

MANUAL OF PROCEDURES
FOR THE
COMPLAINTS COMMITTEE
OF THE
ASSOCIATION OF ONTARIO LAND
SURVEYORS

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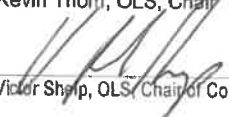
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Kevin Thom, OLS, Chair

Date: July 6, 2022

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Victor Sharp, OLS, Chair of Council

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1.0 Introduction

The Complaints Committee receives its Legislative Authority from the *Surveyors Act*, R.S.O. 1990, c. s.29, as amended 2009, c. 33, Sched. 22, s. 11. (Hereinafter referred to as the "Act").

This Manual is to be used as a guideline for the Complaints Committee in order to ensure consistency, openness, and fairness in the treatment of a complaint.

The Manual is composed of 3 Parts.

PART 1 relates to the Complaints Committee, its functions and operations,

PART 2 relates to the administrative procedures to be followed in the processing of a complaint, and

PART 3 refers to the powers and actions available to the committee when considering and investigating a complaint.

This Manual is to be treated as a document that is continuously under review and subject to change and revision. The Manual should be reviewed by members of the Complaints Committee as required but in any case at least every 5 years, and amended as required.

2.0 Definitions

- a) "Act" refers to the *Surveyors Act*, R.S.O. 1990, Ch. S29
- b) "ADR" refers to the Alternative Dispute Resolution process.
- c) "Association" or "AOLS" refers to the Association of Ontario Land Surveyors.
- d) "Committee Member" refers to a member of the Complaints Committee
- e) "Complaints Committee" or "Committee" refers to the Complaints Committee of the Association.
- f) "Complaints Review Councillor" refers to the Complaints Review Councillor appointed by AOLS Council under Sec. 23 of the Act.
- g) "Council" refers to the Council of the Association.
- h) "Discipline Committee" refers to the Discipline Committee of the Association.
- i) "Frivolous, vexatious or an abuse of process" is a term defined by case law. Where the Committee believes a Complaint may fit this definition, it may review the advice previously provided, or seek new advice as necessary to ensure the appropriate use of these terms.
- j) "Incompetence" refers to the definition described in sections 26(3)(a) & 26(3)(b) of the *Surveyors Act*
- k) "LGA" refers to a Lieutenant Governor's Appointee (lay member) of Council.
- l) "Member" refers to a member of the Association.
- m) "Parties" refers to the parties to a complaint.
- n) "Professional Misconduct" refers to the definition described in Regulation 1026 under the *Surveyors Act*

PART 1 – THE COMPLAINTS COMMITTEE

3.0 Statutory Committee

The Complaints Committee is a Statutory Committee constituted in accordance with Section 9(1)(d) of the *Surveyors Act*. Its function is explained in Sections 21 and 22 of the Act.

4.0 Terms of Reference

4.1 Aims

To ensure fair, open and complete fulfillment of Sections 21, 22, and 23 of the Act.

4.2 Objectives

- a) The Committee will consider and investigate in a timely manner all complaints that are presented in a form consistent with the *Surveyors Act*.
- b) The Committee will maintain complete and accurate records of each complaint file.
- c) The Committee will ensure that confidentiality is maintained of files and all associated committee materials used during and after its deliberations.
- d) The Committee will ensure that all new committee members are provided training and sufficient materials to assist the member in serving on the committee.
- e) The Committee will attempt to inform and educate members and the public of the surveyor's roles and responsibilities.
- f) The Committee will strive to ensure that all parties to a complaint understand the aims, objectives and powers of the committee and the reasons for each decision.

4.3 Responsibilities

- a) The authority of the Complaints Committee is derived from Section 22 of the Act.
- b) As per Sections 22.(4) and 22.(4.1) of the Act, the Committee may refuse to consider or investigate a complaint if in the opinion of the committee the complaint is frivolous, vexatious or an abuse of process.
- c) If the Complaints Committee refuses to consider or investigate a complaint under subsection 22.(4), the Committee shall give written notice of its decision and of the reasons for it to the complainant and the member who is the subject of the complaint.

4.4 Registrar's Role

- a) The Registrar of the Association has the role of administering the operation of the Complaints Committee but the Registrar is not a member of the Committee.
- b) As per Section 22(2) of the Act, when a complaint is filed, the Registrar shall give written notice of the complaint to the member and advise the member that he or she may submit a detailed written response to the complaint to the Registrar within two weeks of receiving the notice.
- c) The Registrar will prepare a file for each complaint and ensure that a copy of all documentation relating to the complaint is kept in the file and that an electronic file containing a copy of all documents is maintained in a secure location of the internal computer system of the Association, and is also posted in the secure and confidential Complaints Committee section of the AOLS website.
- d) The Registrar will prepare and circulate a draft agenda to Committee Members at least one week before the date of a meeting of the Complaints Committee.
- e) The Registrar will prepare minutes for all meetings of the Complaints Committee and distribute them to Members within one week following the meeting.
- f) The Registrar will ensure that a copy of each signed Decision is delivered to both parties to the complaint.
- g) If the Registrar declares a conflict with a particular file or other matter under consideration by the Committee, the Deputy Registrar will act in the capacity of the Registrar for said file or matter.

4.5 Committee Structure

- a) The formation of the Complaints Committee, and the identification of its members, is to be done each year by AOLS Council. This will normally occur at the first Council meeting following the Annual General Meeting.
- b) As per Section 21(1) of the Act, the Complaints Committee shall be composed of at least five members, including:
 - i. At least one member of the Association who was elected to the Council,
 - ii. At least one LGA, appointed under Clause 3(2)(e) or (f) of the Act), and
 - iii. Members in good standing of the Association each having a minimum of five years of experience.

Section 21(3) states that Council shall name one member of the Committee to be chair, and Section 21 (2) states that no person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

- c) For the purpose of transacting business, a quorum of the Complaints Committee consists of five members of the Committee, where,

- j. at least one member is a member of the Association elected to the Council under clause 3 (2) (a) of the Act; and
 - ii. at least one member is a person who was appointed to the Council by the Lieutenant Governor in Council
- d) In the circumstance where the appointed LGA is unable to act, the LGA member of the Discipline Committee may be appointed by Council to fill in at a Complaints Committee meeting but the said member of the Discipline Committee is appointed only until the time that the member who is unable to act is able to resume his or her duties or is replaced.
- e) A member of the Discipline Committee who is appointed to act in the place of a member of the Complaints Committee under Section 21 (2.1) shall not serve on a disciplinary panel that holds a hearing with respect to any matter that the member was involved with as a member of the Complaints Committee.
- f) The term of office for the Complaints Committee is not specified in the Act, however it is suggested that members serve for a period of not more than 10 years. It is also suggested that the Committee should consist as much as is reasonably possible of members from diverse areas and occupations within the province.

4.6 Conflict of Interest and Confidentiality

- a) All Committee Members must sign a conflict of interest and confidentiality statement in the form attached as Appendix A, which will be kept on file at the office of the Association.
- b) Complaint files are confidential and the contents are not to be acknowledged or discussed other than among committee members or by AOLS staff as required for administrative purposes.

