

**MANUAL OF PROCEDURES**

**FOR THE**

**DISCIPLINE COMMITTEE**

**OF THE**

**ASSOCIATION OF ONTARIO**

**LAND SURVEYORS**

**Version 2.5**

Approved by Discipline Committee:  
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Chair of the Discipline Committee

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Chair of Council

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**MANUAL OF PROCEDURES  
FOR THE  
DISCIPLINE COMMITTEE  
OF THE ASSOCIATION OF ONTARIO  
LAND SURVEYORS**

**1. Introduction:**

- 1.1 The Discipline Committee derives its Statutory 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”), and the Statutory Powers Procedure Act, R.S.O. 1990 c. S.22 as amended 2009, c. 33, Sched. 6, s. 87, (hereinafter referred to as the “SPPA”).
- 1.2 This Manual is to be used as a guide for the Discipline Committee and the Discipline Panel, before, during and after a hearing in order to ensure consistency, openness, and fairness in the treatment of a case referred to the Discipline Committee by the Council of the Association.
- 1.3 The Manual is composed of 3 Parts.
  - 1.3.1 PART 1 relates to the Discipline Committee, its functions and operations,
  - 1.3.2 PART 2 relates to Discipline Panels, the conduct of a hearing by a Panel (with the specific rules for a hearing outlined in Appendix A of the Manual), and
  - 1.3.3 PART 3 refers to actions of the Discipline Committee subsequent to a decision being reached at a hearing.
- 1.4 This Manual is to be treated as a document that is continuously under review and subject to change and revision. At least once a year the Manual should be reviewed by members of the Discipline Committee and amended as required.
- 1.5 Once every 5 years as outlined in the Manual an audit is to be performed of the document and the operations of the Discipline Committee.

**2. Definitions**

- 2.1 “ADR” refers to the Alternative Dispute Resolution process.
- 2.2 “Association” refers to the Association of Ontario Land Surveyors.
- 2.3 “Discipline Committee” refers to the Discipline Committee of the Association.
- 2.4 “LGA” refers to the Lieutenant Governor’s Appointee (lay member of Council).
- 2.5 “Panel” refers to the panel appointed by the Chair of the Discipline Committee to conduct a discipline hearing.

- 2.6 “Parties” refers to the parties to a discipline hearing and they are: the Association, and the member of the Association whose conduct is being investigated in the proceedings as specified by the Act. (See Section 27.(1) of the Act.)

## **PART 1: The Discipline Committee.**

3. The Discipline Committee is a Statutory Committee constituted in accordance with Section 9(1)(e) of the Surveyors Act. Its function is explained in the Act.

### **4. Terms of Reference of the Discipline Committee**

#### **4.1 Aims**

- 4.1.1 To ensure fair, open and complete fulfillment of Sections 25, 26, 27, 28 and 35 of the Act.

#### **4.2 Objectives**

- 4.2.1 To protect the public from incompetent and/or unethical practitioners of Professional Surveying under the Act.
- 4.2.2 To enforce the standards of qualification, standards of practice and standards of professional ethics of the Association.
- 4.2.3 If warranted, renew, amend, suspend, cancel, revoke or re-instate certificates of authorization, licenses and certificates of registration.
- 4.2.4 To ensure that Association members are aware that prior published decisions of Panels can be found in the AOLS Quarterly and that arrangements are in place that allow such members of the Association and members of the public to attend at the Association’s offices to review such decisions and copy them as required.

#### **4.3 Responsibilities**

- 4.3.1 The authority of the Discipline Committee derives from the Act, the SPPA, Regulations under the Acts, policies, procedures and bylaws deriving their powers from Acts and Regulations and the Common Law.

#### **4.4 Registrar’s Role**

- 4.4.1 The Registrar of the Association has no role in the operation of the Discipline Committee.
- 4.4.2 The only time the Registrar is to attend a meeting of the Discipline Committee will be at the said Committee’s specific request and then only to answer specific questions of an administrative nature raised by the Discipline Committee.
- 4.4.3 The time duration and subject matter of the Registrar’s attendance will be specifically noted in the minutes.

- 4.4.4 Once a Panel has conducted a hearing and has rendered its decision, the Registrar must take all administrative steps required to implement that decision, and maintain a record of the hearing.

#### **4.5 Committee Structure**

- 4.5.1 The formation of the Discipline Committee, and the identification of its members, is to be done each year at the first meeting of a newly constituted Council.
- 4.5.2 The Discipline Committee, all appointed by Council, is composed of;
- (a) at least one member of the Association who was elected to the Council,
  - (b) at least one LGA, (preferably the LGA appointed under Clause 3(2)(f) of the Act), and
  - (c) not fewer than six members in good standing of the Association each having been a member of the Association for a minimum five years.
  - (d) the chair of the Discipline Committee who shall be appointed from the member(s) appointed pursuant to subsection (a) above.

In the circumstance where the appointed LGA is unable to act, the LGA member of the Complaints Committee may be appointed by Council to fill in at a Discipline Committee meeting but the said member of the Complaints 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.

- 4.5.3 New members of the Discipline Committee under 4.5.2 (c) are to be selected by Council from a list of qualified members of the Association.
- 4.5.4 The term of members of the committee may be set by policy of Council.
- 4.5.5 The Chair of the Discipline Committee will inform all committee members, in writing or by electronic mail, who the current members are and will send a letter of appreciation to those members whose term has expired, immediately after Council has confirmed the membership.

#### **4.6 Conflict of Interest and Confidentiality**

- 4.6.1 Members of the Statutory Fees Mediation Committee, Complaints Committee and Academic and Experience Requirements Committee are disqualified from membership in the Discipline Committee.
- 4.6.2 All members must sign a conflict of interest and confidentiality statement that will be kept on file at the office of the Association.
- 4.6.3 All Panel members prior to participating in a hearing will be required to sign an additional conflict of interest and confidentiality form, specific to the hearing.
- 4.6.4 Discipline Committee members and especially Panel members are reminded by this Manual and Rules that confidentiality is paramount.
- 4.6.5 Conflict of Interest & Confidentiality Declaration forms can be found at Appendix C and Appendix D of this manual.

## **4.7 Membership Training**

All new and existing members are to receive training in procedures and legal aspects of hearings. It is mandatory to complete this training before being eligible to sit on a panel. (These training seminars are to be established by Council or its representative).

