

SCHEDULE “A”

ALLEGATIONS OF PROFESSIONAL MISCONDUCT

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IN THE MATTER OF the *Surveyors Act*
R.S.O. 1990, Chapter S.29, as revised.

AND IN THE MATTER OF P. Ardon Blackburn, 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.

I, WILLIAM D. BUCK, O.L.S., C.L.S., P. ENG., of the Town 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 February 21, 2012, directed the Discipline Committee to hold a hearing in respect of allegations of professional misconduct against Ardon Blackburn, O.L.S.
2. It is alleged that Ardon Blackburn, O.L.S. (herein referred to as “Mr. Blackburn”), in his personal capacity, and as the official representative for the firm P. A. Blackburn 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 August 2, 2011 the AOLS received an official complaint from Matthew Tucker alleging that Mr. Blackburn had failed to provide him with services that had been agreed to by both parties for an agreed fee, that Mr. Blackburn’s final invoice far exceeded his original estimate of his fees and that no indication of an increase in fees had been provided to Mr. Tucker during the course of the project;
 - b) In the Reasons section of the Complaints Committee’s Decision for the said complaint, the Committee noted that there had been a history of similar complaints against Mr. Blackburn over a period of several years, including:
 - i. File C-04-10 in which the Final Decision included a statement that “No evidence was submitted that Mr. Blackburn had provided Mr. Spooner with a written work order detailing fixed-cost arrangements for the requested revisions.”
 - ii. File C-05-16 in which the Interim Decision required, among other things, that:
 - “c) Mr. Blackburn, O.L.S. prepare, and submit to the Committee, a sample form to document the authorization of additional fees above an original quotation and/or scope of work, prior to proceeding with the additional work.
 - d) In order to prevent further reoccurrence of this type of complaint, Mr. Blackburn, O.L.S., must commit to use the above form to gain client authorization of additional work prior to the undertaking of such work.”
 - iii. File C-10-10, in which the Committee again noted that Mr. Blackburn had not supplied the form that he had agreed to supply in Decision C-05-16.
3. It is alleged that the member failed to comply with the *Code of Ethics* of the AOLS in that he has repeatedly failed to ensure that clients are 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.
4. It is alleged that the member has committed acts of professional misconduct as defined by Section 35(21) of Regulation 1026, R.R.O. 1990, as amended of the *Surveyors Act* in that his actions would be reasonably be regarded by members as dishonourable or unprofessional.

Dated at Toronto, Ontario, this 1st day of June, 2012.

DISCIPLINE DECISION

IN THE MATTER OF the Surveyors Act, R.S.O. 1990,
Chapter S.29, as amended

AND IN THE MATTER OF Ardon Blackburn, 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 July 17, 2012. The Member, Ardon Blackburn, O.L.S. was represented by counsel, Ms. Christine McLeod. Both Mr. Blackburn and Ms. McLeod were 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 presented with a Joint Submission as a proposed resolution of the matter.

The proposed Joint Submission, as originally signed by both Mr. Blackburn, O.L.S., and Mr. Buck, O.L.S., C.L.S., was marked as Exhibit 5 at the hearing. A copy of the Joint Submission, as presented to the panel, is attached to this Order and Decision as Appendix A.

Pursuant to paragraph 8 of the proposed Joint Submission, the parties had not come to any agreement with respect to the matter of costs and whether the panel should make an order that the Association should be reimbursed for a portion of its costs in proceeding to a discipline hearing regarding Mr. Blackburn.

After hearing submissions from both Mr. de Rijcke and Ms. McLeod, the panel recessed and considered the Joint Submission and the question of costs.

The panel accepted the Joint Submission. Pursuant to paragraph 3 of the Joint Submission the Member was reprimanded by the Lieutenant-Governor in Council representative, Mr. Mark Spraggett. With respect to the question of costs, the panel notes that it has the discretion to make an award of costs against the member in favour of the Association. Section 26(4)(k) says:

If a discipline panel finds a member of the Association guilty of professional misconduct or incompetence it may, by order, ...

fix and impose costs to be paid by the member to the Association

Both counsel agreed that any such cost order is to reimburse the Association for costs incurred in proceeding against a member, and are not by way of a penalty.

Mr. de Rijcke submitted that a cost award in the amount of \$10,000 should be imposed by the panel against Mr. Blackburn. He provided documentation establishing that the actual costs to the Association were in excess of this amount.

Ms. McLeod pointed out that in a criminal law proceeding, costs are very rarely awarded against a defendant. While noting that a discipline hearing is an administrative law proceeding, she described it as quasi-criminal in nature. She submitted that in the circumstances the panel should not exercise its discretion to award any costs against Mr. Blackburn. Alternatively, if any costs were to be awarded she submitted they should be nominal and suggested an amount of \$1,000. She pointed out, among other things, that once the matter was brought to Mr. Blackburn's attention he responded diligently and appropriately, and that he had not engaged in any culpable or advertent wrongdoing.

The conduct that brings Mr. Blackburn before this panel arises out of a fee dispute between him and a client and the failure to make use of a specific form identifying the project or tasks to be undertaken by the member, and the cost to avoid such disputes. The panel noted that in paragraph 1 of the Joint Submission, Mr. Blackburn pleaded guilty to most of the allegations against him, including the allegation that there have been similar complaints against him in the past which resulted in an agreement between Mr. Blackburn and the Complaints Committee of the Association that he would make use of the specified form to avoid such complaints in the future. The current proceedings, in the panel's view, became necessary because Mr. Blackburn failed to use the form as previously agreed, and failed to resolve the fee dispute with his client without the involvement of the Association.

A copy of the Notice of the Allegations against Mr. Blackburn was marked as Exhibit 1. Schedule "A" of Exhibit 1 lists the Allegations. A copy of Schedule "A" is attached as Appendix B to this Decision. Mr. Blackburn pleaded guilty to all charges except those allegations set out in paragraph 2(b)(iii) of this Schedule.

In these circumstances, the panel agrees that a cost award of \$10,000 is appropriate, to be paid within 60 days of the hearing date of July 17, 2012.

The panel has therefore accepted the Joint Submission between the Member and the Association, in the form attached hereto as Appendix A, with costs to be paid to the Association in the amount of \$10,000 within 60 days of the panel's oral decision.

This Order may be signed in counterparts.

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APPENDIX A

JOINT SUBMISSION TO DISCIPLINE COMMITTEE ON CONSENT OF ALL PARTIES

The Association of Ontario Land Surveyors (the “Association”) and the Member, Ardon Blackburn, O.L.S. (the “Member”), make joint submission to the Discipline Committee under the *Surveyors Act* in respect of this matter by asking the Discipline Committee 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 by the Association at paragraphs 2(a);(b)(i),(ii);3; and 4.
2. 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.

3. The Member shall be reprimanded and the reprimand will be recorded on the Register of the Association.
4. The Member shall be required to comply with the terms of the Order or Decision in all respects, failing which, the Member’s License shall be suspended for a period of one (1) year.
5. The terms of this Joint Submission are fair and reasonable and protect the public interest.
6. The Member acknowledges having been advised to obtain and has had the benefit of independent legal advice, or, has voluntarily declined to obtain same.
7. 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.
8. The Association and Member may each make submissions to the Discipline Committee as to costs.

DATED at Toronto, Ontario, this 17th day of July, 2012.