



# **Review of the Regulatory Activities of the Association of Ontario Land Surveyors**

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## **INTRODUCTION**

The regulation of professions is undergoing rapid change in Canada and, indeed, around the world. Regulators of professions are expected to meet high standards of governance, effective protection of the public and rapid adjustments to changing public expectations and evolving technology. The Association of Ontario Land Surveyors (AOLS) has sought a review of a broad range of their activities so as to provide information about their performance and possible areas for improvement.

The eight program areas reviewed are as follows:

1. Council Governance,
2. Complaints and Discipline,
3. Fees Mediation,
4. Registration Committee,
5. Inspection Program (Peer Competency Review),
6. Development of Practice Standards,
7. Continuing Professional Development, and
8. Prevention of Unauthorized Practice.

Assessing the performance of a regulator against “best practices” is challenging. There are no universally accepted best practices in the domain of regulating a profession. In addition, best practices vary with the context. For example, a health profession may emphasize personal health safety and avoiding the crossing of personal and emotional boundaries with patients. Those considerations may be less applicable to a profession that deals with another type of boundary and has primarily financial implications for clients and the public. Some professions focus primarily on the interests of their clients while other professions have balanced their obligations amongst clients, other affected individuals, and broader public interests. In addition, the size of a profession has implications as to what is realistic and practical in terms of processes and procedures. As a result, the assessment of whether a regulator is following best practices is somewhat subjective and amounts to the experienced professional opinion of the reviewer.

The observed meetings and interviews suggest that the AOLS has a constructive, collaborative culture that takes its public interest objects seriously. There was a sense that staff are helpful and transparent and avoided creating bureaucratic type of interactions with Council and Committee members. The public members, in particular, noted this constructive culture, sometimes in contrast to their experience with other organizations. As such, care must be taken not to adopt best practices appropriate to larger organizations that may create more harm than good to the actual performance of the AOLS.

## **EXECUTIVE SUMMARY**

The AOLS has been incredibly busy in recent years. In addition to major operational tasks (e.g., database, telephone system, pandemic adjustments) the organization has begun, and in some cases, completed a number of important regulatory initiatives including a psychometric audit of

its registration examination, work on equity, diversity, and inclusion, a review of its complaints and discipline processes with a risk-management lens, instituting a mediation process for discipline matters, reconsideration of its fees mediation program, a review of the impact of technology on the practice of the profession, updating its website, monitoring of regulatory developments elsewhere, particularly British Columbia and Alberta, and some legislative amendments. These initiatives are impressive, and work needs to continue on most of them.

As noted above, I am impressed with the commitment to the public interest by all individuals I interviewed or observed. Similarly, I was pleased to see a general understanding of the fiduciary duties of Council and Committee members, especially related to conflicts of interest and confidentiality.

As will be seen, for any regulator, and particularly for a smaller regulator, the AOLS is doing many of the right things in the right way. The necessary focus of this report on possible areas for improvement should not take away from the excellent work that the AOLS is already doing. The AOLS should be commended for being a high performing regulator.

In terms of recommendations and suggestions, certain themes have emerged. In particular:

1. The AOLS Council should endeavour to focus on strategic planning, policy making and high-level oversight of the organization. In order to do this well, the Council should cease becoming involved in individual regulatory matters and from many of the operational matters in which it participates.
2. On a related point, a longer-term goal is that AOLS Council members should not sit on Committees that deal with individual applicants and practitioners. They should only sit on Committees that facilitate the Council's core activities, namely strategic planning, policy making and high-level oversight.
3. The AOLS Council could enhance its policy making process. In particular, proactively identifying priority issues, conducting a systematic analysis of the issue including in a comprehensive briefing note, and more regular consultation could assist Council in performing this essential task.
4. The requirement for members of the profession to approve enactments or amendments to by-laws or regulations is not a best practice and should be discontinued as soon as possible. This requires legislative amendments.
5. The AOLS might take a more rigorous approach to identifying activities that do not primarily serve the public interest and are more related to supporting practitioners. Removing or modifying those activities can assist the AOLS in focussing even more attention on its public interest protection activities.
6. The AOLS Council and its Committees have a basic orientation process involving reviewing essential documents, an offer of a meeting with senior staff, and observing activities before being "thrown into the deep end". A best practice would be to provide every new Council and Committee member or new Chair with a formal, structured orientation to their position, including the duties and responsibilities of the Council or the Committee, the criteria by which decisions should be made, the skills necessary for the position (with identification of any targeted training needs for the individual) and specific ways in which conflicts of interest and confidentiality issues can arise in that position. It

would also be helpful to have a formal mentoring process for new Council and Committee members.

7. The AOLS and its Committees should develop a stronger sense of the criteria that should be used for the various types of decisions it makes. Those criteria should form a significant portion of the relevant manuals for the Council and its Committees and should be referred to frequently during meetings and in the reasons for decisions made.

Some of these recommendations and suggestions will require legislative change. Recommendations that require legislative change are indicated in the report below.

The report distinguishes between recommendations (which are numbered and set out in green font) and suggestions which are included periodically in the text of the report. Recommendations are intended to be more emphatic in their nature and have a greater significance to the ability of the AOLS to fulfill its mandate with excellence. Suggestions are less likely to have as important an effect on the overall performance of the AOLS and, in some cases, are more debatable as to their utility.

## **METHODOLOGY**

The review was conducted in the following manner:

1. I developed the criteria for review based on provincial, national, and international precedents. The AOLS accepted the proposed criteria without suggesting any changes.
2. I reviewed the legislation governing the AOLS (particularly the *Surveyors Act* and regulations).
3. I reviewed the AOLS website.
4. I reviewed the documents related to each program area and the review criteria. This included minutes of Council and Committee meetings, policies and procedures, sample files, and internal and external reports about them. I was given access to the internal database of the AOLS and was able to select sample files on my own in addition to those suggested as representative by the AOLS.
5. I interviewed staff, Council and Committee members in each of the program areas. Typically, I interviewed at least three people in each area so as to obtain staff and professional and public member perspectives. The interviews were conducted by video conference.
6. I observed meetings of Council and Committees, including reviewing the meeting materials for those meetings. I attended a meeting of the Council, a portion of the Council's strategic planning meeting, and meetings of the Professional Standards Committee and the Complaints Committee.
7. I prepared a draft report and shared it with the AOLS for comment to ensure the accuracy of the factual statements upon which the conclusions and recommendations were based. No substantive changes were suggested or made.
8. I finalized and am delivering the report.

9. I anticipate appearing before Council to discuss the report.

## CRITERIA USED FOR THE REVIEW

Perhaps the most broadly accepted criteria for an external review of regulators of professions are the Standards of Good Regulation employed by the Professional Standards Authority of the United Kingdom.<sup>1</sup> Versions of that document have been used for external reviews of a number of Canadian regulators. Other broadly recognized approaches to reviewing and recommending modernization of the regulation of professions in Canada include the following:

- The Professional Reliance Review of the natural resources professions in British Columbia that led to the enactment of the *Professional Governance Act* there;<sup>2</sup>
- Recommendations to modernize the provincial health profession regulatory framework made by the Steering Committee on Modernization of Health Professional Regulation in British Columbia;<sup>3</sup>
- The College Performance Measurement Framework for the health professions of Ontario developed by the Ministry of Health;<sup>4</sup>
- The governance task force report of the College of Nurses of Ontario;<sup>5</sup> and
- The governance review report for the Ontario College of Teachers.<sup>6</sup>

In consolidating and adapting these sources, I propose that the external review use the following criteria to review the regulatory activities of the AOLS:

### *General Criteria*

1. The AOLS clearly understands its public interest mandate and applies that mandate to all of its activities.
2. The AOLS makes its expectations of practitioners and its own processes and decisions transparent and accessible.

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<sup>1</sup> See: [https://www.professionalstandards.org.uk/docs/default-source/publications/standards/proposed-new-standards-of-good-regulation---evidence-framework-\(june-2018\).pdf?sfvrsn=270c7220\\_6](https://www.professionalstandards.org.uk/docs/default-source/publications/standards/proposed-new-standards-of-good-regulation---evidence-framework-(june-2018).pdf?sfvrsn=270c7220_6).

<sup>2</sup> See:

[https://professionalgovernancebc.ca/app/uploads/sites/498/2019/05/Professional\\_Reliance\\_Review\\_Final\\_Report.pdf](https://professionalgovernancebc.ca/app/uploads/sites/498/2019/05/Professional_Reliance_Review_Final_Report.pdf).

<sup>3</sup> See: <https://www2.gov.bc.ca/assets/gov/health/practitioner-pro/professional-regulation/recommendations-to-modernize-regulatory-framework.pdf>.

<sup>4</sup> See, for example, the 2020 report by the College of Physicians and Surgeons of Ontario:

<https://www.cpso.on.ca/admin/CPSO/media/Documents/news-events/publications/cpmf-report/cpmf-cpso-report-2020.pdf>.

<sup>5</sup> See: <https://www.cno.org/globalassets/1-whatiscno/governance/final-report---leading-in-regulatory-governance-task-force.pdf>.

<sup>6</sup> See: <https://www.oct.ca/-/media/PDF/Governance%20Review%20Report/Governance%20Review%20Report.pdf>.



3. The AOLS appreciates the diversity of its licensees, their clients, and society and takes appropriate action to bring diversity, equity, inclusion, and cultural safety and humility to the achievement of its mandate.
4. The AOLS consults and works with relevant stakeholders to achieve its mandate.
5. The AOLS systematically reviews, reports on and is accountable for its regulatory performance in all areas of its regulatory activities (including those listed below) and strives to continuously improve its regulatory performance.

#### *Governance*

6. The AOLS Council and Committee composition and structure facilitates the achievement of its mandate.
7. The AOLS facilitates the selection and training of Council and Committee members on the basis of skills, competence, and commitment.
8. The AOLS has a shared understanding of the appropriate allocation of roles and responsibilities amongst Council, Committees, staff, and their members.
9. The AOLS ensures that all of its leaders and decision makers meet their fiduciary obligations, including those related to conflicts of interest.

#### *Standards and Policies*

10. The AOLS has a sound and transparent process for identifying, making, and monitoring relevant standards and policies in accordance with its mandate.
11. The AOLS's standards and policies identify and address changes in technology and changes in societal expectations.
12. The AOLS effectively assists licensees in understanding and applying AOLS standards and policies.

#### *Registration and Quality Assurance*

13. The AOLS's registration requirements and processes achieve its mandate in a transparent, objective, impartial, and fair manner.
14. The AOLS's public register reasonably and proportionately achieves the AOLS mandate.
15. The AOLS reasonably and proportionately ensures ongoing competence and improvement of licensees.
16. The AOLS reasonably and proportionately protects the public from unauthorized practise and holding out.

#### *Reactive Regulation*

17. The AOLS reasonably and proportionately facilitates the making of complaints and the reporting of concerns about licensees, including supporting parties during the process.

18. The AOLS reasonably and proportionately investigates and screens complaints and concerns in accordance with its mandate, including prioritizing serious risks.

19. The AOLS reasonably and proportionately takes disciplinary action.

In developing these criteria, I kept in mind Professor Haddock's comments that health professions are different from other professions, including in their higher overall number of practitioners and their higher volume of complaints. As noted above, approaches that might be perfectly appropriate for oversight of the health professions may not be suitable for other professions.<sup>7</sup>

## EVALUATION OF EIGHT PROGRAM AREAS

I was specifically asked to review eight program areas. This report will evaluate each program area against the applicable criteria for review.

In terms of general observations, the *Surveyors Act* is over 30 years old. It seems to be of roughly the same vintage and to be structured similarly to the *Professional Engineers Act* and the *Architects Act*. These statutes were considered to be fairly modern and advanced professional self-regulation legislation at that time. There have been some updates to the *Surveyors Act* since then, including amendments in 2009 to recognize various categories of surveyors, to enhance transparency, and to modernize the complaints and discipline system. However, these amendments did not alter the basic regulatory approach taken in the *Act*.

Section 2 of the *Surveyors Act* requires the AOLS to serve and protect the public interest.

### *Council Governance*

#### (a) Public Interest Mandate

**Overview.** It is not entirely clear from the *Surveyors Act* whether the AOLS is just a regulatory body or whether it has a dual mandate to provide services for members. The objects of the AOLS, as set out in section 2 of the *Act*, appear to relate solely to public protection regulation.

The "About AOLS" page on the website emphasizes the public protection mandate of the AOLS. The page links to a page labelled "Public Protection" which reads, in part:

The Association of Ontario Land Surveyors takes its responsibility for public protection seriously and continues to improve its public protection measures. These range from maintaining and enforcing a Code of Ethics to ensuring continuing education of its members. In the rare event that a surveyor is not meeting expected standards a complaint and discipline process is available to address a surveyor's behaviour.

The "Public Protection" page also links to the programs and activities of the AOLS that protect the public.

The "Governance" page of the AOLS website sets out the leadership role of the Council and the identities and status of the Council members. It also links to a page identifying the statutory and non-statutory Committees that help the AOLS perform its functions. There are 27 Committees

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<sup>7</sup> Mark Haddock. (2018). The Final Report of the Review of Professional Reliance in Natural Resource Decision-Making, p. 53. [https://www2.gov.bc.ca/assets/gov/environment/natural-resource-policy-legislation/professional-reliance/professional\\_reliance\\_review\\_final\\_report.pdf](https://www2.gov.bc.ca/assets/gov/environment/natural-resource-policy-legislation/professional-reliance/professional_reliance_review_final_report.pdf).

and task forces listed; most relate to regulatory activities, while some Committees relate to the management of the AOLS (e.g., Website Maintenance Committee). Three Committees could be seen as falling under the Member Services category: AGM Task Force, Archival & Historical Committee, and Insurance Advisory Committee.

Traditionally the AOLS has done a larger strategic planning exercise every five years with extra members involved, with the last major one done in 2019. It is during this session that the longer-term strategic planning takes place. For the other four years, strategic planning tended to be a tune up and recalibration, usually just with Council and key staff. The portion of the strategic planning session observed contained an excellent discussion of the mandate and role of the AOLS and how it can better achieve its goals. Specific action items were agreed upon. One might quibble that some of the process was more about operational planning, as discussions were really about policy issue identification and a preliminary discussion of them. However, having that sort of broad-based discussion, at least annually, is exactly what Council should be doing regardless of what one calls the process. As will be discussed in the area of technology, the surveying profession is already undergoing significant technological changes and longer-term strategic planning in this area would be appropriate in the 2024 session.

***Liability Insurance Program.*** The *Surveyors Act* authorizes, but does not require, the AOLS to operate a professional liability insurance program for practitioners. In fact, the AOLS does so and the vast majority of practitioners belong to it. The AOLS takes significant measures to separate its insurance activities from its regulatory activities. While the sharing of some information from the insurance arm of the AOLS to the regulatory arm is permissible, the AOLS takes steps to minimize that from occurring. The sharing typically takes the form of statistical information or areas of concern that can then be incorporated into regulatory initiatives such as the SRD or continuing education.

There are a few other examples of regulators in Ontario who also operate a professional liability insurance program. However, the vast majority of regulators do not do so because it creates a confusion of mandate (e.g., protecting the public or assisting members), appropriate-only sharing of information is difficult to maintain at all times (e.g., to prevent AOLS staff and Committees from being influenced by the fact that a claim is outstanding) and because of the public perception that the AOLS is defending a practitioner from an insurance claim at the same time that it is investigating and possibly disciplining the same practitioner for the same conduct. Also, AOLS staff may learn of significant conduct concerns about an individual practitioner that they cannot use for regulatory purposes. There could also be a perception by some members of the public that the AOLS is less likely to take serious action because that would increase the risk of an insurance payout.

The AOLS recognizes this concern. There has been a detailed and frank review of the issue, as recorded in the Executive Director's Notes in the winter edition of the Ontario Professional Surveyor magazine. However, the fact remains that a regulatory body operating a professional liability insurance program for practitioners is generally not seen as a best practice. If the AOLS were to divest itself from the professional liability insurance business, it can still require insurers to provide useful regulatory information.<sup>8</sup>

**Recommendation #1:** The AOLS should again consider transferring the professional liability insurance program to a third party. (Legislative change not required)

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<sup>8</sup> See s. 31 of the *Surveyors Act*.

