

MINUTES
COUNCIL OF THE ASSOCIATION OF ONTARIO LAND SURVEYORS
Tuesday, February 16, 2021
10:00 AM to 12:30 PM
Teleconference GoTo Meeting

Chair:	Andrew Mantha,	President	Windsor	1
	Gavin Lawrence,	Vice-President	Newmarket	2
	Al Jeraj,	Past-President	Mississauga	3
	Andy Shelp,	Senior Councillor	Ottawa	4
	Anna Aksan,	Senior Councillor	Toronto	5
	Trevor McNeil,	Intermediate Councillor	Stratford	6
	David Kovacs,	Intermediate Councillor	Thunder Bay	7
	Simon Kasprzak,	Junior Councillor	Barry's Bay	8
	Patricia Meehan,	Lay Councillor	Sudbury	9
	Peter Meerveld	Lay Councillor	Kitchener	10
	John General,	Lay Councillor	London	11
	Martha George	Lay Councillor	Kitchener	12
	Andrew Dowie	Lay Councillor	Stouffville	13
	Susan MacGregor,	Surveyor General	Peterborough	14
Staff:	Brian Maloney,	Executive Director	North Kawartha	1
	Kevin Wahba,	Registrar	Vaughan	2
	Penny Anderson,	Recorder	Mississauga	3
Absent:	Amar Loai,	Junior Councillor	Toronto	1

1. Call to Order; Reminder of Conflicts of Interest and Confidentiality

The Meeting was called to order at 10:00 AM

The President reminded Council of confidentiality and to declare conflicts of interest.

2. Review of Agenda

The Agenda was reviewed by Council.

Motion 20.73 MOVED: Andy Shelp SECONDED: Gavin Lawrence

BE IT RESOLVED THAT: Council Approves the Agenda as provided

DATE: February 16, 2021 Chair: Andrew Mantha Carried: (Unanimous)

3. Approval of Previous Minutes / Review of Action Items

The Minutes were reviewed by Council.

Motion 20.74 MOVED: Trevor McNeil SECONDED: Anna Aksan

BE IT RESOLVED THAT: Council approves the Minutes as amended from the meeting of January 26th, 2021.

DATE: February 16, 2021

Chair: Andrew Mantha Carried: (Unanimous)

There has been no progress on the I&IT Strategy. AGM preparations have been consuming us. In terms of assistance from MNR that is on the GRLC is on agenda for discussion.

The webinar is scheduled for this Thursday.

*The E.D. had called out for members to join the Harassment and Discrimination Prevention Committee and received zero responses. The E.D. will reach out to a few people. This is an Important committee to help us and we need a female member on this Committee. **Action: Brian to reach out to members to join the Harassment and Discrimination Prevention Committee***

The Legislation and Regulation Task Force had a kickoff meeting to discuss revisions to the Surveyors Act. They are in the process of putting together a Project Plan.

The Fees Mediation Committee is finalizing the changes made to the Manual but additional work is required to more clearly address referrals to the Complaints Committee.

4. Financial Information and Investments

The Report has two tabs. There is an investment tracking by year in the first tab.

We are now reflecting the new Fiscal Year which starts November 1st.

We were in much better shape in the end of December but that's now in the next fiscal year.

At the end it was 2.3% gain in investments for the year at the end of October.

The next tab has the monthly changes.

We are actually 7.1% through to the end of January. The market has been treating us well.

According to the insurance policy we passed last year, we are in the position to be able to make available the \$550K to offset the self-insured retention fund again this year.

We will be sending out insurance invoices to the membership fairly early.

We will continue to monitor this according to our policy.

There is currently no monthly operational statement since we are in the process of transitioning our financial system to address the changed fiscal year.

BM put the calendar year un-audited financial statement into the budget. We put the full year in as opposed to the financial audit statement that goes to the end of October which is reflective of the new fiscal year.

There were no changes to the budget numbers that were approved by Council back in the fall.

The financial Audit statement was completed.

It was for a ten-month period because of the change of the fiscal year.

It was going to cost us double to have two statements, so we decided not to have two created.

We had a pretty serious surplus due to the savings. D. Kovacs will speak to this at the AGM.

We had some problems arise from changing our Fiscal Year.