## **4.8 Meetings & Quorum**

- 4.8.1 Meetings of the Discipline Committee will be held at the discretion of the Chair, but there will be a minimum of three meetings annually, with at least one of those being a face-to-face meeting.
- 4.8.2 An agenda is to be set by the Chair and distributed to members at least 1 week before the date of a meeting of the Discipline Committee.
- 4.8.3 Administrative requirements such as scheduling, location, number of Panel members, appointment of legal counsel to the Panel, etc. of pending cases that have been referred to the Discipline Committee for a discipline hearing pursuant to the Act will be dealt with to ensure that a hearing is scheduled promptly. In no case will there be any discussion or disclosure amongst the Discipline Committee of the defendant member and the merits or substance of the allegations that have resulted in the direction to hold a discipline hearing.
- 4.8.4 Past hearing decisions and orders will be reported to Council by the Registrar annually to ensure that any conditions set out as part of a Panel decision are being fulfilled. The Discipline Committee shall also receive a report similar to that presented to Council, as an educative tool.
- 4.8.5 Minutes will be kept for all meetings of the Discipline Committee and distributed to committee members within two weeks of the meeting. Once approved, these Minutes will be available to all members of the Association, subject to any confidentiality restrictions set out in the Act.
- 4.8.6 The Chair is to report regularly to Council.
- 4.8.7 Subject to section 4.8.1, official meetings of the Committee may be held by teleconference, Internet audio/video/chat or face to face.
- 4.8.8 Meetings of the Discipline Committee will require a quorum of six members, at least one of whom must be a LGA. The legal LGA is normally appointed by Council to be the representative on the Discipline Committee. If for some reason that representative is not available the presence of any of the LGAs together with the requisite number of members would constitute a quorum. (See 4.5.2)
- 4.8.9 The Discipline Committee may have legal counsel present (independent of the LGA) to provide advice and direction, should the Chair consider it necessary.

## **4.9 Subcommittees**

From time to time subcommittees may be formed to review and comment on particular decisions that may affect overall structure and conduct of the Discipline Committee.

## **5. Committee Documentation**

The Association Executive Director is to have overall responsibility for all files and minutes of the Discipline Committee.

## **PART 2: Discipline Panels.**

### **6. Hearing Clerk**

- 6.1 The Executive Director will appoint a Hearing Clerk (a support staff member) to a Panel to provide administrative assistance to the Panel before, during and after any hearing.
- 6.2 The duties of the Hearing Clerk will include, but not be limited to:
  - 6.2.1 Arranging for a hearing room and ensuring that the parties are aware of the time, date and location of the hearing.
  - 6.2.2 Arranging for a court reporter to be present to transcribe the testimony.
  - 6.2.3 Arranging for legal counsel for the Panel to be present at the hearing.
  - 6.2.4 Being present at the hearing for administrative reasons to the extent that the Panel deems necessary and to arrange for any consultation rooms required.
  - 6.2.5 Performing any support action requested by either party such as typing of interim orders, copying of documentation etc.
  - 6.2.6 Being responsible for the security of all evidence during any adjournments.
  - 6.2.7 Forwarding the decision of the Panel to all parties.

### **7. Discipline Files**

- 7.1 Once a directive is received by the Discipline Committee to strike a Panel for a hearing, a file is to be opened forthwith. This file will contain all documentation relating to the discipline hearing.
- 7.2. This file will also contain documentation as to who is to be assigned to the Panel, a copy of each Panel member's statement certifying that there is no conflict of interest and correspondence, hearing documents, (the Record of the hearing) transcripts (if any) and all related follow-up documents.
- 7.3 The contents of the hearing files are to be catalogued.
- 7.4 This file will be the responsibility of the Executive Director and will be held in a secure place.
- 7.5 This file will become an addendum to the Record of the hearing.
- 7.6 The Executive Director shall ensure that notification of a Panel hearing be published and made available to the public on the Association's web site at least 10 business days before the scheduled hearing date.
- 7.7 The Executive Director will also be responsible for ensuring that decisions of all discipline cases are kept on file in a secure location.
- 7.8 Completed files are to be kept for a duration of time as recommended by legal counsel.
- 7.9 Active files are to be in a secure (locked) location in the Association Office. Entry to this location is to be under the authority of the Executive Director and files must be signed in and out for record keeping purposes.

## **8. Panel Selection**

- 8.1 When the Discipline Committee is directed, pursuant to the Act, to hold a discipline hearing, the Chair of the Discipline Committee will select the members for the Panel. To convene a hearing Panel, the Chair will select one of the LGAs with advice from Council and four members of the Discipline Committee, at least three of whom are appointed under clause 25(1)(c) of the Act. The Chair will select the Panel members from eligible members of the Discipline Committee, and will contact potential members in random order. Potential Panel members will be asked to identify whether they have any conflict of interest affecting their ability to participate in the pending hearing, and will only be selected if there is no such conflict. The Chair will continue this process until the required number of Panel members has been selected. For subsequent hearings, the Chair will continue the random selection of Committee members
- 8.2 In selecting Panel members, every effort will be made to ensure that at least one of the four members selected has previously participated in a discipline hearing, and that member will be assigned the responsibility of acting as Chair of the Panel conducting the hearing. In any event, the member selected to act as the Chair of the Panel conducting the hearing will be notified in advance that s/he will have that role, and may consult with legal counsel to the Panel in advance of the hearing for purposes of familiarizing him or herself with the duties required of the Chair of the Panel conducting the hearing.
- 8.3 Each Panel member selected will be required to complete a Conflict of Interest and Confidentiality Declaration form (see Appendix C). These forms will be retained in the case file.

## **9. Identifying a Conflict of Interest**

- 9.1 Prior to a hearing, a proposed candidate for a Panel shall not have taken part in any investigation of the subject matter of the hearing other than as a member of the Council considering the referral of the matter to the Discipline Committee or at a previous hearing by a discipline panel that considered the same subject matter.
- 9.2 Any candidate, other than an LGA, is excluded from consideration if they have dealt with the same person in a previous action.
- 9.3 Any candidate that acted as a mediator involving the defendant member is excluded from consideration.
- 9.4 It is up to each candidate 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.
- 9.5 Any candidate must exclude themselves from the hearing if they have any direct business interests or dealings with the defendant member. This does not include carrying on business as a surveyor in the same general geographic area as does the defendant member.

- 9.6 Publication of findings of guilt is prescribed in the Surveyors Act, and at Section 4.2.4 of this manual, and therefore prior knowledge of a previous conviction will not alone give rise to a conflict of interest.
- 9.7 The Chair of the Discipline Committee will maintain a record of which candidates have declared a conflict of interest prior to the commencement of a hearing.
- 9.8 In the event that legal counsel to the Panel has been appointed, she or he will also advise whether a conflict of interest exists in advising the Panel. In this event, the Panel may retain another legal advisor who does not have a conflict of interest.

## **10. Panel Quorum**

- 10.1 The Panel will commence a hearing with five appointed members, one of whom will be an LGA.
- 10.2 Where a member of the Panel becomes unable to continue on the Panel, the remaining members of the Panel can continue and may complete the hearing despite the absence of the member who is unable to act, as long as a quorum of three is maintained and one of the members is an LGA, appointed in accordance with section 10.1 of this Manual.
- 10.3 Where the term on Council or on the Discipline Committee of a member of the Panel, including the LGA, has expired or is terminated (other than for cause) before the hearing has been fully disposed of, but after it has commenced, she or he will be considered to be a member of the Panel for the purpose of completing the disposition of the proceeding in the same manner as if the term had not expired or terminated. (See Subsection 26(12) of the Act.)

## **11. Criteria for Decisions/Actions**

- 11.1 Decisions of the Panel are based on the evidence presented at the hearing. The Panel is guided by the Act and Regulations thereunder, the SPPA and Regulations thereunder, this Manual and Rules compiled from and under the authority of the Act and the SPPA and the common law.
- 11.2 The Act specifies the decisions and orders that can be made by the Panel and the criteria for those decisions. (See Sections 26 & 27 of the Act)

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) 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) 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) impose terms, conditions and limitations on the licence or certificate of registration, as the case may be, of the member, including but not limited to, 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) 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 counseled and, if considered warranted, direct that the fact of the reprimand, admonishment or counseling 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) 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.

