

MANUAL OF PROCEDURES

FOR THE

FEEES MEDIATION COMMITTEE

OF THE

ASSOCIATION OF ONTARIO LAND SURVEYORS

Version 1.4

Updated to May 28, 2021

Approved by Fees Mediation Committee: Brent Larocque Date: May 28, 2021

Presiding Officer

Approved by Council: Date: July 13th, 2021

President: Gavin Lawrence

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1.0 Introduction

1.01 The Fees Mediation Committee receives its Legislative Authority from the Surveyors Act, R.S.O. 1990, c. S.29, (hereinafter referred to as the "Act").

1.02 This Manual is to be a guideline for the Fees Mediation Committee to assist in ensuring consistency, openness, and fairness in the treatment of a complaint regarding fees charged.

1.03 The Manual is composed of 2 Parts.

1.0.3.1 PART 1 relates to the Fees Mediation Committee, its functions and operations, and

1.0.3.2 PART 2 relates to the administrative procedures to be followed in the processing of a complaint.

1.0.4 This Manual is to be treated as a living document that is continuously under review (audit) and subject to change and revision. As new situations arise, suggested changes to the Manual should be reviewed by members of the Fees Mediation Committee, amended as necessary and subsequently sent to Council for review and approval.

1.0.5 Once every 5 years this Manual and the operations of the Fees Mediation Committee shall be audited by the Registrar or other person(s) appointed by Council.

1.0.6 Members of the Fees Mediation Committee who have edited and approved this manual:

Brent Larocque, O.L.S., Presiding Officer
Anna Aksan, OLS, Liaison Councillor (portion only)
Amar Loai, Liaison Councillor (portion only)
John Merrlles, OLS
Michele Pearson, OLS
Harold Hyde, OLS
Murray Purcell, OLS
Martha George, Lay Councillor, member of the AOLS Council appointed by the Lieutenant Governor in Council

2.0 Definitions

2.0.1 "Act" refers to the Surveyors Act, R.S.O. 1990, Ch. S.29

2.0.2 "Regulation" refers to Regulation 1026, R.R.O. 1990

2.0.3 "Association" or "AOLS" refers to the Association of Ontario Land Surveyors.

2.0.4 "Client" refers to a person or company who engages an Ontario Land Surveyor for professional advice or services.

2.0.5 "Client Representative" refers to a person who acts on behalf of the client or company, with the client's or company's written permission, to help the client interpret, relate to and/or understand the issues discussed. (example: Client Representative helps overcome a language barrier).

2.0.6 "Committee Member" refers to a member of the Fees Mediation Committee

2.0.7 "Council" refers to the Council of the Association.

2.0.8 "Fees Mediation Committee" or "Committee" refers to the Fees Mediation Committee of the Association.

2.0.9 "LGA" refers to a Lieutenant Governor's Appointee (lay member) of AOLS Council.

2.0.10 "Mail" refers to the delivery of documents and/or information and includes the delivery of same by electronic mail, express post, registered mail, and/or regular mail.

2.0.11 "Mediation Agreement" refers to the resolution of a fee dispute between a surveyor and client which is negotiated through mediation.

2.0.12 "Meeting" refers to a meeting hosted face to face, by tele / video conference or other electronic means.

2.0.13 "Member" refers to a member of the Association.

2.0.14 "Parties" refers to the parties to a complaint.

2.0.15 "Presiding Officer" refers to the Committee Member who conducts a meeting and sees that the rules are observed. The phrase "the chair" applies to the person presiding. The Presiding Officer is selected by Council as set out in Regulation 1026 Section 15 (4).

2.0.16 “Registrar” refers to the Registrar of the Association or the Deputy Registrar in the case where a conflict of interest is perceived with the Registrar.

2.0.17 “Secretary” refers to the Committee Member who makes a written record of a meeting. These are typically referred to as the minutes. Due to the relatively small size of this Committee, the Presiding Officer and Secretary are often the same person.

PART 1

THE FEES MEDIATION COMMITTEE

3.0 Statutory Committee

The Fees Mediation Committee is a Statutory Committee constituted in accordance with Section 9 of the Surveyors Act. Its composition, duties and authority are explained in Section 29 of the Act and in Sections 15 and 16 of Regulation 1026 of the Act. The obligations of the AOLS members on the Fees Mediation Committee from which additional authority can be derived are set out in the Code of Ethics, Sections 33, 34 and 35 of Regulation 1026 and Section 36 of the Act. The provisions of the Act and regulation recited in this paragraph are set out in Appendices I, J and K, respectively.

4.0 Terms of Reference

4.1 Aims and Objectives

To ensure fair, open and complete fulfillment of Section 29 of the Act and Regulation 1026.