***Other Activities that Have a Strong Professional Support Component.*** Observed meetings and interviews suggest that the low number of practitioners is seen as a threat to the profession's ability to serve the public, and as an existential threat to the AOLS itself. The profession is, on average, older than most other professions and society as a whole. While it is not appropriate for a regulatory body to attempt to restrict entry into the profession so as to reduce competition, some regulatory bodies do have a role in facilitating sufficient numbers of entrants to the profession so as to ensure access to services. Certainly, this occurs for many health professions. As such, I cannot say that the outreach and recruitment initiatives of the AOLS are inconsistent with its mandate and, in the context of this profession, it has a compelling public interest aspect.

The AOLS does interact with issues that affect the profession. For example, the AOLS has intervened in the move to OnLand that would result in closure of counter services at the Land Registry Office. This development has a public interest component to it in that land surveyors need to perform title searches to perform their functions, and this is a standard of practice. AOLS representatives met with government officials, wrote a letter to the Ministry, and gave at least one media interview. There are mixed regulatory and professional interests in such advocacy.

The AOLS also operates a charitable foundation that gives monetary awards to promising students in the area of land surveying. The apparent goal is to raise awareness of land surveying and to encourage excellent students to consider entering the profession.

The AOLS confers awards to practitioners, students, and others who have made significant contributions to the profession. The most recent awards are highlighted in the Spring 2021 edition of the Ontario Professional Surveyor magazine. A page on the AOLS website describes the various categories for awards and lists past recipients. In general, awards are most closely associated with professional support organizations, rather than regulators. It makes it more difficult for a regulatory body to regulate a practitioner once the regulator has conferred an award to them. However, a number of regulatory bodies still confer awards with the view to inspiring excellence within the profession.

The AOLS also collects and publishes a survey on salaries. This activity is typically associated with professional support organizations rather than regulators.

The AOLS also posts job opportunities within the industry on its website as a service to practitioners. Again, this activity is typically associated with professional support organizations rather than regulators.

Some of the policy issues discussed by Council and its Committees appear to have a larger impact on practitioners than on the public. For example, the discussion on public access to plans deposited with municipalities is at least in part related to the use of the work of practitioners without compensation and the liability of practitioners for use of the plans for unintended purposes. The issue also has implications for members of the public being misled by plans that are no longer current or suitable for other purposes. Council has spent some time discussing the issue. While the briefing note to Council did mention the risk of their being used inappropriately and resulting in public harm, this could easily be perceived as a professional self-interest issue as well.

Other initiatives of the AOLS that relate to the expanding of the profession or educating the public (e.g., on relying on older survey plans) can also have the perception of mixing regulatory and professional interests.

During the observed portion of the strategic planning session, it appeared that the Council was still struggling with whether it is a public interest regulator or whether it has a dual mandate that includes stewardship of the profession. Interviews indicated that while the public interest role of the AOLS was always viewed as predominant, many viewed the AOLS as also providing some assistance to the profession. The Professional Surveyors Canada is the national advocacy body for land surveyors and could enhance its role in Ontario should the AOLS shed some of its non-core regulatory activities, including possibly even arranging professional liability insurance coverage.

**Recommendation #2:** The AOLS should conduct a rigorous review of its activities to see if there are some that should be eliminated or reduced because they do not primarily serve the public interest. (Legislative change not required)

**Risk Management.** Risk management is a tool that regulators can use to inform and guide all of their regulatory activities to focus on the public interest. In 2019 and 2020, the AOLS did extensive work on risk management. It quite reasonably decided to focus on risk of public harm. Council developed an impressive list of sources of harm to the public, analyzed the causes of such harm, developed a series of measures to address those harms and developed an implementation plan to address them; that implementation is ongoing. This work has significantly impacted the Council's strategic planning, its communications strategy, its continuing education initiatives (including at the AGM), and has prompted discussion about how the SRD program might evolve. Educational sessions have been done for various Committees. Council even did a one-time self-assessment of its own effectiveness.

This exercise is an example of best practice being adopted and implemented by a relatively small regulatory body. This excellent work needs to continue. For example, as will be seen below, some Committees need to do additional work on developing risk-based regulatory activities, including prioritizing high-risk cases and having written criteria for decision making that takes into account risk to the public. This work also should be ongoing, with Council repeating the exercise in a year or two, perhaps even seeking broader input in identifying, analyzing, and addressing risks of harm to the public.

(b) Transparency

The AOLS does not provide public access to its Council meetings, nor does it make its meeting materials or minutes available to the public. Council minutes, but generally not Council materials, are provided in the members' section of the website. Public access to Council meetings and meeting materials is now considered a best practice by many regulators as it demonstrates a transparent commitment to serve the public interest. Technology has made public access to meetings and materials fairly easy to arrange. Different access entitlement for members of the profession compared to members of the public is difficult to justify. While it is likely that few people would take advantage of such an opportunity, it is the potential for such scrutiny that matters. Of course, exceptions can be made for sensitive matters such as legal proceedings or personnel matters. Opening Council meetings would also encourage the Council to not address operational matters as often. It would also likely result in Council addressing regulatory matters involving individuals less often and leaving those issues to Committees with expertise in those matters.

**Recommendation #3:** The Council should conduct its meetings in public, publish its meeting materials on the AOLS website, and post its minutes on the website, all with suitable exceptions. (Legislative change not required)

Section 18 of the *Surveyors Act* requires that certain basic information (e.g., restrictions on registration, discipline outcomes) be posted on the public register. The AOLS has gone through an extensive policy review of its transparency policies and developed an expanded approach to transparency, last updated in June of 2021. The AOLS makes public several types of information that do not identify individual practitioners, such as some information about Council meetings, AOLS policies and procedures, and its registration process. The policy also makes certain information about identified practitioners public, such as upcoming discipline hearings and decisions, and legal proceedings against the AOLS. The policy also requires the posting of the public register on the AOLS website (as opposed to access through a physical visit to the AOLS office). However, the AOLS website still contains a page entitled “Official Register” indicating that the official register is maintained on paper and provides instructions on how to arrange viewing it at the AOLS office. The AOLS website does have a “Find a Surveyor” feature, but this seems to be limited to how to locate a surveyor rather than providing information available on the public register about the practitioner. The Council is aware that its website does not yet contain its public register and has recently approved a plan to upgrade its database and website to make this information website accessible. The Council is to be commended for taking this step.

While the extent of the information made public is less than what is provided by some other regulators of professions, it is commendable that the AOLS went through the process of seeing how it can provide public access to more information about its processes and about individual practitioners. There is a high public interest component to these sort of transparency choices. The AOLS should periodically repeat the process to ensure that its approach to transparency adequately protects the public and meets contemporary public expectations. One wonders whether more information might be designated as public in nature if practitioners were not under the impression that they had veto power over the decision.

Like most regulators of professions, the AOLS is governed by a strict confidentiality provision in the *Surveyors Act*. The provision has an explicit exception for disclosure of personal information made in accordance with the AOLS privacy policies as set out in the AOLS by-laws. In fact, the AOLS by-laws do not contain a privacy policy. However, the AOLS has communicated a privacy policy on its website that does address access to and correction of personal information. That privacy policy is similar to that of other regulators of professions. It may be that the requirement for practitioner approval of by-laws has influenced the failure to reference the policy in the by-laws. If so, that is another example of why practitioner approval is inappropriate.

The AOLS publishes its Ontario Professional Surveyor magazine quarterly. The magazine contains a mixture of entries of interest to the practice of practitioners as well as providing a forum for reporting on (e.g., discipline decision summaries) and discussing its regulatory activities (e.g., balancing the public interest in protective regulation against the harm of reduced competition in the Summer 2021 Executive Director’s Notes). The magazine is supported, at least in part, by advertising revenue. Most of the advertisers are businesses that supply products and services to practitioners. One could be hesitant about whether accepting advertising revenue from those affiliated with the profession could create a conflict of interest and create the impression that the AOLS is a professional support group. Most regulators do not sell advertising in their communication vehicles to those they regulate. While the AOLS may wish to consider this issue when reviewing its public interest regulatory mandate, in my view, this circumstance alone does not warrant a full recommendation.

In addition, the AOLS also publishes an email newsletter every two weeks called AOLS In Sight. This contains much shorter pieces of “nuts and bolts” information such as available CPD

opportunities, legislative changes, election reminders, salary survey results, reminders about AOLS deadlines, links to interesting articles, notification of discipline decisions, health notices and warnings (e.g., about ticks), human interest stories (e.g., surveyor saves an elderly man), and the like.

The AOLS occasionally publishes links to news stories of interest to practitioners.

The AOLS website contains some sections that provide useful information to the public about what the profession does and about recurring issues that members of the public have with surveyors. Similarly, the AOLS website contains a non-legal description of the role of surveys in the sale or purchase or other activities related to land. There is also a non-legal explanation of the various types of survey plans and their uses, monument protection, and title insurance. In addition, the AOLS has developed videos and other resources about the profession, directed to parents and students.

Overall, the AOLS publishes a significant amount of information about its activities and the profession that is relevant and interesting to both the profession and the public.

Having said that, the AOLS posts a significant amount of information on the members-only portion of its website that is not available to the public, including the Standards of Practice manual. It is no longer a best practice to provide information to the profession that is not made available to the entire public. A members-only section should be limited to activities only relevant to members such as annual renewal procedures, posting CPD hours, or paying fees.

**Recommendation #4: That the AOLS post all general information relevant to the regulation of the profession on the public portion of its website. (Legislative change not required)**

The AOLS should also consider becoming more involved in social media in order to reach out to different demographic groups.

#### (c) Diversity

It is clear from multiple sources that the AOLS has discussed equity, diversity, inclusion, and cultural sensitivity and humility at the Council, but these topics have not been the subject of serious analysis or reports until very recently. An attempt at a workshop to learn more was unsuccessful. However, a survey conducted of the membership produced valuable information. Interviews indicated that the results of the survey sparked recognition as to how serious an issue this is for the profession and how the AOLS needs to do more.

Council did strike a Committee this year and is awaiting recommendations from the Committee. The work generated by the Inclusion and Diversity Committee so far is impressive. The Committee has gathered resources, prepared some draft policies and one completed policy (i.e., Land Acknowledgement) to present to Council, considered how the AOLS can address systemic issues such as gender representation within the profession and recruitment of internationally trained surveyors, and has had good discussions on how the AOLS can provide resources to and support members facing harassment and discrimination. Over time, this Committee is likely to examine other issues including how the AOLS can address systemic issues in its own activities (e.g., in the recruitment and selection of Council and Committee members; how some AOLS functions may have an unintended adverse impact on certain groups).

The inclusion of Committees in this initiative is just beginning. Some changes have been made to the AERC oral examination process.

The AOLS has also discussed the gender and age imbalance within the profession and on its Council and Committees. Interviews indicate that the Nominating Committee informally takes into account gender and racial diversity in order to facilitate diversity on Council, with limited but some success. This important issue needs to continue to be discussed and to lead to some action plans. Other traditionally male dominated professions have made significant progress in recent years.

The AOLS publishes an accessibility policy on its website committing the organization to accommodating disabilities. The policy specifically addresses how it can arrange meetings with individuals who are unable to access the stairs in its building. There are occasional references to diversity issues in the Ontario Professional Surveyor magazine (e.g., the President's Page in the Summer 2021 issue) and in the AOLS In Sight newsletter (e.g., notice about international homophobia day in the May 14, 2021 edition).

The AOLS has a Workplace Harassment and Discrimination policy. While it is said to apply to Council and Committee members, the wording of the policy and the enforcement mechanisms are more appropriate to staff members. For example, it would be challenging for the Executive Director to investigate the conduct of a Council member. However, the conduct provisions for Council members would presumably take effect in those circumstances.

#### (d) Stakeholders

The Executive Director performance review includes a specific item on engaging with stakeholders. The Executive Director reports on those engagements at each Council meeting.

The documents reviewed, the observed Council meeting, and the interviews conducted indicate that the AOLS has identified a number of important stakeholders in the surveying world and government area and has regular, collaborative engagement with them. This includes educational institutions that train practitioners. While some indicated that more could be done, the identification and engagement of stakeholders appears to be an area of strength for the AOLS. Most challenging, as is the case for most regulators, is finding ways of engaging with the general public or some of their representative organizations.

#### (e) Oversight, Performance Reviews and CQI

Under the *Surveyors Act* the Council is subject to the scrutiny of the Minister who can give advice and make recommendations to the Council. The Minister can also require the Council to make a regulation it specifies.

Council does review its strategic objectives at each meeting and monitors how well it is implementing them. That is a form of performance review.

Interviews indicate that there have been no formal evaluations of Council and Committees. However, minutes indicate that Council has experimented with a self-evaluation process of its effectiveness. In the observed Council meeting, there was a brief review of the effectiveness of the meeting at its end. Also, as part of its work on risk management in 2019-2020, Council conducted a self-assessment of its effectiveness.



In addition, the Council has a reasonable precedent in the written criteria and reporting process for the performance evaluation of the Executive Director.

Conducting performance reviews of the Board of Directors of a regulatory body is a recognized best practice, even if it is one that some regulators have been hesitant to implement. While a self-evaluation is just a starting point, it is a good one. This should progress to developing criteria for good performance by both the Council as a whole and individual Council members. Feedback generally enhances future performance. Those criteria could be used for selection of future Council members. Eventually, the goal is to have a formal performance review process in place. There are a number of processes adopted by other regulators that can provide assistance to the AOLS.

Recommendation #5: That Council should develop a more formal process of reviewing the performance of itself and its members. (Legislative change not required)

Recommendation #6: Similarly, the AOLS should develop a formal process for reviewing the performance of its Committees and individual Committee members. (Legislative amendment not required)

(f) Structure, Selection and Training of the AOLS's Board of Directors

Under the *Surveyors Act*, the AOLS Council serves as its Board of Directors. It consists of between 13 and 15 people, eight of whom are elected by the profession, a government official (Surveyor General<sup>9</sup>) and between three and five public members appointed by Cabinet. One of the public members must be a senior lawyer. Council has discussed updating the statutory provisions and this is under active consideration by the AOLS.

Under the regulations, a candidate can be nominated for election to Council either by the Nominations Committee or by being nominated by ten practitioners. There are more positions to fill than are usually pursued by candidates, so the elections process does not unduly interfere with proactive recruitment strategies (although some people are reluctant to stand for a position if it requires a contested election). Interviews indicated that the Nominations Committee actively recruited new members to the Council. This is done through a call for volunteers and the approaching of people known to the Nominations Committee or other AOLS staff and leaders. People who have served well on Committees are an obvious source of recruits for Council. A frequent pattern of selection is for practitioners to be placed on a non-statutory Committee then, if they perform well, they are placed on a statutory Committee and, if they do well there, they are considered for recruitment to Council. However, there does not appear to be a formal list of criteria or attributes developed for each position<sup>10</sup> or a formal process for screening candidates. Candidates are nominated based on reputation, past experience with the AOLS and perceptions of those within the AOLS that know them. While understandable in a small profession, using personal knowledge as a leading basis for recruiting Council members has the potential to reduce the opportunities to promote inclusion and diversity. Interviews indicated that candidates are

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<sup>9</sup> The presence of a government official on the Council or Board of a regulator is unusual, but not unheard of. After considering the advantages and disadvantages of such an arrangement I have decided not to make any suggestions or recommendations on the practice.

<sup>10</sup> A high-level description of desirable skills and knowledge has been distributed to the profession during the past two years when recruiting volunteers to serve with the AOLS. This would be an excellent starting point for a formal document.

generally interviewed before being recommended to Council. The Nominations Committee is not involved in the recruitment of Committee members.

It is difficult to question a system that generally works to successfully recruit candidates where there are often more positions than candidates. However, the AOLS has a lot of Committees and task forces. The demand for people to serve might be reduced if the work of some of those entities could be consolidated or set aside as not being a core regulatory activity.<sup>11</sup> In any event, even the current system could still be enhanced to more actively recruit candidates, to screen them against previously identified criteria, and to promote diversity. For example, the skills required for Council members (strategic planning, policy making, organizational oversight including risk management) are much different than the skills for the AOLS hearing Committees (e.g., familiarity with hearing procedures, ability to remain calm under pressure). Perhaps consultation with a human resources professional or discussions with other regulators who engage in active recruitment could help develop the process further.

Orientation and training for Councillors takes the form of self-study with a follow up and the offer of a conversation with the Executive Director to review the roles and responsibilities and to answer any questions or address any concerns. The two documents included were provided to both new lay councillors and new elected members. Access to past documents of the Council is also provided through the secured part of the website. This approach is not uncommon among regulators, but best practices would include a formal, structured training session involving a senior staff person, possibly with an officer of the Council, and an assigned mentor.

As will be seen below, many Committees also use only informal training for new Committee members and their Chairs.