11.3 The Panel may find a defendant member guilty on some or all of the allegations of;

i.) professional misconduct if,

- (a) the member has been found guilty of an offence relevant to his or her suitability to practise, upon proof of such conviction;
- (b) in the opinion of the discipline panel, the member is guilty of professional misconduct as defined in the regulations.

and/or

ii.) incompetence if in its opinion,

(a) the member has displayed in the member's professional responsibilities a lack of knowledge, skill or judgment or disregard for the welfare of the public the member serves of a nature or to an extent that demonstrates the member is unfit to carry out the responsibilities of a person engaged in the practice of professional surveying; or

(b) the member is suffering from a physical or mental condition or disorder and the nature or extent of the condition or disorder is such that it is in the interest of the public, of the member or of both that the member no longer be permitted to practise or that his or her practice be restricted.

Alternatively, the Panel may fully dismiss the allegations. (Subsections 26.(2) and 26(3) of the Act)

11.3.1 Professional Misconduct is defined in Section 35 of RRO 1026 as:

1. Contravention of the Act or the regulations or of any Act or regulations relating to professional surveying in Ontario.
2. Failure to comply with and maintain the performance standards for the practice of professional surveying.
3. Failure to comply with the code of ethics or the standards of practice of professional surveying.
4. Knowingly furthering the application for admission to the Association of a person known by the member to be unqualified by education or character.
5. Authorizing, permitting, counseling, assisting, aiding, abetting or acquiescing in any act that constitutes professional misconduct.
6. Signing a project that is not prepared or completed by the member or under the member's supervision.

7. Failure to assume responsibility for all phases of a project carried out under the member's supervision.
8. Failure to engage staff deemed competent by virtue of education, on the job training or both to perform the duties assigned to them.
9. Knowingly allowing or encouraging non-professional staff to engage in activities that reasonably would be regarded as professional in nature.
10. Failure by an employed member to act for an employer as a faithful agent or trustee and failure to regard as confidential information, however obtained, about the affairs of the employer's clients and to continue to so regard it after the termination of the relationship with the employer.
11. Failure to disclose to a client or employer a conflict of interest.
12. Charging a fee for professional surveying services not performed or knowingly submitting a false or misleading estimate, account or charge for professional surveying services rendered to a client.
13. Revoked: O. Reg. 506/93, s. 2.
14. Advertising in a manner that is contrary to the regulations.
15. Making a false or malicious statement or publication that injures the professional reputation, prospects or the practice of professional surveying of another member.
16. Soliciting or accepting any work when the member knows or has reason to believe that another member is engaged for the same purpose by the same client.
17. Offering to pay compensation or offering an inducement to secure employment or a contract for service.
18. Undertaking work that the member is not competent to perform by virtue of his or her training and experience or that is beyond the member's resources to complete in the time agreed upon with the client.
19. Failing to co-operate with the Association with respect to a claim made under an insurance policy made under an arrangement described in subsection 32 (2) of the Act.
20. Allowing a non-member to act as an agent to procure work or to act in a manner that would lead members of the public to believe that such non-member was licensed under the Act.
21. Conduct relevant to the practice of professional surveying that, having regard to all the circumstances, would reasonably be regarded by members as dishonourable or unprofessional.

- 11.4 A Panel shall ensure that the oral evidence taken before it is recorded and shall if so required furnish copies of a transcript of the evidence to the parties, if requested after the completion of the hearing, at their own cost.
- 11.5 The findings of fact of a discipline panel shall be based exclusively on evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the Statutory Powers Procedure Act.
- 11.6 A member of a discipline panel shall not participate in a decision of the panel following a hearing unless the member was present throughout the hearing and heard the evidence and argument of the parties
- 11.7 If one of the five members of a discipline panel has become unable to continue with respect to a matter that is before the panel and the four remaining members of the panel are divided equally as to the guilt of the member of the Association who is the subject of the hearing, that is to say two believe that the defendant member should be found guilty and two believe that the defendant member should not be found guilty, the panel shall find that the defendant member is not guilty of incompetence or professional misconduct, as the case may be.

Please refer to Appendix A: DISCIPLINE PANEL RULES, for further information on a conducting hearing

### **PART 3: Discipline Committee and Panel conduct and actions post hearing**

#### **12. Reporting mechanisms**

- 12.1 Where a Panel finds a defendant member guilty of professional misconduct or incompetence, the Panel that has conducted the hearing shall cause its order to be published with the name of the defendant member identified, with or without reasons. Where the Panel deems the publication of the decision or order may prejudice the interests of an individual or public safety or security, the publication shall not include the name(s) of the person(s) complaining or giving evidence in respect of the conduct or actions of the defendant member.  
The Panel may direct that the name of the complainer be not included in the publication of the decision where the Panel is of the opinion that such publication is not material to the case.
- 12.2 If an appeal is launched by the defendant member, publication will include a statement that the decision is under appeal. The result of the appeal will also subsequently be published.
- 12.3 Publication shall be in the Association's Quarterly publication and on the public area of the Association web site.

- 12.4 Where the Panel that has conducted the hearing revokes, suspends or restricts a licence or certificate of registration on the ground of incompetence, the decision, according to the Act, takes effect immediately even if an appeal is taken from the decision. The court to which the appeal is taken however, may order otherwise, where it is satisfied that it is appropriate in the circumstances.
- 12.5 Where the Panel that has conducted the hearing revokes, suspends or restricts a licence or certificate of registration on grounds other than incompetence, the order, according to the Act, does not take effect until the time for appeal from the order has expired without a notice of appeal being filed or, if the notice of appeal is filed within the appropriate time, the appeal has been disposed of or abandoned. The Panel may consider that it is appropriate for the protection of the public that the order come into effect immediately or at any other time that the panel deems necessary for the protection of the public and may so order.
- 12.6 Where the Panel that has conducted the hearing concludes that an allegation of professional misconduct or incompetence was unfounded, the Panel shall direct that this determination be published, if requested to do so by the defendant member.
- 12.7 Where the Panel that has conducted the hearing is of the opinion that the commencement of the proceedings was unwarranted, it may order that the Association reimburse the defendant member for the member's costs or the portion of the costs that the panel fixes and the Association shall comply with the order. Alternatively, if the Panel makes a finding of professional misconduct or incompetence, it may fix and impose costs to be paid by the defendant member being disciplined.
- 12.8 Without in any way limiting the powers of the panel to assess and award costs, the Panel, in exercising its discretion to award costs, may be particularly inclined to impose costs on the defendant member where the Panel is of the opinion that the actions of the defendant member have been vexatious or frivolous or have unduly extended the proceedings or increased the cost of the proceedings.
- 12.9 Where the Panel that has conducted the hearing finds the defendant member guilty of professional misconduct or incompetence, its decision in that regard will be released as soon as possible after the conclusion of the hearing and a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the defendant member.

### **13. Appeal Process**

- 13.1 A party to the discipline proceedings may appeal to the Divisional Court of the Superior Court of Justice from the decision or order of the Panel.

