

The Discipline Process

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The Discipline Process

Discipline - do we even want
to talk about it?

May 15, 2007

FIG Working Week 2007

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Honourable Bette Stephenson, M.D.,
Ontario Minister of Education

Discipline, however, in the eyes of the public is the most important duty of the profession – and public disbarment or cancellation of the license of a fellow professional is the most painful task that the profession carries out.

But it must be done. Abscission of an unethical or incompetent member is essential for the protection of the public generally and for all those who could be affected by that profession's work.

The right and responsibility of self-discipline to protect the public is the keystone of the self-governing profession and of the social contract between the profession and the public.

May 15, 2007

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Responsibilities of a Professional Association

- Establishing entrance standards
- Registration and licensing
- Maintenance of competency
 - Professional development
 - Practice audits
- Establishing Codes of Ethics
- Complaints
- Discipline

May 15, 2007

FIG Working Week 2007

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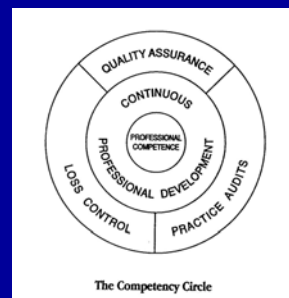
- Initial registration does not guarantee competency for ever.
- One must take efforts to maintain their level of competency.

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The Competency Circle



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FIG Working Week 2007

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Ethical Principles - FIG Code

Care and competence

Surveyors:

- maintain their knowledge and skills, keep abreast of developments in their fields of practice and apply their expertise for the benefit of society
- only take on work that they reasonably believe they will be able to carry out in a professional manner; and
- exercise care in the performance of their duties.

FIG Model Code of Professional Conduct

In general, surveyors:

- act competently and do not accept assignments that are outside the scope of their professional competence.
- advance their knowledge and skills by participating in relevant programmes of continuing professional development

FIG Model Code of Professional Conduct

In general, surveyors:

- ensure that they understand the fundamental principles involved when working in new areas of expertise, conducting thorough research and consulting with other experts as appropriate

FIG Model Code of Professional Conduct

In general, surveyors:

- do not accept assignments that are beyond their resources to complete in a reasonable time and in a professional manner.

The Disciplinary Process

There is, however, no guarantee that practitioners will abide by their ethical obligations and maintain an acceptable level of competency.

It is a function of a professional association to ensure that the public is afforded a competent level of practice.

Unskilled practice and unprofessional conduct

Any conduct of a practitioner that, in the opinion of the Discipline Committee,

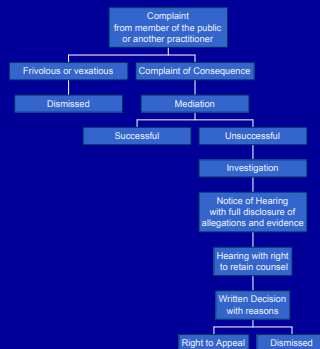
- (a) is detrimental to the best interests of the public,*
- (b) contravenes a code of ethics of the profession as established under the regulations,*
- (c) harms or tends to harm the standing of the profession of surveying generally,*
- (d) displays a lack of knowledge of or lack of skill or judgment in the practice of surveying, or*
- (e) displays a lack of knowledge of or lack of skill or judgment in the carrying out of any duty or obligation undertaken in the practice of surveying,*

whether or not that conduct is disgraceful or dishonourable, constitutes either **unskilled practice** of surveying or **unprofessional conduct**, whichever the Discipline Committee finds.

(2) If an investigated person fails to comply with or contravenes this Act . . . the failure or contravention may be found by the Discipline Committee to be unprofessional conduct whether or not it would be so found under subsection (1).

Land Surveyors Act (Alberta)

Sample Disciplinary Process



Principles of Natural Justice

- Know the case - notice of allegations and evidence against you
- Meet the case - right to be heard
- Unbiased decision maker(s)
- Person(s) who hears - decides
- Written decision with reasons

Quote from Justice Belzil

The practice of a profession is a privilege. The law grants to certain groups a monopoly to carry on certain well-defined activities and imposes upon the members of those groups an obligation to prevent abuse and to ensure that the monopoly will be exercised for the public good. It is normal that those who enjoy these privileges should be subjected to a more rigorous discipline than that which applies to ordinary citizens.

Possible Sanctions

- reprimand, suspension or cancellation
- limitation of practice
- requirement to complete a course of study
- requirement to practice under supervision
- fine and/or costs of the hearing

This discipline is peculiar to them and is not part of penal law. In consequence of this, the right to silence . . . does not apply to professional disciplinary law. One cannot claim in the same breath the so-called right to silence and the privileged status as a professional.

Fang v. The College of Physicians and Surgeons

The Decision

- Title page
- The parties
- The allegations or issues
- The evidence
- Findings of Fact
- Decision
- Reasons
- Order

As the late Madame Justice Bertha Wilson of the Supreme Court of Canada commented
"[m]embership in a profession should be in and of itself a guarantee of competence."

While it may not be possible to **guarantee** competence, a professional association has a responsibility when confronted with a potential challenge of the competence of one of its members to investigate and take appropriate action to safeguard the public. In doing so, however, it must observe a fair and just process in exercising its professional mandate.

The surveying profession is one which, more than most other professions, comes into frequent contact with the law, from specific concepts such as property law, land registration systems and boundaries to the more philosophical legal concepts implicit in a self-governing profession.

Brian Campbell L.L.B