



## What happens at a VCNZ Judicial Committee hearing?

This document describes what happens:<sup>1</sup>

- After a decision has been made that the Judicial Committee of the Veterinary Council of New Zealand (the Judicial Committee) should hear charges
- At a hearing before the Judicial Committee
- After a hearing

### 1.0 The matter is referred to the Judicial Committee

Part 3 of the Act sets out the functions and powers of the Veterinary Council in respect of disciplinary proceedings.

The Veterinary Council has the power to appoint one or more Judicial Committees to exercise the Council's functions and powers under Part 3 of the Act (section 81)

You will probably be reading this document after you have been advised that the Judicial Committee is to hear charges.

This means that the Complaints Assessment Committee (CAC) investigating a complaint has determined that the matter requires a disciplinary hearing, and has referred the matter to the Judicial Committee by laying a charge or charges (section 43(1)(d) or (e)).

### 2.0 Before the hearing

When charges are laid against you the Council or Judicial Committee will send out a copy of the charges and will advise you of the date, time and place of the hearing. This will usually be in the nearest main centre.

The Judicial Committee endeavours to hear every matter within 3 months of its referral from the CAC.

You will be notified who will be on the Judicial Committee. If there is any change to the membership of the Committee after that original notification you will be advised.

If you believe that there is any conflict of interest between you and one of the named members (such as a personal relationship) you should raise this at the first possible opportunity, which may be as follows.

#### 2.1 Pre-hearing conference

A pre-hearing conference will be held if possible within 4 weeks of receipt of the referral from the CAC.

---

<sup>1</sup> References are made to sections of the Veterinarians Act 2005 (the Act) . This document does not replace the Act which contains the law relating to the operation of the Judicial Committee.

You will be advised of the date, time and venue of the conference. The conference may be held by telephone, in which case you will be advised of the number to call.

Taking part in the conference will be the Chair of the Judicial Committee, a representative of the CAC, the CAC appointed lawyer and the veterinarian and his or her lawyer.

Matters which may be addressed at the conference include;

- timetabling
- likely numbers of witnesses
- hearing length
- whether there is any agreement as to the facts
- availability of written evidence
- venue
- agreement on filing and exchange of briefs of evidence before the hearing (note failure to do so may have an impact on costs awarded)
- name suppression application

The pre-hearing teleconference is the place to raise any matters relating to the running of the forthcoming hearing. A checklist is sent out with the notice of charge and should be completed and returned before the conference. The checklist serves as an agenda for the conference.

Following the conference the Chair will produce a memorandum recording the matters which have been agreed and setting out the next steps.

Should matters arise in the course of preparation for the hearing that your lawyer thinks should be the subject of a direction by the Chair then application can be made for a further pre-hearing conference.

## 2.2 Legal representation

The Complaints Assessment Committee will appoint a lawyer to act on its behalf and present the CAC case at the hearing

Veterinarians may be represented by lawyers. This is not essential, but most veterinarians will find it very helpful to have legal advice and to be legally represented at the hearing.

Lawyers need time to prepare for a hearing, so it will help you if you give your lawyer as much notice as possible of the hearing.

You should not presume that by taking no steps to engage a lawyer you will automatically be granted an adjournment or that the hearing will not proceed on the due date.

## 2.3 Witnesses, records and documents

To enable you to present your point of view properly to the Judicial Committee, and for the Judicial Committee to inquire properly into the complaint, you may wish either to produce documents or to call witnesses to events to give evidence on your behalf. Records or xrays may be needed too. Your lawyer will help you to sort out what you need and what is relevant.

If your lawyer has difficulty obtaining these documents, they should contact the Judicial Committee at least 3 weeks before the hearing date to allow time for documents to be obtained.

Documents like records should be circulated prior to the hearing so that everyone may be familiar with them and will not have to spend time at the hearing making a detailed study of them. The Judicial Committee may set time limits or deadlines for this to be done.

The parties are therefore encouraged to co-operate in identifying and providing copies of relevant documents but if either is having difficulty they should advise the Judicial Committee's Officer (contact details below).

Sometimes someone you wish to call as a witness may only be available for a short time on the day of the hearing. It is usually possible to obtain the agreement of lawyers to a witness giving their evidence at a predetermined time.

The Judicial Committee will require that you advise it not less than 21 days before the hearing whether you intend to appear and be heard either in person or by your lawyer.

You can give this advice to the Judicial Committee's Officer, Mrs S D'Ath, PO Box 10 563, Wellington (Ph. (04) 499 0431, Fax (04) 499 0662).