4.2 Responsibilities

4.2.1 The Committee will consider in a timely manner all complaints regarding fees that are presented in a form consistent with the Act and Regulation, subject to section 4.3.2 of this Manual and Section 29 (2) (a) of the Surveyors Act, R.S.O. 1990, c. S.29

4.2.2 The Presiding Officer of the Committee, with the assistance of the Secretary, will maintain complete and accurate records of each complaint file during its deliberations. Upon the conclusion of a file, the necessary documents and evidence associated therewith shall be filed with the Registrar.

4.2.3 The Committee will ensure that confidentiality is maintained of files and all associated committee materials used during and after its deliberations.

4.2.4 The Committee will ensure that all new committee members are provided training and sufficient materials, including this manual, to assist the member in serving on the committee.

4.2.5 The Committee will inform and educate all parties to a complaint of the surveyor's roles and responsibilities. This is achieved by directing all clients to this manual. A link to this manual is included in Appendix B Fees Mediation Help Form.

4.2.6 The Committee will explain to all parties to a complaint the aims, objectives and powers of the committee and the reasons for each decision. This is achieved by directing clients and members to this manual. A link to this manual is included in Appendix B Fees Mediation Help Form.

4.3 Duties

4.3.1 The duties of the Fees Mediation Committee are derived from Section 29 of the Act and Sections 15, 16 and 34 of the Regulation.

4.3.2 The Committee may refuse to consider a complaint if in the opinion of the committee the complaint is frivolous, vexatious or an abuse of process.

4.3.3 The Committee may also refuse to consider a complaint if the matter is brought before the Courts of Ontario

4.3.4 If the Fees Mediation Committee refuses to consider a complaint, the Committee shall provide written notice of its decision and of the reasons for it to all parties involved in the complaint.

4.4 Registrar's Role

4.4.1 The Registrar of the Association shall administer the operation of the Fees Mediation Committee. The Registrar is not a member of the Committee.

4.4.2 When a complaint is filed, the Registrar shall give written notice of the complaint to the member and advise the member and the complainant that the committee shall mediate unless considered inappropriate by the Committee and, with the written consent of all parties, arbitrate the dispute.

4.4.3 For mediation or arbitration, the Registrar will advise both parties that they must submit a brief signed written statement of the dispute within 30 days. The Registrar may extend the time limit for filing a statement as appropriate. The Registrar shares the written statements between the parties involved.

4.4.4 The Registrar will prepare a paper file for each complaint and ensure that a copy of all documentation relating to the complaint is kept within 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 Fees Mediation Committee section of the AOLS website as necessary.

4.4.5 The Registrar will ensure that a copy of each signed Arbitration Decision or Mediation Agreement is mailed to both parties to the complaint. The delivery of any Decision or Agreement requires signature upon receipt.

4.5 Committee Structure

4.5.1 The Fees Mediation Committee members will be appointed each year by Council. This will normally occur at the first Council meeting following the Annual General Meeting. The Committee members will be notified of their appointments.

4.5.2 As per Section 15(1) of the Regulation, the Fees Mediation Committee shall be composed of:

- (a) Three or more members of the Association to be appointed by the Council; and
- (b) One LGA, to be appointed from the Council
- (c) One member of the Association, appointed from Council, to act as a Liaison to Council

Section 29(1) of the Act states that no person who is a member of the Complaints Committee or the Discipline Committee shall be a member of the Fees Mediation Committee.

4.5.2.1. An alternate Fees Mediation Committee members list composed of 3 or more members of the Association and 1 LGA shall be maintained by the Registrar. This list shall be used as needed including when a conflict of interest is declared.

4.5.3 Quorum

For the purpose of transacting business, a quorum of the Fees Mediation Committee consists of three members of the Committee, one of whom is a person who is appointed to the Council by the Lieutenant Governor in Council.

4.5.4 If a member of the Committee becomes unable to act after the Committee commences a hearing, its remaining members may complete the hearing in the member's absence, if they constitute a quorum. If the remaining members do not constitute a quorum, one or more members may be selected from the alternate members list to allow the dispute to continue to its conclusion.

4.5.5 The term of office for the Fees Mediation Committee is not specified in the Act, however it is preferable that members serve for a period of not more than 10 years. It is also preferred that the Committee consist of members from diverse areas and occupations within the province.

4.6 Conflict of Interest and Confidentiality

4.6.1 The Presiding Officer shall ensure that all Committee Members sign a Conflict of Interest and Confidentiality Statement within 30 days of appointment to the Committee and within 30 days of receiving notice of a new complaint. This shall be in the Form attached as Appendix A and kept on file at the office of the Association.

