

Complaints

MANITOBA LAND SURVEYORS



**ASSOCIATION
OF MANITOBA
LAND SURVEYORS**

The Association of Manitoba Land Surveyors is mandated to protect the public's interest with respect to boundaries and interests in land. In order to accomplish this mandate, there is a formal complaints procedure in place as outlined in The Land Surveyors Act and in By-law No. 1, General By-laws of the Association of Manitoba Land Surveyors, as shown below. If you have a concern about the professional conduct of a Manitoba Land Surveyor, you may make a formal complaint in writing to the Association. The Association requests the complaint be made in writing so that it is clear what has happened and what the nature of the complaint is. Your letter should state that you are making a "formal complaint" and describe in as much detail as possible what has happened and what steps you have taken, if any, to try to resolve the matter. Complaints are to be addressed to the Registrar or to the Chair of the Complaints Committee.

Being PART 19 of By-law No. 1,

General By-laws of the Association of Manitoba Land Surveyors

THE COMPLAINT PROCESS

Guidelines for Informal Resolution of Complaints

An informal method of resolving alleged misconduct is where the relevant parties resolve the matter by mutual agreement. The parties shall deal with each other in good faith which includes providing the opportunity for each to consider and respond to each other.

Advantages of an informal Resolution

19.1 Advantages of informal resolution include:

- a) resolution by agreement;
- b) resolution by the parties involved;
- c) quicker resolution of matters; and
- d) greater likelihood of maintaining a good relationship between the parties.

19.2 An informal process may be appropriate where:

- a) there is a situation such as a dispute between two colleagues who normally have a good working relationship; or
- b) the appropriate remedy for a misconduct is not a disciplinary action; or
- c) a member, who is the subject of the complaint is genuinely unaware that they have acted inappropriately and once made aware, is willing to correct his or her behaviour.

19.3 An informal process may not be appropriate where:

- a) an alleged misconduct may warrant disciplinary action; or
- b) an alleged misconduct is a matter for the courts.

Procedure for an Informal Process

19.4 Upon receiving a referral of a complaint from the Registrar, the chair of the Complaints Committee shall:

- a) determine the preferred method of communication with the complainant, being electronic or written submission;
- b) recommend to the complainant by the preferred method of communication, that this is the Complaint Committee's preferred method of resolution to the complaint and the reasons why;
- c) advise the complainant that they have 10 business days to respond with their acceptance or rejection of the recommendation for informal resolution;
- d) advise the complainant of the complaint process; and
- e) advise the complainant that they may be accompanied by a Manitoba Land Surveyor, a lawyer, or any other person of their choice to counsel them in the meeting.

19.5 If it is acceptable the Chair of the Complaints Committee shall inform the member, by the preferred method of communication, who is the subject of the complaint:

- a) that the Committee has received a complaint;
- b) that the complainant has accepted an informal resolution process;
- c) of the date, time, and place of the resolution meeting; and
- d) of the nature of the complaint. Appointment of Conciliator

19.6 The Complaints Committee will appoint a conciliator who:

- a) is a member in good standing of the Association;
- b) has no conflict of interest;
- c) will be supplied all information regarding the complaint; and
- d) will arrange a joint or separate meeting between the complainant and the member who is the subject of the complaint at a time and place that is mutually agreeable.

Meeting

19.7 The meeting(s) will allow the complainant to state his or her concern and the reason for the complaint. The member who is the subject of the complaint will be allowed to respond. All proceedings of the meeting(s) will be recorded and each party will be notified of this fact prior to commencement of the meeting.

19.8 At the conclusion of the meeting(s) the conciliator will inform the parties that a resolution will be drafted and presented to each party for approval.

Resolution

19.9 The resolution will:

- a) contain the particulars of the complaint and the suggested resolution;
- b) provide timelines for any remedial actions required;

- c) be drafted and delivered by the conciliator within 10 business days of the date of the conciliation meeting; and
- d) be forwarded by the preferred method of communication to each party and include a signatory line for each party indicating their acceptance of the resolution.

Response

19.10 The parties have 10 business days from the date of notification of the resolution to respond with an affirmation of the resolution, suggested changes or rejection. Responses shall be by the preferred method of communication.

Resolution Accepted

19.11 If the resolution is accepted by both parties, they will forward the signed resolution back to the conciliator who will forward the resolution onto the Complaints Committee. The Complaints Committee will arrange for the resolution to be placed on the member's file and will oversee any actions required by the resolution.

Resolution Rejected

19.12 Should the resolution be rejected by either party the complaint will be directed back to the Complaints Committee.

Resolution Accepted with Changes

19.13 Should the claimant or the respondent partially accept the resolution and offer alternative measures to the resolution; the conciliator may amend the resolution and supply the amended resolution to each party for their approval.

Guidelines for Conducting Hearing of Appeals to Council

19.14 A complainant may appeal a Complaints Committee decision made under clause 34(1) (b), (d) or (f) of the Act to council.

19.15 Council is not required to hold a hearing. However, council will hold a hearing upon written request of the complainant.

Notice of Appeal

19.16 The complainant shall file a written notice of appeal to the Registrar within 30 days of receiving notice of the Complaints Committee's decision and shall state the grounds for the appeal.

Preparing for the Appeal Hearing

19.17 The purpose of an appeal is to enable an independent review of the decision of the Complaints Committee. It is important the appeal focuses on reviewing the process followed and the appropriateness of the decision. The following points should be considered:

- a) were the principles of natural justice applied;
- b) was a thorough and sufficient investigation conducted;
- c) was the decision of the Complaints Committee reasonable based on the evidence relating to the case;
- d) was the Complaints Committee's actions reasonable, given the circumstances of the case; and
- e) was the matter handled fairly and appropriately and in a manner consistent with the Act and By-laws of the association?

Timing of Appeal

19.18 The appeal hearing shall be scheduled within thirty (30) days of receiving a request for an appeal hearing.

Opportunity to Appear

19.19 Although council is not required to hold a hearing or to give any person an opportunity to appear before them before making a decision, it shall give the complainant and investigated member an opportunity to make written submissions.

19.20 Should council decide that an appearance in person would be beneficial to the process, it will notify the complainant and investigated member of the date, time and place that the hearing will be conducted at least ten days before the hearing is to take place.

Right to be Accompanied

19.21 The complainant and investigated member have the right to be accompanied by legal counsel if so desired. Council shall have legal counsel present.

The Hearing

19.22 The hearing will be conducted by legal counsel for the association. Prior to the hearing, council will meet with legal counsel to set out parameters for the hearing.

The Decision Making Process

19.23 Legal counsel for council shall guide the decision making process. Considerations of council shall include but not be limited to:

- a) the seriousness of the misconduct;
- b) the investigated member's previous record;
- c) the appropriateness of the Complaints Committee decision;
- d) decisions of previous Complaints Committees on related matters; and
- e) any mitigating circumstances.

Decision

19.24 Three possible decisions can be reached. Council may:

- a) make any decision that in its opinion ought to have been made by the Complaints Committee;
- b) quash, vary or uphold the decision of the Complaints Committee; or
- c) refer the matter back to the Complaints Committee for further consideration in accordance with any direction council may make.

Notice of Decision

19.25 Within 10 days of the date of the appeal, council shall provide written notice to the investigated member and the complainant of the result of the hearing and the reasons for the decision