

SCHEDULE “A”

ALLEGATIONS OF PROFESSIONAL MISCONDUCT

CANADA)	IN THE MATTER OF the <i>Surveyors Act</i>
)	R.S.O. 1990, Chapter S.29, as revised.
)	
PROVINCE OF)	AND IN THE MATTER OF David S. Dorland, O.L.S.
)	
)	
ONTARIO)	AND IN THE MATTER OF a Disciplinary Hearing of the
)	Discipline Committee of the Association of Ontario Land
)	Surveyors held in accordance with sections 26 and 27 of the said Act.

I, **WILLIAM D. BUCK, O.L.S., C.L.S., P. ENG.**, of the City of Markham, in the Region of York, am the Registrar of the Association of Ontario Land Surveyors.

1. The Council of the Association of Ontario Land Surveyors (AOLS) pursuant to Section 25(7)(a) of the *Surveyors Act*, by a Motion dated June 17, 2015, directed the Discipline Committee to hold a hearing in respect of allegations of professional misconduct against David S. Dorland, O.L.S.
2. It is alleged that David S. Dorland, O.L.S. (herein referred to as “Mr. Dorland”), in his personal capacity, and as the official representative for the firm D. S. Dorland Limited, Ontario Land Surveyors, is guilty of professional misconduct within the meaning of Section 35 of Regulation 1026, R.R.O. 1990, as amended, the particulars of which are as follows:
 - a) On or about November 12, 2014 the AOLS received an official complaint from Mr. Lawrence Fannon (herein referred to as “Mr. Fannon”) alleging that Mr. Dorland had failed to communicate confirmation on his project’s scope, costs and timeline, that he had yet to receive any survey plans or sketches that he had requested and that almost all of the original estimate of fees had been spent.
 - (b) On or about May 8, 2008 Mr. Dorland was retained by Mr. Fannon to act as a consultant in determining the developability (sic) of certain lands. Having received no communication from Mr. Dorland for several months, Mr. Fannon visited Mr. Dorland’s office on or about February 4, 2009 and received an invoice in the amount of \$525.00 for services rendered. Mr. Fannon was unclear about what services Mr. Dorland had provided.
 - (c) On or about April 22, 2013 Mr. Fannon met with Mr. Dorland and signed a Work Order for surveying services on a portion of his lands, which services Mr. Dorland estimated would cost \$2,000.00.
 - (d) On or about May 1, 2013 Mr. Fannon met with Mr. Dorland to review the progress of his survey. During this meeting Mr. Dorland suggested to Mr. Fannon that he increase the scope of the project and with added fees to an additional cost of \$6,000.00. Mr. Fannon agreed to this and gave Mr. Dorland a cheque in the amount of \$4,183 payable to the City of Sudbury and a second cheque payable to Mr. Dorland in the amount of \$3,000.00 as an advance on his fees.
 - (e) On or about May 2, 2013 Mr. Fannon cancelled the said cheques and contacted Mr. Dorland to advise him that he did not wish to proceed with the \$6,000.00 project but only wanted his original work order completed. Mr. Dorland stated that he had not started the \$6000.00 job and that he would not proceed with it.
 - (f) On or about May 17, 2013, not having received his survey, Mr. Fannon travelled to Mr. Dorland’s office in Sudbury with the intention of paying him for the work performed to date and severing their relationship. During this meeting Mr. Dorland convinced Mr. Fannon that his survey would soon be completed and Mr. Fannon gave Mr. Dorland a cheque in the amount of \$2,000.00 plus \$500.00 in cash, with the understanding that this was payment for the original work order.
 - (g) During their May 17, 2013 meeting Mr. Dorland proposed to Mr. Fannon that he should increase the scope of the project further and that for a fee of \$10,000.00 he would perform all of the survey work required and that this would result in some cost savings with the City of Sudbury.
 - (h) Mr. Fannon agreed to Mr. Dorland’s new \$10,000.00 proposal, which included a requirement that Mr. Fannon contact several owners adjoining his lands before Mr. Dorland could begin his survey work.
 - (i) On or about September 16, 2013 Mr. Fannon emailed Mr. Dorland to advise him that he had been unable to make suitable agreements with any of the adjoining owners and that he therefore wanted to proceed only with the original \$2000.00 work order.
 - (j) On or about October 9, 2013 Mr. Fannon emailed Mr. Dorland again to request a meeting and to confirm that he only wanted the original \$2000.00 work order done.
 - (k) On or about October 11, 2013, having received no response to his October 9th email, Mr. Fannon went to Mr. Dorland’s office, at which time an employee of Mr. Dorland’s informed Mr. Fannon that his September 16, 2013 and October 9, 2013 emails had not been received,