4.6.2 Fees Mediation 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

4.7.1 All new Committee Members will receive a copy of the terms of reference and the Procedural Manual of the Committee. All new Committee members are also 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 & Quorum

4.8.1 Meetings of the Fees Mediation Committee will be held at the discretion of the Presiding Officer. It is encouraged that the Committee meets at least once per year. It is also encouraged that the Committee teleconference at least once per file. The committee must meet at least once per file via teleconference.

4.8.2 The Presiding Officer will circulate a draft agenda to Committee Members at least one week before the scheduled date of a meeting of the Fees Mediation Committee, as necessary.

4.8.3 Minutes will be kept for all meetings of the Fees Mediation Committee and will be distributed to Committee Members within one week of the meeting, as necessary.

4.8.4 Official meetings of the Fees Mediation Committee may be held by teleconference, video conference or face to face, as determined by the Presiding Officer.

5.0 Committee Documentation

5.0.1 The Registrar has overall administrative responsibility for all files, agendas and minutes of the Fees Mediation Committee.

5.0.2 Fees Mediation 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.

5.0.3 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 Fees Mediation 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. A "Fees Mediation Help Form" is available as Appendix B to this manual, which is to be posted on the AOLS website, at:

https://www.aols.org/site_files/content/pages/public-protection/fees-mediation/fees-mediation-help-form-2020.pdf

A hard copy will be sent to complainants upon request. This form is not mandatory however it provides guidance to complainants to ensure that all necessary information is submitted.

6.1 Initial Processing

The initial processing of a Fees Mediation file will proceed as follows:

- The Registrar will mail an acknowledgement letter to the complainant (Appendix D), explaining the committee's ability to mediate and arbitrate the complaint. This letter will include a Mediation Agreement (Appendix L)
- The Registrar will mail a notification letter (Appendix E) including a copy of the Mediation Agreement (Appendix L) to the O.L.S.
- Paper copies of the complaint submission and the signed letters are placed in a secure physical file in the Registrar's office and electronic copies are posted in the confidential Fees Mediation section of the AOLS website and stored in a secure folder on the Association's internal computer system.

- The responses from both parties are placed in the physical file and an electronic copy is posted and stored as above.
- Any additional correspondence is also filed, posted and saved.
- The Registrar will forward all correspondence to the Presiding Officer of the Fees Mediation Committee
- The Presiding Officer will review the file and discuss with the Registrar. These discussions might involve contacting the Executive Director regarding obtaining an opinion from an external lawyer.
- The Presiding Officer will set a date for the next Committee meeting and direct the Committee to specific file locations.
- The Presiding Officer will appoint a mediator from one of the Committee members, who will attempt to mediate a solution.
- Should mediation be unsuccessful, the mediator shall determine if there is interest in proceeding to arbitration and contact the Presiding Officer, who will notify the Registrar.
- If it appears that arbitration is a possibility, the Registrar will send a notice to the member in the form of Appendix M along with the Consent to Arbitration Form (Appendix C) to the complainant. Upon receipt of a signed Consent to Arbitration Form by the Complainant, the Registrar will send a copy to the O.L.S.

6.2 Confidential Information

In some cases, one or both of the parties may request that information be kept confidential from the other parties, some members of the Committee, or any other individual they may indicate. The Committee may consider such requests.

7.0 Committee Meetings

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

The Committee will review each file and will decide whether additional information or investigation is required.

The Committee may direct the Presiding Officer to request additional information from either party. Upon receipt, this information will be circulated to the Committee for review and discussion.

8.0 Mediation

Mediation will be conducted by a mediator who shall be a Fees Mediation Committee member appointed by the Presiding Officer at his or her discretion.

A person-to-person meeting involving the parties and the mediator is highly desirable, albeit not strictly necessary. If distances are prohibitive, teleconference, video conference, etc. may be used. Before holding a meeting or conference call, the mediator should attempt to determine the specific issues to be mediated and determine an appropriate direction for mediation. This should normally be completed within 30 business days. They may solicit all relevant documentation and a written summary of each party's position.

Throughout the process, the Mediator must take care not to side with any one party. Impartiality is crucial to the mediator's effectiveness. It is important not only to be impartial, but also to appear impartial.

Before commencing mediation, the mediator will have the parties sign a mediation agreement consistent with appendix L.

The mediator may choose to address mediation through shuttle diplomacy (one on one dealings). Should the mediator choose to meet with both parties, the Mediator should sit down at the negotiation table with both parties (and often their counsel) and assist the parties to negotiate more effectively. The Mediator establishes the order of discussions, allows each party to present their views at the start of the meeting, helps the parties identify common ground, helps them to eliminate irrelevancies or unproductive discussion, defuses anger or hostility, keeps the parties focused on the issues, moves the parties from fixed positions, helps the parties develop creative solutions, helps the parties do "reality testing" and encourage compromise.