4.7 Member Training

All new Committee Members are obligated to attend the next available Administrative Law seminar hosted through the Association. Existing members are also encouraged to attend these seminars to maintain currency with existing legislation and case law.

4.8 Meetings

- a) Meetings of the Complaints Committee will be held at the discretion of the Chair.
- b) The Registrar will circulate a draft agenda to Committee Members at least one week

before the scheduled date of a meeting of the Complaints Committee.

- c) Minutes will be kept for all meetings of the Complaints Committee and will be distributed to Committee Members within one week of the meeting.
- d) Official meetings of the Complaints Committee may be held by teleconference, Internet Meeting software or face to face, as determined by the Chair. It is recommended that a face-to-face meeting take place at least once every year.
- e) Meetings of the Complaints Committee require a quorum of five Committee Members, at least one of whom must be a LGA, and one of whom must be an elected member of Council

5.0 Committee Documentation

- a) The Registrar is to have overall administrative responsibility for all files, agendas and minutes of the Complaints Committee.
- b) Complaint files will include all correspondence and materials received from and sent to the parties to the complaint, as well as copies of any decisions, letters or other documentation issued by the committee in relation to the complaint.
- c) Copies of committee meeting agendas and minutes will be kept by the Registrar and electronic copies will be kept in a secure location on the Association's internal computer system and will also be posted on the secure and confidential Complaints Committee page of the Association website.

PART 2 – ADMINISTRATIVE PROCEDURES

6.0 Filing a Complaint

The Act requires that a complaint must be filed in writing, with the Registrar. A “Complaints Help Form” (Appendix B) is available on the AOLS website, at: https://www.aols.org/site_files/content/pages/public-protection/complaints/20122016-complaints-help-form.pdf. A copy will be sent to complainants upon request. This form is not mandatory but provides guidance to complainants to ensure that all necessary information is submitted.

The OLS who is the subject of the complaint will be provided with a “Surveyor’s Complaints Help List” (Appendix C) to assist in providing the appropriate information to the committee.

6.1 Initial Processing

The initial processing of a complaint file will proceed as follows:

- a) An acknowledgement letter is delivered to the complainant (Appendix D), stating that the complaint has been received and that the Surveyor’s submission will be forwarded to the Complainant for a further response.
- b) A notification letter (Appendix E) including a photocopy of the written complaint and a Surveyor’s Complaints Help List (Appendix C) is delivered to the O.L.S. Email may be used in addition to regular mail to improve the timelines of information exchange.
- c) Complaints and responses received as hard copies and the signed letters are placed in a physical file in the Registrar’s office and electronic copies are posted in the confidential Complaints section of the AOLS website and stored in a secure folder on the Association’s internal computer system.
- d) The response from the O.L.S. is forwarded to the complainant with an invitation to submit any further response. A copy is placed in the physical file and an electronic copy is posted and stored as above.
- e) The complainant’s second submission, where applicable, is forwarded to the surveyor. This is posted and stored as above.
- f) The complainant’s second submission is forwarded to the surveyor, and the surveyor’s second response, if any, is posted and stored as above.
- g) When the initial complaint is received the file is added to the Complaints Committee agenda, to be considered by the committee at the next available meeting after all submissions have been received by both parties.

6.2 Information Exchange

- a) The Act states that the member who is the subject of the complaint may submit a written response within 2 weeks of receiving the notice of the complaint.
- b) The policy of the Committee is to allow two submissions from each of the parties.
- c) It is recommended that all exchange of information is delivered via a service which includes confirmation of receipts.

6.3 Confidential Information

In some cases one or both of the parties may request that information be kept confidential. The Committee shall consider such requests and may grant them at their discretion.

6.4 Withdrawal of a Complaint

Where the complainant and the O.L.S. agree independently of the Complaints Committee to withdraw a complaint, the Complaints Committee may continue the investigation if the matter concerns issues of public protection.

6.5 Ongoing Litigation

It is recommended that the Complaints Committee adjourn a file where parties to a complaint or matters associated with a complaint are before the courts. Generally, it would be inappropriate for the Committee to decide whether the issue raised by a complaint is peripheral to the matter before the courts. The Complaints Committee is subordinate to the divisional court and cannot risk being found to have interfered with the court's right to reach its own decisions.

6.6 Complaints Against Former Members

Complaints against former members are to be processed by the Committee unless the former member is Deceased. In the event of a complaint against a deceased member, the Registrar shall not process the file and inform the Complainant of the former member's status in addition to this provision of the Committee's Practice Manual. The Committee may also refuse to address a Complaint if the former member's licence was revoked for cause.

If a Complaint against a former member is accepted by the Committee, the following items should be considered:

- a) Where, in the opinion of the Committee, the issues raised by the complainant are significant and concerns regarding the public's interest might have led to

the referral of a practicing member, ask the former member to sign an undertaking that they will not reapply for membership. If they sign this it should be put on the surveyor's official record and the complaint would be considered complete;

- b) Where, in the opinion of the Committee, the issues raised by the complainant are significant and concerns regarding the public's interest might have led to the referral of a practicing member and the member refuses to sign an undertaking that they will not reapply for membership, the complaint should continue through the normal complaints/discipline process;
- c) Where, in the opinion of the Committee, the issues raised by the complainant are not significant and concerns regarding the public's interest are unlikely to have led to the referral of a practicing member but there is still a high likelihood of public harm, then the complaint should be recorded on the surveyor's official record for internal purposes only. The complaint would be considered complete;
- d) Where the complaint, in the opinion of the Committee, did not appear to indicate an issue which is contrary to the public's interest it would be dismissed.

If the former member is not deceased or has not had their licence revoked for cause, they shall be afforded the opportunity to respond to the complaint prior to the Committee considering how it will proceed. In any event, the Complainant should be notified as to the outcome of their Complaint.

6.7 Fees Related Complaints

Where the Committee determines that the fee related issues in a complaint do not warrant a referral on issues of professional misconduct the Committee may recommend the complainant consider using the Fees Mediation process.

When a determination is being made, it's recommended the Committee avoid language suggesting the complaint has been dismissed.

6.8 Overlapping Complaints

Where complaints against a member are filed with both the Complaints Committee and the Fees Mediation Committee, the Complaints Committee should place their file on hold and allow the Fees Mediation process to resolve before proceeding.

7.0 Committee Meetings

- a) Committee members will familiarize themselves with the current files as materials are posted and will be prepared to discuss each active file during the meeting.

- b) The Committee will review each file and will decide whether additional information or investigation is required.
- c) The Committee may direct the Registrar to request additional information from either party.
- d) The Registrar will provide to the Committee all previous complaints against members who have ongoing files when all submissions on a particular file have been delivered.
- e) If appropriate, the Committee may direct the Registrar to investigate internal AOLS files regarding SRD reviews or insurance claims, or to carry out further investigation under the authority granted to the Registrar by Section 30 of the Act (Registrar's Investigation).
- f) The committee may appoint one committee member or hire an outside consultant to review complex complaints and provide a report for review by the committee.
- g) The Committee Chair may assign a committee member to prepare a draft decision based on the deliberations at the meeting.
- h) The draft decision will be circulated to all Committee members for their comments and the final version will be made available for approval at the next committee meeting or through an appropriate secure channel.