- 13.2 A party may also bring an Application for Judicial Review of the proceedings that have taken place before the Panel. Such application is brought to the Divisional Court of the Superior Court of Justice.
- 13.3 If, in the course of a hearing by a Panel and before the Panel makes its ruling, a party to the hearing desires to make an application to the Superior Court of Justice in respect of a matter before the Panel, the party shall post security for costs in accordance with the rules of the Superior Court of Justice.
- 13.4 Upon the request of a party desiring to appeal to the Divisional Court and upon payment of the fee therefor, the Registrar shall furnish the party with a certified copy of the record of the proceedings, including the documents received in evidence and the decision or order appealed from.
- 13.5 An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Panel appealed from and may exercise all powers of the Discipline Committee and may direct the Discipline Committee to take any action which the committee may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the Panel or the court may refer the matter back to the Discipline Committee for rehearing in whole or in part, in accordance with such directions as the court considers proper. R.S.O. 1990, c. S.29, s. 28

#### **14. Audit Processes**

- 14.1 From time to time one of the LGAs will be requested to audit the discipline process and provide any recommendations to the Discipline Committee and Council.
- 14.2 Normally this will be done every 5 years in conjunction with a review of the entire process.

#### **15. Manual Publication**

The Discipline Committee will arrange for this Manual to be available on the web site of the Association in the public viewing area in order that the public can readily determine the process involved in ensuring only competent practitioners will be offering their services to the public.

**Appendix A**  
**Discipline Panel Rules**

Rules of Practice governing discipline proceedings before a duly constituted panel of the Discipline Committee (the panel is referred to in these Rules as the “Discipline Panel”)

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## **RULES OF PRACTICE**

### **1. DEFINITIONS**

In these rules;

“**Affidavit**” means a document made by a person who states that its contents are true and is confirmed as true by oath, affirmation or such other manner as is recognized under the laws of Ontario.

“**Certified form**” means a copy of a document which is recognized under the laws of Ontario as a true copy of the original.

“**Chair**” means the member of the Discipline Panel who is appointed Chair of the Discipline Panel.

“**Counsel**” means the Discipline Panel’s Counsel.

“**Deliver**” means to serve a person or corporation with a copy of a document and to file the document and proof of its service with the Discipline Panel.

“**Document**” includes a sound recording, videotape, film, photograph, chart, graph, map, plan, survey, book of account, and information recorded or stored by means of any device.

“**Electronic hearing**” means a hearing held by conference telephone or similar form of electronic technology allowing persons to communicate with one another.

“**Examination in chief**” refers to the presentation of evidence by a party and the party's witnesses prior to cross-examination by opposing parties.

“**File**” means to provide effective delivery of documents to the Chair or to counsel for the Discipline Panel.

“**Hearing**” means a hearing conducted by the Discipline Panel pursuant to the Surveyors Act.

“**Holiday**” means Saturday or Sunday, New Year's Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any special holiday proclaimed by the Governor General or the Lieutenant Governor; and where New Year's Day, Family Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays; and where Christmas Day falls on a Friday, the following Monday is a holiday.

“**Legal counsel**” means a member of the Law Society of Upper Canada licensed to practice law in the Province of Ontario.

**“Mediator”** means a member of the Discipline Committee appointed by the chair to facilitate a resolution if possible and make a report and recommendation back to Council as to whether the matter can be or has been resolved or should be referred to the Discipline Committee for a hearing.”

**“Motion”** is a written or oral request made to the Discipline Panel by a party, or person seeking status as a party, in a proceeding before the Discipline Panel.

**“Oral hearing”** means a hearing at which the parties or their counsel or agents attend before the Discipline Panel in person.

**“Panel”** means the same as Discipline Panel within these rules.

**“Particulars”** means facts required to ascertain or clarify the nature of a party's allegation and on which that party is relying, but does not mean the evidence which that party may use to prove such allegation is true.

**“Party”** means a person or corporation recognized by the Discipline Panel as having the status pursuant to the Surveyors Act to participate in the proceedings, or such other persons or corporations specified by the Discipline Panel as an added party.

**“Pre-hearing Conference”** means a meeting of the parties with a Presiding Member, conducted under these rules to consider issues, procedures or matters pertaining to such forthcoming hearing.

**“Presiding Member”** means a member of the Discipline Committee who is not a member of Council, and not a Panel member, who is selected by the Chair of the Discipline Committee to conduct a Pre-Hearing Conference.

**“Proceedings”** means a matter before the Discipline Panel.

**“Representative”** means the legal counsel or the agent who the Discipline Panel is satisfied is authorized to represent a party in proceedings before the Discipline Panel.

**“Rules”** means these rules of practice.

**“Service”** means the effective delivery of documentation to any person or to the person's counsel or agent in a manner prescribed by these rules.

**“Discipline Panel”** means a duly constituted Panel of the Discipline Committee of the Association of Ontario Land Surveyors directed to hold a hearing pursuant to the Surveyors Act.

**“Written hearing”** means a hearing held by means of the exchange of documents, whether in written form or by electronic means.

## 2. GENERAL

- 2.1 These Rules apply to all proceedings of the Discipline Panel.
- 2.2 The Discipline Panel may exercise any of its powers under these Rules on its own initiative or at the request of a party.
- 2.3 Where any of these rules is in conflict with any statute or regulation, the statute or regulation applies.
- 2.4 In any matter not provided for in these Rules, the practice of the Discipline Panel will be determined by analogy to these Rules.
- 2.5 No proceeding is invalid by reason only of a defect or other irregularity in form.
- 2.6 The Discipline Panel may issue general or specific directions at any time.
- 2.7 The Discipline Panel may waive any of these Rules at any time.
- 2.8 Hearings to be public:
  - 2.8.1 A hearing of a Discipline Panel shall, subject to 2.8.2 of these Rules, be open to the public.
  - 2.8.2 A Discipline Panel may make an order that the public be excluded from a hearing or any part of a hearing if the panel is satisfied that,
    - (a) matters involving public security may be disclosed;
    - (b) upon considering that financial, personal or other matters may be disclosed at the hearing, it is preferable to exclude the public from the hearing and prevent such disclosure, in order to protect the interests of an individual or for reasons of public safety or security, rather than adhere to the principle that hearings be open to the public; or
    - (c) the safety of a person may be jeopardized.
  - 2.8.3 A Discipline Panel may make an order that the public be excluded from a hearing while it receives evidence or submissions or deliberates whether to exclude the public from all or part of a hearing under 2.8.2 of these Rules.
  - 2.8.4 In any situation in which a Discipline Panel may make an order under 2.8.2 or 2.8.3 of these Rules, the Discipline Panel may make orders it considers necessary to prevent the public disclosure of information disclosed at the hearing and may for such purpose make an order banning the publication or broadcasting of that information.
  - 2.8.5 An order under 2.8.2 or 2.8.3 of these Rules shall be made in writing and shall include written reasons and shall be made available to members of the public upon request.
- 2.9 An agent who is to represent a party before the Discipline Panel shall file with the Discipline Panel that party's written confirmation that the agent is authorized to represent that party before the Discipline Panel, failing which, the agent shall have no standing with the Discipline Panel.
- 2.10 Where a party's representative ceases to act for the party in proceedings before the Discipline Panel, the representative shall in writing promptly notify the Discipline Panel and all other parties to the proceedings.
- 2.11 Where the Discipline Panel requires a party to attend before the Discipline Panel and the party fails to do so, the Discipline Panel may recess the proceedings at the commencement thereof for one-half hour, following which the Discipline Panel may proceed in the party's absence and the party will not be entitled to any further notice of the proceedings.