#### 2.4 Expert witnesses

On occasions the Judicial Committee may seek advice from an experienced veterinarian who specialises in the area of practise which is the subject of the hearing.

You will be advised if an expert witness, called by the Judicial Committee, is to attend the hearing. The expert witness will be available for cross-examination after giving their evidence in the same way as any other witness.

#### 2.5 Public notice

The Judicial Committee advertises the date, place and time of the hearing in the public notice column of the local newspaper approximately ten days before the hearing but does not advertise the names of the parties.

### 3.0 At the hearing

The hearing will usually be held in public, subject to the provisions of section 49 of the Act.

The Judicial Committee has the powers of a Commission of Inquiry (other than in respect of costs which are dealt with separately) (section 48). Although the procedures are of necessity formal, the Judicial Committee does try to reduce the formality to a minimum.

You or your lawyer may ask questions about procedure at any point either before or during the hearing.

#### 3.1 Introduction

At the beginning of the hearing the Chairperson will introduce the Judicial Committee members, the Judicial Committee officer and the stenographer.

The Judicial Committee will comprise between 3 and 5 members (section 83 (2) and (3)).

The membership must include;

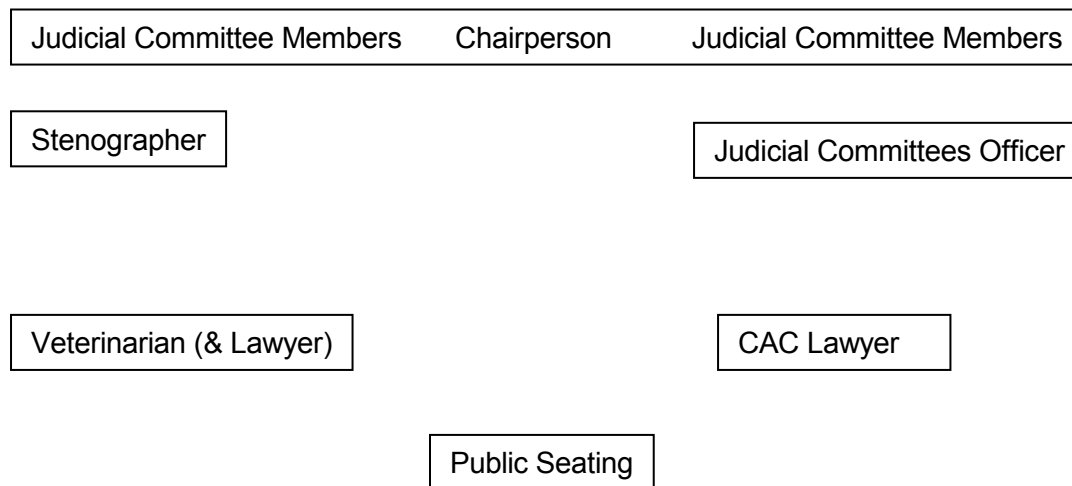
- A barrister and solicitor of not less than 7 years practice

- a layperson (not a veterinarian)
- a member of the Veterinary Council
- a veterinarian with relevant experience

You should note that one member of the Committee may fulfil more than one of these roles.

Following introduction of the members of the Judicial Committee, lawyers representing the CAC and the Veterinarian then introduce themselves and their clients and identify other witnesses or close family members who may be present.

Shown below is the usual layout of the inquiry room.



All evidence given at the hearing is recorded normally by a stenographer. In the event of an appeal against the Judicial Committee's finding, a transcript of the evidence will be made available to the parties or their lawyers on request.

Any person who is called as a witness by either the CAC or Veterinarian may be asked to remain outside the room in which the hearing is being held until their evidence is to be heard. This ensures that the witness gives evidence based on personal recollection of events and not influenced by the evidence of earlier witnesses or evidence. Both the complainant and Veterinarian are present in the inquiry room throughout the inquiry.

### 3.2 The complaint

The CAC lawyer will then present their case.

They may make an opening statement before witnesses are called by the CAC to give their evidence to the Judicial Committee.

All people giving evidence at an inquiry are required, as in a Court of Law, either to swear on the Bible or to affirm that the evidence they are to give is the truth.

Evidence in the form of briefs or affidavits should be provided in typed form with a minimum of nine (9) copies being available for the Judicial Committee and other parties to the hearing. The Judicial Committee expects that if you are represented by a lawyer that your lawyer will file evidence, whether in the form of briefs or affidavits, with the Judicial Committee in advance of the hearing in accordance with any timetable set prior to the hearing.