**Recommendation #7:** That all new Council members, Committee members and Chairs receive formal training soon after their appointment (Legislative amendment not required). To be effective, likely the best method is for staff supporting the position to take the lead and that the Chair (or immediately past Chair) be invited to participate as well, where feasible. For hearing Committees, the training may need to be provided by hearing support staff and the Committee's independent legal counsel.

The selection of public members is through the Public Appointments Secretariat and the Ministry. Interviews indicated that the usual public appointments process was followed which, while covering basic matters such as experience and conflicts of interest, is not particularly rigorous nor especially tailored to the identified needs of the AOLS. Interviews also indicated that the public appointments process has varied over time. The quality of the public members I spoke to was impressive, however.

The AOLS does not currently have the authority to appoint individuals who are not lay councillors as public members of Committees. This can pose a challenge as the pool of lay councillors is small compared to the number of positions they could potentially fill on Committees. Government policy has also limited the ability of the AOLS to place lay councillors on non-statutory Committees. Occasionally, non-practitioners are invited as non-voting guests to provide their assistance to Committees (e.g., university representatives to the AERC). Some regulators have

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<sup>11</sup> Interviews indicated that some viewed the AOLS as having too many Committees and task forces and that their effectiveness depended somewhat on the enthusiasm of the Chair and the amount of staff support that can be provided to them.

moved towards directly recruiting public members, often with special skills, to serve on Committees.

**Recommendation #8:** That the legislation be amended to authorize the AOLS to recruit public members to serve on Committees who are not lay councillors (Legislative amendment required). In the meantime, the AOLS should consider expanding its use of “guests” on Committees as appropriate (Legislative amendment not required).

Many of the recommendations below will rely on this recommendation being accepted and implemented.

In the observed portion of the strategic planning meeting, staff succession was identified as an ongoing issue. However, it was seen not to be as acute a concern as it was in the recent past and no immediate action plan was developed. In the past, the AOLS has been fortunate that senior staff have generally announced their departure plans well in advance so that suitable arrangements could be made. For smaller organizations, however, the unexpected departure of a staff person can have significant consequences for the organization. It would be prudent for the AOLS to address this issue regularly.

A best practice has developed in many jurisdictions, including quite recently in Ontario, to replace election of professional members and appointment of lay councillors by government with a competency-based recruitment process. This is a development that should be monitored by the AOLS and, when it becomes more accepted, consideration should be given to pursuing this approach for the AOLS as well.

#### (g) Role of AOLS Members

Under the *Surveyors Act*, in addition to electing the majority of the Council, members of the AOLS have a significant say in their regulation. They are entitled to attend an Annual General Meeting. Members must approve any proposed regulation amendments and any amendments to the AOLS’s by-laws. Interviews indicate that the membership has never rejected a proposed regulation or by-law amendment, although the votes have sometimes been close.

The AOLS regulations cover many regulatory matters including standards of practice, the Code of Ethics, the definition of professional misconduct, and the SRD and continuing education requirements. The AOLS’s by-laws address such issues as internal operations, fees payable by members, Survey Review Department documentation, and potentially the content of the public register. There has been some discussion at the AOLS as to the appropriateness of the AOLS members having veto power over these amendments. However, there is not a consensus that this role of AOLS members is inappropriate in all circumstances as it helps the profession remain engaged in the activities of the AOLS.

Strong concerns have been expressed by leaders in professional regulation about the appropriateness of those being regulated being able to veto the rules that regulate them.<sup>12</sup> A similar restriction for membership approval of by-laws has recently been nearly eliminated for Professional Engineers of Ontario. This role for members is inconsistent with the public interest

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<sup>12</sup> Professional Standards Authority. (2018). A legislation and governance review conducted for Engineers and Geoscientists British Columbia, pp. 8-10. [https://www.professionalstandards.org.uk/docs/default-source/publications/international-reports/review-of-the-legislation-and-governance-for-engineers-and-geoscientists-in-british-columbia-\(june-2018\).pdf?sfvrsn=b2d7220\\_9](https://www.professionalstandards.org.uk/docs/default-source/publications/international-reports/review-of-the-legislation-and-governance-for-engineers-and-geoscientists-in-british-columbia-(june-2018).pdf?sfvrsn=b2d7220_9).

mandate of the AOLS. Even if the membership approves proposed changes, the need for such approval can affect the work of the AOLS as it may only consider “achievable” goals. This requirement also makes it difficult for the AOLS to act nimbly when required.

**Recommendation #9: That the requirement for membership approval of proposed regulation and by-law changes be replaced by a duty to consult (Legislative amendment required)**

Unlike most regulators of surveyors in other provinces, the AOLS does not directly support the national advocacy group, Professional Surveyors of Canada (PSC) through an automatic dues payment system. This lack of direct support is commendable. The AOLS does permit voluntary payment of dues through the annual renewal process, but apparently the uptake is not huge. The PSC is seen as a stakeholder that should be engaged when appropriate. The AOLS has permitted PSC to make presentations at the Annual General Meeting encouraging those in attendance to join them. Interviews indicate that the AOLS refers some issues to the PSC that are more of an advocacy or professional support nature, which is appropriate.

The AOLS facilitates the operation of regional chapters. It does so, among other ways, through collection of dues on a voluntary basis for the chapters on the annual renewal of membership, by awarding CPD hours for participating in chapter activities, and by providing virtual meeting facilities (i.e., Zoom). Only a few regulators in Ontario operate regional chapters and this is often viewed as a professional support activity rather than a regulatory activity.<sup>13</sup> A regional chapter system can create a misperception in the profession, and to the public, that the AOLS supports its members rather than regulates them. Interviews indicate that the AOLS views its involvement in the regional chapters system as a means of communicating regulatory information to practitioners (e.g., new policies, standards and initiatives, CPD and Survey Review programs), as a means of facilitating continuing education, and as a means of identifying and recruiting practitioners to AOLS Committees and the Council. While the AOLS should constantly and critically review whether its facilitation of the regional chapter system should remain a part of its mandate, given the size of the profession and its effectiveness as a communications tool, I am not prepared to recommend its disbandment at this time.

While some concern was expressed during interviews about the low level of engagement of members of the profession in AOLS activities including voting and attending the AGM, my anecdotal observations are that the level of engagement is well above average for regulated professions.

#### (h) Allocation of Roles and Responsibilities

Both the Executive Director and the Registrar file reports on the activities they are involved in at each Board meeting. The reports seem to be appropriate in content and level of detail. Interviews did not indicate any inclination on the part of the Council to interfere with statutory functions and duties, for example of the Registrar. The Executive Director felt comfortable that the Council was not encroaching on operational matters within his role.

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<sup>13</sup> Professional Standards Authority. (2019). A review of the regulatory performance of Professional Engineers Ontario, at pp. 31ff. [https://www.professionalstandards.org.uk/docs/default-source/publications/international-reports/review-of-the-regulatory-performance-of-professional-engineers-ontario.pdf?sfvrsn=b3e07420\\_2](https://www.professionalstandards.org.uk/docs/default-source/publications/international-reports/review-of-the-regulatory-performance-of-professional-engineers-ontario.pdf?sfvrsn=b3e07420_2).

The Council seems to be engaged in AOLS matters. During the observed Council meetings there was active discussion on many of the topics. The discussion was cordial and collaborative. All viewpoints were received well, even on topics that could have become emotional (e.g., on the Land Acknowledgement policy). For the most part, discussion stayed on topic, although a few times the discussion digressed onto tangents (e.g., moving from paper to electronic filings of plans), although even that digression was related to AOLS policy matters.

However, there were a number of abstentions during the meeting that was observed. Interviews indicated that this occurs occasionally and the reason for the abstention is not always clear. Best practice is for all Council members to vote on all motions unless there are exceptional circumstances (e.g., a new Council member who cannot become knowledgeable about an issue before it must be decided). Abstentions are not an appropriate way to register disagreement with a motion and are certainly not a way to deal with a conflict of interest.

It is a best practice for regulatory Boards to focus on three things: strategic planning, policy making and oversight.

The Council uses dashboards as a means of monitoring the performance of its Committees and task forces at each Council meeting. This is a best practice. Of course, constant work is required to ensure that the dashboards accurately portray the most relevant information for Council. The modernization of the database will provide opportunities to generate more accurate and more relevant data. The Council also has a valuable dashboard showing the categories of activities that the Council discussed and the number of Council items in each category. However, that dashboard did not show the items related to administrative and operational matters. As noted below, a considerable portion of the meeting was spent discussing operational-type issues such as procurement. During the observed Council meeting there was minimal discussion of the oversight dashboards. Interviews indicated that some Committees and task forces were slow to complete their tasks and that this was not always identified by Council's review of the dashboards.

The Council has a responsibility to keep abreast of the financial status and future financial prospects of the AOLS. Typically, a Board would receive high-level financial statements at each meeting showing major variances from budget in various program areas. Where there is a significant variance, an explanation is expected along with recommendations from staff as to whether any Board action is required. In my view, the financial reporting to Council provides excessive detail. The Council minutes also suggest that the financial statements of the AOLS are discussed in some detail. This is true for the budget document as well. This is both distracting to Council and may tempt Council to intervene in operations. However, during the observed Council meeting the time spent discussing the financial statements was not excessive.

The Council also conducts audits of some of its programs. For example, a recent psychometric audit of the registration examination was conducted, albeit at the request of the Office of the Fairness Commissioner. Such periodic audits are a best practice.

However, for some issues, Council is more involved in operational matters than is appropriate, in my view, for a policy making and oversight body. For example, Council materials and minutes indicate active Council participation in contracts and procurement (e.g., mediation training, on-line exam procurement, telephone system) and, perhaps a bit more understandably if still over-involvement, in some legal matters (e.g., recovery of costs in discipline and legal matters). The possibility of conflicts of interest on the part of Council members increase the more that Council becomes involved in operational matters (e.g., knowing someone who would benefit or be harmed

by a decision). Over-involvement in operational matters can distract Council from its core responsibilities and can discourage competent senior staff members.

During the observed Council meeting, a significant portion of the time was spent on discussion of the SRD moving from paper to electronic filing of plans. Various alternatives to the proposed procurement options were discussed. The discussion got quite operational at times. The reviewer questions whether this was even a topic worthy of Council discussion. Similarly, there was extensive discussion of the procurement details for the membership database project. It is appropriate for Council to discuss the concept of developing an integrated database to more effectively gather information on regulating the profession and making information (such as the public register) available on its website. It was also appropriate for the Council to approve a large expenditure. However, one can question the appropriateness of Council duplicating the Committee work of the Website Maintenance Committee and delving into the details of the procurement options and prices. A more appropriate level of Council involvement would be to discuss the necessity of the purchase, including the regulatory risks and benefits, and the maximum budget and then leave the implementation to staff and, where appropriate, the relevant Committee.

Interviews indicated that, while Council members were aware of the need to stay out of operations, the concept of operations was defined quite narrowly to include purely day to day administration.

**Recommendation #10: Council members should receive training on role of the Council that emphasizes strategic planning, policy making, and high-level oversight. In addition, those planning the agenda for Council meetings and preparing meeting materials should reduce reporting on operational matters. (Legislative amendment not required)**

It is quite unusual for most regulatory Boards to be involved in individual regulatory actions. That is not the best use of Council's time, does not call upon the skills for which Council members ought to be selected, requires expertise in areas that Council may not possess, and can encourage improper considerations (e.g., interpersonal relationships). For various reasons, including the wording of the existing legislation, the Council of the AOLS is called upon to make such decisions. For example, Council was asked to grant certain records approvals and exemptions. In one case, an exemption was granted for a firm whose principal would have been well known to Council because of his services for the AOLS. More concerning, Council spent almost an hour discussing a referral from the Complaints Committee. The discussion seemed to duplicate that which would have occurred at the Complaints Committee. There was little reference to the criteria for screening a complaint. Interviews indicate that referrals from the Complaints Committee frequently create active discussion by the Council, although not usually for this length of time. The ultimate decision was not consistent with the role of the Council. Recommendations will be made in the discussion of the complaints and discipline process below as to how these matters might be best dealt with at the Committee level. The point here is that one quarter of the time of this Council meeting was not spent on its primary role: oversight, strategic planning and policy making, but rather was spent on one complaints matter.

At the observed strategic planning and Council meetings, the Executive Director seemed to be a driver of ideas and was an active participant in the discussion. However, his manner was not overbearing and seemed to respect the role of Council members to make the decisions. He actively amended language of motions in response to Council comments. Interviews indicated a great appreciation of the role of the Executive Director in bringing forth ideas and preparing information for Council while leaving decision making to the Council. From what I can observe,



there does not seem to be an issue of forceful Executive Director intervention in the dynamics of Council decision making.

The personnel policy states that one Council member is assigned the task of reviewing the completed performance reviews of all staff (other than the Executive Director). It is unusual for Board members to be involved in the performance review of any staff member other than the Executive Director. The scope of the review is not specified. Interviews indicate that this authority has not been exercised in recent years, which is a good thing. I suggest that the personnel policy be revised on this point.

Observations of meetings and interviews indicated that the President was careful to facilitate meetings without dominating or controlling them.

(i) The Executive Committee

Under the *Surveyors Act*, the Council is required to have an Executive Committee. Under the regulations, the Executive Committee is made up of Council members, including its officers. Interviews indicated that the Executive Committee would deal with urgent issues and would plan for Council meetings and perhaps pre-discuss some of the issues. Recent governance trends have de-emphasized the role of Executive Committees and the AOLS appears to be doing so given its current legislative constraint.

(j) Fiduciary Duties

One of the most important fiduciary duties of a regulatory body is to respect the confidentiality of all information obtained in the course of guiding or operating the organization. Conscious exceptions are made for transparency purposes (e.g., open Council meetings, the public register), but these choices are made through policy or, sometimes, by-laws. In addition, some disclosure is required to administer the legislation (e.g., in the course of an investigation). Individual Council and Committee members cannot choose to make information public, even information that does not relate to individual practitioners. For example, policy discussions are confidential until discussed at an open Council meeting or a decision is made to consult on them.

Another core fiduciary duty is not to act when in a conflict of interest. This can be challenging for professional members as every decision they make affects them to some extent. Professional Council and Committee members must identify when a decision for or involvement with the AOLS has an undue impact upon them. If so, there should be discussion of whether there is a reasonable perception of a conflict of interest.

From everything I have seen, the AOLS takes its duties of confidentiality and avoiding conflicts of interest seriously. For example, staff provided a detailed report to Council on the impact of privacy legislation on the reconstructions of its database. In the observed Council meeting, there was a reminder about declaring conflicts of interest. During the meeting three Council members declared a conflict and left the room for the discussion, which is entirely appropriate.

Interviews indicated that all Council and Committee members were generally aware of their duty of confidentiality and to avoid and address any conflicts of interest. Interviews also indicated that there was a culture of reminding Council and Committee members to respect confidentiality and identify conflicts of interest. During the interviews, many Council and Committee members were able to identify obvious sources of conflicts of interest. However, many regulators engage in more detailed orientation on these topics. The education often involves some reflective exercises on

less obvious challenges that may result in confidentiality breaches or conflicts of interest and how to respond to them when they do arise. Such discussions can also lead to adopting policies and procedures that can reduce accidental breaches (e.g., email protocols).

An issue that many regulators struggle with is maintaining confidentiality in electronic communications. For example, at the AOLS, some sensitive communications continue to be conducted through unencrypted email even though this has become much rarer given the use of the AOLS website portal. Cost and inconvenience can be a barrier to using more secure methods of communication. However, the IT and database upgrades coming to the AOLS might provide an opportunity to address this remaining concern.

There is no Code of Conduct for Council and Committee members and no regulation setting out the process and criteria for disqualifying Council and Committee members, other than for missing three consecutive meetings. These types of documents are beneficial for guiding Council and Committee members and are necessary in those rare instances in which a Council or Committee member must be sanctioned or removed for a serious breach of fiduciary duties or gross unsuitability.

**Recommendation #11:** That the AOLS develop a Code of Conduct for Council and Committee members (Legislative change not required) and a regulation providing a process and criteria for sanctioning or removing a Council or Committee member who violates the Code of Conduct (Legislative change required).

#### (k) Policy Making Process

It is generally accepted that policy making (including standards, guidelines, and proposed legislation amendments) is one of the key roles of the Council.