and that he owed an additional \$6,400.00, bringing the total cost to date to \$9,400.00.

- (l) On or about October 11, 2013 Mr. Fannon visited the project site and could find no evidence that any survey work had been done on the project which had a budgeted amount of \$10,000.00 as per work order dated May 17, 2013.
- (m) On or about October 21, 2013 Mr. Fannon's son, Dan Fannon, telephoned Mr. Dorland and directed him to stop all work on the project and provide him with a detailed breakdown of the costs to date. Mr. Dorland agreed to provide a report "in a couple of days."
- (n) On or about October 31, 2013, following several more phone calls and emails from Mr. Fannon, Mr. Dorland provided an invoice and a computer printout detailing the cost of his survey work.
- (o) Mr. Fannon sent emails to Mr. Dorland on or about November 13, 2013, November 18, 2013, November 28, 2013 and December 5, 2013 asking for clarification of several elements of Mr. Dorland's invoice.
- (p) On or about December 6, 2013, Mr. Dorland provided a more detailed invoice to Mr. Fannon containing dates worked and short descriptions of work performed on those dates.
- (q) On or about December 12, 2013, December 14, 2013, December 29, 2013 and January 18, 2014 Mr. Fannon emailed Mr. Dorland requesting an explanation of why Mr. Dorland had continued to work on the project after their telephone call on October 21, 2013 at which time Mr. Dorland had agreed to stop work on the project. In these emails Mr. Fannon summarized his view of the original work order and the expanded work order, the current status of the project, the substantial delay in completing the work and he questioned how this situation could be resolved. Mr. Dorland did not respond to any of these emails.
- (r) On or about March 20, 2014, still not having heard from Mr. Dorland, Mr. Fannon had his son Dan Fannon call Mr. Dorland. In his complaint, Mr. Fannon noted that during this conversation Mr. Dorland stated that he could not proceed with much of the work because Mr. Fannon had not made agreements with buyers, while on the other hand Mr. Dorland had spent almost all of the estimated \$10,000.00 cost of the work order on the project.
- (s) On or about June 25, 2014, concerned that Mr. Dorland had still not responded to him, Mr. Fannon emailed Mr. Dorland a detailed offer that would allow him perform less work for the same \$10,000.00 fee.
- (t) On or about July 15, 2014, as Mr. Dorland had not responded to Mr. Fannon's offer, Dan Fannon called Mr. Dorland again. During this call Mr. Dorland offered to send Mr. Fannon a "layman's friendly report" detailing where the \$9,000.00 had been spent, what remained to be done, and at what cost.
- (u) On or about July 15, 2014, Mr. Dorland provided Dan Fannon with a one page hand written transmittal form that did not provide the requested details as discussed during their recent telephone call.

(v) On or about July 28, 2014, Mr. Fannon emailed Mr. Dorland stating that he no longer needed his services.

(w) On or about September 15, 2014, having received no further communication from Mr. Dorland, Dan Fannon called Mr. Dorland and requested that Mr. Dorland provide him with an email detailing what Mr. Dorland believed would be an acceptable exit agreement to end their relationship. Mr. Fannon's complaint, received on November 12, 2014, noted that Mr. Dorland had not responded to this request as of the date of his complaint.