After the evidence has been read and any relevant documents handed to the Judicial Committee, the CAC's lawyer may ask questions of the witness, to clarify any point and if necessary, to seek further information about the complaint. The Veterinarian or their lawyer can then cross-examine the witness. Following these questions, members of the Judicial Committee may wish to ask the complainant questions about the complaint. Following questions by the Judicial Committee, CAC or their lawyer then has a further opportunity to clarify any points.

The procedures described earlier in this paragraph are followed as each person gives evidence.

### 3.3 The response

The Veterinarian or their lawyer will then present the Veterinarian's response to the complaint.

They may make an opening statement before the Veterinarian and other witnesses are called by the Veterinarian give evidence to the Judicial Committee.

The procedure following is the same as that described in paragraph 3.2. Once again it is helpful, but not essential, to have the Veterinarian's and witnesses evidence in typed form with eight copies being available for the Judicial Committee and other parties.

### 3.4 Expert witness (Refer paragraph 2.4)

If the Judicial Committee has called an expert witness they will appear at this point and give their evidence.

The CAC and Veterinarian or their lawyers may then cross-examine the expert witness.

### 3.5 Conclusion

Each party then sums up their case.

The Chairperson then closes the hearing.

## **4.0 What happens after the hearing**

### 4.1 Decision and penalty

The Judicial Committee will usually meet in private immediately after the conclusion of the hearing, to consider the evidence which has been placed before it and reach a decision. The hearing will then be reconvened and the Judicial Committee decision announced. If the complaint has been upheld the Chairperson will invite the lawyers for both complainant and respondent Veterinarian to make submissions as to what penalty the Judicial Committee should impose.

The relevant sections of the Veterinarians Act including section 51 describes the penalties which the Act permits the Judicial Committee to impose, and the provisions relating to costs and publication.

In some cases because there is not time on the day of the hearing for the Judicial Committee to communicate its decision to the complainant and the Veterinarian, the decision will be reserved and later sent to the Veterinarian, CAC and their respective lawyers. Even if the

decision is given orally at the hearing a formal written decision or order will be sent to the CAC, Veterinarian and their lawyers.

#### 4.2 Costs

If the complaint or any part of it has been upheld the Judicial Committee may order that the Veterinarian pay the costs and expenses of, and incidental to, the disciplinary hearing and any investigation made by the CAC (section 51(3)).

The CAC, Veterinarian and their respective lawyers will be invited to make submissions on the question of an award of costs either in person or in writing.

An interim schedule of the costs of the inquiry may be available at the end of the hearing and oral submissions made by the lawyers for the CAC and Veterinarian or the Judicial Committee may prefer that the schedule be finalised and sent to the parties and their lawyers prior to their making written submissions to the Judicial Committee on costs.

The Judicial Committee will consider all submissions before it issues a final decision on any costs award. This decision may be given orally at the hearing or by a written decision later sent to the parties.

Section 52 of the Veterinarians Act provides that the Council may cancel or suspend registration or cancel or suspend the practising certificate of any veterinarian who is required to pay fines and costs imposed under Section 51 and has not done so for 60 or more days.

#### 4.3 Publication

The Judicial Committee's decision is issued in writing to all parties, whether appealed or not.

Publication of findings occurs in all cases whether or not the charges are upheld unless there are circumstances allowing exception (see sections 49 and 71).

Council's usual practice is to publish the findings in its newsletter and on its website and notify news media that the decision is available.

#### 4.4 Rights of appeal (section 64)

A Veterinarian may appeal to the District Court against a decision of the Judicial Committee imposing a penalty which may include;

- cancellation of registration
- removal of specialist registration
- suspension of registration
- cancellation of practising certificate
- suspension of practising certificate
- order that ineligible to hold a practising certificate
- imposition of conditions on practise
- fine
  - order that refund, reduction or waiver of professional fee be made to complainant
  - a costs award

The Act requires that notice of an appeal must be made within 20 working days of your receiving notice of the decision (including penalty if one is to be imposed). The District Court may extend the time in certain cases.

You should discuss making an appeal with your lawyer.

### **5.0 Any questions?**

This document summarises what happens before and at a hearing. If you have any questions, please do not hesitate to ask either your lawyer or the Veterinary Council

Veterinary Council  
P O Box 10 563  
Wellington  
Telephone: (04) 473 9600  
Fax: (04) 473 8869

July 2008

## **APPENDIX A**