- 2.12 If a party seeks a remedy or order that the Discipline Panel cannot grant without first providing other parties an opportunity to make submissions, the party seeking the remedy or order should first seek the consent of the other parties and advise the Discipline Panel whether consent was obtained.

### **3. NOTICE OF PROCEEDINGS**

- 3.1 The Chair of the Discipline Committee shall set the hearing date and location for proceedings before a Discipline Panel and a written notice of such shall be issued by the Registrar of the Association to the parties.
- 3.2. The Executive Director shall appoint a Hearing Clerk as provided in Section 6 of the Manual who shall provide in every notice of oral hearing, notice of electronic hearing, notice of written hearing or notice of pre-hearing conference:
- (1) a reference to the statutory authority under which the hearing is to be held;
  - (2) a statement of the time and the purpose of the hearing; and
  - (3) any other information the Discipline Panel considers necessary for the proper conduct of the hearing.
- 3.3. Notice of Oral Hearing  
In addition to the requirements prescribed in Rule 3.2, the Hearing Clerk shall include in a notice of oral hearing:
- (1) the place of the hearing;
  - (2) a statement that, when a person is properly served with notice of a hearing and does not attend at the time and place appointed, the Discipline Panel may proceed in that person's absence and without further notice to that person; and
  - (3) a statement that the hearing will be open to the public, unless provided otherwise pursuant to Section 27 of the Act.
- 3.4. Notice of Electronic Hearing  
(1) In addition to the requirements prescribed in Rule 3.2, the Hearing Clerk shall include in a notice of electronic hearing:
- a. details about the manner in which the hearing will be held;
  - b. a statement that the purpose of the hearing is to deal with procedural matters, if that is the case;
  - c. if clause (2) does not apply; a statement that the party notified may, by satisfying the Discipline Panel that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the Discipline Panel to hold the hearing as an oral hearing and give an indication of the procedure to be followed;
  - d. a statement that if the party notified fails to act under clause (3), if applicable, and fails to participate in the hearing in accordance with the notice, the Discipline Panel may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding; and
  - e. a statement that the electronic hearing is open to the public, unless provided otherwise pursuant to Section 27 of the Act.

- (2) The Hearing Clerk will make appropriate arrangements and provide suitable information 5 clear days before the scheduled electronic hearing to allow the public to attend the electronic hearing via telecommunications.

3.5. Notice of Written Hearing

In addition to the requirements prescribed in Rule 3.2, the Hearing Clerk shall include in a notice of written hearing:

- (1) a statement that parties will be required to exchange documents with other parties, will have an opportunity to ask questions on the documents in writing, which the other parties will be obliged to answer, and will have an opportunity to make submissions in accordance with the Discipline Panel's Rules relating to a written hearing;
- (2) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
- (3) if clause (2) above does not apply; a statement that the party notified may, by notifying the Discipline Panel that there is good reason for not holding the hearing as a written hearing, require the Discipline Panel to hold the hearing as an oral or electronic hearing, and give an indication of the procedure to be followed, and
- (4) a statement that if the party notified fails to act under clause (3), if applicable, and fails to participate in the hearing in accordance with the notice, the Discipline Panel may proceed without the party's participation and the party will not be entitled to any further notice of the proceeding; and

3.6. Notice of Pre-Hearing

In addition to the requirements prescribed in Rule 3.2, a notice of a Pre-Hearing conference shall include:

- (1) the place of the Pre-Hearing Conference;
- (2) a statement whether parties are required to exchange or file documents or pre-hearing submissions as prescribed by these Rules and, if so, the issues to be addressed and the date when they are required;
- (3) a statement whether parties are required to attend in person, and
  - (a) if so, that they may be represented by counsel or agent; or
  - (b) if not, that they may be represented by their counsel or agent who has the authority to make agreements and undertakings on their behalf respecting the matters to be addressed at the Pre-Hearing Conference;
- (4) a statement that the Presiding Member at the Pre-Hearing Conference may make orders with respect to the conduct of the proceeding which will be binding on all parties; and
- (5) a statement that the Pre-Hearing Conference shall not be open to the public.

## 4. SERVICE AND FILING

- 4.1 A summons issued by the Discipline Committee Chair, the Discipline Panel or the Hearing Clerk to require a person to give evidence under oath or affirmation or to produce in evidence documents and things at an oral or electronic hearing shall be served personally on the person summoned, and the person summoned is entitled to receive the same fees or

allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Ontario Superior Court of Justice.

- 4.2 For documents other than a summons issued by the Discipline Committee Chair, the Discipline Panel or the Hearing Clerk as provided in Rule 4.1, the following rules apply:
- (1) Service of a document is deemed to be effective when delivered:
    - (a) by personal delivery by same-day delivery to that person;
    - (b) by telephone facsimile (fax) transmission on the same day as the transmission;
    - (c) by courier on the second full day after the document was given to the courier by the party serving;
    - (d) by regular, registered or certified mail on the fifth day after the day of mailing;
    - (e) by electronic mail, (e-mail), on the same day as the message was sent if notification of receipt of the e-mail has been sent by the recipient; or
    - (f) in a manner directed by the Discipline Panel;
  - (2) Service of a document is deemed to be non-effective if the person to whom the document is to be delivered establishes that that person, acting in good faith and through absence, accident, illness or other causes beyond that person's control, failed to receive the document until a later date or at all.
  - (3) Documents delivered after 4:00 p.m. shall be deemed to have been served on the next day that is not a holiday.
  - (4) A person who serves or files a document in a proceeding under these Rules shall include with the document a written statement which identifies the proceeding and the name, address and telephone number of the person serving or filing the document.
- 4.3 Documents may be filed with the Discipline Committee Chair, the Discipline Panel or the Hearing Clerk by any of the methods provided in Rule 4.2(1), but the time of filing will be the time of actual receipt by the Discipline Panel.
- 4.4 Upon the request of the party who produced documents and things put in evidence at a hearing, the Discipline Panel or, as the case may be, the Chair of the Discipline Committee, shall return them within a reasonable time after the matter has been finally determined, to the party that produced said documents or things.

## **5. TIME**

- 5.1 In the computation of time under these rules or in an order of the Discipline Panel, except where a contrary intention appears,
- (1) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens, and including the day on which the second event happens even if they are described as clear days or the words "at least" are used;
  - (2) where a period of ten days or less is prescribed, holidays shall not be counted;
  - (3) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday; and

(4) where a time of day is mentioned in these rules or in any document in a proceeding, the time referred to shall be taken as the time observed locally.

5.2 The Discipline Panel may extend or abridge any time prescribed under these rules on such terms as are just.

## **6. DISCLOSURE**

### **6.1 Order for Particulars**

At any time in a proceeding, the Discipline Panel may order any party to provide such further particulars, as the Discipline Panel considers necessary, for a full and satisfactory understanding of the subject of the proceedings.