8.0 Decisions

Following its consideration and investigation of a complaint, the Committee may direct that the matter be referred, in whole or in part, to AOLS Council with a recommendation that Council refer the matter to the Discipline Committee, or take the action that it considers appropriate in the circumstances and that is not inconsistent with the Act or the regulations or by-laws of the Association. Such action may include undertaking to complete specific training to fill a skill or knowledge gap, letter of apology, undertaking to complete work in a specific time period, etc.

8.1 Hearings

The Committee is not required to hold a hearing or to afford to any person an opportunity for a hearing or an opportunity to make oral submissions before making a decision or giving a direction.

8.2 Interim Decisions

- a) The Committee may issue an Interim Decision that requires a time-limited response or action from the member. This will generally occur when the committee feels that the member's actions do not warrant referral to Council, but that some form of education or remedial action is warranted. A copy of the Interim Decision will be sent to both parties.
- b) The surveyor's response to an Interim Decision is included in the Agenda for the next meeting. If the Committee is satisfied with the member's response a Determination of the Committee confirming this and noting that the member will not be referred to Council will be issued.
- c) The surveyor's response shall be delivered to the Complainant immediately following its receipt.

8.3 Decision Process

- a) The Complaints Committee shall give its decision in writing to the Registrar and, if the decision is to not refer the matter to Council its reasons for the decision.
- b) The Registrar shall send to the complainant and to the person who is the subject of the complaint, by mail, a copy of the written decision made by the Complaints Committee and its reasons for it, if any.
- c) Decisions shall be written in the format attached as Appendix F, and shall include the names of the committee members who participated in the decision, a brief synopsis of the complaint, a listing of the materials and evidence considered, a synopsis of the issues identified by the committee, the decision rendered by the committee and the reasons for the decision.
- d) The reasons for the Committee's decision should be explained in detail. It is not enough to simply state that there was no evidence indicating that the surveyor did anything less than what is required of him or her as an Ontario Land Surveyor.
- e) The decision, signed by the Chair, or if the Chair has declared a conflict, by another member of the Committee shall be provided to the Registrar, who shall mail a copy to both parties.
- f) It is recommended that all exchange of information is delivered via a service which includes confirmation of receipts.

8.4 Feedback and Further Actions

The covering letter with the decision to the complainant (Appendix G) must include notice of the availability of the Complaints Review Council, as detailed in Section 23 of the Act as well as a copy of the Complainant Satisfaction Survey (Appendix H).

The covering letter to the surveyor must include a copy of the Member Feedback Form (Appendix I).

Feedback forms submitted by complainants or members shall be posted to the Committee's web page and placed on the agenda for the next meeting for consideration by the committee.

8.5 Possible Outcomes of a Complaint

Complaints investigated by the Complaints Committee may result in one of the following outcomes:

- a) The Complaints Committee may refer a matter to Council with the recommendation that Council refer the matter to Discipline in accordance with subsection 22(4.2)(a) of the *Surveyors Act*. Possible acts of professional misconduct, skill gap incompetence or incapacity may result in a referral to Council under subsection 22(4.3)(a) of the *Act*.
- b) The Complaints Committee may take educational or remedial action in accordance with subsection 22(4.2)(b) of the *Surveyors Act*.

This outcome may apply to concerns that do not warrant a discipline hearing but where the practitioner or the public would benefit from the practitioner taking measures to improve their future behaviour.

- c) The Complaints Committee may decide to take no action if the alleged conduct is not improper, if there are exceptional mitigating circumstances or where there is little or no evidence to support the alleged conduct. The Complaints Committee may refuse to consider or investigate a complaint filed if, in the opinion of the Committee, the complaint is frivolous, vexatious or an abuse of process.

9.0 Complaints Review Councillor

9.0.1 Section 23 of the Act requires that there be a Complaints Review Councillor who shall be appointed by and from among the members of the Council appointed by the Lieutenant Governor in Council. The Complaints Review Councillor is not eligible to be a member of the Complaints Committee or the Fees Mediation Committee. The Complaints Review Councillor is not an appeal to the decision, and can only review and comment on the procedures used by the committee in arriving at their decision.

9.0.2 As per Section 23 of the Act, the Complaints Review Councillor may,

- a) from time to time conduct an examination of the Association's procedures for the treatment of complaints; and
- b) upon application of a complainant or on the Councillor's own initiative, review the treatment of a particular complaint against a member of the Association or the holder of a certificate of authorization if the Complaints Committee has not disposed of the complaint within 90 days after the day the complaint was filed with the Registrar.

9.0.3 During an examination under Sec. 23 (a), the Complaints Review Councillor may examine, the number of complaints, the nature of complaints, the feedback received from participants, recommendations for improvements by committees, etc.

Upon receiving a request from a complainant under Sec. 23(b) to have a specific file reviewed, the Registrar shall forward the entire contents of the complaint file to the Complaints Review Councillor.

9.0.4 Section 23 (11) of the Act states that:

Every person who is,

- (a) a member of the Council;
- (b) an officer of the Association;
- (c) a member of a committee of the Association; or
- (d) an employee of the Association,

shall furnish to the Complaints Review Councillor such information regarding any

proceedings or procedures of the Association in respect of the treatment of complaints made to the Association as the Complaints Review Councillor from time to time requires, and shall give the Complaints Review Councillor access to all records, reports, files and other papers and things belonging to or under the control of the Association or any of such persons and that relate to the treatment by the Association of complaints or any particular complaint.

- 9.0.5 In an examination or review in respect of the Association, the Complaints Review Councillor shall not inquire into the merits of any particular complaint made to the Association. (Sec. 23(4))
- 9.0.6 The Complaints Review Councillor is not required to hold or to afford to any person an opportunity for a hearing in relation to an examination, review or report in respect of the Association. (Sec. 23(10))
- 9.0.7 The Complaints Review Councillor shall make a report following upon each examination or review by him or her in respect of the Association. (Sec. 23(12))
- 9.0.8 Where the report follows upon an examination of the treatment of complaints by the Association, the Complaints Review Councillor shall transmit the report to the Council. (Sec. 23(13))
- 9.0.9 Where the report follows upon a review as to the treatment of a complaint by the Association, the Complaints Review Councillor shall transmit the report to the Council, to the Surveyor General, to the complainant and to the person complained against. (Sec. 23(14))
- 9.0.10 The Complaints Review Councillor may transmit a report following upon an examination or review to the Minister where, in the opinion of the Complaints Review Councillor, the report should be brought to the attention of the Minister. (Sec. 23(15))
- 9.0.11 The Complaints Review Councillor may include in a report following upon an examination or review his or her recommendations in respect of the procedures of the Association, either generally or with respect to the treatment of a particular complaint. (Sec. 23(16))
- 9.0.12 The Council shall consider each report, and any recommendations included in the report, transmitted to it by the Complaints Review Councillor and shall notify the Complaints Review Councillor of any action it has taken in consequence. (Sec. 23(17))
- 9.0.13 The Complaints Review Councillor shall meet with the members of the Complaints Committee at least once a year to,
 - (a) discuss the results of an examination of the Association's procedures for the treatment of complaints received by the Committee in the preceding 12-month period;

and

(b) discuss the review of any individual complaint conducted under clause (3) (b) in the preceding 12-month period. (Sec. 23(18))

10.0 Identifying a Conflict of Interest

- a) It is up to each Committee member to determine, in good faith, whether they have a real or perceived conflict of interest and to disclose forthwith that such a perceived or real conflict of interest exists.
- b) Any Committee member must exclude him or herself from the appropriate part of a meeting if they have any direct business interests or dealings with any party to a complaint. This does not include carrying on business as a surveyor in the same general geographic area as the member who is the subject of the complaint.
- c) The minutes of each Complaints Committee meeting will record any conflicts of interest declared, including the name of the committee member(s) and the subject file(s).