There are numerous kinds of instruments created by the AOLS that are a form of policy. These include proposed modifications to the *Surveyors Act*, proposed regulation changes, amendments to the by-laws, bulletins, policy documents, position statements, and various forms of advice to the profession<sup>14</sup>. These instruments share a common feature that they convey expectations to the profession and the public as to how practitioners (and in some case, the AOLS) should conduct themselves. Council either creates these instruments or has significant involvement in their making.

For example, the AOLS has published on its website 39 Bulletins, ranging in dates from 1981 to 2020, “that provide greater detail regarding surveyor's conduct and standards of survey set out in legislation and regulation”. The Bulletins cover practical issues that arise in the course of practising the profession such as surveys for fencing purposes, monumentation, and guidelines for entering private property. Interviews indicate some concerns that Bulletins are not sufficiently enforceable as they constitute the views of the Council and are not legislation. Even though such Bulletins have a somewhat ambiguous legal status, their level of detail (which may require frequent updating) and the challenges in having a regulation passed, make them consistent with

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<sup>14</sup> Another example is practice standards. While this general discussion applies to them as well, some unique features of practice standards are specifically discussed below.



best regulatory practices. Assistance is available to discuss how Bulletins can best be used to change behaviour and how they can be appropriately enforced.<sup>15</sup>

The Council does receive reports from staff and Committees about proposed changes to policies applicable to their activities. For example, Council reviewed the proposed risk-based approach to initiating Registrar's investigations. The AOLS also categorizes the calls that are received by staff at the office to identify the types of concerns raised and any developing patterns. This is commendable. At the yearly strategic planning update session, the Council identifies policy issues that should be prioritized for the coming year. Interviews indicated that the Council often uses Committees and task forces to do research and make preliminary proposals on various Council policy proposals. This can be useful to ensure that policies are well considered and thought out. However, not surprisingly, interviews indicated that in some circumstances Committees felt they were not consulted when they should have been, and that Council did not always give sufficient weight to the work that had been done by a Committee.

In my view, the best practices process for policy making includes a variation of the following seven steps:

1. Identification of an issue warranting a policy,
2. Research into nature of the issue and options for addressing it,
3. Preparing a briefing note for the policy decision makers,
4. Consulting with stakeholders and affected persons,
5. Deciding on what the policy should be,
6. Implementing the policy, and
7. Monitoring the impact of the policy and reviewing and revising the policy as needed.<sup>16</sup>

The Council meeting materials and minutes indicate that the briefing notes (or at least a slide presentation acting as a briefing note) are often prepared on policy issues, often with a definition of the problem and an analysis of the options for consideration. The public interest is often, but not always, prominent in the briefing notes. However, there are some policy issues in which minimal briefing notes were prepared (e.g., Land Acknowledgement policy, which ended up having a lengthy discussion at Council and resulted in a number of revisions). It would be useful for briefing notes to be used consistently and to adopt a more uniform format to ensure that all topics are covered and to assist readers in preparing for the issue.<sup>17</sup> There are many formats available, one being:

1. The issue,

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<sup>15</sup> *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, 2019 ONCA 393 (CanLII), at paras. 14-17, <https://canlii.ca/t/j08wg>.

<sup>16</sup> See, for example: <https://www.cno.org/en/learn-about-standards-guidelines/standards-and-guidelines/developing-standards/>.

<sup>17</sup> A policy developed on the basis of just Council discussion runs the risk of being challenged in court on the basis that its public interest rationale is not obvious. See, for example, *Sobeys West Inc. v. College of Pharmacists of British Columbia*, 2016 BCCA 41 (CanLII), <https://canlii.ca/t/gn3cn>.

2. The potential harms to the public arising from this issue,
3. Research and analysis of the nature, causes and pathways of the harms and possible mitigating approaches, including the experience of other regulators or organizations,
4. Options for addressing the harms including an analysis of the advantages and disadvantages of each option,
5. A consultation plan (especially if this is the first time the issue is presented to the Council),
6. A recommendation where appropriate, and
7. An implementation and monitoring plan.

The Land Acknowledgement policy is an example of good, but not excellent, policy making process. The policy originated with the Inclusion and Diversity Committee. The observed Council meeting had a brief, but good, explanation of the rationale for the policy. There was an extensive discussion of the issue by the Council. There was a briefing note prepared that discussed the rationale for the proposal and contained some research. However, the discussion of options in the document was quite brief and there was minimal external consultation. A more detailed briefing note and external consultation might have assisted the Council in preparing for the discussion and provided additional ideas as to how the initiative could have been even more effective (e.g., as an educational tool for the profession and as an outreach opportunity to reach communities often outside of the AOLS sphere of influence). The outcome was passage of a good policy that could have been even better and could have been dealt with more efficiently.

Interviews indicated that the AOLS did not always consult with stakeholders, members of the profession or members of the public on proposed policies. It was much more common to engage in external consultations, especially with the profession, for proposed changes to regulations and by-laws and for topics that are seen as controversial within the profession.

Interviews also indicated that there was not an established set of criteria for making policy decisions<sup>18</sup>. Interviews indicated that there was a general sense that protecting the public interest takes top priority, and the considerations related to current societal expectations and proportionate impact on practitioners were also relevant. Again, a consistent briefing note format with appropriate headings could assist in identifying criteria for policy making.

**Recommendation #12: The Council should develop a written policy development process tool. (Legislative amendment not required)**

**Recommendation #13: The Council should develop a briefing note template to be used for all non-urgent policy issues. (Legislative amendment not required)**

(I) Effective Assistance to Practitioners re Standards and Policies

Once a policy affecting professional practice is made, it is important to communicate it effectively so that the profession can understand and implement it. Simply emailing the policy to the membership and posting it on the AOLS website is insufficient to constitute a best practice. The

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<sup>18</sup> See for example: Professional Standards Authority. (2015). Right-touch regulation Revised, p.8. <https://www.professionalstandards.org.uk/docs/default-source/publications/thought-paper/right-touch-regulation-2015.pdf>.

review of the written materials, observations at meetings, and interviews indicated that the AOLS does take additional and effective steps. Frequent reminders in the communications from the AOLS, inclusion of important developments in the continuing education programs offered by the AOLS, communications at the well-attended AGMs, and occasional inclusion in the review department audits provide effective assistance to practitioners. Interviews indicated that frequent calls were made to the AOLS offices by both members of the public and the profession in which staff provided information about the applicable standards and policies. The AOLS should continue to explore using all available communication strategies to maintain this best practice.

#### (m) Changing Technology and Societal Expectations

The AOLS takes various steps to help practitioners stay abreast of advances in technology. For example, recent developments are a frequent subject of articles in their Ontario Professional Surveyor magazine. Observed meetings and interviews indicated that there was a high level of awareness of the need to assist practitioners in keeping up with technological developments.

The AOLS has also been actively considering changing societal expectations. This review is a prime example, as are a number of articles in the Ontario Professional Surveyor magazine, including the article on recent regulatory developments in the Executive Director's Notes in the Spring 2021 edition and the article in the same column on right touch regulation in the Fall 2020 edition.

Information gathered suggests that the surveying profession may face profound changes as a result of technology in the longer term. These issues are already a part of its strategic planning process and probably need to be an expanded part of its long-term planning. The AOLS is in the midst of preparing a major technology impact review that is still in draft form. It will soon be presented to the Legislation and Regulation Committee and then, ultimately to the Council. The draft that I have seen is impressive for an initial, high-level overview document. This should be a high priority for the AOLS, and more work likely needs to be done.

Interviews indicate that consideration of changing technology and societal expectations (e.g., right of entry to property, timeliness of service) are present in Council discussions in recent years.

**Recommendation #14: The AOLS should make the impact of technology on the public and profession a significant topic for Council consideration. (Legislative amendment not required)**

#### *Complaints and Discipline*

The complaints and discipline system of the AOLS shares many features with those of other regulators of professions in Ontario. Under the *Surveyors Act*, the complaints process is conducted in writing with contributions by both parties. There is discretion to refuse to investigate frivolous or abusive complaints. The Complaints Committee can take formal (e.g., recommend to Council that there be a referral to discipline) or informal (e.g., providing advice or a caution) action. There is no appeal on the merits of a decision not to refer a complaint to discipline, however the Complaints Review Councillor can review the process followed.

Under the *Surveyors Act* the discipline process involves a referral, a hearing, an order, and publication. The hearing procedures are partially specified in the *Surveyors Act* with additional requirements set out in the *Statutory Powers Procedure Act* and case law. An unusual feature is that the Council can direct that a matter referred to discipline be subject to mediation. There are

a number of benefits to mandatory mediation as a means to resolve cases that do not require a full public hearing.

(a) Public Interest Mandate

The complaints and discipline process is a core function of all regulators of professions.

The AOLS website identifies the complaints and discipline processes as one of the ways in which the AOLS protects the public. The Discipline Committee Manual describes the first objective of the Discipline Committee as protecting the public from incompetent and unethical practitioners. However, the Complaints Committee Manual itself describes its objectives more operationally as fulfilling its statutory functions. The observed meeting included several references by Complaints Committee members to its public interest mandate.

In discipline matters, the hearing panel acts as an adjudicator. Its public interest arises from conducting hearings fairly and ensuring that reasonable decisions are made. In the cases I reviewed, the outcome reflected right tough regulation principles. Remedial orders involving close monitoring or ensuring supervision of future work seemed appropriate to the facts of the case.

(b) Transparency

Currently, complaints decisions are not made public, at least where the practitioner is identified. This might be an area for future policy discussions, as some other regulators make significant complaints outcomes (e.g., remediation programs, cautions) public. However, statistics, trends or recurring issues arising from complaints are communicated to practitioners through the Ontario Professional Surveyor magazine, such as through the Registrar's Review column.

Under the *Surveyors Act*, discipline hearings are notionally held in public (although the public rarely attends) and decisions are published.

The AOLS website describes the role and purpose of the complaints process. It provides useful information as to the focus on professional misconduct or incompetence of practitioners and not boundary disputes or fee disputes.<sup>19</sup> Helpful links are provided for information on how to address boundary disputes or fee disputes. Individuals are encouraged to contact the Registrar to discuss concerns even if they do not wish to register a formal complaint. Interviews indicate that staff receive and respond to calls made by members of the public about concerns that could become complaints. There is also a detailed description of the right of entry onto private property of a practitioner or a person in their employ, likely intended to address a recurring area of concern by members of the public.

The AOLS website also contains a non-legal description of the complaints process and provides an online form helping individuals to formulate their complaint in an organized fashion.

The AOLS website also contains a link to the Complaints Committee manual of procedures.<sup>20</sup>

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<sup>19</sup> Interestingly, the link describing professional misconduct and incompetence goes to the Code of Ethics and Standards of Practice. It does not go to the definitions of professional misconduct and incompetence contained in the legislation. Nor is there a non-legal description of what constitutes professional misconduct or incompetence. This might be an area for enhancement.

<sup>20</sup> One of the links to the page did not work when I tried it. However, another link on the same page did work.

The Complaints Committee Manual emphasizes the duty for the Committee to give meaningful reasons for decision where a referral to discipline is not recommended.

The AOLS website also provides an overview of the discipline process. Some of it is in non-legal language and some of it (e.g., the list of penalties that can be imposed) is in legislative language. Decisions of the Discipline Committee from the past 14 years are posted on the AOLS website. The Manual of Procedures for the Discipline Committee is also posted on the AOLS website.

As noted above, discipline hearings are open to the public (with rare exceptions) and information about upcoming hearings is posted on the AOLS website. The Discipline Committee Manual indicates that its decisions are generally public unless the legal criteria for non-publication have been met. The Discipline Committee Manual contains the rules of practice for the Committee, which are consistent with those of other professional regulators. The AOLS has a policy that discipline decisions can be removed from the website after ten years, except for decisions involving a suspension or revocation. While some other regulators make a point of retaining such information permanently, absent exceptional circumstances, this approach is consistent with current regulatory practice.

The AOLS website also contains guidelines on mediation of discipline matters. This is in addition to the usual pre-hearing conferences held in discipline matters. In my view, this transparent, additional option is a best practice.

Discussions on changes to the process (e.g., Registrar's investigations, use of mediation, risk-based decisions, discipline process reform) are conducted at Council and thus would be available to the public if Council meetings were held in public.

In one of the discipline files reviewed, the hearing was closed to the public without the provision of reasons other than that the hearing was being held electronically. Given the presumption of public hearings the hearing panel should give meaningful reasons whenever closing the hearing.

#### (c) Diversity

The only express references to diversity for the selection of Committee members mentioned in the Complaints Committee Manual are geography and areas of practice of professional members. Interviews indicated that little work has been done on diversity and inclusion issues to date.

Interviews indicated that the Discipline Committee had done some recent policy work on the need to ensure that diversity is taken into account in the discipline process even though the Committee's role is that of an adjudicator. In fact, some recommendations have been made to the Council as to how the discipline process can be modified to fairly consider those values.

Inclusion and diversity might be something for the Committees to discuss with the Inclusion and Diversity Committee and staff. For example, is there a disproportionate impact on certain demographic groups in the way in which the Committees operate?

#### (d) Oversight, Performance Reviews and CQI

The complaints process involves an opportunity for the complainant to request a review by the Complaints Review Councillor. The Complaints Review Councillor, who is a member of the Council, can also initiate a review on their own. The review is not of the merits of an individual complaint, but rather of the process. The Complaints Review Councillor then provides a report

which is provided to the Council and, in respect of the treatment of a complaint, also to the parties and the Surveyor General. In one sample case, the Complaints Review Councillor provided a report that indicated the limited scope of the review. The Complaints Review Councillor also meets with the Complaints Committee once a year. The minutes of the Complaints Committee and interviews indicate that recommendations from the Complaints Review Councillor are considered by the Committee. In my view, this statutory structure does meet contemporary expectations, but just barely. There is an increasing tendency to ensure that there is a review of the disposition of an individual complaint, which can be initiated by either party or by an independent agency. That expectation increases where the complaints process can impose mandatory remediation measures on a practitioner.

**Recommendation #15:** That there should be an external review of complaints dispositions, including the adequacy of the investigation and the reasonableness of the decision. This recommendation becomes more pressing should the Complaints Committee be given the authority to impose mandatory remediation directions. (Legislative amendment required)

In addition, the complainant is sent a Complainant Satisfaction Survey and the practitioner is given a Member Feedback Form to complete. Any responses are considered by the Complaints Committee at a meeting. That is a commendable practice.

The oversight of individual discipline decisions is partially done through the statutory appeal to the Divisional Court. The Committee also has discussions reflecting on completed cases and how to improve both the overall process and its own performance. However, the Discipline Committee Manual and interviews indicate that, from time to time (typically every five years), a publicly appointed member of the Council will audit the discipline process.

In terms of oversight by the Council, interviews indicate that there have been no formal evaluations of Committees. Committees are reviewed as part of the dashboard reports to the Council, however, it is more in the form of the following: are they meeting, are they addressing work items sent by Council, and have there been any concerns on their performance raised by the Registrar or Executive Director. The dashboard documents are included with Council minutes. The dashboard approach should continue with regular updating of the dashboard criteria. As noted above, a process for the review of the performance of each Committee and each Committee member should be a long-term goal of the AOLS.

Interviews indicate that having a Council member and staff present for most meetings of the Complaints Committee helps ensure effective communications between them. Some felt that this overlap constituted a form of accountability. However, in my view, that type of oversight may not necessarily be the most appropriate one for the Discipline Committee.

#### (e) Structure, Selection and Training

Under the *Surveyors Act*, the composition of both the Complaints Committee and the Discipline Committee consists of a combination of Council members and non-Council practitioners. There has been a trend to minimize or even eliminate overlap between the Council and regulatory Committees. Traditionally, such overlap was justified on the basis that this permitted Council to be more aware of what was going on the “front lines” and to ensure that Council policies are understood by the Committees. However, in recent years these considerations are seen to be outweighed by the need to ensure the independence and impartiality of regulatory Committees, especially in the complaints and discipline area. As important, the skills and competencies of Council members (e.g., strategic planning, policy making, oversight) are quite different from that

required by members of Complaints and Discipline Committees (e.g., investigative, legal and adjudicative). In addition, the time commitment to serve on both the Council and Committees with heavy or occasionally intensive workloads can prevent the most qualified candidates from agreeing to serve. Eliminating the overlap of composition of the Council from Complaints and Discipline Committees is advisable.<sup>21</sup>

**Recommendation #16:** That members of the Council no longer serve on the Complaints Committee and Discipline Committee. Rather, their members should be selected through a rigorous competency-based selection process identifying the experience and skills necessary to serve on these Committees and actively recruiting appropriate candidates. (Legislative amendment required)

The proportion of public members on both the Complaints Committee and the Discipline Committee is fairly low compared to other regulators. For example, the health professions require that a hearing panel of the Discipline Committee have at least two public members. It is easy for one non-professional voice to be hesitant to contribute or to defer to the professional perspective. It would be prudent for there to be at least two public members on both Committees and, perhaps even, on all panels. They need not be and, as discussed above, should not be Council members. Public confidence would be enhanced if 50% of members of both Committees are members of the public.