CRA had not notified us that they had changed our Fiscal Year, and we were still reporting on the old quarters and not the new one, so we had to go back and refile our HST reporting.

It triggered a review, and looked at the dollars that were submitted, and they looked the period from February.

And we ended up high reporting of income with not enough tax credits for that particular period.

As a result, they had sent us a bill of \$150K, and a fine of \$5K for not reporting and an interest fee of another \$5K.

Brian phoned CRA many times to try and address this, and in the end he was advised to launch an appeal, which he did.

CRA launched an audit that was due last Thursday.

Our Accounting system does not deal with HST appropriately and we had a few issues we have to deal with.

We received an extension until this Thursday.

BM is working closely with our Accountant to respond.

We encountered a couple of issues; there were no HST payments made on revenue brought in from Discipline hearing recoveries although we claimed the input tax credits for discipline costs; we did not pay HST on late fees that were collected. As a result we will owe additional HST.

The good news is that our Accountant ended up charging a slightly higher rate on the HST on the Insurance. (Post the Council meeting further research was completed and the overpayment amount is small).

We caught it when we were providing copies of a series of invoices and cheques and found that Discipline was missing. The HST payments are generated from general ledger codes that did not include discipline.

5. President's Report

The AGM Committee had their final meeting.

Thanks to Bruce Parker and Gary Irwin from the SWRG who helped us plan for this Virtual AGM.

Gavin met with Brian to finalize the meeting dates for Council in the following term.

We considered a call for proposals from Economic and Social Development Canada and believe that we have the opportunity to receive financial assistance to help increase the number of surveyors or technicians. We asked Brian to approach the Professional Surveyors of Canada to see if they would like to lead this. We will be considering this at the Presidents' Forum and may have to bring this back to Council depending on the outcome. This was added to this Agenda.

We are getting ready for the AGM and hope this works!

6. Staff Report

Executive Director

Traditionally we put forward the Annual report for this meeting from ED, Registrar and SRD Manager, which was done. If Council has questions, ED will be happy to speak to his attached report.

Registrar

He had nothing to add to his report and will be glad to speak to his attached report.

7. Surveyor General's Report

The SG report had to be approved through the Ministry, all the way to the Minister, before it was sent out.

Wayne Tremblay from PEI is taking on the Coordinator role starting today and replacing Bruce Clark.

Bruce Clark is now in the Manager's position.

The SG report contains all the activities for the past year. The SG offered to answer any questions regarding the report.

This will be SG's and Patricia Meehan's last AGM.

SG expressed her appreciation for Legal Lay Councillor Patricia Meehan.

8. Recommendations from the Discipline Committee

This came about from two special meetings of the Discipline Committee, one discussing the experience of recent Panels and the other addressing risk. The large hearing that was recently held provided several issues to consider that can help future panels prepare for similar hearings. Other issues were also considered by the Discipline Committee. Chair Dave Kovacs thanked the Lay Members, Patricia Meehan and Peter Meerveld for their contributions. A deck was provided offering the recommendations and rationale for each.

The Committee recommends that all new members of the Discipline Committee should receive formal training before participating on a panel.

Half of the committee members received training in the fall and the other members will receive their training in June.

New members should have a session with the lawyer providing services to the Panel to ensure they fully understand each others' roles. Additionally, the role of the lawyer should be documented and added to the binder that the Panel receives prior to the hearing. It seems that sometimes the Legal Counsel's role was not fully explained, and they did not understand their limitations with dealing with our own legal counsel.

Some members noted that they felt unprepared for their first hearings. With increasing expectations being imposed on discipline panels by the Courts this becomes even more important.

All panels should have someone with legal training as part of the panel – usually a Lay Member. Consideration should be given to having more than one lawyer appointed as lay members when the Surveyors Act is opened.

The reason behind this is to have a backup. In the event that our Legal Lay Councillor is unable to attend, we will have a backup. The current Surveyors Act requires one lawyer to be appointed as lay councillor. Conflicts of interest could potentially impact their ability to sit on a panel.

It was pointed out that the Legal Lay Councillor is there under the act for judicial/administrative fairness – it is not appropriate for legal lay councillor to provide legal advice to the panel.

Where a joint submission has been reached the following recommendations were made. Prior to hearings with joint submissions being offered, the Discipline Panel should receive a full statement of allegations, facts, and agreed upon statements as soon as they are available to allow sufficient time for consideration. This should also include a record of member's complaints and disciplinary history.