3. It is alleged that the member failed to comply with the Standards of Practice of the AOLS as in Section 34(2)(i) of Regulation 1026, R.R.O.1990, as amended, which states that "every professional member shall keep and make available to his client, on request, an itemized and accurate record of the cost of a project;" Failure to comply with the *Standards of Practice* constitutes Professional Misconduct within the meaning of Section 35(3) of Regulation 1026, R.R.O. 1990, as amended.
4. It is alleged that the Mr. Dorland failed to comply with the *Code of Ethics* of the AOLS in that he has repeatedly failed to ensure that his client was aware of the complexity of the type of surveys recommended and the nature of fees for service, all of which is contrary to Section 33(2)(e) of Regulation 1026, R.R.O. 1990, as amended. Failure to comply with the *Code of Ethics* constitutes Professional Misconduct within the meaning of Section 35(3) of Regulation 1026, R.R.O. 1990, as amended.
5. It is alleged that the member failed to comply with the Standards of Practice of the AOLS as in Section 34(2)(g) of Regulation 1026, R.R.O.1990, as amended, which states that "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", in that he failed to comply with his written undertaking to the Complaints Committee on March 1, 2008 that he would "... review on an ongoing basis, billing summaries to enable us to be aware of any overruns of estimated fees and communicate the same to our clients in a more regular manner." That prior written undertaking dated March 1, 2008, and given by Mr. Dorland to the Association of Ontario Land Surveyors and its Complaints Committee, remains in full force and effect to this day. Failure to comply with the *Standards of Practice* constitutes Professional Misconduct within the meaning of Section 35(3) of Regulation 1026, R.R.O. 1990, as amended.
6. It is alleged that Mr. Dorland has committed acts of professional misconduct as defined by Section 35(21) of Regulation 1026, R.R.O. 1990, as amended, in that his actions as detailed above in this Notice, would be reasonably regarded by members of the Association of Ontario Land Surveyors, as dishonourable and unprofessional.

Dated at Toronto, Ontario, this 8th day of September, 2015.

DISCIPLINE DECISION

IN THE MATTER OF *the Surveyors Act*, R.S.O. 1990, Chapter S.29, as amended
AND IN THE MATTER OF David Dorland, O.L.S.
AND IN THE MATTER OF a Disciplinary Hearing
Of the Discipline Committee of the Association of Ontario Land Surveyors held in
accordance with Sections 26 and 27 of the said Act

Order and Reasons

This Panel of the Discipline Committee convened on March 23rd, 2016. The Member had retained Mr. Barry Poulson, Counsel, and both Mr. Dorland, O.L.S. and Mr. Poulson were present. Mr. Dorland's son was also present. The Association was represented by Mr. Izaak de Rijcke, Counsel; both Mr. de Rijcke and the Association Registrar, Mr. Bill Buck, were also present. The Panel was assisted by Counsel, Carol Street.

On convening, the Panel was advised that the parties proposed to proceed by way of a guilty plea by Mr. Dorland, O.L.S., followed by a Joint Submission with respect to what the parties jointly proposed was an appropriate penalty for consideration by the Panel.

The allegations against Mr. Dorland were as set out in Schedule A to the Notice of Hearing, marked as Exhibit 1 by the Panel. After hearing submissions from both Counsel and from the Member, the Panel recessed and considered whether it was prepared to accept Mr. Dorland's plea of guilt to the allegations. The Panel comments that it would have been helpful to it to have been provided with an Agreed Statement of Facts to assist it in its consideration of whether there were sufficient agreed facts to support the Member's plea.

The Panel gave due consideration to all submissions and after a thorough discussion agreed that it was appropriate to accept the Member's plea of guilt to the allegations in Schedule A to the Notice of Hearing.

The Panel was also presented by the parties with a Joint Submission that was the agreed position of both parties as to the appropriate penalty for this Panel to impose in the circumstances. The Joint Submission was marked as Exhibit 11 at the hearing, and a copy is attached to this Order and Reasons, marked as Appendix 1.

The Panel reviewed the Joint Submission and asked the parties whether they were prepared to agree to two additions to it. The parties agreed. Those additions are:

1. Paragraphs 2 and 7 of the Joint Submission, read together, say that the Member's Licence and Certificate of Authorization are suspended for one year, starting from the date of the hearing on March 23, 2016, but the effect of which is 'deferred'. This

'deferral' will be revoked, and the suspension will come into effect, only if the Member fails to comply with the terms of this Order and Decision, and in particular the terms of the Joint Submission which is incorporated into this Order.