PART 3 – COMMITTEE POWERS

11.0 Powers of the Committee

11.1 The powers of the Complaints Committee derive from Section 22 (4.3) of the Act, which states:

[\(4.3\)](#) Upon consideration of the complaint, of any response received under subsection (3) and of any other information, record or document relating to the complaint that has come to the attention of the Complaints Committee in the course of its investigation, the Committee may,

- a. (a) direct that the matter be referred, in whole or in part, to the Council with a recommendation that Council refer the matter to the Discipline Committee; or
- b. (b) take the action that it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws. 2009, c. 33, Sched. 22, s. 11 (20).

It should be noted that a referral to Council with a recommendation that the matter be referred to Mediation should be done under the authority of subsection 22(4.3)(b) of the *Surveyors Act*.

With regard to part (b) above, it should be noted that the Committee cannot take any action that is within the jurisdiction of the Discipline Committee, which is specified in in Section 26(4) of the Act, as follows:

Powers of discipline panel

[\(4\)](#) If a discipline panel finds a member of the Association guilty of professional misconduct or incompetence it may, by order,

- (a) revoke the licence or certificate of registration, as the case may be, of the member;
- (b) (b) suspend the licence or certificate of registration, as the case may be, of the member for a stated period, not exceeding twenty-four months;
- (c) (c) accept the undertaking of the member to limit the professional work of the member in the practice of professional surveying to the extent specified in the undertaking;
- (d) (d) impose terms, conditions and limitations on the licence or certificate of registration, as the case may be, of the member, including but not limited, in the case of a member, to the successful completion of a particular course or courses of study, as are specified by the discipline panel;
- (e) (e) impose specific restrictions on the licence or certificate of registration, as the case may be, or on the certificate of authorization, including but not limited to,
 - i. requiring the member to engage in the practice of professional surveying only under the personal supervision and direction of another member,

- ii. requiring the member to not alone engage in the practice of professional surveying,
 - iii. requiring the member to accept periodic inspections by the discipline panel or its delegate of the books, accounts, records and plans of the member in connection with the member's practice,
 - iv. requiring the member to report to the Registrar or to such committee of the Council as the discipline panel may specify on such matters in respect of the member's practice for such period of time, at such times and in such form, as the discipline panel may specify;
- (f) require that the member be reprimanded, admonished or counselled and, if considered warranted, direct that the fact of the reprimand, admonishment or counselling be recorded on the register;
 - (g) revoke or suspend for a stated period of time the designation of the member by the Association as a specialist in any branch of professional surveying;
 - (h) impose the fine that the discipline panel considers appropriate, to a maximum of \$5,000, to be paid by the member to the Minister of Finance for payment into the Consolidated Revenue Fund;
 - (i) require the member to repay, waive or reduce the fee charged by the member in respect of the practice of professional surveying related to the finding of professional misconduct or incompetence;
 - (j) Repealed: 2009, c. 33, Sched. 22, s. 11 (40).
 - (k) fix and impose costs to be paid by the member to the Association;
 - (l) direct that the imposition of a penalty be suspended or postponed for the period and upon the terms or for the purpose that the discipline panel specifies, including but not limited to any combination of the following:
 - i. the successful completion by the member of a particular course or courses of study,
 - ii. (ii) the production to the Discipline Committee of evidence satisfactory to it that any physical or mental incapacity in respect of which the penalty was imposed has been overcome. R.S.O. 1990, c. S.29,s. 26 (4); 2009, c. 33, Sched. 2, s. 72; 2009, c. 33, Sched. 22, s. 11 (32-41).

12.0 Criteria for Decisions/Actions

12.1 Consideration

The *Surveyors Act*, at Section 22(4.3) gives broad discretion for the Complaints Committee to consider information that is relevant to a complaint. This section states:

[\(4.3\)](#) Upon consideration of the complaint, of any response received under subsection (3) and of any other information, record or document relating to the complaint that has come to the attention of the Complaints Committee in the course of its investigation, the Committee may,

- (a) direct that the matter be referred, in whole or in part, to the Council with a recommendation that Council refer the matter to the Discipline Committee; or
- (b) take the action that it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws.

12.2 Investigation

- a) As stated in subsection 4.3 of the Act, copied above, it is open to the Committee to examine other information that is relevant to a decision. This may include, but is not limited to:
 - i. A pattern or period of prior complaints,
 - ii. Insurance claims, and
 - iii. Survey Review Department reviews.
- b) To ensure consistency, the committee should also consider any decisions rendered in prior complaints of a similar nature.
- c) Examples of behaviour that may indicate that additional investigation is required would include, but are not limited to:
 - i. Surveyors did not exchange notes or discuss significant differences in boundary opinions with each other.
 - ii. Surveyor appears to be applying surveying principles incorrectly.
 - iii. Complaints made by another surveyor are generally serious in nature and should be given serious consideration.
- d) The Standards of Practice of the Association state, in part:

34. (1) Professional members shall maintain the standards of practice prescribed by this section in the performance of their practice of professional surveying. R.R.O. 1990, Reg. 1026, s. 34 (1); O. Reg. 218/10, s. 17 (1); O. Reg. 327/12, s. 12 (1).

(2) The standards of practice of the Association require that,

(g) every member shall comply with any written or oral request received from the Association, the Registrar, the presiding officer of any committee of the Association within the time specified in the request and shall supply such information and copies of such material, other than material concerning a member's health or financial status, as may be requested;

NOTE: Failure to comply with the code of ethics or the standards of practice of professional surveying is one of the definitions of Professional Misconduct.

12.3 Interim Decisions

In cases where the Committee concludes that the evidence is not sufficient to warrant a referral to Council but that the member's actions do warrant further action, the Committee may issue an Interim Decision that requires some type of remedial action by the member. The Committee must exercise caution to ensure that the action requested does not fall within the jurisdiction of the Discipline panel, as noted in Section 11.1 above.