The Discipline Committee should meet with the Registrar annually to discuss Joint Submission settlements to ensure consistency of views.

Some Panel members felt they did not have sufficient information to fully consider joint submissions being offered and insufficient time to review the complete case. They felt that have been rubber stamping decisions and were not sure they would always agree with the results.

The Committee recommended that past complaint and disciplinary actions related to the member being considered for discipline should be made available to the Complaints Committee considering a complaint, to Council considering how to address a request for disciplinary action (addressed through Council Motion 20-56 in meeting of October 30, 2020), and to the Discipline Panel, after a member has been found guilty of professional misconduct and/or incompetence but prior to a determination of sanction. The rationale behind that is that there have been examples where Council and/or Discipline Panels have not been aware of past complaints/disciplinary actions that would have influenced decisions made and perhaps resulted in stronger actions.

It was noted that the Compliant should stand on its own and should not have additional history, however, this recommendation changes this idea. The Complaint still has to stand on its own but it's important to know whether this member has garnered the same type of complaints several times. This has always been a challenge.

It would be fairer if the Member knows in advanced that in response to the Complaint that their full record will be considered by the Complaints Committee – as opposed to individual members doing their own research.

The Registrar noted that the Complaints Committee is trying to revamp the Complaints Committee manual and they have had a lots of discussions regarding historical information on those frequent offenders; we keep previous files away from the Complaints Committee until all submissions have been submitted, and up to that point only the Registrar will open those previous files and that is something we want to put into the manual.

It was suggested to have it included in the Transparency Policy as well.

With Discipline, we would not have the information in advance of determining a finding of guilt with regards to the allegation. If the Discipline Panel finds a member guilty of a particular named offense, then and only then, before the consequential determination, or determining the appropriate penalty is, would it be fair to look at the history. We need to let the Member know that their records will be considered but not in terms of a finding whether they are guilty or not, but only with regards to the ultimate consequence.

If it is a joint submission or agreed statement of facts it would be preferable to have the committee receive all of that information before judging the joint submission.

It was asked whether we have consulted Steinecke on these conversations. The courts have ruled on these items already, in one circumstance, they chastised a regulator for not considering the previous history of failures of a member.

It was suggested to have a meeting with Dave Kovacs, Kevin Wahba, Richard Steinecke and Izaak de Rijcke and present these recommendations.

The following recommendation is directly related to the extended hearing where it stemmed to the many complaints that had been lodged prior to the member going to discipline. Where the Complaints Committee chooses not to proceed with fees related complaint and refers it to the Fees Mediation Committee, they should be very careful with their language and NOT use language that suggests that the complaint was "dismissed". An example of potential appropriate wording is: "While we are concerned with the alleged conduct, we conclude that as this is primarily a fees dispute, we do not have jurisdiction to make a finding regarding this complaint. It is more properly dealt through the Fees Mediation process".

The rationale behind that is the wording of a Complaints Committee decision with "dismissed" wording provided a potential opportunity for the defense to upset a decision that considered multiple complaints that were "dismissed". It also added time to the hearing to discuss the merits of the argument.

Where Registrar's recommendation is launched, the Registrar should document the grounds for the investigation and clearly spell out the areas for investigation.

The investigation should be conducted in a neutral, unbiased fashion and the investigator's report should stick to facts and not provide an editorial comment.

It is recommended to extend the guidelines for the Registrar's Investigation to include the above recommendations.

The rationale is that an appeal of a discipline decision resulting from a Registrar's investigation claimed that the investigation was a "fishing expedition" and included inappropriate comments. Although the AOLS was successful in defending this, it added significant time to the hearing and efforts in defending the appeal.

Allegations in the Notice of Hearing should be directly related to the evidence provided.

Where complicated allegations are made, considerations should be given to having an independent legal review prior to providing them.

If, as the AOLS prepares its case for the hearing, it realizes that the allegations are not properly worded, a supplementary or amended Notice should be provided to the Member well in advance of the hearing.

The rationale behind that is that allegations in the Notice of Hearing define the parameters of what is relevant and admissible evidence at the discipline hearing and as such, the wording of the allegations is important.