At the conclusion of a successful mediation, the Mediator shall draw up a Mediation Agreement to be signed by both parties. The Registrar will mail the Agreement as per section 4.4.5

Should the mediation be unsuccessful, a report by the Mediator would be highly desirable. The report should set out the matters on which an agreement was reached and provide the particulars of the agreement. The report should also set out the matters still in dispute. Although there is no hard-and-fast rule against a mediator making a recommendation or expressing an opinion on the disputed matters, to do so incurs the risk of appearing biased.

If the Mediation is unsuccessful, Arbitration can be pursued.

9.0 Arbitration

Arbitration will only be available after mediation has been unsuccessful.

A panel consisting of at least 3 of the Fees Mediation Committee members will be appointed by the Presiding Officer. This cannot include the original mediator. This panel may include the Presiding Officer at his or her discretion. The panel will include the Lay Councillor. This panel shall be known as the Arbitrators.

The Presiding Officer will ask both parties about their preference regarding the format of the arbitration (provided it will not cause any party significant prejudice):

- A) In person by both sides at the Association offices 1043 McNicoll Ave, Scarborough
- B) Recorded teleconference or video conference with both sides
- C) Written

Whichever format is chosen, both parties and any witnesses will have the opportunity to provide new information to the Committee and answer questions. Material from the mediation will not be made available unless approved by the originator of the material.

Should both parties prefer to decline options A and B the Arbitrators will base its decision on the written information that has been provided.

If both parties cannot agree as to which format of Arbitration should be held, the Arbitrators will choose the format that would be the fairest to all concerned. Note both sides must decline for neither a meeting or tele / video conference not to occur.

If a meeting is held at the Association offices or by tele / video conference, the Registrar will advise both parties of the date and time.

9.01 The Arbitrators will meet beforehand and review documentation provided, and:

- o Prepare a list of questions, if appropriate, for both parties.
- o Determine whether an estimate or firm price was quoted by the surveyor.
- o Determine if there was confirmation of the price, by the surveyor? Was this accepted by the client?
- o Determine if the price was increased with concurrence of client? Again how?

- o If no estimate was given, the committee will deal with what is a reasonable cost for the survey. This may include the Committee evaluating the project, determining what survey work was required and assessing a reasonable cost for said works.

- o Ensure both sides are provided with all questions, answers and materials supplied by the other party

- o Both parties will be allowed to respond to any new or unexpected points brought forward by either party. Witnesses can be questioned by both sides.

9.02 If either party attends the meeting, a brief statement is made by the Presiding Officer on the purpose of the Committee to the parties. The parties are then allowed to make presentations to the Committee and answer questions.

9.03 After the parties leave, the committee will review the case, summarize the facts that the committee has accepted and make the decision.

9.04 A decision, with reasons, is prepared and sent to the Presiding Officer for signature. The decision of the arbitration is binding on both parties. The decision cannot be appealed to the courts in Ontario.

9.05 The Registrar securely delivers the written Decision to both parties and, if necessary, will file the Decision with the Superior Court of Justice.

9.0.6 Withdrawal of a Complaint

Where the complainant and the O.L.S. agree independently of the Fees Mediation Committee to withdraw a complaint, the file shall be closed. This does not prevent the complainant from launching a complaint to the Complaints Committee.

10.0 Identifying a Conflict of Interest

10.0.1 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.

10.0.2 Any Committee member must exclude him or herself from the arbitration or mediation process if they have any direct business with any party to a complaint or carry on business as a competitor surveyor in the same general geographic area as the member who is the subject of the complaint. This could cause a perception of unfairness as they are a competitor in the same geography. These are some examples of a perceived conflict of interest. Any Committee member must exclude him or herself from the arbitration process if they feel there can be any perception of unfairness to either party.

10.0.3 The minutes of each Fees Mediation Committee meeting will record any conflicts of interest declared, including the name of the committee member(s) and the subject file(s).

11.0 Manual Publication

The Fees Mediation 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 Fees Mediation are dealt with in an appropriate manner.

https://www.aols.org/site_files/content/pages/public-protection/fees-mediation/2020-10-18-feesmediationcommmanual-ver1-4.pdf

Appendix A

Conflict of Interest & Confidentiality Declaration

I _____ hereby accept appointment to the Fees Mediation 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

Fees Mediation Help Form

A complaint relating only to fees charged by a member should be directed to the Registrar, who will refer it to the Association's Fees Mediation Committee.

Information about you:

Your full name:

Today's Date :

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.

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 What would you consider to be an appropriate resolution of your complaint?