An Interim Decision could include the following, as appropriate:

- Soliciting a Memorandum of Understanding or undertaking from the member that he or she will employ certain business practices in the future, such as signed work orders, change orders, check lists, etc. in return for taking no further action on the complaint. The decision should note that failure to comply with the undertaking will be considered by the Committee in any future complaints of the same nature.
- Direct that the member review Association policy regarding the subject of the complaint (e.g. Right of Entry, monumentation, research) and to review it with appropriate staff and report to the Committee that this has been done.
- Direct that the member apologize to his or her client for poor behaviour.
- Provide advice, cautions or educational advice to remind and assist the member in avoiding behaviour that causes complaints.
- Suggesting mediation or ADR to negotiate a disposition of the complaint.
- Referral to a non-disciplinary process, such as a quality assurance program.

In the case of an undertaking, as long as the undertaking is successfully completed, the matter ends. If the undertaking is breached it is often the breach that is acted upon rather than the original complaint.

12.4 Case Law

As seen from the cases below, the committee is exercising a screening function, essentially an investigation and a decision as to the existence of sufficient evidence to warrant a referral, not a hearing to determine what the facts were and whether punishment should be imposed. The Complaints Committee does not make findings of fact.

From *A.T. v. D.D., 2010 CanLII 73141 (ON HPARB)*:

71. As the Court states in *Walker*, “the central feature of the [Complaints Committee] procedure is that the Committee was exercising a screening function: it was an investigation and a decision as to the existence of sufficient evidence to warrant referral. It was not a hearing to determine with finality what the facts were and whether punishment should be imposed.”
72. For these reasons, the Board finds that it was reasonable for the Committee *not* to have applied the “strikingly similar” test to the information concerning the other complaints that had been made about the Applicant’s behaviour. As stated above, the Board in HPARB Decision No. 6808 relied upon the “strikingly similar” test to reach its conclusion. However, as we find that this test is not applicable to proceedings before the Complaints Committee, we have not followed the reasoning of the panel in that case.
78. As stated above, the Complaints Committee does not make findings of fact. In this case, the Committee made no finding that the Applicant *had* been rude on the occasions when other complaints had been made against him. Again, as stated by the Divisional Court in *Walker*, the Complaints Committee does not hold “a hearing to

determine with finality what the facts were.

From *Walker v. Health Professions Appeal and Review Board, 2008 CanLII 7755 (ON SCDC)*

In our view, these same considerations show the duty of procedural fairness to the complainant is even more limited. In the present case, for example, the complainant is not at risk of the loss of any profession or occupation, nor is his right to bring an action for malpractice affected in any way. The stakes for him are very low; the duty to him is commensurately low, subject to the other factors in *Baker*. This Committee investigates complaints and disposes of them either by referring them to another process or by determining that they should not be referred. The Committee does not make findings of fact nor impose any penalty; rather, it weighs the evidence to determine whether there is sufficient evidence to refer the matter to the Discipline Committee or the Fitness to Practise Committee. It is those bodies which will make findings of fact.

13.0 Patterns or Systemic Issues

The Registrar maintains an up to date summary of all complaints, including the names of the parties and the topic of the complaint. The Complaints Committee shall review this summary at least once per year to determine whether many complaints are similar in nature, or whether a particular member has received an unusual number of complaints. This may indicate that the membership in general should be advised to be aware of particular behaviours that may lead to a complaint, or that further investigation of a specific member may be warranted.

14.0 Exceptions

Exceptions to any of the processes noted in this document may be approved by a quorum of the Committee. Where there is a conflict of interest, the exception must be approved by a quorum of Council.

Exceptions may include, but are not limited to, requests for extensions to deadlines or media used for the delivery of documents.

15.0 Manual Publication

The Complaints Committee will arrange for this Manual to be available on the web site of the Association in the public viewing area in order that both members and the public can readily determine the process involved in ensuring that complaints are dealt with in an appropriate manner.

Appendix A – Conflict of Interest & Confidentiality Declaration

I _____ hereby accept appointment to the Complaints Committee of the Association of Ontario Land Surveyors. I understand that I am governed by Section 36 of the *Surveyors Act* and I confirm that I will treat as confidential, except as allowed by Section 36 or as may be required by law or by professional standards, all information and material that I receive as a participant on this Committee.

I further confirm that to my knowledge I have no personal or business conflict of interest with any matters currently being dealt with by the Committee. Should such a conflict of interest arise during Committee deliberations, I will so declare and remove myself from the Committee discussion and decision on those matters.

I further undertake to perform my duties, within the Terms of Reference of the Committee, and with independence and objectivity.

Dated at _____ this _____ day of _____ 20____

(Member's Signature)

(Witness' Signature)

(Member's Name)

(Witness' Name)

Appendix B – Complaints Help Form

IMPORTANT INFORMATION: The Association of Ontario Land Surveyors cannot rule, or provide an opinion on the location of a boundary. If you do not agree with the location of a boundary established by a surveyor, you may seek the opinion of another surveyor, or you may wish to consult a lawyer for advice on a court application or an application under the Boundaries Act.

Fee related complaints that raise issues relevant to professional misconduct are appropriately addressed to the Complaints Committee. However, the Complaints Committee cannot rule or provide an opinion on fees. Complaints relating only to fees charged by a member are more appropriately dealt with through the Association's Fees Mediation process.

Information about you:

Your full name: _____

Your full address: Street No. _____ Street Name: _____

Apt. No. _____ City: _____

Province: _____ Postal Code: _____

Home Telephone: (____) _____

Work Telephone: (____) _____

Fax Number: (____) _____

E-mail: _____

May we contact you at work? Yes No

May we contact you at the e-mail address above? Yes No

Information about the Surveyor:

Please be aware that the Surveyor about whom you are complaining will be sent a copy of your complaint. Your complaint and the Surveyor's response will be considered by the committee. The committee may request additional information from either party, as they deem appropriate. Please make best efforts to identify the individual surveyor against whom you wish to file a complaint. If you are unable to identify the surveyor, please indicate the survey firm.

Surveyor's (or company's) Name: _____

Surveyor's Address: Street No. _____ Street name: _____

Suite No. _____ City: _____

Postal Code: _____

Your replies to the following will help the Committee to better understand the nature of your complaint:

1. Were you the client of this Surveyor? Yes No

If not, what is your relationship to this complaint?

2. If applicable, describe your understanding of the surveying services to be provided. For example, a Surveyor's Real Property Report required for a sale or purchase, property boundaries to be established and marked out, topographic survey, site plan, etc.

3. If applicable, please provide details of any cost estimate or quotation. Include a copy of any written estimate, quotation or confirmation of work ordered. If verbal only, please describe your understanding of the fee arrangements.

4. Did the scope or nature of the work change after the job was started? Please provide copies of any change orders, etc. or describe new arrangements.

5. Please describe or outline the nature of the complaint in your own words. (Use a separate sheet of paper if required, and attach to this form. Include copies of any supporting information)

6. Have you tried to discuss your complaint with the surveyor? Yes No
If yes, what was the result?

7. Keeping in mind that the Committee cannot render a decision on a boundary location or a dispute regarding fees, what would you consider to be an appropriate resolution of your complaint?

Appendix C – SURVEYOR’S COMPLAINT HELP LIST

Since you, or your firm, are the subject of an official complaint under Section 22 of the *Surveyors Act*, it is your responsibility to submit a written response to the claim as well as to forward copies of any documents that support your defense.