**Recommendation #17:** That at least 50% of the members of the Complaints Committee and the Discipline Committee be public members and that panels dealing with individual matters have at least two public members. (Legislative amendment required)

The Complaints Committee Manual does not identify the competencies that members of the Committee should have. It also does not identify the recruitment and selection process other than that it is done by Council as required by the *Surveyors Act*. The Manual does identify that there should be diversity in terms of the geography and areas of practice of the professional members. The Manual also recommends a maximum term of ten years. Interviews indicated that recruitment relates primarily to availability, interest, and general suitability rather than a formal, skills-based, transparent recruitment process.

The Discipline Committee Manual contains even less information about the selection criteria and process. Similar to the Complaints Committee, interviews indicated that recruitment relates primarily to availability, interest, and general suitability rather than a formal, skills-based, transparent recruitment process. However, the Discipline Committee Manual specifies that hearing panels are selected randomly (except that the Chair of the panel must have some hearing experience), presumably to ensure that there is no perception of favouritism or “stacking” of the panel.

Complaints Committee members are expected to attend training in Administrative Law and are encouraged to attend seminars on legislation and case law. Interviews indicate that beyond those “when available” options, most orientation and training has been informal (e.g., review of the

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<sup>21</sup> Some would recommend that the Complaints Committee and the Discipline Committee be removed entirely from the AOLS and be assigned to an independent agency. In my view there is insufficient evidence to demonstrate that the independence gained from such a change outweighs the loss of expertise that would result. In addition, the volume of cases in your context would likely make such an initiative prohibitively expensive.



Committee's terms of reference, observing Committee meetings, reviewing past decisions, receiving extra assistance when leading the presentation or writing of first decisions).

Discipline Committee members are required to receive training in procedures and legal aspects of hearings before being eligible to sit on a panel. Training of discipline panel members has been enhanced with new members being afforded access to existing training programs for other professions and having a meeting with independent legal counsel before their first hearing. The sample files reviewed indicated that the quality of the reasons for decision of the Complaints Committee is adequate. However, additional training in reason writing might be considered.

As noted above, a recommendation has been made that all Committee members receive additional formal orientation.

(f) Allocation of Roles and Responsibilities

Both the Complaints Committee Manual and the Discipline Committee Manual set out the respective roles of the Registrar and Committee members and their Chairs. For example, the Registrar acts as an administrative support to the Complaints Committee. Interviews, confirmed at the observed meeting, indicate that the Registrar allows the Complaints Committee to deliberate without interference. Further, the Registrar has limited contact with the Discipline Committee in order to preserve its independence. In addition, the Discipline Committee Manual sets out the responsibilities of their administrative staff support person, the Hearing Clerk. Interviews indicate that the separation of Hearing Clerk and Registrar functions is an idea worthy of implementation.

File reviews and interviews indicate that most investigations of complaints are conducted through an exchange of correspondence and are then presented to the Complaints Committee for review. It is quite appropriate for the Registrar to conduct additional inquiries (e.g., of third-party witnesses) or appoint an investigator on the Registrar's own authority where relevant information is being withheld. Increasing the Registrar's role to collect additional likely relevant information without a specific request by the Complaints Committee would enhance the process.

Some of the policy discussions of the Discipline Committee ventured into the roles of others in the process (i.e., the Registrar, the Complaints Committee, the Council). This is natural given the impact of some issues throughout the process (e.g., consideration of the prior history of the practitioner). However, the Discipline Committee needs to be careful to respect the independence of the roles of others in the process.

Currently, referrals to discipline have to go through the Council. There are many concerns with this process. It distracts Council from its primary role of giving direction to the AOLS, making policy, and overseeing the regulation of the organization. There is no reason to believe that Council members have more expertise than Complaints Committee members as to which cases should go to discipline; in fact, the opposite is likely the case based on actual experience alone. In addition, Complaints Committee members dealing with a matter over several meetings, having the complete file before them, and having no other responsibilities are more familiar with the facts and issues of each case. Involving the Council increases the perception of bias in that Council members who may sit on the Discipline Committee have to be insulated from that decision. This perception can be increased with the Council's role in recommending mediation and approving mediated resolutions. Also, members of the Discipline Committee may be perceived by practitioners and, perhaps even, the public as likely to give deference to their colleague's view



that the alleged conduct warrants discipline. Such a step is unusual in modern approaches to professional regulation which generally enhances the independence of the discipline tribunal.

*Recommendation #18: That the *Surveyors Act* be amended to remove the role of the Council in the referral of matters to mediation or discipline. (Legislative amendment required)*

File reviews and interviews indicated that the Complaints Committee saw its role as being primarily investigative and to screen out complaints that do not require any further action. Apart from rendering interim decisions to enable practitioners to take suggested courses or to make changes to their policies and procedures, the Complaints Committee deferred many informal resolution options to the Council. Interviews and the observed meeting indicated that the Complaints Committee was desirous of, but uncertain as to, its authority to take a more active role in facilitating educational and remedial measures where there were concerns that may not be serious enough for referral to discipline or mediation. Some recent efforts have been made by the Complaints Committee to be more adventuresome in its disposition options. In my view, even under the current legislation, there is no reason why the Complaints Committee could not assertively implement more non-referral options such as negotiated undertakings, letters of advice or caution, invitations to attend for an oral caution, or voluntary mediation. In that way, only cases requiring a true referral to discipline would go to the Council under the current legislation. Of course, even more could be done by the Complaints Committee with legislative amendments.

*Recommendation #19: That the Complaints Committee immediately develop and implement the full range of remedial options available to it and only refer a matter to the Council where a referral to discipline is warranted. Similarly, where the Complaints Committee refers a matter to the Council, absent exceptional circumstances, the Council focus its role in making a referral to either discipline, mediation or both. (Legislative amendment not required)*

*Recommendation #20: That the *Surveyors Act* be amended to facilitate greater remedial options for the Complaints Committee including being able to direct the mandatory education or remediation of a practitioner and being able to require a practitioner to attend before the Committee to receive an oral caution. In addition, the *Surveyors Act* should be amended to remove the Council's role in referrals to the Discipline Committee or for mediation. (Legislative amendment required).*

There are other roles of Council in individual regulatory matters that might be reconsidered.

One is related to the compensation fund. Few claims for compensation are made. Staff gathers information and presents it to the Council. The Council (or a subset of the Council) is the one that makes decisions as to whether payments should be made from the compensation fund for dishonest or incompetent conduct by practitioners. Again, this is a function for which the Council is not well suited, can be a distraction from more important Council work, and may create an appearance of bias. The legislation should allocate this role to a different, more suitable, entity such as a special Committee.

Similarly, the Council has the authority to restore a licence of a practitioner where it has been suspended or revoked for cause (e.g., discipline). Interviews indicate that this authority has not been exercised by the Council, at least recently. Under the *Surveyors Act* it is the Registration Committee that has that role. Other regulators often allocate this function to the Discipline Committee. Presumably this authority of the Council can be used to avoid a hearing before the Registration Committee where restoration is obviously appropriate (e.g., were the suspension or

revocation was for conduct that is no longer prohibited). Nevertheless, there are good reasons to keep the Council entirely out of complaints and discipline matters.

**Recommendation #21:** That the legislation be amended to remove the Council from making compensation fund decisions or restoring the licence of practitioners and transferring this role to a suitable Committee. (Legislative amendment required)

Care must be taken to ensure that those assisting in the prosecution of matters before the Discipline Committee do not provide an undue level of administrative support to the hearing panel. This can create the perception of bias. This separation of functions is difficult for a regulator with few employees, as the administrative support person must have a familiarity with legal processes and the ability to manage legal counsel. As a practical matter, the AOLS relies on independent legal counsel to perform some of those functions. While this is an acceptable solution, the AOLS should be alert to the possibility of training a suitable staff member who is not involved in the prosecution to perform these functions. This can help ensure that hearings are administered effectively and efficiently. For example, my file review indicated that a small number of non-essential administrative documents may not have been deposited into the file.

#### (g) Fiduciary Duties

The Complaints Committee Manual and the Discipline Committee Manual discuss the fiduciary duties of Committee members, especially for conflict of interest and confidentiality. Committee members must sign a formal written statement promising to comply with those expectations. The Discipline Committee Manual also emphasizes these fiduciary duties, especially avoiding a conflict of interest. Nothing I learned in reviewing the sample files or conducting interviews suggested concerns in respect of the Committee members complying with their fiduciary duties.

The minutes of each meeting of the Complaints Committee contain a list of the conflicts of interest declared. There are a number of conflicts declared indicating that this issue is taken seriously by both Committee members and staff. In fact, interviews indicated that sometimes conflicts of interest are declared too readily given the small size of the profession.

Interviews also indicated that care is taken to ensure that those appointed to hearing panels do not have a conflict of interest or an appearance of bias. There is a two-stage screening process with a general inquiry at the selection stage (where the name of the practitioner is not disclosed) followed by the signing of declaration forms in which the name of the practitioner is disclosed.

While the Discipline Committee does and should hold general policy discussions about its process, there is a possibility that discussion of individual cases can create a risk of conflicts of interest in future cases (e.g., if the same practitioner comes before them again). The minutes of these policy discussions indicated that the Committee was aware of that risk and that all discussions should not be of individual cases but of broader policy issues. However, this is not easy to do, and the Committee should remain diligent during these discussions.

#### (h) Policy Making Process

The Complaints Committee Manual contains a number of policies related to the process. For example, the portion of the Manual dealing with complaints against former members provides good guidance of the considerations to be taken into account in deciding whether to proceed with the complaint. That policy is consistent with the best practices of other regulators.

The Complaints Committee Manual also provides guidance on obtaining information on prior complaints and in the practitioner's dealings with the SRD reviews or insurance claims in a manner consistent with contemporary approaches by other regulators.

The Complaints Committee Manual also provides options for achieving remedial action (e.g., interim decisions) that are consistent with contemporary approaches by other regulators if readily adopted.

However, the portion of the Manual dealing with deferring the processing of complaints that are the subject of other proceedings is quite brief, essentially indicating that such complaints will generally be placed on hold. This discussion does not set out all of the relevant considerations (e.g., risk of harm to the public; legal impact of a possibly lengthy delay) and reflects a dated approach to the issue. This portion of the Manual might be reviewed.

The minutes of the Complaints Committee indicate that it has been considering whether changes to the *Surveyors Act* are warranted. This type of policy discussion is useful to have periodically. The minutes, interviews, and observed meeting indicate an active review of the content of the Complaints Committee Manual, which is a means of discussing Committee policy.

The Discipline Committee conducted a review of its processes and made recommendations for change to the Council. The minutes of the Committee meetings for the past year indicate that this role was taken seriously and various topics were discussed at length, including how the prior history of the practitioner was taken into account throughout the entire complaints, referral and discipline process. The Council approved the modifications. The proposed changes appear to enhance the fairness and effectiveness of the discipline process. The Discipline Committee has also had general discussions of other related issues such as a debrief on their first virtual hearing and general discussions of how mental health or addictions issues should be handled. Again, there are limits to the ability of the Discipline Committee to take action on some of these issues (e.g., addressing mental health and addictions issues) since it performs an adjudicative role.

(i) Changing Technology and Societal Expectations

The Complaints Committee met electronically during the pandemic.

The Discipline Committee held its hearings electronically during the pandemic. At its policy meetings, it discussed the impact of electronic hearings on the process and whether such forms of hearing should become more common.

The Complaints Committee, in particular, is well placed to identify concerns arising through technology or as a result of changing societal expectations (e.g., notifying owners before accessing private property). It appears that this role is kept in mind.

(j) Facilitates Process

In addition to providing an optional Complaints Help Form for complainants to use to formulate a complaint, the AOLS website invites individuals to contact the Registrar with any questions. The process is described in some detail in non-legal language on the AOLS website. The observed meeting included discussion about enhancing the Form further. The Complaints Committee Manual is also publicly available on the website explaining the process in even more detail. The practitioner is provided an opportunity to respond to the complaint and to respond to any reply from the complainant to the practitioner's response. Acknowledgement letters are provided at

each step of the way. In reviewing the files, it appears that the template is followed closely for each of the acknowledgement letters. The letters are clear and to the point. The language is fairly non-legal in nature for the most part, given the circumstances. One might wish for a bit more explanation of the process (perhaps through an attachment) in the initial letter acknowledging the complaint. In addition, the final letter advising the complainant of the practitioner's reply is a bit abrupt in tone by indicating that the exchange of correspondence process is completed. Perhaps there is different language than "the Committee will not consider any further submissions".

The Complaints Committee also exchanges correspondence between the parties for Interim Decisions (which provides a remedial approach to resolving some complaints).

The complaint is sent to the practitioner with a list of information that would commonly assist the Committee in assessing the complaint.

Overall, the Complaints Committee facilitates the process for participants.

The Discipline Committee has a lesser role in facilitating participation in the process, other than by placing its Manual on the AOLS website. The recent initiative to encourage pre-hearing conferences is also of assistance. The task of assisting self-represented practitioners at discipline hearings is left to the AOLS's counsel. This is quite acceptable. Some regulators are considering additional initiatives, including preparing a plain language explanation of the process for self-represented practitioners.

#### (k) Screening Complaints including Risk Assessment

The Complaints Committee Manual provides some guidance on the considerations for the Committee to take into account when disposing of a complaint. For example, conduct that reflects a pattern of behaviour, especially with a prior history with the AOLS, should be taken more seriously. The two main criteria, the seriousness of the concerns and whether there is sufficient evidence to support the concerns are referred to. However, interviews and the observed meeting indicated that even these two core overall criteria are not always top of mind. The Committee is appropriately warned against making findings of credibility.

The Manual could provide additional guidance to the Complaints Committee. Most importantly, the Manual would benefit from an explicit discussion of risk of harm. In addition, other commonly considered factors (e.g., seriousness of the nature of the conduct such as dishonesty and breach of trust, the extent to which the practitioner recognizes any gaps in their performance and their willingness to take steps to prevent is re-occurrence) could also be articulated. These criteria, or even a decision tree, can provide guidance without constraining the discretion necessary for screening decisions. The observed meeting reinforced the value that a decision tree organizing the criteria for decision-making could offer the Committee.

Having said that, the minutes of the Committee and Committee documents indicate that the Committee participated in a risk management workshop in October of 2020 and a risk management evaluation has been done by the Committee. Certain risk factors were identified. Interviews indicate that this valuable work is still at a preliminary stage. It would be useful to further develop those discussions and to implement the outcomes in the Manual or a separate risk management document.

Also, during the past year, the AOLS developed a risk-based approach to initiating Registrar's investigations. The criteria used there would have some relevance to the Complaints Committee investigation and screening functions.

**Recommendation #22:** That the Complaints Committee develop a document outlining the criteria it should use in making decisions and the options available to it. The document can be incorporated into its Handbook. In addition, there should be training of the Complaints Committee on its role and the criteria and options for its decisions. (Legislative amendments not required)

Understandably the Discipline Committee Manual identifies the criteria for discipline decisions in legal terms, such as basing its decision on the evidence before it. The Discipline Committee participated in a risk management workshop in January 2020 and developed a risk register related to risks of the Committee not performing its functions effectively. Action items were developed to mitigate those risks.

(l) Proportional Disciplinary Action

As noted above, the Complaints Committee considers remedial options in appropriate cases.

In reviewing sample files of the Complaints Committee, it appears that the outcomes were proportional to the nature of the concerns, the response of the practitioner and the information gathered. One case I reviewed was borderline as to whether a referral to discipline was warranted, but the choice made was defensible, in my view, given the response of the practitioner.

Interviews indicated that the Discipline Committee actively discusses this issue after individual cases and in relation to diversity, equity, and inclusion considerations.