The Committee recommended increasing the use of off-the-record pre-hearing conferences that could include complainant participation.

The rationale is that pre-hearing conferences are an option in the Discipline Committee Manual but are rarely used. In some circumstances, they could help narrow charges being considered and improve the relationship with the complainant.

The draft motion was presented to Council.

We will run this by Steinecke and/or Izaak when we get into the details that will ultimately be incorporated into guidelines, policies and procedural manuals.

The motion is structured such that the recommendations are approved in principle and that adjustments can be made as appropriate to operational manuals and the transparency policy.

Concerns were expressed in the first two recommendations related to lawyers supporting the panel. It was suggested to expanding the role vs. looking at another lay lawyer to assist the panel.

We have clarified her (Carol Street's) role in the first recommendation.

It was noted that her role is defined by administrative law principles.

The details as to the exact wording and any potential changes to the Surveyors Act would still have to be worked out. This only recommends considering a change to the Act.

Action: Brian to track implementation of Discipline Committee recommendations

Motion 20.75 MOVED: Sue MacGregor SECONDED: Patricia Meehan

BE IT RESOLVED THAT: Council approves the Discipline Committee Recommendations in principle and that adjustments be made as appropriate to operational manuals and the transparency policy.

DATE: February 16, 2021 Chair: Andrew Mantha Carried: 10 Support, 2 Against (Aksan, Meerveld)

9. AGM Test

Event Consultants from Redstone Agency joined the meeting to introduce themselves and the AGM Platform.

Council was provided credentials to the AGM Event Portal.

Council was provided a tour of the Event Portal.

The majority of the sessions were pre-recorded. We encourage everyone to join the session on time. Should a participant join a session late, the session stream will start at the beginning of the video and the stream will be cut off as scheduled and the participant will miss viewing the remainder of the session. The Exhibitor presentations are hosted in the Channel section and will be available on Monday, February 23rd at 1pm until 9pm. Council participated in a live demonstration in one of the test sessions. Challenges occurred with individuals joining the Zoom webinar. Further refinement was recommended, and Councillors were asked to join 15 minutes in advance to work out any technical difficulties. Another test is to be scheduled.

10. Potential Proposal to ESDC (<https://www.canada.ca/en/employment-social-development/services/funding/sectoral-initiatives.html>)

*The President mentioned this in his report earlier. The E.D. provided a link with information about this funding. Proposals are due in early March. We would like to make a national application. The E.D. had met with the PSC President and Executive Director last week, and they had suggested it was a good idea to apply. They have agreed to pursue it and are developing a proposal. They are looking for support from us. There is a 10% matching funds, so, if they had a \$1M proposal, whoever is involved would have to come up with \$100K. We have yet to see the detail of what they are proposing. We had discussed something about an outreach type of campaign. They are looking to have something in place before the President's forum on the Thursday morning and it will be brought up at that table. The E.D. had considered asking for authority for Exec. Committee to proceed due to the tight timeframe, however, we are lacking too much detail to allow this. We are hoping to have other Associations support this as well. We can schedule a special Council meeting immediately after the Annual General Meeting. **Action: Brian to schedule a special Council meeting.***

11. Appointments (no material)

Motion 20.76 MOVED: Trevor McNeil SECONDED: Al Jeraj

BE IT RESOLVED THAT: Council approves the following changes:

- Brian Kerr and Dan Cormier are appointed to the Complaints Committee for a three-year term
- Dan Cormier is removed from the Public Awareness Committee

DATE: February 16, 2021 Chair: Andrew Mantha Carried: (Unanimous)

12. Schedule of Next Year's Meetings

VP G. Lawrence and E.D. B. Maloney had a meeting and discussed dates for Council meeting dates for the next term. A calendar with dates was sent to Members of Council and they are asked to protect those dates. Ideally, we should be able to stick to these dates. We are looking at virtual meetings for the early part of the year to early fall.

We are hoping to have a face-to-face meeting for the Strategic Planning and pushed it to September, which hopefully will allow this.

We are not having a short Council meeting on the 23rd, which would have been the tradition.

We will find another test run of the AGM Event portal next week. Penny will send a meeting invitation for this test.

13. Discipline Matters

There were no disciplinary matters to be considered at this meeting.

This item should come up in our next meeting.

The meeting was adjourned at 12:47pm

DRAFT