NOTE: It is in your best interest to provide all relevant information at the first opportunity as you may not be provided with another opportunity.

Supplying the Complaints Committee with the following information (where applicable), will help to expedite the complaint process:

1. A copy of the job order sheet, job log, and/or other documentation showing your original instructions from your client;
2. A brief synopsis of your firm’s usual manner of recording new projects (including estimate forms, approval letters, etc...);
3. Any correspondence, including faxes or emails, received or sent during the project;
4. Evidence that sufficient research was conducted at the Land Registry Office and in the records of other local surveyors or other sources as appropriate;
5. Copies of the appropriate field notes and final plans;
6. Any other documents you feel may be pertinent to the case;
7. Any change of orders received during the project;
8. A chronological summary of events leading up to the complaint;
9. Please report on any remedial actions or steps you may have used to resolve this issue before the formal complaint was lodged.

Please be aware that a complainant does NOT have to have a contractual relationship with you or your firm in order to submit a complaint. You should therefore be prepared to report on any contact outside of a contractual relationship that you have had with the complainant.

Appendix D – ACKNOWLEDGEMENT LETTER TO COMPLAINANT

June 15, 2020

Private and Confidential

Complainant
P.O. Box 666
Urbanite, Ontario
P0M 1N0

**Re: Bob Plumb, OLS, OLIP
 Complaints Committee File # C-20-01**

Dear Complainant:

We acknowledge receipt of your Complaint Letter wherein you wish to make an official complaint against Plumb Bob, O.L.S.

Plumb Bob's reply will be forwarded to you, and any further response from you will be sent to Plumb Bob. Following these exchanges, your complaint will be forwarded to the Committee for its consideration.

We will be in further contact after the Committee has reviewed the material at the next available meeting date.

Yours truly,

Name & Title
Registrar

Appendix E – LETTER SENDING COMPLAINT TO SURVEYOR

June 15, 2020

Private and Confidential

Bob Plumb, OLS, OLIP
Excellent Surveys Ltd.
414 Avenue Boulevard
Coboconk, Ontario
H0H 0H0

**Re: Complainant
Complaints Committee File # C-20-01**

Dear Plumb:

Please find enclosed a copy of a complaint sent by Complainant and received by us on June 14, 2020.

Section 22 of the *Surveyors Act* requires the Complaints Committee to investigate all complaints submitted in writing to the Registrar. Your response to the complaint is a vital part of the information that will assist the Committee in rendering a decision. Enclosed is a Surveyor's Complaints Help List to assist you in assembling your response.

Please provide any representation or explanation you may wish to make concerning this matter in writing—**no later than two weeks following the date you have received this letter**—together with any additional documentation that may assist the Complaints Committee in its investigation.

Please note that a copy of your submission will be forwarded to the complainant for response and any additional response by the complainant will also be sent to you for any further response you may have..

Yours truly,
Name & Title,
Registrar

enclosure

Appendix F – Sample Decision Format

IN THE MATTER OF the *Surveyors Act*
R.S.O. 1990, c. S.29

AND IN THE MATTER OF the written complaint
of (complainant)
against O.L.S.(surveyor complained against)

COMPLAINTS COMMITTEE

Surveyor X, O.L.S., Chair
Surveyor Y, OLS, Council Liason
Surveyor A, OLS
Surveyor B, OLS
Surveyor C, OLS,
Surveyor D, OLS
Person E, Lay Councillor

Re: Complaints Committee File No. C-YY-##

DETERMINATION OF THE COMMITTEE

1. Complaint

In a letter (or Complaints Help Form, etc. as appropriate) dated (summarize the complaint)

2. Investigation

The Complaints Committee, in its consideration of the matter, reviewed the following material:

(List all materials considered by the Committee)

- i)
- ii)

3. Issues (Describe the issues considered by the Committee)

Did Surveyor Z, O.L.S. conduct

4. Decision

The Committee directs, pursuant to Section 22(2)(?) of the *Surveyors Act* that

5. Reasons (Provide detailed reasons for a decision whether or not referring member to Council)

The Committee

Dated the th day of , 2020

Surveyor X, O.L.S.
Chair of the Complaints Committee

Appendix G – Sample Letter Sending Decision to Complainant

June 15, 2020

Private and Confidential

FName Public
6868 Sierra Morena Blvd.
Toronto, ON
H0H 3R6

Re: J. B. Good, OLS, OLIP
Complaints Committee File # C-20-__

Dear FName Public:

Enclosed is a copy of the Decision of the Complaints Committee relative to this matter. The Decision was rendered at the Committee's January 25, 20__ meeting.

Under the provisions of Section 24 of the *Surveyors Act*, a copy of which is enclosed, you have the right to apply to the Complaints Review Councillor. The Complaints Review Councillor **has no authority to inquire into the merits of the complaint, as it is not an appeal to the decision** of the Complaints Committee. The Complaints Review Councillor **cannot overturn or alter a decision** of the Complaints Committee. If so requested, the Complaints Review Councillor may only review the **treatment of the complaint by the Committee.**

We have also enclosed a copy of Sections 22 and 23 of the *Surveyors Act*, RSO 1990, c. S.29, for your information.

The Committee is seeking feedback concerning their handling of complaints. We have enclosed a confidential Satisfaction Survey and would appreciate your completing this survey and returning it to us.

Yours truly,

Name & Title,
Registrar

enclosures (2)

Appendix H – Complainant Satisfaction Survey

Confidential Complainant Satisfaction Survey

Re: File C-_____ (_____)

Note: All responses will be kept confidential

1. How did you learn about the Association’s complaints process?

- AOLS Website
 - Call to AOLS office
 - Other (Please Specify)
-

2. Were the following helpful in your understanding and use of the complaints process?

	Very Helpful	Helpful	Somewhat Helpful	Not Helpful
Procedural Guide	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Help Form	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AOLS Staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
AOLS Website	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Please rate the following as they relate to the processing of your complaint.

	Excellent	Good	Fair	Poor
Response Time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Communication with AOLS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Openness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. Did the Committee’s decision meet your expectations?

- Completely
- Mostly
- Somewhat

Not at all

5. Were the reasons in the decision clearly explained?

- Completely
- Mostly
- Somewhat
- Not at all

6. Please describe how you feel the complaints process could be improved.

Appendix I – Member Feedback Form

Member Feedback Form

Re: File C-_____ (Note: All responses will be kept confidential)

The mandate of the Complaints Committee is to assist the Association by ensuring that the public's interest is served and protected. Under the *Surveyors Act*, any complaint submitted to the Registrar in writing by members of the public or members of the Association must be considered and addressed.

In the process of carrying out its mandate, the Committee must be fair and impartial, considering the rights of the complainant and those of the member being complained against.

In order to assist the Committee in helping to improve the processes that ultimately lead to complaints being dismissed or lead to correctional and educational measures requested of the member, the Committee would appreciate any feedback you may have.

- 1) Do you feel that the Committee members understood the nature of the complaint and your response to the complaint?

- 2) Do you feel you were dealt with fairly and in an impartial manner?

- 3) Were the reasons in the decision clearly explained?