(m) Statutory Provisions that May Require Updating

While most of the provisions in the *Surveyors Act* are fairly standard, there are some provisions (or gaps in the provisions) that do not, in my view, reflect current best practices. In particular:

1. While the Discipline Committee has the authority to impose terms and conditions on a certificate of authorization, there is not an explicit provision for suspending or revoking a certificate of authorization. This ambiguity should be resolved as there are cases in which suspending or revoking a certificate of authorization might be obviously justified (e.g., where the holder is not able to "keep up" but would be able to continue to practice under the leadership of another practitioner).
2. The Discipline Committee has the authority to "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". This provision can be seen to involve the Discipline Committee in resolving fee disputes rather than protecting the public interest. It can also encourage complaints that are not really related to professional conduct. The focus of the AOLS, and particularly the complaints and discipline process, should be on protecting the public from harmful behaviour. Consideration should be given to removing this provision.

**Recommendation #23:** The *Surveyors Act* should be updated to modernize the discipline process to enable it to suspend or revoke a certificate of authorization and to remove the authority to compel a practitioner to repay, waive or reduce fees. (Legislative amendment required)

### *Fees Mediation*

Like the professional engineers and architects, the AOLS has a Fees Mediation Committee. Under the *Surveyors Act*, the Committee can either mediate or arbitrate written complaints related to the fees charged by practitioners. The Committee can make binding and enforceable decisions on fees.

#### (a) Public Interest Mandate

The Fees Mediation Committee Manual describes the Committee's mandate in legislative terms, namely "To ensure fair, open and complete fulfillment of [the legislation]." The Manual also characterizes the Committee's function as resolving complaints related solely to fees. However, this function relates to settling the amount owing rather than altering the practitioner's future behaviour or deterring such conduct by other practitioners.

One can debate whether this activity is appropriate for a regulatory body. This activity could be seen as being more appropriate for the civil courts. Decision makers, who are often members of the profession, may not have the same level of expertise in mediation and adjudication compared to the courts. Also, the focus on fees, especially by complainants, could result in other, more serious concerns, such as dishonest conduct or incompetence, not being addressed. The program could also divert resources from public protection to an area that involves a lower level of harm to the public. In addition, at least one party is likely to be dissatisfied with the outcome and may view the AOLS as protecting the other side's interest. This could harm the regulatory reputation of the AOLS if it is the client who is dissatisfied.

On the other hand, the program can provide a less costly and less technical option to resolve fee disputes to both clients and practitioners. The program could also be seen as an option for diverting low-risk concerns from the complaints and discipline route so that priority can be given to higher-risk concerns.

The Council has discussed the value of the Fees Mediation Committee during the past year. During that discussion it was noted that the Committee was rarely used, that few other regulators had such a Committee, and that the Committee often came across matters in which non-fee issues arose. Council was divided on the issue of whether to eliminate or improve the effectiveness of the Committee. The files reviewed reinforced the concern that rarely is the issue just about fees. In one of the cases reviewed there were significant allegations of unprofessional behaviour. In both files reviewed, communication issues were identified. Both cases could be characterized as "messy" in that the various issues were intertwined and were not limited to the amount of the fees charged.

A related issue is that the process is complex. Not only are there two resolution streams, mediation and arbitration, but when arbitration results there are three different formats (written, electronic and in person). Obtaining consensus or imposing a stream and a format makes for complicated communications with two individuals who are not familiar with the process. These issues were evident from the files reviewed.

**Recommendation #24:** The AOLS should seek a legislative amendment to eliminate the Fees Mediation Committee. (Legislative amendment required) Until then the Committee should employ strict criteria for accepting cases deferring any but the clearest of matters to the Complaints Committee. (Legislative amendment not required)

## (b) Transparency

The AOLS website explains the purpose and process of the Fees Mediation Committee in non-legal language. The website provides a form for people to complete in order to begin the process. The AOLS website also contains a Manual for the Fees Mediation Committee. The forms direct people to the Manual. Interviews indicate that staff receive and respond to calls made in this area.

The Manual contains a template decision of where the Committee, in an arbitration, reduced the fee payable. On the one hand, this template provides extremely useful information to the parties. On the other hand, its presentation may create the impression that the Committee routinely finds fees charged are excessive. This impression could be reduced if there were a disclaimer at the beginning of the template decision that this is but one example, and if a template where the fees of a practitioner were largely upheld was also included.

## (c) Diversity

The Manual expresses a preference for geographical and occupational diversity for selection to the Committee. Interviews indicate that diversity, equity, and inclusion issues have not yet been discussed. Inclusion and diversity might be something for the Committee to discuss with the Inclusion and Diversity Committee and staff. For example, is there a disproportionate impact on certain demographic groups in the way in which the Committee operates?

## (d) Oversight, Performance Reviews and CQI

In terms of oversight by the Council, interviews indicate that there have been no formal evaluations of Committees. Committees are reviewed as part of the dashboard reports to the Council, however, it is more in the form of: are they meeting, are they addressing work items sent by the Council, and have there been any concerns on their performance raised by the Registrar or Executive Director. The dashboard documents are included with Council meeting materials. The dashboard approach should continue with regular updating of the dashboard criteria. As noted above, a process for the review of the performance of each Committee and each Committee's members should be a long-term goal of the AOLS.

There do not seem to be performance reviews performed by the Committee or continuous quality improvement processes. This Committee could benefit from such activities including offering a questionnaire to participants when the process is concluded and at least a self-evaluation.

Interviews indicate that having a Council member and staff present for most meetings helps ensure effective communications between them. Some felt that this overlap constituted a form of accountability.

## (e) Structure, Selection and Training

No criteria are established in the Manual for appointment to the Committee. It also expresses a preference that members do not serve on the Committee for more than ten years.

Under the regulations, the Committee is composed of three practitioners who do not need to be Council members and a public member of the Council. The public member is required to be a member of each panel. For the reasons noted above in discussing the Complaints Committee and the Discipline Committee, similar adjustments are recommended to the composition of the Fees Mediation Committee and its panels.



The Manual says that Committee members will be trained in their responsibilities, including attending the next available Administrative Law seminar, reviewing the Manual and the Committee's terms of reference, and encouragement to attend ongoing seminars. Recently, training was provided on mediation skills. Other than that, interviews indicate that orientation mostly consists of orientation by staff, continued availability of staff to Committee members, and access to the Manual. In particular, there has been no training on the skills necessary for conducting arbitration hearings.

As noted above, a recommendation has been made that all Committee members receive additional formal orientation.

**Recommendation #25:** If it continues to operate, that members of the Council should no longer serve on the Fees Mediation Committee. Rather, their members should be selected through a rigorous competency-based selection process, identifying the experience and skills necessary to serve on the Committee (especially in mediation and conducting hearings) and actively recruiting appropriate candidates. (Legislative amendment required)

**Recommendation #26:** If it continues to operate, that at least 50% of the members of the Fees Mediation Committee be public members and that panels dealing with individual matters have at least one public member (more if panels are larger than three persons). (Legislative amendment required)

**Recommendation #27:** If it continues to operate, that the members of the Fees Mediation Committee be given training in mediation and arbitration skills before engaging in either one of these activities. (Legislative amendment not required)

#### (f) Allocation of Roles and Responsibilities

The Manual describes the role of the Registrar, the Presiding Officer, and the Committee members. For the initiation of the process, the roles and templates seem to be clear. However, once an arbitration is commenced, the Presiding Officer can communicate with the parties. An arbitration is like a hearing. It is far from ideal for the Presiding Officer to be communicating directly with the parties during an arbitration. That is a role for support staff who have developed expertise in how to conduct such communications. In addition, such communications should be with both parties at the same time. Also, any miscommunication by staff members would then not be attributed to the arbitration panel itself. The wisdom of this separation of roles was reinforced by the files that were reviewed in which a potentially confusing communication had been sent by the arbitration panel itself. It is understood that communicating through staff members can delay communications and affect the "can do" approach of the current Committee, but it is a necessary step to safeguard the integrity of the process.

**Recommendation #28:** If it continues to operate, that support staff of the Fees Mediation Committee handle all communications with the participants.

#### (g) Fiduciary Duties

The Manual identifies the fiduciary duties of respecting confidentiality and avoiding conflicts of interest. Committee members are required to sign forms attesting to their awareness of these obligations for every complaint. Interviews indicate that there is a general awareness of these obligations. The additional training and processes recommended above will also assist in



reducing the likelihood of accidental confidentiality breaches, for example through email communications.

#### (h) Policy Making Process

Interviews indicate that there have been recent discussions on how to make more use of its mediation role than its adjudicative role. Revisions have been made to the Manuals to reflect this change in emphasis. It is difficult to tell whether the change in emphasis has taken hold yet.

The Manual, including the forms, identifies the types of information that would assist the Committee members in resolving a mediation or determining an arbitration. The text of the Manual does not explicitly provide a description of the criteria for facilitating or determining an outcome. However, the sample arbitration decision form in the Manual provides some guidance.<sup>22</sup> Interviews indicate that the considerations mentioned in the sample decision reflect the “unwritten” criteria generally applied. It would be helpful to list the criteria in a specific section in the Manual so that they can be reviewed and updated with experience. This would also be helpful for new members of the Committee.

Interviews indicate that the discussion about the suitability of the Fees Mediation Committee to continue to deal with these issues is primarily being held at the Council level.

#### (i) Changing Technology and Societal Expectations

This does not seem to be an issue that this Committee has dealt with.

#### (j) Facilitates Process

As noted above, the AOLS website provides information about the process, a copy of the Manual, and forms for people to use when initiating the process. The AOLS website also encourages people to contact the Registrar with any questions. However, the process is inherently confusing to many people with mediation and arbitration options and, where arbitration occurs, three different types of hearing formats (written, electronic and in-person). If the Fees Mediation Committee continues to operate, it should consider providing a more detailed plain-language explanation of its role and process on the AOLS website and in the initial communication to participants.

### *Registration Committee*

Under the *Surveyors Act*, the Registrar processes applications for a licence (for cadastral surveying), a certificate of registration (for practitioners in other branches of surveying) and a certificate of authorization (for those offering cadastral surveying services to the public). Where there are concerns about the application, they can be referred to the Registration Committee for

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<sup>22</sup> In particular:

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.

The template decision then goes on to calculate a fee based on the number of hours the work should take.

determination. The Registration Committee can then hold a formal hearing to determine whether the applicant meets the requirements or should be exempted from them.

The AOLS website indicates that the AOLS has entered into a mutual recognition agreement with all other Canadian regulators facilitating mobility under the former Canadian Agreement on Internal Trade.

(a) Public Interest Mandate

The draft Manual of Procedures for the Registration Committee describes the role of the Registration Committee in terms of its statutory role, and “to ensure consistency, openness, and fairness in the treatment of a matter referred to the Registration Committee”.

The Registration Committee is given additional responsibilities under the standards of practice to approve exceptions to the usual rule that one can only practice at or supervise one office.

(b) Transparency, Objectivity, Neutrality and Fairness

The AOLS has posted numerous documents explaining the categories of registration, the process for becoming registered and the requirements for registration. There are numerous resources filed to assist applicants through the process, including past professional examinations. There are specific website resources for internationally trained applicants and applicants applying under Canadian mobility provisions.

The AOLS publishes a number of policies on its website related to the registration process, including on language proficiency expectations and access to an applicant’s registration file. Interviews indicate that staff receive and respond to calls made in this area.

In terms of the role and function of the Registration Committee itself, the AOLS website does describe the process. However, for the most part, the page simply recites the applicable provisions in the *Surveyors Act*. The page is difficult to read and understand.

**Recommendation #29: That the AOLS website page on appeals to the Registration Committee be updated to include a plain language description of the availability, process, and criteria for such appeals. (Legislative amendment not required)**

I could not locate the draft Manual of Procedures for the Registration Committee on the public portion of the AOLS website. The draft Manual contains rules of practice for proceedings before the Registration Committee.<sup>23</sup> Those rules ought to be publicly available and I understand that this is the intent once the Manual is updated.

The Manual directs hearing panel members to the legislation in terms of criteria for decision making. Some criteria are provided for decisions relating to operating more than one office or practice.

The Registration Committee does not appear to hold hearings very often. Most of its work appears to relate to approvals of practising at or supervising multiple sites. The files I reviewed did not have the reasons given for decisions on those matters. While much less is at stake in those matters than in true registration appeal hearings, brief reasons would be helpful in order to be

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<sup>23</sup> Advice should be sought on whether the provisions relating to the payment of costs are consistent with s. 17.1 of the *Statutory Powers Procedure Act*.

transparent and consistent. Interviews indicated that there were no established criteria for making the exemption decisions.

I could not locate any actual registration appeal decisions on the AOLS website, although this is likely because a hearing has not been held for so long.

The AOLS website contains the most recent report to the Office of the Fairness Commissioner about its registration process. However, the website does not contain the most recent OFC assessment report made in 2016, nor does it describe the steps taken to address the issues identified in that report. However, Council meeting materials indicate that the AOLS has been actively addressing the recommendations and has been in communication with the Fairness Commissioner about this progress. In addition, the AOLS records demonstrate that it has identified all outstanding OFC recommendations, the steps being taken to address those recommendations, and documentation of a meeting with the OFC to provide an update on them. Most of the report deals with the registration process before the matter reaches the Registration Committee.

(c) Diversity

In implementing the OFC recommendations, training has been provided to those involved in the registration process about unconscious bias. Also, the AOLS has surveyed practitioners about any barriers they experienced in the process related to equity, diversity, and inclusions grounds. Inclusion and diversity might be something for the Committee to discuss with the Inclusion and Diversity Committee and staff. For example, is there a disproportionate impact on certain demographic groups in the way in which the Committee operates?

(d) Oversight, Performance Reviews and CQI

The registration process is reviewed by the Office of the Fairness Commissioner. The AOLS's files indicate that there has been contact with the OFC about how the AOLS is going to address all outstanding recommendations from the OFC.

In addition, the AOLS recently had an external review of its compliance with the Fair Registration Practices Code. The focus of the report was on the steps leading up to the involvement of the Registration Committee. Some of the recommendations (e.g., documented training, documented criteria for making a decision) are consistent with this review. The external review briefly touched upon the Registration Committee process, noting the existence of this statutory right of internal appeal.

Interviews indicate that some additional sources of feedback are obtained during the registration process, including surveys of candidates sitting for the examination as to the relevance and utility of the preparatory information provided.

In terms of oversight by the Council, interviews indicate that there have been no formal evaluations of Committees. Committees are reviewed as part of the dashboard reports to the Council, however, it is more in the form of: are they meeting, are they addressing work items sent by the Council, and have there been any concerns on their performance raised by the Registrar or Executive Director. The dashboard documents are included with Council minutes. The dashboard approach should continue with regular updating of the dashboard criteria. As noted above, a process for the review of the performance of each Committee and each Committee member should be a long-term goal of the AOLS. Hearing decisions are reported to the Council.

Interviews indicate that having a Council member and staff present for most meetings helps ensure effective communications between them. Some felt that this overlap constituted a form of accountability.

(e) Structure, Selection and Training

Under the regulations, the composition of the Registration Committee consists of a combination of Council members and non-Council practitioners. Only one public member serves on the Committee. While an elected Council member must serve on a panel, it is not necessary for the public member to be on the panel. The Manual does not contain any criteria for selection.

The Manual does indicate that hearing panel members should be selected so that at least one of them has prior Registration hearing experience. That person will be appointed Chair of the panel. It should be kept in mind that in some cases a more appropriate person could be selected to Chair the hearing panel (e.g., if someone has extensive hearing experience in other contexts and the person with previous Registration Committee hearing experience does not really have the skills to Chair a hearing).<sup>24</sup>

For the reasons noted above in discussing the Complaints Committee and the Discipline Committee, similar adjustments are recommended to the composition of the Registration Committee and its panels.

**Recommendation #30:** That members of the Council no longer serve on the Registration Committee. Rather, their members should be selected through a rigorous competency-based selection process identifying the experience and skills necessary to serve on these Committees and actively recruiting appropriate candidates. (Legislative amendments required)

**Recommendation #31:** That at least 50% of the members of the Registration Committee be public members and that panels dealing with individual matters have at least one public member (more if panels are larger than three persons). (Legislative amendments required)

Given that the Registration Committee conducts hearings but has an almost non-existent workload, it might make sense for it to have an extensive overlap of composition with the Discipline Committee. The Discipline Committee also conducts hearings and has more extensive training and has at least some hearing experience. It would be rare for an applicant for registration to have previously been before the Discipline Committee even in a case where an applicant has been revoked and is seeking reinstatement, the expertise of Discipline Committee members would be helpful, even if the panel members are different.

The 2016 report of the Office of the Fairness Commissioner identified training of those involved in the registration process as an area for improvement. The AOLS has implemented training programs and reported on those programs to the OFC. The Manual identifies a need for training of Committee members on how to conduct a hearing. That need is confirmed by the interviews conducted.