### **6.2 Character, Conduct or Competence Issues**

Where the good character, propriety of conduct or competence of a party is an issue in the proceedings, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto.

### **6.3 Disclosure of Documents or Things Generally**

Except for the report of an expert witness to which Rule 6.4 applies or where a document or thing is to be used by a party solely for the purpose of the cross-examination of another party or another party's witness, a party to a hearing shall, at least ten days, before the hearing:

- (1) Disclose to all other parties the existence of every document and thing that the party will refer to or tender as evidence at the hearing and shall deliver a copy of such documents to the other parties, and
- (2) Disclose and make available for inspection by every other party all things, other than documents, that the party will refer to or tender as evidence at the hearing.

### **6.4 Expert Witness**

- (1) Where a party intends to rely on or refer to the evidence of an expert witness, that party shall provide to every other party:
  - (a) the name of the expert witness,
  - (b) the qualifications of that expert witness,
  - (c) that expert's conclusions and the basis for those conclusions on all issues to which the expert will testify before the Discipline Panel, and
  - (d) when that party intends to rely on or refer to a written report of that expert witness at the hearing, a copy of that written report signed by the expert witness not less than thirty days before the hearing.
- (2) A party who intends to call an expert at the hearing to respond to the expert witness of another party shall, not less than twenty days before the commencement of the hearing, serve on every other party a report containing the information set out in subsection 6.4(1) of these rules.

### **6.5 Order for disclosure of documents**

The Panel may at any stage of the proceeding order a party:

- (1) to disclose to any other party the existence of all documents and things that the party will refer to or tender as evidence at the hearing;

- (2) to deliver to any other party at least ten days before the hearing or as otherwise ordered by the Panel copies of all documents that the party will produce or tender as evidence at the hearing; and
- (3) to make available for inspection or make available for testing subject to terms and conditions established by the Panel, any thing, other than a document, that the party will produce or tender as evidence at the hearing.

#### 6.6 Failure to disclose

If a party fails to comply with the provisions of these rules with respect to disclosure or inspection of documents or things, that party may not refer to the document or thing without the consent of the Discipline Panel which may be on such terms as are just.

### **7. NOTICE OF CONSTITUTIONAL QUESTION**

7.1 Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or to claim a remedy under the Canadian Charter of Rights and Freedoms, notice shall be served on the other parties, the Discipline Panel, the Attorney General of Ontario, and the Attorney General of Canada as soon as the circumstances requiring notice become known but, in any event, at least fifteen days before the question is to be argued before the Discipline Panel, and the notice shall set forth,

- (1) the particular legislative provision or particular rule of common law,
- (2) the material facts giving rise to the constitutional questions, and
- (3) the legal basis for the constitutional question, setting out concisely the legal basis for each question and the constitutional principles to be argued,

7.2 Where a party fails to comply with Rule 7.1 the Act, regulation, by-law or common law shall not be adjudged to be invalid or inapplicable or the remedy shall not be granted, as the case may be.

7.3 Where the Attorneys General of Canada and Ontario are entitled to notice of a matter referred to in Rule 7.1, he or she is entitled to adduce evidence and make submissions to the Discipline Panel regarding the constitutional question.

### **8. PRE-HEARING CONFERENCE**

8.1 The Chair of the Discipline Committee, in response to a written request by either of the parties, or by the Discipline Panel, or at his or her own initiative may designate a Presiding Member to conduct a Pre-hearing Conference.

#### 8.2 Direction to Attend

The Discipline Panel on its own initiative or in response to a written request by one of the parties prior to the commencement of the hearing, or in response to an oral or written request once the hearing has begun, may direct the parties to participate in a Pre-hearing Conference to consider:

- (1) identification of parties and other interested persons and the scope of their participation at the hearing;
- (2) identification of facts or evidence that may be agreed upon;
- (3) the identification and simplification of the issues;
- (4) issues relating to disclosure and the exchange of information;
- (5) the settlement of any or all of the issues;
- (6) the dates by which any steps in the proceeding are to be taken or begun;
- (7) the advisability, in appropriate cases, of Alternative Dispute Resolution;
- (8) the estimated duration of the hearing; and
- (9) any other matter that may assist in the just and most expeditious disposition of the proceeding.

### 8.3 Hearing Clerk

The Hearing Clerk appointed by the Executive Director pursuant to section 6.1 of the Manual of Procedures for the Discipline Committee will perform the following duties for the purposes of a Pre-hearing Conference:

- (1) Arrange for a hearing room and ensure that the parties and the Presiding Member are aware of the time, date and location of the Pre-hearing Conference;
- (2) Arrange for legal counsel for the Presiding Member to be present or to be available to the Presiding Member by telephone or other means;
- (3) Perform any support action requested by the Presiding Member or by either party such as typing of agreements, interim orders, or copying of documents;
- (4) Assume responsibility for the security of any documentation or other communications during any adjournments or absences from the hearing room;
- (5) Assume responsibility for ensuring proper and timely communication as required during or after the conclusion of the Pre-hearing Conference.

### 8.4 Location of Pre-hearing Conference

The Pre-hearing Conference shall take place in person at the Association offices, or, at the direction of the Presiding Member, and with the consent of the parties, at some other location or by conference call having consideration to:

- (1) the convenience of the parties;
- (2) the suitability of the subject matter;
- (3) the cost, efficiency and required timeliness of the Pre-hearing;
- (4) the avoidance of delay or unnecessary duration of the Pre-hearing;
- (5) the fairness of the process;
- (6) any other matter which the Presiding Member considers relevant in order to secure the just and expeditious determination of the Pre-hearing and of the hearing.

8.5 The Presiding Member may make such order, as s/he considers necessary or advisable with respect to the conduct of the proceeding, including adding parties.

8.6 All parties directed to participate in a Pre-hearing conference shall exchange Pre-hearing Conference memoranda and any related documents and provide copies to the Presiding Member, at least two clear working days prior to the Pre-hearing Conference. Documents provided to the Presiding Member shall:

- (1) at the conclusion of the Pre-hearing Conference, be returned by the Presiding Member to the party who provided them, and
- (2) not be considered as evidence in the discipline hearing, unless properly introduced to and accepted by the Discipline Panel in the course of the hearing.

#### 8.7 Settlement

Unless the parties consent in writing, all statements made at a Pre-hearing Conference in relation to the settlement of any or all issues are without prejudice and shall not be communicated to the Discipline Panel that presides at the hearing in the proceedings.

8.8 The Presiding Member shall not participate at the Discipline Panel hearing.

#### 8.9 Undertakings and Agreements

Undertakings and agreements made by the parties at a Pre-hearing Conference with respect to the proceedings before the Discipline Panel shall be in writing, prepared by or under the direction of the Presiding Member and be incorporated into an order of the Presiding Member .

8.10 An order under Rule 8.9 shall be part of the record of the proceedings, and shall be provided to the parties and the Discipline Panel presiding at the hearing of the matter.

8.11 Where a party fails or refuses to attend a scheduled Pre-hearing Conference, the discipline hearing will proceed as scheduled before the panel, but the party who has failed to attend the Pre-hearing Conference may be liable for any costs incurred in arranging and cancelling the Pre-hearing Conference, at the discretion of the Discipline Panel, and subject to the Act.

