves a lawyer who hired a number of young girls in horse shows across North America. He seduced these young girls and was even convicted in the United States for transporting a girl for immoral purposes. He was disbarred for conduct unbecoming a lawyer and the Court upheld his disbarment because “his conduct was not only reprehensible, but it seriously reflects upon and shatters his professional integrity to the point where the protection of the public is involved”.

Another example involved an engineer who was working for a mining company and mishandled trust funds. He was expelled from the Association of Professional Engineers and the Court agreed that this dishonesty could well translate into issuing engineering reports that were not trustworthy: honesty was held to be a prerequisite of professionalism. Another engineer was found to have been properly disciplined for enabling demolition and reconstruction work on a personal building project without obtaining the necessary permits from the City and in defiance of a “stop work order”. A final example involved a teacher in Quesnel who was found guilty of unprofessional conduct for publishing a series of articles in the local newspaper that were found to be discriminatory against homosexuals. Even though this occurred on an off-duty basis, it was found that the conduct could legitimately be subject to professional discipline because his conduct did not involve views expressed as a private citizen but rather as a teacher and counsellor and it was found that this activity negatively affected the school system and his ability to carry on



his professional obligations. Even though his *Charter* rights to free expression were considered, his activity was nevertheless found to be “conduct unbecoming a teacher”.

Closer to the activity of registered professional biologists, consider the case of a UK veterinarian who was disciplined for neglecting his own livestock on the basis that this would certainly bring his profession into disrepute.

What about an RPBio who engages in civil disobedience, perhaps to protest government environmental policy? Contempt of court involves deliberate or wilful disobedience of a court order. Because an injunction is an order of the court, any person who violates an injunction, for example during civil disobedience, can be charged with contempt. The difference between civil and criminal contempt is not always easy to determine: if the conduct amounts to “a public defiance or violation of the order so as to make the contempt criminal as opposed to civil” it amounts to criminal activity and fines and imprisonment may follow. Would a conviction for criminal contempt constitute “conduct unbecoming”?

What about a RP Bio who is convicted for fishing or hunting without a license out of season?

Should she not know better? Would such activity not bring the profession not only into disrepute but perhaps into ridicule – particularly if this conviction were front page news in a local paper somewhere in the province?

These are the kind of issues that may well be addressed over time. As more cases come forward, it will of course be easier to draw more certain conclusions as to the kinds of conduct that the College considers worthy of the attention of BC’s newest self-governing profession. But what is already clear is that the College has the obligation to consider a wide variety of conduct – occurring both in and out of the office -- in determining whether its members are achieving the requisite standard of professionalism.

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Links to Rule 15 and Schedule 2 (the College's Code of Ethics) referenced in the preceding article can be found at: [https://www.cab-bc.org/Rule\\_15.pdf](https://www.cab-bc.org/Rule_15.pdf) and [https://www.cab-bc.org/Code\\_of\\_Ethics.pdf](https://www.cab-bc.org/Code_of_Ethics.pdf).