*Note – The role of a cadastral surveyor is to act as an impartial party when providing an opinion as to the location of a property boundary. In addition to the contractual obligations and responsibilities a surveyor has towards his or her client, the surveyor also has a duty to the public at large to ensure that the proper due diligence is undertaken when opining or providing advice as to the location of a property boundary. Additionally, the surveyor has a duty to ensure that the client is continuously informed as to the complexity of a project, any new information which may affect the original description of the project and any changes to the original contract before such changes are made.

Please refer to the Fees Mediation Manual for the role of the Committee. It may be found at the following link:

https://www.aols.org/site_files/content/pages/public-protection/fees-mediation/FeesMediationCommManual-ver1-4.pdf

We would ask that you review this manual in detail. If you have any questions, please feel free to contact the Presiding Officer of the Fees Mediation Committee.

ASSOCIATION OF ONTARIO LAND SURVEYORS

FEES MEDIATION COMMITTEE

Appendix C

CONSENT TO ARBITRATION

IN THE MATTER OF the dispute over a fee charged for services in the Practice of Professional Land Surveying provided to: (Name of client)

by: (Name of Surveyor or Firm)

for a survey in: (Describe location of survey)

I hereby consent to Binding Arbitration by the Fees Mediation Committee of the Association of Ontario Land Surveyors according to subsection 29-of the Surveyors Act, C.S.29, R.S.O. 1990. Note as per Surveyors Act, R.S.O. 1990, c. S.29, as amended, c. 20, Sched. 8, s. 133 Section 29 (3) the decision of the Fees Mediation Committee is final and binding on all parties. Also note that under Section 29 (4) of the Surveyors Act, the Arbitrations Act does not apply.

Dated:

Signature:

Name in print:

Statement of dispute:

Appendix D

June 15, 2020

Private and Confidential

Mr. & Mrs. Complainant

P.O. Box 666

Urbanite, Ontario

POM 1N0

Re: James Surveyor, OLS, OLIP
Fees Mediation Committee File # FM-20-01

Dear Mr. & Mrs. Complainant:

This will formally confirm receipt of your (fax/email/letter) dated June 14, 2020, in which you file a complaint regarding the fees charged by James Surveyor, OLS of Local Surveys Limited for the surveying services provided for (Describe location of survey).

We ask that you complete and submit the enclosed Fees Mediation Help Form, which will ensure that we receive all information required to process your complaint.

The Surveyors Act states that the Fees Mediation Committee of the Association shall mediate a written complaint in respect of a fee charged for services in the practice of professional surveying or, with the written consent of all parties, may arbitrate the dispute. In the case of arbitration, the decision of the committee is binding on all parties.

It is our policy to not move to arbitration without attempting mediation. I ask that you sign the attached mediation agreement and return it along with Help Form.

If mediation is unsuccessful and should you be willing to accept arbitration you will be provided another form to consent to arbitration. If the surveyor agrees to arbitration the Act requires that a brief written statement of the dispute. Statements by both parties should be filed within 30 days. The Presiding Officer sends the written statements to both parties for review and comment. Should the surveyor not agree to arbitration the committee will attempt to mediate the complaint.

Once a reply has been received from Surveyor, as well as any other information that the Fees Mediation Committee may require, your complaint will be forwarded to the Committee for consideration.

We will be in further contact after the Committee has reviewed the material.

Yours truly,

Kevin Wahba, O.L.S., B.Eng.,

Barrister and Solicitor

Registrar

Enclosures

Appendix E

June 15, 2020

Private and Confidential

James Surveyor, OLS, OLIP

Local Surveys Ltd.

414 Avenue Boulevard

Coboconk, Ontario

M1W 3W6

Re: Mr. and Mrs. Complainant
Fees Mediation Committee File # C-20-01

Dear Mr. Surveyor:

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

Section 29 of the Surveyors Act requires the Fees Mediation Committee to mediate, or with the written consent of all parties, arbitrate any fees complaint submitted in writing to the Registrar. In the case of arbitration, the decision of the committee is binding on all parties.

Please submit your response, including all supporting information to the attention of the Registrar no later than June 30, 2020. Should you be willing to accept arbitration you must also complete and submit the enclosed Consent to Arbitration form. If the complainant agrees to arbitration the Act requires that a brief written statement of the dispute is received from both parties within 30 days. The Presiding Officer sends written questions to both parties for review and comment. Should the complainant not agree to arbitration the committee will attempt to mediate the complaint.

Once replies and consents, if any, have been received from all parties, as well as any other information that the Fees Mediation Committee may require, the complaint will be forwarded to the Committee for consideration.

We will be in further contact after the Committee has reviewed the material.