### 9. HEARING

#### 9.1 Oral Hearing

The Discipline Panel may, in accordance with these Rules and subject to the Surveyors Act, hold an oral hearing.

#### 9.2 Electronic Hearing

The Discipline Panel may, in accordance with these Rules, hold an electronic hearing.

9.2.1 In deciding whether to hold an electronic hearing, the Discipline Panel may consider any relevant factors, including:

- (1) the cost, efficiency and timeliness of proceedings;
- (2) the assurance of a fair and understandable process;
- (3) the impact on the ability of the hearing to be open and accessible to the public;
- (4) any other consideration affecting the fulfillment of the Discipline Panel's mandate.

9.2.2 Unless otherwise ordered by the Discipline Panel, an electronic hearing is open to the public.

9.2.3 The Discipline Panel chair shall be physically present at a designated location for an electronic hearing to ensure proper conduct of the hearing and shall be the “Moderator” of any teleconferences.

9.2.4 Continuing as an Oral or Written Hearing

The Discipline Panel may continue an electronic hearing:

- (1) as an oral hearing whenever the Discipline Panel deems it appropriate, or
- (2) as a written hearing with the consent of the parties.

9.2.5 Objections to Electronic Hearings

A party to a proceeding may object to a hearing being held as an electronic hearing and where the objecting party has delivered an objection to a hearing being held as an electronic hearing, the Discipline Panel may,

- (1) accept the objection, cancel the electronic hearing and either schedule an oral hearing or, with consent of the parties, schedule a written hearing;
- (2) if the Discipline Panel is satisfied that this will cause no significant prejudice, reject the objection without inviting responses from the other parties and proceed with the electronic hearing; or
- (3) provide all other parties with notice of an opportunity to respond to the objection, in which case the Discipline Panel shall provide directions for the form and timing of responses and for reply, if any, allowing at least ten days for response and for reply and after considering such submissions, proceed with the electronic hearing, schedule an oral hearing, or schedule a written hearing.

9.2.6 Terms and Conditions

In providing for an electronic hearing, the Discipline Panel may impose terms and conditions respecting the hearing, including:

- (1) specifying who will arrange the electronic hearing, and
- (2) requiring that a party requesting an electronic hearing pay all or part of the cost of providing the facilities necessary for the conduct and recording of the hearing electronically.

9.3 Written Hearing

The Discipline Panel may, in accordance with these rules and subject to the Surveyors Act, conduct, at any time, a proceeding or part of a proceeding by means of a written hearing.

9.3.1 When to hold a Written Hearing

In deciding whether to hold a written hearing, the Discipline Panel may consider any relevant factors, including:

- (1) the suitability of a written hearing format considering the subject matter of the hearing, including the extent to which the matters are in dispute;
- (2) whether the nature of evidence is appropriate for a written hearing, including whether credibility is an issue and the extent to which the facts are in dispute;
- (3) the extent to which the matters in dispute are questions of law;
- (4) the convenience of the parties;
- (5) the cost, efficiency and timeliness of proceedings;
- (6) avoidance of unnecessary length or delay;
- (7) ensuring a fair and understandable process;

- (8) the impact on the ability of the hearing to be open and accessible to the public;
  - (9) any other consideration affecting the fulfillment of the Discipline Panel's mandate.
- 9.3.2 **Objections to Written Hearing**  
 A party to a proceeding may object to a hearing being held as a written hearing and in such case,
- (1) a party that objects to a hearing being held as a written hearing shall notify the Discipline Panel and the other parties of its objection in writing within ten days of receiving the Discipline Panel's notice of the written hearing,
  - (2) The notice of objection shall state why there is good reason for not holding a written hearing and shall set out reasons for this statement; and
  - (3) all other parties shall send a written response to the objection to the Discipline Panel within ten days of receiving the objection, unless the Discipline Panel orders otherwise.
- 9.3.3 **When a party objects to a hearing being held as a written hearing and that party has delivered an objection to a hearing being held as a written hearing as provided in Rule 9.3.2, the Discipline Panel may,**
- (1) accept the objection, cancel the written hearing and either schedule an oral hearing or, with the consent of the parties, schedule an electronic hearing; or
  - (2) if the Discipline Panel is satisfied that there is not a good reason for not holding a written hearing, reject the objection without inviting responses from the other parties and proceed with the written hearing; or
  - (3) provide all other parties with notice of an opportunity to respond to the objection, in which case the Discipline Panel shall provide directions for the form and timing of responses and for reply, if any, allowing at least ten days for response and for reply, and after considering such submissions proceed with the written hearing, or if satisfied that there is good reason for not holding a written hearing, schedule an oral hearing or schedule an electronic hearing.
- 9.3.4 **Request for an Oral Examination**  
 Any request by a party in a written hearing for oral examination of a party or a witness shall be deemed to be an objection to having a hearing in writing.
- 9.3.5 **Converting To Oral or Electronic Hearing**  
 The Discipline Panel may, on at least ten days notice to the parties, convert a written hearing to an oral or electronic hearing where the Discipline Panel considers it appropriate, and in such case, the Discipline Panel shall provide the parties with directions as to the holding of the oral or electronic hearing.
- 9.3.6 **Tendering Material**  
 A party tendering material to the Discipline Panel at a written hearing as evidence shall identify the person giving the evidence and where directed by the Discipline Panel that person's statements as to the material shall be in either certified form or affidavit form.
- 9.3.7 **Supporting Documents**
- (1) Where a hearing is to be conducted in writing, unless otherwise directed by the Discipline Panel, the Association of Ontario Land Surveyors shall

within thirty days of receiving notice of the hearing prepare and serve on every other party to the hearing and file with the Discipline Panel, a record that shall contain:

- (a) a table of contents,
  - (b) a statement of facts relied on by that party,
  - (c) the submissions and arguments of that party, and
  - (d) a copy of any document on which that party is relying;
- (2) Where a record has been served under Rule 9.3.7.(1), and a party wishes to respond, that party may within thirty days of receiving such record, prepare and serve on every other party to the hearing and file with the Discipline Panel, a responding record that shall contain in consecutively numbered pages:
- (a) a table of contents,
  - (b) a statement of facts relied on by that party,
  - (c) the submissions and arguments of that party, and
  - (d) a copy of any document on which that party is relying; and
- (3) Where a party who has received a responding record under Rule 9.3.7.(2) wishes to reply thereto, that party may within ten days of receiving the responding record, serve on every other party and file with the Discipline Panel a reply record which shall contain in consecutively numbered pages:
- (a) a table of contents,
  - (b) a statement of facts relied on by that party,
  - (c) the submissions and arguments of that party, and
  - (d) a copy of any document on which that party is relying.
- (4) The Discipline Panel may require any party to a written hearing to provide further information, and this information shall be supplied to the parties and other persons as directed by the Discipline Panel.

9.3.8 The material on which a party intends to rely at the written hearing shall be:

- (1) in writing, or
- (2) where electronic transmission of material is permitted under these rules, in an electronic form approved by the Discipline Panel, or subject to the direction of the Discipline Panel.

9.3.9 Hearing in the absence of a party

Where a party who has received a notice of written hearing from the Discipline Panel does not object as provided in the notice of written hearing and does not participate in the hearing, the Discipline Panel may proceed without the party's participation and the party will not be entitled to any further notice in the proceedings.