As noted above, a recommendation has been made that all Committee members receive additional formal orientation.

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<sup>24</sup> The provision in the Manual about quorum of the Registration Committee hearing panel might be reviewed to ascertain whether it is still current given the wording of the *Statutory Powers Procedure Act*.

(f) Allocation of Roles and Responsibilities

The documents related to the Registration Committee indicate a clear distinction between the role of the Registrar and the Committee members. The Manual indicates that the Registrar has no operational role and that attendance at any meetings of the Registration Committee is simply to respond to questions of an administrative nature. For example, the script for the panel Chair contains a statement that the Registrar, if they testify, does not participate in the Committee's decision.

The Associate Registrar is assigned the responsibility of managing the Committee's files.<sup>25</sup>

According to the draft Manual, the administrative support for the Registration Committee is provided by a Hearing Clerk who has defined responsibilities.

The roles and responsibilities of the Committee Chair and hearing panel Chair are also articulated.

(g) Fiduciary Duties

The 2016 report of the Office of the Fairness Commissioner identified processes for demonstrating objectivity and neutrality of those involved in the registration process as an area for improvement. This comment applied to the entire registration process and not just to the Registration Committee. However, the Manual indicates that all members must sign a conflict of interest and confidentiality statement. In addition, the template script for the hearing asks the parties at the beginning of the hearing if there are any objections to the panel composition. The Manual also indicates that the Chair of the Committee will specifically inquire of each potential hearing panel member if they have a conflict of interest. The Manual provides some guidance as to what might constitute a conflict of interest.

(h) Policy Making Process

The 2016 report of the Office of the Fairness Commissioner identified completing a policy on how the AOLS assesses the good character of an applicant as an area for improvement.

The Registration Committee does not appear to have done significant policy making for its own activities, which is not surprising given how rarely it conducts hearings. As noted above, criteria for the exemptions would be beneficial.

Interviews indicated that one possible area of policy development relates to the duplicative supervisory and responsibility roles related to entities holding a certificate of authorization. This has caused some confusion as to who is responsible for concerns that develop. However, this concern is, again, not within the mandate of the Registration Committee itself.

(i) Changing Technology and Societal Expectations

While not a responsibility of the Registration Committee itself, interviews indicate that while there has been some discussion of including these topics in the registration process (e.g., as content in the educational programs and articling process). Apparently, this has not been done for a while.

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<sup>25</sup> In the draft of the Manual I reviewed, there was some inconsistency as to whether the Associate Registrar or the Registrar held that responsibility.

### *Inspection Program (Peer Competency Review)*

The inspection program is set out in the regulations. It involves an annual peer review of at least one file and a comprehensive review every five years. Serious concerns are reported to the Registrar and taken to the Complaints Committee. The AOLS's by-laws prescribe the information that must be recorded for Survey Review Department purposes.

#### (a) Public Interest Mandate

The inspection program is an important proactive program that systematically reviews the quality of work done at various surveying offices and provides peer feedback (positive and encouraging improvement). The goal is to address issues within the program. However, if significant concerns are identified, especially of a persistent nature, they are reported to the Registrar who can take them to the Complaints Committee.

The Survey Review Department Procedures Manual identifies the program's role as: "oriented towards the education of the membership. This is accomplished by working with the membership to maintain good survey and business practices in order that the public may be better served." This philosophy was generally confirmed during the interviews, although there has been some discussion on how the program can result in regulatory enforcement action in some cases.

The SRD program also provides insight into patterns of practice within the profession that can inform other parts of the AOLS such as continuing education, AOLS communications, and the need for policy development.

The SRD program is impressive in its scope and comprehensiveness; it reflects best practice. It may, however, need to expand its scope to remain so.

#### (b) Transparency

The Manual is not the AOLS public website.

The AOLS regularly provides updates, practical suggestions, and explanations for practitioners about the inspection program in the Ontario Professional Surveyor magazine.

Interviews indicate that information about the program is regularly provided at the AGM and regional chapter meetings.

#### (c) Diversity

Discussions of diversity, equity, and inclusion have not played a significant role in the SRD activities to date. This might be something for the SRD to discuss with the Inclusion and Diversity Committee and staff. For example, is there a disproportionate impact on certain demographic groups in the way in which the program operates?

#### (d) Oversight, Performance Reviews and CQI

The SRD program has built in a number of components to its program to ensure that it is as objective as possible. For example, the primary consultant provides a draft of their report to a secondary consultant to promote consistency, especially in the scoring. Scoring is by way of established criteria based directly on the regulations. A score that goes above the threshold for

referral to the Registrar is reviewed by a senior staff member. Draft reports are shown to the practitioner for comment before being finalized. These are impressive safeguards.

The Committee primarily has a policy making role; it also has some high-level monitoring functions. For example, the Committee periodically considers its scoring/point system to ensure that it remains appropriate.

The Committee has also begun to review its statistics, both to see whether consultants are generally consistent in their scoring, and to identify possible characteristics of concern (e.g., small firms vs. large firms).

The Committee encourages practitioners to complete exit surveys, which it reviews at each meeting. The Committee receives the survey results directly and not from staff to facilitate open consideration of feedback.

In terms of oversight by the Council, interviews indicate that there have been no formal evaluations of Committees. Committees are reviewed as part of the dashboard reports to the Council, however, it is more in the form of: are they meeting, are they addressing work items sent by the Council, and have there been any concerns on their performance raised by the Registrar or Executive Director. The dashboard documents are included with Council minutes. The dashboard approach should continue with regular updating of the dashboard criteria. As noted above, a process for the review of the performance of each Committee and each Committee member should be a long-term goal of the AOLS. The Council also has access to the minutes of the Committee, like it does for many other Committees.

Interviews indicate that having a Council member and staff present for most meetings helps ensure effective communications between them. Some felt that this overlap constituted a form of accountability.

#### (e) Structure, Selection and Training

The Manual does not identify the criteria the Council should use in selecting Committee members other than geographical representation.

Like many of the other Committees, the SRD Committee selection process involves a call for volunteers and a searching for suitable candidates by staff, Council officers and Committee members. There are no pre-established formal competencies or skills identified and the screening process is informal.<sup>26</sup>

A lot of the front-line work is done by consultants who are trained fairly rigorously to conduct reviews. However, interviews indicated that there was less training for Committee members. A formal training process is useful for all new Committee members.

As noted above, a recommendation has been made that all Committee members receive additional formal orientation.

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<sup>26</sup> A high-level description of desirable skills and knowledge has been distributed to the profession during the past two years when recruiting volunteers to serve with the AOLS. This would be an excellent starting point for a formal document.

#### (f) Allocation of Roles and Responsibilities

The Manual describes the role of staff and Committee members. In fact, the Manual includes detailed job descriptions of staff and discussion of their training and performance reviews. Template letters and other documents are provided.

The Committee's role is to oversee the program. It does not get involved in individual reviews. The program is operated by staff and consultants. The Committee monitors the number and timing of reviews. It also discusses policy issues such as expanding the scope of the SRD program. Interviews indicated that while the Committee has some oversight functions, it is primarily a resource to the department. Interviews also indicated that there is considerable overlap in the policy role of the Committee and that of the Council.

The Manual also provides detailed descriptions of the role to be performed by examiners/consultants recruited from the profession.

#### (g) Fiduciary Duties

The Manual identifies the duties of confidentiality and avoiding conflicts of interest. Committee members must sign a declaration acknowledging those duties. The potential for breaches of these duties is less for this Committee than some other Committees since they do not see individual review results. However, the risk is still present in respect of disclosing details of policy discussions that are not yet public. For staff and consultants, the risk is more obvious given their access to client information and business practices of practitioners and the fact that inadequate review outcomes are highly sensitive information. Greater discussion of these possibilities and how they might arise (e.g., at social events with colleagues) could be beneficial.

There is a unique aspect to the SRD scope in that it should not be influenced by other interactions between the AOLS and practitioners. For example, prior complaints should not be taken into account. In addition, because of the educational nature of the program, disclosure of review results should be kept confidential from other parts of the AOLS (e.g., complaints and discipline) unless specified criteria are met. Interviews indicate that SRD personnel are well aware of these constraints and the location of the SRD offices on a different floor of the building assists in achieving that goal.

#### (h) Policy Making Process

The Survey Review Department Committee has been reflecting on its role. It has identified certain limitations in its program including that its geographical focus may not sufficiently scrutinize work being done across multiple locations. More importantly, the focus of the program is on firms and not individual practitioners, which can be less meaningful where there are large, multiple-office firms.

The Committee also provides input to the work done by the Council and other Committees such as the Expanded Professional Task Force. The Committee also discussed how it can help implement the work done by others such as using the construction projects checklist as a part of its review process. The Committee is also considering incorporating high-level business standards as a part of its reviews.

The Committee is sensitive as to whether it should just review requirements in the legislation or whether it should also review important non-legislative expectations or, even best, practices. As



the AOLS, like many regulators, moves away from regulations as a means to establish standards and requirements, the SRD needs to consider whether a program focused on regulations adequately achieves the proactive regulatory objectives of the AOLS.

The Committee is also considering whether holders of certificates of registration should also be brought into the program.

These policy discussions need to continue, perhaps with greater urgency, as the importance of proactive regulatory programs gains acceptance.

(i) Risk Management

The Survey Review Department Committee participated in an internal workshop on risk management. The workshop included the identification of the sources of various risks of harm to the public and how the Committee could contribute to addressing those risks. The workshop also looked at sources of risk associated with the Committee that might be ineffective and briefly looked at some mitigating strategies for those risks.

The pandemic forced the SRD program to conduct virtual comprehensive reviews, which was seen as a possible permanent feature of the program.

As noted above the Committee has also begun to review its statistics, in part to identify possible characteristics of concern (e.g., small firms vs. large firms).

(j) Changing Technology and Societal Expectations

Given the focus of the SRD program on objectively measuring compliance with the requirements set out in the regulations, there is limited scope for it to consider changing technology and societal expectations. As the program considers expanding its scope, these considerations can perhaps be included.

(k) Facilitates Process

The Manual is a lengthy document that sets out template communication documents with practitioners. An attempt is made to explain the nature and purpose of the process in non-legal language. The communications include checklists, forms, and “tips”. Since this is an ongoing and comprehensive program, most practitioners who are not new to the profession have an awareness of the program already. Most communications with program participants are conducted by SRD staff, which facilitates consistency and ready access to further information. The SRD program is discussed in many of the communication vehicles of the AOLS which helps make its purpose and processes better understood.

As can be seen, while I have a few suggestions for the SRD program, I have no recommendations specific to it.

*Development of Practice Standards*

This portion of the report should be read in conjunction with the review of the policy making role of the Council.

The Professional Standards Committee assists in developing many of the AOLS’s guidelines and standards. Like many regulators, the AOLS is moving away from having all practice standards in

regulation and instead providing guidance documents. The Committee is a busy one, meeting about once a month. Observations of a meeting indicate that a large part of its function is to obtain insights and observations from a number of practitioners who are not part of the Council on policy issues. This role is valuable.

(a) Public Interest Mandate

The Professional Standards Committee identifies topics to address by referrals from the Council, other Committees, and information provided by the profession (e.g., at the Annual General Meeting), staff, and from within the Committee. The Committee discusses topics, directs staff to prepare draft documents (sometimes with the assistance of Committee members), discusses them and then make recommendations to the Council. Documents, once approved, are published on the AOLS website, some on the public portion and some on the members-only portion. Observations indicate that the Committee also makes suggestions for continuing education programs. In fact, the Committee is involved in specifying the content of such educational programs and recruiting potential speakers. This overlap in functions with the Continuing Education Committee is curious.

The documents generated by the Professional Standards Committee cover a variety of topics. Some try to resolve tricky professional issues (e.g., searching private survey records). Some try to provide practice checklists and best practices guidance (e.g., A Practical Guide for Measurement Accuracy for Cadastral Surveys). Some address newly arising issues (e.g., Professional Oversight in a Virtual Environment – Considerations). It periodically reviews or adds to the Standards of Practice handbook for practitioners.

The regulations set out the Code of Ethics and Standards of Practice of the profession. This is a form of policy making. However, the Committee did not deal with these issues, which were instead addressed by a Committee dealing with legislation or by the Council. While there were some refinements of the Code of Ethics earlier this year, there has not been a substantive revision of these professional expectations in the past decade. Most of these provisions are consistent with the expectations in other professions. However, a few of the provisions are somewhat restrictive in nature, such as limiting the ability of a practitioner to operate from more than one office, and significant prohibitions against practising in association with unlicensed individuals or entities.

The Committee also does not deal with the definition of professional misconduct set out in the regulations. Again, most of the definitions are consistent with the expectations in other professions. However, a few of the definitions appear to relate to relationships with colleagues rather than the public. For example, the following constitutes professional misconduct:

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.
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.

The regular review of these regulations should be allocated to someone.

Interviews indicate that criteria for the content of a standard is general (e.g., how will this protect the public). There are no specific criteria for this work.

#### (b) Policy Making and Transparency

Once a topic is identified as worthy of a new or revised policy, the Committee discusses its potential content and staff prepare a draft that is reviewed. Only occasionally is outside expertise obtained. Only occasionally is a standard circulated in draft to the profession for comment. However, feedback is welcomed once published and the document can always be revised. Not every output is sent to the Council for comment or approval. For example, the Committee may publish a non-binding “best-practices” document directly to the profession depending on its content. While it is unlikely given the Council and staff overlap on the Committee, there is the potential for miscommunication or inconsistent communication if a non-statutory Committee publishes an expectation of the profession without prior Council review.

The Standards of Practice, including monumentation requirements, are described briefly on the AOLS website with links to the relevant regulations. The process for developing them is not described there.

#### (c) Structure, Selection and Training

Like many of the other Committees, the selection process for the Professional Standards Committee involves a call for volunteers and a searching for suitable candidates by staff, Council officers and Committee members. There are no pre-established formal competencies or skills identified and the screening process is informal.<sup>27</sup>

Similarly, orientation and training are informal with key documents being provided (e.g., terms of reference), staff discussions, observations during the initial meetings and staff being available to answer any questions.

#### (d) Fiduciary Duties

The opportunities for breaching confidentiality and conflicts of interest for this Committee are less than for many other Committees. The usual reminders are made. However, it is conceivable that advance disclosure of an upcoming policy or guideline could form a breach of confidentiality. Similarly, some policies or guidelines might have a greater impact on some members of the Committee than others (e.g., something that benefits or creates extra costs for large firms), creating a possible conflict of interest. Thus fiduciary duties cannot be entirely discounted.

#### (e) Changes in Technology Societal Expectations

The Committee takes changes in technology into account when identifying topics for standards or policies or in specifying their content. Interviews indicate that it is rare for societal expectations to be part of this Committee’s work.

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<sup>27</sup> A high-level description of desirable skills and knowledge has been distributed to the profession during the past two years when recruiting volunteers to serve with the AOLS. This would be an excellent starting point for a formal document.

(f) External Stakeholders

Interviews indicate that the Professional Standards Committee does not identify key external stakeholders other than the profession.

As can be seen, while I have a few observations and suggestions for the Professional Standards Committee, I have no recommendations specific to it in addition to the recommendations made for policy development to the Council or are general to all Committees.

*Continuing Professional Development*

The regulations set out the professional development requirements for practitioners. Over each three-year cycle practitioners shall complete over 100 hours of various professional development activities. Those activities are not limited to attending courses. Practitioners need to record their activities and those records can be audited by the AOLS. While practitioners are able to obtain their CPD hours elsewhere, the paucity of relevant resources means that the courses offered through the AOLS are attended by a vast majority of practitioners.

(a) Public Interest Mandate

The minutes of the Committee on Continuing Education (CEC) indicate that it takes a broad view of its mandate. It does not limit itself to approving courses and auditing compliance. It actively reviews the issues arising at the Council and other Committees. It also contributes to policy discussions going on elsewhere in the AOLS. As such, its activities overlap somewhat with the policy making role of the Council and of the Professional Standards Committee. However, it has a different focus. It considers how the program can better achieve the goals of continuing competency and even excellence within the profession to enhance public protection. It communicates with other Committees to identify topics for continuing education purposes so as to support those other Committees.

Interviews indicated that the CEC considers how it can provide relevant content including changes in the law, improvements in technology, social issues (e.g., appropriately exercising the right of entry), and diversity. A few comments indicated a desire that the CEC arrange for more CPD content, especially during the pandemic when other opportunities were reduced.