Yours truly,

Kevin Wahba, O.L.S., B.Eng.,

Barrister and Solicitor

Registrar

enclosures

Appendix F

Sample of a Fees Mediation Decision – Arbitration File

IN THE MATTER OF the Surveyors Act

R.S.O. 1990, c. S.29

AND IN THE MATTER OF the written complaint of I. B. Complainant (complainant)
against J. Surveyor, O.L.S. (surveyor complained against)

FEES MEDIATION COMMITTEE

Member A, O.L.S., Presiding Officer

Member B, OLS, Liaison Councilor

Member C, OLS

Member D, OLS

Member E, OLS

Member F, OLS

Member G, Lay Councilor

Re: Fees Mediation Committee File No. FM-XX-XX

DECISION OF THE COMMITTEE

1. Complaint

In a letter dated _____, _____, the complainant alleges that the surveyor charged excessive and unsubstantiated survey fees.

2. Investigation

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

- i) The letter from the complainant dated _____, ____
- ii) A statement by the complainant dated _____, ____
- iii) Photos of the property provided by the complainant on _____, ____
- iv) The invoice dated _____, __, \$____.____ including HST, and timecards provided by the surveyor
- v) The surveyor's price list for the calendar year _____
- vi) Research information provided by the surveyor – specifically the title search, plan of subdivision XXM-XX and reference plan in the area XXRXXXX
- vii) The surveyors notes
- viii) Further information from the surveyor requested by the Committee dated _____, ____
- ix) A response by the surveyor regarding the information supplied by the complainant. Said response was received on _____, ____
- x) A response by the complainant regarding the information supplied by the surveyor. Said response was received on _____, ____.

Both parties provided written consent for the Committee to arbitrate this dispute. The Committee notified the parties of the options for an in-person arbitration, an arbitration by tele / video conference or a written arbitration process. Neither party requested an in-person, tele / video conference, or written arbitration and left the process to the Committee. The Committee concluded that given the relatively small amount in dispute, the distance of the parties from Toronto for an in-person meeting, the unlikelihood that there would be any witnesses beyond the parties themselves, and the amount of information provided by the parties in writing already, that an arbitration based on written submissions was fair and appropriate. Both parties were given the opportunity to make additional written submissions and both parties took advantage of that opportunity.

3. Issues

Upon receipt of the invoice, the complainant felt the amount was high. He commenced his own investigation regarding what other surveying firms would charge for the same works.

The surveyor did not provide an estimate to the complainant. Prior to the rendering of the invoice, the surveyor did not communicate at any time during the project with the complainant about the total amount of the bill and the complexities of the survey that were encountered.

The Committee is of the view that its role is to establish what would be a fair and reasonable fee for the work requested and performed in all the circumstances. This would include, but not be limited to the communications between the parties about the scope of work and costs for the work before and during the project, the nature of the work performed, the purposes for which the work is being done, the complexity of the work done, any unusual or unexpected features of the project, and the usual fees and expenses charged by the profession for this type of work.

4. Decision

The Committee directs, pursuant to Section 29(3) of the Surveyors Act that the contract for services is set at \$XXXX.xx plus disbursements, plus H.S.T.

X Surveying Inc. Invoice dated _____, _____ is revised as follows and represents the final invoice for the boundary survey.

| | | |
|---|---|-----------|
| - | Professional Fees | \$XXXX.xx |
| - | Disbursements (Service Ontario Registry Office, rebars, pickets.) | XX.xx |
| | H.S.T. | XXX.xx |
| | Total | \$XXXX.xx |

5. Reasons =====

It is this Committee's opinion that a project of this type should have taken X hours.

$X \text{ hours} * \$XXX \text{ per hour 2-person crew with total station} = \$XXXX.XX$

$\$XXXX * X.X \text{ for in-office time before and after the field crew goes to site} = \$XXXX.XX$

Given all of the information provided by the parties and using the expertise of the Committee, it accepts that a two person crew was reasonable for this project and that it would have taken approximately X hours to have completed the onsite works even given the complications identified by Mr. X Surveyor.

An Ontario Land Surveyor typically ensures that a project includes several properties on each side of the subject lands. This is done to confirm that neighbors have the extent of title they are supposed to have, and the subject lands have the extent of title they are supposed to have – due diligence.

There is preparatory time required before a project. This includes but is not limited to: conducting a title search at the Land Registry Office; reviewing the research materials, plans and field notes, on file in preparation of the works to be completed, reaching out to other firms if inadequate information was obtained from the Land Registry Office and from office records, pre-calculation of points to assist the field crew with the location of property corners, review of the file by the Ontario Land Surveyor with the field crew prior to attendance to site. After the field work has been completed the file is reviewed by the Ontario Land Surveyor and confirms that the work completed was correct. The Ontario Land Surveyor reports to the client. Using the expertise of the Committee, the amount of the field crew multiplied by a rate of X.X includes the before and after time related to this type of project.

The Committee feels that it completed a comprehensive review of the materials provided. The materials allowed the Committee to determine that the total fee of \$XXXX.XX plus disbursements and HST is fair and reasonable.