## 10. MOTIONS

- 10.1 A party may bring a motion during a hearing without prior notice to the other parties only with the consent of the Discipline Panel that is hearing the matter.

- 10.2 Subject to Rule 10.1, when a party to a hearing intends to bring a motion before the Discipline Panel,
- (1) where the motion is to be heard on the same date as that scheduled for the hearing, the party shall serve notice of the motion and any supporting documentation on all other parties and file with the Discipline Panel a copy of the notice, supporting documentation and proof of such service at least ten days before such hearing date, and the notice of motion shall set out,
    - (a) the relief sought,
    - (b) the grounds to be argued, including a reference to any statutory provision or rule to be relied on, and
    - (c) the evidence to be used.
  - (2) where the motion is to be heard on a date other than the date scheduled for the hearing, the party bringing the motion shall file with the Discipline Panel a copy of the notice of motion and obtain from the Discipline Panel an appointment for the hearing of the motion by the Discipline Panel and directions as to service.
- 10.3 Where a party who brings a motion is required under these rules to give written notice to other parties, proof that such notice has been given shall be filed with the Discipline Panel prior to the hearing of the motion.

## **11. ADJOURNMENT**

- 11.1 The Discipline Panel must approve any adjournment of a hearing, pre-hearing conference or motion which has been scheduled by the Discipline Panel.
- 11.2 Any party requesting an adjournment from the Discipline Panel shall notify all other parties of that party's request.
- 11.3 Where a party consents to an adjournment, such consent shall be in writing, signed by the party or the party's legal representative, if any, and filed with the Discipline Panel prior to the Discipline Panel considering the request for an adjournment.
- 11.4 Where all parties do not consent to an adjournment, the party requiring the adjournment may bring a motion before the Discipline Panel to request an adjournment, and that party's notice of motion shall:
- (1) set out the grounds for the motion and the evidence to be relied upon, and
  - (2) be served on all parties and filed with the Discipline Panel, and where such motion is filed with the Discipline Panel less than ten days prior to the date scheduled for the hearing in the proceedings, the Chair may direct that such motion shall be heard by a member of the Discipline Panel prior to the scheduled hearing or by the Discipline Panel at the commencement of the scheduled hearing.

## **12. REVIEW OF A DECISION**

### **12.1 Application**

A party to proceedings who wishes the Discipline Panel to review its interim order or procedural ruling shall do so by bringing a motion to the Discipline Panel that made the interim order or procedural ruling, and prior to the release of the Discipline Panel's final decision or order in the proceedings.

12.2 The Discipline Panel may at any time correct a typographical error, error of calculation, or other similar error made in its decision without prior notice to the parties.

## **13. RECORD OF PROCEEDING**

13.1 The Executive Director shall compile a record of every proceeding and the record shall contain:

- a) Every document filed with the Executive Director under these Rules in respect of the proceeding or a step in the proceeding.
- b) Every document received by a panel under these Rules in respect of the proceeding or a step in the proceeding.
- c) The Notice of Hearing on the merits of a proceeding.
- d) The endorsement of the decision and order in the proceeding and of the order in a motion in the proceeding.
- e) The formal decision and order in the proceeding and the formal order in a motion in the proceeding.
- f) The reasons, if any, for the decision or order in the proceeding and for the order in a motion in the proceeding.
- g) The transcript of a hearing in the proceeding or in a motion in the proceeding that is obtained by the Executive Director.

### **13.2 Record is public record**

Subject to the Act and rule 2.8 of these Rules, the record of a proceeding is a public record.

### **13.3 Documents not available for public inspection**

A document or a part of a document contained in the record of a proceeding that contains information that may not be disclosed under rule 2.8 is not available for public inspection.

## Appendix B – Indemnification of the Association’s Costs

### **Indemnification of the Association's Costs**

Some costs are necessary for a self-governing profession to govern its members in the public interest.

1. a). It is acknowledged to be in the best interests of all members of the Association to seek indemnification of the Association's costs incurred to discipline a member.  
b). It shall not however be the responsibility of the hearing panel, association counsel or any discipline panel to attempt to achieve total compensation of all costs incurred.
2. The awarding of costs in discipline proceedings shall be in the sole discretion of the panel hearing the matter and may be set at any stage of the proceeding, including at the request for or granting of an adjournment, or subsequent to a hearing once all expenses are known.
3. Costs shall not be awarded in punishment on the party who pays them nor as a bonus to the party who receives them.
4. A cost award may cover all allowable and reasonable expenses and services incurred if relevant to the case, proceeding or matter.
5. Cost orders may be awarded or not so ordered to:
  - a. encourage early resolution, participation in the discipline process, reasonableness or
  - b. Discourage frivolous matters or unnecessary steps or for people to pursue matters without merit.
6. The Discipline panel, in deciding whether to order costs, the amount of the costs and any terms or conditions of payment, may consider the following
  - a. The result in the proceeding
  - b. The cost to the Association of the proceeding, including reasonable travel and accommodation expenses of the members of the panel hearing the matter
  - c. Any offer to settle or proposal for resolution made in writing
  - d. Any legal fees and disbursements paid or owed by either party, including the experience of counsel, hourly rate of counsel and the reasonableness of those fees and expenses
  - e. Any amount claimed or recovered
  - f. The complexity of the proceeding and issues
  - g. The importance of the issues to the member, the Association or the public
  - h. Whether the proceeding or any step was improper, frivolous, vexatious or unnecessary or taken through negligence, mistake or excessive caution or unnecessarily delayed the matter
  - i. A defendant member or party's denial of or refusal to admit anything that should have been admitted
  - j. The reasonable expectations of both parties or the public as to the outcome and costs if successful or otherwise.
7. a). A defendant member shall be made aware that costs incurred by the Association in proceeding or not proceeding with a discipline hearing may exceed the legal fees and disbursements charged by counsel and may also include travel, accommodation, food and other reasonable expenses of the panel members.

- b). The Association therefore encourages as much advance notice as possible of any need for adjournment of a discipline hearing.
  - c). A request for adjournment or an adjournment may itself trigger a cost award by the panel that was supposed to hear the matter, or by the panel which ultimately hears the matter particularly if sought with little or no notice and/or not for valid reason.
8. A copy of the costs policy shall be provided to every member of the Association and shall be provided to every member against whom discipline proceedings are brought at the time the member is notified of the proceeding.

## Conflict of Interest & Confidentiality Declaration

I \_\_\_\_\_ hereby accept appointment to the Discipline 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 \_\_\_\_\_.

\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Witness)

## Conflict of Interest & Confidentiality Declaration

**IN THE MATTER** of a discipline panel to hear allegations against

\_\_\_\_\_

I \_\_\_\_\_ hereby accept appointment to a panel of the Discipline 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 panel.

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 panel and that in accepting this appointment I recognize and understand the need not to be found in a position of conflict, prejudice, bias, or the apprehension of bias. Should such a situation arise during this hearing, I will so declare and remove myself from the panel or the discussion and decision on those matters, as appropriate.

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 \_\_\_\_\_.

\_\_\_\_\_  
(Member)

\_\_\_\_\_  
(Witness)