While there is debate within some professions as to whether the regulatory body should be providing continuing education, the size of the profession, the lack of educational programs willing to offer content, and the integration of continuing education into the other programs of the AOLS suggest that there are compelling public interest reasons for the AOLS to offer such courses.

(b) Transparency

The AOLS website describes the continuing education requirements expected of practitioners. The communications platforms of the AOLS provide repeated information to practitioners as to CPD requirements and available programs. However, it seems that some practitioners procrastinate until the end of the cycle before seeking out such opportunities.

The CEC does not have a procedures manual or handbook. Such a document would not only assist the Committee and the profession, but publishing it on the AOLS website would also provide greater transparency for the public.

Apart from the requirements in the regulations, there does not seem to be any defined criteria for the decisions of the CEC. There is wide discretion as to what courses will be offered. Auditing of compliance and determining when enforcement action may be taken is also discretionary. Written and published criteria would make its processes more transparent.

(c) Diversity

The minutes of the Continuing Education Committee and interviews indicate that the CEC is actively considering requiring practitioners to take courses in equity, diversity, and inclusion, similar to the requirements for the Law Society of Ontario. It also has considered how recent developments in the law and in society related to indigenous issues affect the profession and how the profession should receive education in responding to them.

(d) Stakeholders

The minutes of the Continuing Education Committee and interviews indicate that it seeks input from practitioners (through surveys), other Committees and external sources (e.g., government) on issues that should be addressed in CPD programs and in how to make the programs more effective. The minutes of the Committee also indicate that it has used a risk-management perspective in reviewing the information it receives from others.

(e) Oversight, Performance Reviews and CQI

In terms of oversight by the Council, interviews indicate that there have been no formal evaluations of Committees. Committees are reviewed as part of the dashboard reports to the Council, however, it is more in the form of: are they meeting, are they addressing work items sent by the Council, and have there been any concerns on their performance raised by the Registrar or Executive Director. The dashboard documents are included with Council minutes. The dashboard approach should continue with regular updating of the dashboard criteria. As noted above, a process for the review of the performance of each Committee and each Committee member should be a long-term goal of the AOLS.

The CEC does conduct surveys of attendees at CPD programs for feedback on the effectiveness and relevance of individual programs.

Interviews indicate that having a Council member and staff present for most meetings helps ensure effective communications between them. Some felt that this overlap constituted a form of accountability.

The Continuing Education Committee views the CPD Audit Task Force as an opportunity to enhance its processes.

(f) Structure, Selection and Training

Like many of the other Committees, the CEC selection process involves a call for volunteers and a search for suitable candidates by staff, Council officers and Committee members. There are no pre-established formal competencies or skills identified and the screening process is informal.<sup>28</sup>

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<sup>28</sup> A high-level description of desirable skills and knowledge has been distributed to the profession during the past two years when recruiting volunteers to serve with the AOLS. This would be an excellent starting point for a formal document.

Similarly, orientation and training are informal with key documents being provided (e.g., terms of reference), staff discussions, observations during the initial meetings and staff being available to answer any questions.

As noted above, a recommendation has been made that all Committee members receive additional formal orientation.

(g) Allocation of Roles and Responsibilities

Interviews indicated that the CEC itself appears to act as a resource and policy think tank for the staff who operate and enforce the program. There seems to be no dissatisfaction with this allocation of responsibility, particularly since the CEC consists of volunteers. This approach seems to be suitable for this type of program for this profession.

(h) Fiduciary Duties

The usual reminders of the duty of confidentiality and avoiding conflicts of interest exist for the CEC. The potential for breaches of these duties is less for this Committee than many other Committees, but are still present. For example, inappropriate recording of CPD hours by an individual practitioner could be disclosed. Also, CEC members could suggest courses or potential instructors that would provide some financial or other benefit for them. A procedure manual and specific training in identifying these kinds of points would be helpful.

(i) Policy Making Process

The minutes of the Continuing Education Committee and interviews indicate that the CEC actively considers how the program can better achieve the goals on continuing competency and even excellence.

As discussed above, the CEC participates in policy making processes at the AOLS.

(j) Changing Technology and Societal Expectations

The minutes of the Continuing Education Committee and interviews indicate that it actively considers how changes in technology and societal expectations should be reflected in the CPD requirements and course content.

(k) Facilitates Process

There is no procedural manual or handbook. Such a document would assist in making the process more transparent to practitioners. However, the frequent discussions of the program in the AOLS's written and other communications with the profession, including reminder notifications, provide little excuse to practitioners who do not comply with the requirements. The sample communications I saw were reasonably clear.

As can be seen, while I have a few suggestions for the CEC, I have no recommendations specific to it in addition to the recommendations made for policy development to the Council or are general to all Committees.

### *Prevention of Unauthorized Practice*

The *Surveyors Act* prohibits unlicensed people and businesses from practising cadastral surveying unless they hold the appropriate authorization from the AOLS. The *Act* also protects the use of titles associated with land surveyors. These provisions are enforceable in provincial offences courts or by means of an application for a restraining order in the civil courts. The AOLS has been successful in obtaining restraining orders (injunctions) against persons who have practised the profession without a license. Obtaining restraining orders rather than prosecuting for a provincial offence is the preferred enforcement mechanism for a number of reasons, including that it is more likely to prevent ongoing unauthorized practice.

Document reviews and interviews indicate that there has been some discussion as to whether the *Surveyors Act* adequately describes the activities that the public should not be permitted to perform. Council has recently discussed anecdotal evidence of unregistered persons performing work that is authorized only to licensed surveyors and how the public may be placed at risk. Council suggested that the AOLS “should collect metrics on this”. These are complex issues that are beyond the scope of this Review. Care must be taken to ensure that any restricted activities pose a significant risk of harm to the public. Seeking excessive restrictions can be seen as “turf protection”. On the other hand, the nature of the profession and related activities are rapidly evolving, and the legislation needs to keep pace with the real world.

There is no documented process for addressing such concerns; a reactive approach is taken. The AOLS does not actively search for unauthorized practitioners or improper use of titles. Most concerns are raised by members of the profession although a few are brought forward by members of the public. Concerns are raised frequently although few are serious in nature. Staff review the concern and if it appears to be a clear breach of the legislation, a “cease and desist” demand letter is sent requesting written confirmation of future compliance. In recent years, all serious concerns have been addressed informally in this manner. Typically, the conduct is a result of a misunderstanding of the rules. Interviews indicate that in recent years there have not been many “repeat offenders”.

As noted above, in the more distant past, where a serious concern cannot be resolved informally, legal counsel is retained to seek an injunction.

Council has also discussed issues of previously registered members, including one removed through discipline, continuing to perform certain functions that were misleading to the public. In one case, the AOLS published ads in local papers indicating that the individual was no longer a member.

As noted above, the difficulty with unauthorized practice is that it is often viewed as turf protection rather than as genuine public protection. This perception is reinforced by the observation that the vast majority of concerns are raised by practitioners. The current approach of sending a cease and desist letter is a best practice, not only to bring a proportional response to concerns, but also because such evidence is very helpful in court when seeking an injunction.

A reactive approach may be adequate where there does not appear to be a high frequency of harm occurring to the public. It seems that the profession monitors unauthorized practice fairly effectively. The current information does not indicate that unauthorized practice creates a significant public protection issue.

However, a best practice would be to develop a documented process that is risk-based. The document should identify the sources of the highest severity and likelihood of harm to the public (e.g., practitioners revoked at discipline). The document could plan for some proactive measures to identify those risks (e.g., internet search, survey of municipalities). The document would also identify a process and accountable people (e.g., staff, a Committee) to screen information and select the most appropriate response to those risks (e.g., cease and desist letter, notification of municipalities, published ad, application for injunction). Dashboard reports could be provided to the Council. I anticipate that not a lot of resources need to be devoted to operating this regulatory activity once the process is documented.

**Recommendation #32: That the AOLS develop a risk-based documented process for handling unauthorized practice concerns. (Legislative amendment not required)**

There has also been some discussion about whether a Committee should be formed to approve unauthorized practice prosecutions. Initiating such a prosecution has expense implications and always has the potential to become a matter of scrutiny in the media and government. In my view, the priority is for a documented policy on how unauthorized practice cases should be handled. I am not sure that an additional Committee is necessary to scrutinize the few cases that may result in court prosecutions. If an external approval is needed, it should be done by a Committee, not the full Council. Perhaps an existing Committee, like the Executive Committee can perform this function.

## **CONCLUSION**

This review indicates that the AOLS is doing an excellent job in many respects. It is addressing well current regulatory issues with modern regulatory approaches. However, its legislation does need to be updated in a number of respects to enable it to better perform its functions and to reflect contemporary governance expectations. There are a number of areas in which the AOLS can enhance its performance.

Respectfully Submitted

STEINECKE MACIURA LEBLANC



Richard Steinecke  
Counsel



## List of Recommendations

The recommendations and their rationale are set out in the text of the report. It is recognized that the AOLS will not be able to immediately implement the recommendations even if it accepts them all. Fortunately, many the recommendations do not require a significant infusion of resources. In addition, other recommendations require legislative amendment that will take some time to achieve.

Recommendation #1: The AOLS should again consider transferring the professional liability insurance program to a third party. (Legislative change not required)

Recommendation #2: The AOLS should conduct a rigorous review of its activities to see if there are some that should be eliminated or reduced because they do not primarily serve the public interest. (Legislative change not required)

Recommendation #3: The Council should conduct its meetings in public, publish its meeting materials on the AOLS website, and post its minutes on the website, all with suitable exceptions. (Legislative change not required)

Recommendation #4: That the AOLS post all general information relevant to the regulation of the profession on the public portion of its website. (Legislative change not required)

Recommendation #5: That Council should develop a more formal process of reviewing the performance of itself and its members. (Legislative change not required)

Recommendation #6: Similarly, the AOLS should develop a formal process for reviewing the performance of its Committees and individual Committee members. (Legislative amendment not required)

Recommendation #7: That all new Council members, Committee members and Chairs receive formal training soon after their appointment (Legislative amendment not required). To be effective, likely the best method is for staff supporting the position to take the lead and that the Chair (or immediately past Chair) be invited to participate as well, where feasible. For hearing Committees, the training may need to be provided by hearing support staff and the Committee's independent legal counsel.

Recommendation #8: That the legislation be amended to authorize the AOLS to recruit public members to serve on Committees who are not lay councillors (Legislative amendment required). In the meantime, the AOLS should consider expanding its use of "guests" on Committees as appropriate (Legislative amendment not required).

Recommendation #9: That the requirement for membership approval of proposed regulation and by-law changes be replaced by a duty to consult (Legislative amendment required)

Recommendation #10: Council members should receive training on role of the Council that emphasizes strategic planning, policy making, and high-level oversight. In addition, those planning the agenda for Council meetings and preparing meeting materials should reduce reporting on operational matters. (Legislative amendment not required)

Recommendation #11: That the AOLS develop a Code of Conduct for Council and Committee members (Legislative change not required) and a regulation providing a process and criteria for

sanctioning or removing a Council or Committee member who violates the Code of Conduct (Legislative change required).

Recommendation #12: The Council should develop a written policy development process tool. (Legislative amendment not required)

Recommendation #13: The Council should develop a briefing note template to be used for all non-urgent policy issues. (Legislative amendment not required)

Recommendation #14: The AOLS should make the impact of technology on the public and profession a significant topic for Council consideration. (Legislative amendment not required)

Recommendation #15: That there should be an external review of complaints dispositions, including the adequacy of the investigation and the reasonableness of the decision. This recommendation becomes more pressing should the Complaints Committee be given the authority to impose mandatory remediation directions. (Legislative amendment required)

Recommendation #16: That members of the Council no longer serve on the Complaints Committee and Discipline Committee. Rather their members should be selected through a rigorous competency-based selection process identifying the experience and skills necessary to serve on these Committees and actively recruiting appropriate candidates. (Legislative amendment required)

Recommendation #17: That at least 50% of the members of the Complaints Committee and the Discipline Committee be public members and that panels dealing with individual matters have at least two public members. (Legislative amendment required)

Recommendation #18: That the *Surveyors Act* be amended to remove the role of the Council in the referral of matters to mediation or discipline. (Legislative amendment required)

Recommendation #19: That the Complaints Committee immediately develop and implement the full range of remedial options available to it and only refer a matter to the Council where a referral to discipline is warranted. Similarly, where the Complaints Committee refers a matter to the Council, absent exceptional circumstances, the Council focus its role in making a referral to either discipline, mediation or both. (Legislative amendment not required)

Recommendation #20: That the *Surveyors Act* be amended to facilitate greater remedial options for the Complaints Committee including being able to direct the mandatory education or remediation of a practitioner and being able to require a practitioner to attend before the Committee to receive an oral caution. In addition, the *Surveyors Act* should be amended to remove the Council's role in referrals to the Discipline Committee or for mediation. (Legislative amendment required).

Recommendation #21: That the legislation be amended to remove the Council from making compensation fund decisions or restoring the licence of practitioners and transferring this role to a suitable Committee. (Legislative amendment required)

Recommendation #22: That the Complaints Committee develop a document outlining the criteria it should use in making decisions and the options available to it. The document can be incorporated into its Handbook. In addition, there should be training of the Complaints Committee on its role and the criteria and options for its decisions. (Legislative amendments not required)

Recommendation #23: The *Surveyors Act* should be updated to modernize the discipline process to enable it to suspend or revoke a certificate of authorization and to remove the authority to compel a practitioner to repay, waive or reduce fees. (Legislative amendment required)

Recommendation #24: The AOLS should seek a legislative amendment to eliminate the Fees Mediation Committee. (Legislative amendment required) Until then the Committee should employ strict criteria for accepting cases deferring any but the clearest of matters to the Complaints Committee. (Legislative amendment not required)

Recommendation #25: If it continues to operate, that members of the Council should no longer serve on the Fees Mediation Committee. Rather, their members should be selected through a rigorous competency-based selection process, identifying the experience and skills necessary to serve on the Committee (especially in mediation and conducting hearings) and actively recruiting appropriate candidates. (Legislative amendment required)

Recommendation #26: If it continues to operate, that at least 50% of the members of the Fees Mediation Committee be public members and that panels dealing with individual matters have at least one public member (more if panels are larger than three persons). (Legislative amendment required)

Recommendation #27: If it continues to operate, that the members of the Fees Mediation Committee be given training in mediation and arbitration skills before engaging in either one of these activities. (Legislative amendment not required)

Recommendation #28: If it continues to operate, that support staff of the Fees Mediation Committee handle all communications with the participants.

Recommendation #29: That the AOLS website page on appeals to the Registration Committee be updated to include a plain language description of the availability, process and criteria for such appeals. (Legislative amendment not required)

Recommendation #30: That members of the Council no longer serve on the Registration Committee. Rather, their members should be selected through a rigorous competency-based selection process identifying the experience and skills necessary to serve on these Committees and actively recruiting appropriate candidates. (Legislative amendments required)

Recommendation #31: That at least 50% of the members of the Registration Committee be public members and that panels dealing with individual matters have at least one public member (more if panels are larger than three persons). (Legislative amendments required)

Recommendation #32: That the AOLS develop a risk-based documented process for handling unauthorized practice concerns. (Legislative amendment not required)

## **Biography of the Reviewer**

Richard Steinecke practises law exclusively in the area of professional regulation. He is the editor of the widely read Grey Areas newsletter, commenting on recent developments in professional regulation. Because of its comprehensive nature, courts and tribunals have cited his book “A Complete Guide to the Regulated Health Professions Act”, dozens of times, even in cases dealing with non-health professions. The book is updated twice a year.

Today he spends most of his professional life teaching, writing, speaking, training, and consulting on professional regulation issues. A life-long learner, Richard reads every Canadian common law court decision on professional regulation he can find and has a Certificate in Risk Management from the University of Toronto. In 2015, he received the Regulatory Excellence award from the Council on Licensure, Enforcement and Regulation (CLEAR) and in 2019, he received the Tom Marshall Award of Excellence for the Public Sector from the Ontario Bar Association.

Richard is counsel to Steinecke Maciura LeBlanc.

In terms of conflicts of interest for this review, before assuming the task of conducting this review the reviewer disclosed that he had provided legal services to the AOLS in the past. However, the reviewer ended the only recurring role with the AOLS (being one of the legal counsel used to present cases at discipline) when beginning this review. The reviewer did so for personal reasons unrelated to the review, but thought it timely to announce it then. Other than one educational session booked for an AOLS Committee later this year and one request for advice on a specific question related to the review, the reviewer has no expectation of further work from the AOLS.