The Committee concluded that the invoice by Mr. X Surveyor over this amount was not necessary or appropriate. The Committee took into account Mr. X Surveyor's explanation for the length of time however the Committee feels X hours is fair and reasonable.

While the Committee accepts that it is difficult to provide a firm estimate at the time of first inquiry, the Committee is also of the view that it is not appropriate to leave a client with no sense of the likely range of the fee and expenses until after the work is completed and the final invoice rendered. There are several options for providing more information to the client during the process including providing preliminary estimates, providing examples of common circumstances where a preliminary estimate may no longer be valid, or providing estimates upon arrival at the location. This dispute might have been avoided if additional information was provided at the time.

Dated the X day of _____, _____

Member A, O.L.S.

Presiding Officer of the Fees Mediation Committee

Appendix G

February 6, 2020

Private and Confidential

Mr. Smith

6868 Local Blvd.

Toronto, ON

H0H 3R6

Re: James Surveyor, OLS, OLIP
Fees Mediation Committee File FM-20-01

Dear Mr. Smith:

Enclosed is a copy of the Decision of the Fees Mediation Committee relative to this matter. The Decision was rendered at the Committee's January 25, 2020 meeting.

In accordance with Section 29 of the Surveyors Act, this decision is binding on all parties to this dispute and may be enforced in the same manner as a decision by the Superior Court of Justice.

Yours truly,

Kevin Wahba, O.L.S., B.Eng.,

Barrister and Solicitor

Registrar

Enclosure

Appendix H

February 6, 2020

Private and Confidential

Mr. James Surveyor

29 Any Street

Toronto, ON

Postal Code

Re: Robert Smith Complaint
 Fees Mediation Committee File # FM-20-01

Dear Mr. Surveyor:

Enclosed is a copy of the Decision of the Fees Mediation Committee relative to this matter. The Decision was rendered at the Committee's January 25, 2020 meeting.

In accordance with Section 29 of the Surveyors Act, this decision is binding on all parties to this dispute and may be enforced in the same manner as a decision by the Superior Court of Justice.

Yours truly,

Kevin Wahba, O.L.S., B.Eng.,

Barrister and Solicitor

Registrar

Enclosure

Appendix I

Surveyors Act

Sections 9, 23 and 29

R.S.O. 1990, CHAPTER S.29

Consolidation Period: From November 14, 2017 to the e-Laws currency date.

Last amendment: 2017, c. 20, Sched. 8, s. 133.

Committees

9. (1) The Council shall establish and appoint as provided in this Act the following committees:

...

(f) Fees Mediation Committee,

Complaints Review Councillor

23. (1) There shall 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. R.S.O. 1990, c. S.29, s. 23 (1).

Idem

(2) The Complaints Review Councillor is not eligible to be a member of the Complaints Committee or the Fees Mediation Committee. R.S.O. 1990, c. S.29, s. 23 (2).

Fees Mediation Committee

29. (1) No person who is a member of the Complaints Committee or the Discipline Committee shall be a member of the Fees Mediation Committee. R.S.O. 1990, c. S.29, s. 29 (1).

Duties of Fees Mediation Committee

(2) The Fees Mediation Committee,

(a) shall, unless the Committee considers it inappropriate to do so, mediate any written complaint by a client of a member of the Association or of a holder of a certificate of authorization in respect of a fee charged for services in the practice of professional surveying provided to the client; and

(b) shall perform such other duties as are assigned to it by the Council. R.S.O. 1990, c. S.29, s. 29 (2); 2009, c. 33, Sched. 22, s. 11 (44).

Arbitration by Fees Mediation Committee

(3) The Fees Mediation Committee, with the written consent of all parties to the dispute, may arbitrate a dispute in respect of a fee between a client and a member of the Association or a holder of a certificate of authorization and in that case the decision of the Fees Mediation Committee is final and binding on all parties to the dispute. R.S.O. 1990, c. S.29, s. 29 (3).

Application

(4) Where the Fees Mediation Committee acts as arbitrator under subsection (3), the Arbitrations Act does not apply. R.S.O. 1990, c. S.29, s. 29 (4).

Enforcement

(5) A decision by the Fees Mediation Committee under subsection (3), exclusive of the reasons therefor, certified by the Registrar, may be filed with the Superior Court of Justice and when filed the decision may be enforced in the same manner as a judgment of the court. R.S.O. 1990, c. S.29, s. 29 (5); 2006, c. 19, Sched. C, s. 1 (1).

Appendix J

Regulation 1026 of the Surveyors Act

Sections 15, 16

Surveyors Act

R.R.O. 1990, REGULATION 1026

GENERAL

Consolidation Period: From December 1, 2012 to the e-Laws currency date.