- 4) Do you feel the decision of the Committee is helpful in affecting the way you will conduct your affairs in the future?

- 5) Do you have any recommendations on how the process could be improved?

Appendix J – Guidelines for Mediation in Complaints of the Association of Ontario Land Surveyors

Version	Change reason	Author of change	Date
1.0	Initial Draft	Kevin Wahba	2022/03/09

Signatures:

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Introduction

In 2009 the Surveyors Act was changed to bring Council into the discipline process. Complaints Committee can forward decisions to Council with a recommendation that Council refer the matter to the Discipline Committee. Additionally, in the event of a Registrar’s investigation being held, the Registrar shall report to Council and that report may direct the matter to the Discipline Committee. Section 25.1 was added to allow mediation to be an option of Council.

“25.1 (1) If a matter comes to the attention of the Council for referral to the Discipline Committee, whether from the Registrar or the Complaints Committee or otherwise, the Council may appoint a mediator to look into the matter and make a report to the Council as to whether the matter should be referred to the Discipline Committee. 2009, c. 33, Sched. 22, s. 11 (25).”

This guide provides an overview of roles and procedures to be consider in fulfilling the mediation role when a file is being investigated by the Complaints Committee.

This guide should be reviewed regularly by the Complaints Committee particularly following mediation procedures but in any event should be reviewed every three-years.

Definitions

“Association” means the Association of Ontario Land Surveyors; (“Ordre”)

“Association Representative” is the individual appointed by the Executive Director or Council to represent the Association during the mediation. Normally this will be an Assistant Registrar.

“Council” means the Council of the Association; (“Conseil”)

“Complaints Committee” is the Complaints Committee established and appointed by Council

“Discipline Committee” is the Discipline Committee established and appointed by Council

“Executive Director” is the Executive Director of the Association

“LGA” refers to the Lieutenant Governor’s Appointee (lay member of Council)

“Mediator” – as appointed by Council or the Executive Director and can include a Council member, a member of the AOLS or an independent mediator or lawyer

“Parties” - refers to the parties in the mediation and include the surveyor as the subject of the complaint (and their representative), the Association representatives and the complainant

“Registrar” means the Registrar of the Association;

Terms of Reference

Aims

The aim of mediation is to facilitate a resolution to the complaint matter before the Complaints Committee while ensuring that the objectives listed below are met, that interested parties to the process are consulted and that the parties involved have a fair opportunity to come to a resolution and agreement. Mediation is voluntary and any mediation agreement is subject to Council approval.

Objectives

The objectives of the Association in this context are:

- to regulate the practice of professional surveying and to govern its members and holders of certificates of authorization in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected;
- to establish, maintain and develop standards of knowledge and skill among its members;
- to establish, maintain and develop standards of qualification and practice for the practice of professional surveying;
- to establish, maintain and develop standards of professional ethics among its members.

Roles and Responsibilities

The Registrar may appoint a mediator with the approval of the Complaints Committee and the parties to the Mediation. The mediator will be appointed based on the selection criteria noted below. This appointment will happen as soon as reasonably possible.

The Registrar will appoint a representative to represent the Association and consider the public protection objectives as noted above. The Association Representative will represent one party to the mediation. If there is a real or perceived conflict with the Association Representative, the Registrar will appoint someone else to fulfill the role.

If the complaint was from a member of the public, that member of the public should also be involved as described in the procedures below or as appropriate.

The mediator will be responsible for conducting the mediation in accordance with the procedures normally accepted in a mediation process and as noted below. They will be responsible for generating and providing a report and any signed undertaking or mediation agreement to the Complaints Committee.

A LGA, if available, will be appointed as a Lay Public Representative to ensure an additional impartial view in the mediation process that further protects the public interest. The LGA will provide an independent view of the mediation process and report. LGAs on Council will select one of their number who has no conflict of interest. The assigned LGA should not have been involved in a complaint against the involved member and cannot be a member of the discipline panel should the matter be referred to the Discipline Committee in the future. While they can provide value and an impartial view, it is recognized they may not have complete content knowledge and will have to restrict their comments in

this regard.

Council will be responsible for reviewing the mediators report and taking appropriate action. Please see Council considerations below.

Mediators

Selection

Mediators will ideally have experience and knowledge of mediation, surveying, and some administrative law. Mediators can be appointed from within Council, the Complaints Committee, the AOLS membership or from a list of independent mediators. They are not required to be lawyers. The Executive Director will maintain a roster of mediators that will be refreshed annually. If the mediator is a surveyor, care must be taken to ensure that there is no real or perceived conflict of interest. Mediators will be chosen based on their ability and availability. Prior to proceeding with the mediation process, the mediator will sign a conflict of interest and confidentiality agreement (Appendix A). The parties will be notified of the identity of the mediator and will have ten days from that notification to raise any concerns before the appointment becomes final.

Conduct

Mediators will be expected to operate in an honest, professional and non-biased fashion. Information will only be shared as necessary for them to perform their mediation duties and report to Council. Should any conflict of interest of the mediator arise during the mediation they are to advise the Registrar who will notify the Complainants Committee who will determine how to proceed.

The Association Representative will be expected to operate in a non-biased fashion ensuring that the objectives of the Association are being upheld. They will sign the Conflict of Interest form in Schedule B.

Compensation of Mediators

Any surveyor appointed as a mediator will be reimbursed at a rate negotiated with the Registrar and will be provided expenses in accordance with the Association's travel expenses policy. Mediators appointed outside the AOLS will be paid the rates and expenses normally set by independent mediators or as negotiated by the Registrar.

Mediation Procedures

Process Considerations

1. The Registrar will turn over to the Mediator and the Association Representative all relevant material in the possession of Association dealing with the matter. The mediators may ask for additional material from the Registrar during their preliminary inquiries should it serve useful in the mediation process.
2. The mediator will be expected to communicate with the complainant(s), the surveyor and AOLS representative to fully understand the complaint, the interests of the parties, and determine what each party sees as an appropriate resolution. Wherever possible, face to face mediations with all parties are preferable, however where such a meeting is not feasible, the mediation can be held by phone or an on-line meeting.

3. Mediation will be successful if all parties can agree on a way forward, focuses on the best possible outcome that protects the public interest while ensuring any appropriate remedial action is being taken with the surveyor. It may not always be possible to achieve all of the goals of the complainant, particularly if they are seeking financial redress or resolution to a boundary issue. The mediation process is being put in place to satisfy the Association's requirements to meet its objectives as noted above and is not intended to replace other legal action that the complainant may choose to take (unless the complainant and surveyor sign a 'mediation agreement' that releases the other parties from legal action).
4. If a mediation agreement is not possible, the mediator reports to the Complaints Committee on the impasse and makes recommendations describing the issues and next steps (e.g. referral to Council)
5. If a verbal agreement is reached during mediation, a draft written undertaking or mediation agreement shall be developed by the mediator. The Association representative will compare the draft agreement against previous undertakings or agreements before any undertaking or agreement is signed by the parties. The Association representatives may consult with the Registrar, who may also seek legal assistance where necessary. Once approved by all parties, the undertaking or mediation agreement may be signed.
6. Legal counsel may be used by either party during the mediation but is not necessary.