The parties agreed that the intention of these paragraphs is that if the Member fully complies with the terms of this Order and Decision, and the incorporated terms of the Joint Submission, for one year from the date of the hearing, he will at all times be entitled to continue to actively practice. Put another way, the potential threat of a suspension as a result of the facts before the Panel will come to an end as of March 23, 2017, provided the Member fully complies with all agreed provisions of the Joint Submission and this Order and Decision.

2. Paragraph 3 of the Joint Submission refers to the Member obtaining the Registrar's approval to a client confirmation form to be used by the Member before undertaking a project for a client. In addition, as a result of the Panel's request, the parties agreed that the Member will also provide a communication policy to the Registrar for approval, to then be used by the Member. The Panel directs that such a communication policy be provided to the Registrar within 30 days of this Order and Decision, if it has not already been provided.

Subject to these two agreed additions to the Joint Submission, the Panel accepted it as an appropriate resolution of the allegations. Pursuant to paragraph 5 of the Joint Submission the Member was reprimanded by the Panel, and pursuant to paragraph 8, the allegations forming the Charges, as well as this Order and Decision shall be published in the next issue of The Ontario Professional Surveyor magazine and on the AOLS website.

This Order may be signed in counterparts.

Ophir Dzaldov, O.L.S.

Dan Quinlan, O.L.S.

Leslie Higginson, O.L.S.

David Wilton, O.L.S.

Patricia Meehan, Lieutenant-Governor Appointee

APPENDIX 1
JOINT SUBMISSION TO DISCIPLINE
COMMITTEE PANEL ON CONSENT OF ALL PARTIES

The Association of Ontario Land Surveyors (the "Association") and the Member, David S. Dorland, O.L.S. (the "Member"), make joint submission to the Discipline Committee panel under the *Surveyors Act* in respect of this matter by asking the Discipline Committee panel to issue a consent Order on the following terms:

1. The Member pleads guilty to the charges and allegations of professional misconduct against the Member (the "Charges") as alleged.
2. The Member's Licence and Certificate of Authorization shall be suspended for a period of one year from March 23, 2016, such suspension to be deferred for a period of one year.
3. The member shall provide a written undertaking that he will consistently and uncompromisingly use an approved client confirmation of scope of engagement form before undertaking a project for a client, using a form that has been approved by the Registrar of AOLS, which form shall identify the specific project or tasks to be undertaken by the member, including a quote, cost estimate, or schedule of fees and also, where applicable, identifying any tasks or projects that were discussed with the client but not undertaken by the member. Written direction shall also be obtained from the client each time that the scope or nature of the terms for the project are changed.
4. The member shall provide a written undertaking that he will complete the work that D. S. Dorland Limited was retained to complete for Mr. Lawrence Fannon in a timely manner at the agreed upon price or in the alternative that he will refund the monies paid to him by Mr. Fannon and agree to make his notes and records available at no charge should Mr. Fannon wish to retain another surveyor to complete his project.
5. The Member shall be reprimanded and the reprimand will be recorded on the Register of the Association.
6. The Member shall pay to the Association, the sum of \$10,000.00 for costs, payable in 10 equal instalments by postdated cheques from March 23, 2016, to January 23, 2017, both inclusive.
7. The Member shall be required to comply with the terms of the Order or Decision in all respects, failing which, the deferral of the suspension referred to above shall be revoked.
8. The allegations forming the Charges, as well as the Order or Decision of the Discipline Committee, shall be published in the next issue of The Ontario Professional Surveyor magazine and on the AOLS website.
9. The terms of this Joint Submission are fair and reasonable and protect the public interest.
10. The Member acknowledges having been advised to obtain and has had the benefit of independent legal advice, or, has voluntarily declined to obtain same.
11. This Joint Submission and agreement thereto by the Member may be set up as a complete bar and answer by the Association to any appeal or judicial review of the Order or Decision of the Discipline Committee resulting therefrom.

DATED at Toronto, Ontario, this 23rd day of March, 2016.