Last amendment: O. Reg. 327/12.

15. (1) The Fees Mediation Committee is continued and shall be composed of,

(a) three or more members of the Association to be appointed from time to time by the Council; and

(b) one member of the Council appointed by the Lieutenant Governor in Council to be appointed to this Committee from time to time by the Council. R.R.O. 1990, Reg. 1026, s. 15 (1).

(2) Three members of the Fees Mediation Committee, one of whom is appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for the purpose of conducting mediation or arbitration under section 29 of the Act. R.R.O. 1990, Reg. 1026, s. 15 (2).

(3) All decisions of the Fees Mediation Committee require the vote of a majority of its members present. R.R.O. 1990, Reg. 1026, s. 15 (3).

(4) The Council shall select from among the members of the Fees Mediation Committee a person to be its presiding officer. R.R.O. 1990, Reg. 1026, s. 15 (4).

(5) The presiding officer, or in his or her absence another member of the Fees Mediation Committee designated by the presiding officer, shall preside at all meetings and hearings of the Committee. R.R.O. 1990, Reg. 1026, s. 15 (5).

(6) If a member of the Fees Mediation Committee becomes unable to act after the Committee commences a hearing, its remaining members may complete the hearing in the member's absence, if they constitute a quorum. R.R.O. 1990, Reg. 1026, s. 15 (6).

16. (1) If, under subsection 29 (3) of the Act, parties to a dispute agree to arbitration by the Fees Mediation Committee, the written consent to arbitration, signed by all of the parties to the dispute, shall be filed with the Registrar. R.R.O. 1990, Reg. 1026, s. 16 (1).

(2) A brief written statement of the dispute submitted to arbitration, signed by all of the parties, shall be filed with the Registrar within ten days after the filing of the consent to arbitration. R.R.O. 1990, Reg. 1026, s. 16 (2).

(3) The Registrar may extend the time limit for filing a statement of the dispute. R.R.O. 1990, Reg. 1026, s. 16 (3).

Appendix K

Code of Ethics

Sections 33, 34, 35, Reg 1026, Surveyors Act

Surveyors Act

R.R.O. 1990, REGULATION 1026

GENERAL

Consolidation Period: From December 1, 2012 to the e-Laws currency date.

Last amendment: O. Reg. 327/12.

Code of Ethics

33. (1) Members shall abide by the code of ethics of the Association. R.R.O. 1990, Reg. 1026, s. 33 (1).

(2) The code of ethics of the Association requires that every member shall,

...

(e) ensure that clients are aware of the complexity of a project and the nature of fees for service;

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;

(h) every professional member shall report to the Registrar any gross or consistent practice or omission of another professional member, of which the member is aware, that may constitute professional misconduct or incompetence;

...

Professional Misconduct

35. "Professional misconduct" means,

1. Contravention of the Act or the regulations or of any Act or regulations relating to professional surveying in Ontario.

...

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.

Appendix L

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 this 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 M

June 15, 2020

Private and Confidential

Mr. & Mrs. Complainant

P.O. Box 666

Urbanite, Ontario

POM 1N0

Re: James Surveyor, OLS, OLIP
Fees Mediation Committee File # FM-20-01

Dear Mr. & Mrs. Complainant:

As it appears that mediation has been unsuccessful you have the option to proceed to arbitration. Please note that for this to proceed to arbitration the surveyor must also agree. If the surveyor agrees to arbitration the Act requires that a brief written statement of the dispute be prepared. Statements by both parties should be filed within 30 days. The Presiding Officer sends the written statements to both parties for review and comment and arbitration will be set up using one of three forms:

- A) In person by both sides at the Association offices 1043 McNicoll Ave, Scarborough
- B) Recorded teleconference or video conference with both sides
- C) Written

The Presiding Officer will ask both parties about their preference regarding the format of the arbitration (provided it will not cause any party significant prejudice).

Whichever format is chosen, both parties and any witnesses will have the opportunity to provide new information to the Committee and answer questions.

Should both parties prefer to decline options A and B the Arbitrators will base its decision on the written information that has been provided.

If both parties cannot agree as to which format of Arbitration should be held, the Arbitrators will choose the format that would be the fairest to all concerned. Note both sides must decline for neither a meeting or tele / video conference not to occur.

If a meeting is held at the Association offices or by tele / video conference, the Registrar will advise both parties of the date and time.

Once a reply has been received from Surveyor, as well as any other information that the Fees Mediation Committee may require, your complaint will be forwarded to the Committee for consideration.

Please complete the attached Consent to Arbitrate form and return it to me, if you would like to proceed with arbitration.

Yours truly,

Kevin Wahba, O.L.S., B.Eng.,

Barrister and Solicitor

Registrar

Enclosures