Timing

The mediator shall report to the Complaints Committee within 90 days of being appointed.

Reporting by the Mediator

The report should include a summary of steps taken and issues agreed to. It should also include at least a paragraph from the LGA that addresses process impartiality and the public interests.

Communications between the parties are confidential and privileged.

If mediation was not successful, the mediator shall report back on outstanding issues that could not be resolved and provide recommendations (e.g. referral to Council, some resolution other than a referral to Council or take no further action) to the Complaints Committee. If agreement was reached, the signed undertaking or mediation agreement shall be included with the report.

Committee Consideration for Mediation as a Tool

Mediation will not be appropriate in all complaint circumstances. It should not be used as a tool in serious complaint cases. Examples of where it will be useful include remedial action or potential solutions that require the use of a monitor to oversee and improve practices, allow for periodic audits, where further training or education is required, etc.

Upon receipt of a report of a successful mediation with a signed undertaking or mediation agreement, the Complaints Committee will normally accept the agreement unless it would bring the administration of justice before the Association into disrepute.

Where mediation has not been successful the Complaints Committee will consider the report of the mediator and their recommendations including whether to forward the case on to Council or take other

appropriate action that would best serve the public interest.

Appendices

Schedule A – Conflict of Interest

I, (*mediator's name*), appointed by the Complaints Committee, declare that I have no conflict of interest with, (*name of member involved*) or to the complainant and that should I discover any real or potential conflict of interest throughout the mediation, I will report such matter promptly to the Registrar.

Schedule B – Conflict of Interest

I, (*Association Representative's name*), declare that I have no conflict of interest with, (*name of member involved*) or to the complainant and that should I discover any real or potential conflict of interest throughout the mediation, I will report such matter promptly to the Registrar.

Schedule C – Sample Report Outline

Mediation involving Member ABC

- Parties Involved
- Date complaint received
- Complaint and associated issue(s)
- Resolution or agreement sought by each party (e.g. surveyor, Association, complainant)
- Issue(s) arising during the mediation (without disclosing the communications of the parties)
- Steps taken (including meeting dates)
- Issues agreed to, common resolution
- Unresolved issues (if any)
- LGA statement
- Undertaking or Mediation Agreement (Signed undertakings should include tangible actions with time frames and consequences for failure to meet the actions)

Schedule D – Sample Mediation Agreement

AGREEMENT TO MEDIATE

AND

TERMS OF MEDIATION

The parties agree to mediate with _____, an AOLS mediator, to attempt to settle their dispute in relation to the above-noted matter.

The provisions of the Agreement are as follows:

1. The Mediator is a neutral facilitator who will assist the parties in reaching their own settlement. The Mediator will not make decisions for the parties on how the matter must or should be resolved.

2. All written and oral communications made in the course of the mediation will be treated as confidential and without prejudice. Therefore:

a) The parties to this agreement agree that communications and documents shared in this mediation will not be disclosed to anyone who is not a party to this mediation unless:

i) the person has signed this Agreement to Mediate;

ii) the information is otherwise public; or

iii) the person to whom the information is disclosed is a legal or financial advisor to a party to this agreement

b) The parties to this agreement agree that all communications made and documents shared in this mediation, which are not otherwise discoverable, will be shared on a without prejudice basis and, and will not be used in discovery, cross examination, at trial or in any other way, in this or any other proceeding

c) Everyone signing this document, whether or not a party to the action, agrees to be bound by the confidentiality provision of this agreement.

3. The Mediator will not reveal the names of parties or anything discussed in Mediation except that the Mediator may disclose such information:

a) to the lawyers or other professionals retained on behalf of the parties as deemed appropriate or necessary by the mediator;

b) to non-parties consented to in writing by the parties, as deemed appropriate or necessary by the mediator;

c) for research or education purposes, on an anonymous basis;

d) where ordered to do so by a judicial authority or where required to do so by law;

e) where the information suggests that there will be actual or potential threat to human life or safety, or the commission of a crime in the future.

4. a) The parties agree that they will not at any time, before, during, or after mediation call the Mediator or the AOLS Representative as a witness in any legal or administrative proceedings concerning this dispute. To the extent that they may have a right to call the Mediator or the AOLS as a witness Representative, that right is hereby waived.

b) The parties agree not to subpoena or seek any Court Order or use any other legal process in an attempt to demand the production of any records, notes, work product or the like, of the Mediator in any legal or administrative proceedings concerning this dispute. To the extent that they may have the

right to demand these documents, that right is hereby waived.

c) If, at any later time, either party decides to subpoena the Mediator, the Mediator may move to quash the subpoena. That party agrees to reimburse the Mediator for whatever expenses he or she incurs in such an action, including lawyer fees, plus the hourly rate of the Mediator for time that is taken by this matter.

d) Any party calling the Mediator as a witness, issuing a subpoena against the Mediator or seeking production from the Mediator waives his/her/its right to rely upon and enforce the confidentiality provisions of this agreement as against the Mediator.

e) If any of the foregoing provisions is found to be unenforceable, the parties seeking to call the Mediator or the AOLS Representative as a witness agree to pay the then applicable hourly rate of the mediator for the time that the Mediator spends dealing with such issues.

f) Notwithstanding the above, this Agreement to Mediate and any written agreement made and signed by the parties as a result of mediation, may be used in any relevant proceeding, unless the parties make a written agreement not to do so.

5. The Mediator shall not be liable for anything done or omitted with respect to the Mediation and has the immunity granted to a Judge under the legislation in place in the Province.

6. While all parties intend to continue with mediation until a settlement agreement is reached, it is understood that any party may withdraw from mediation at any time.

7. If the Mediator determines that it is not practical or appropriate to continue the mediation, the mediator may terminate the process after conveying his or her unilateral decision to the parties to do so.

8. The parties or those representing them at the mediation have authority to settle the dispute.

9. The parties may have lawyers present at the mediation. The Mediator will not provide legal representation or legal advice to any party at any time, and has no duty to assert or protect the legal rights and responsibilities of any party, to raise any issue not raised by the parties themselves, or to determine who should participate in the mediation.

10. Where an agreement is reached, the parties or their counsel will draft any Settlement Documentation or Minutes of Settlement and any releases. In drafting the agreement, the parties or their counsel will consider what will be published by the AOLS.

11. This agreement may be executed in counterparts.

I have read, understand and agree to the provisions of this Agreement signed this _____ day of _____, 20____.

To be signed by all participants in the mediation.

Appendix K – List of Revisions

Version	Publication Date	Description
1	August 6, 2014	Complaints Committee approves???
2	November 6, 2014	Items 6.2, 6.3, Appendices D and E revised to reflect return to policy of two exchanges of information [this was here]
2.1 to 2.4	??	??
3	September 17, 2019	Clarify the cycle of information exchanges. Substantial formatting changes.
4	January 18, 2021	Addition of Complaints against former members in Complaints Processes section
5	August 23, 2021	Addition of Sections 6.7 & 6.8 Amendments to sections 7.0, 8.3(b), Appendix B and Appendix F