

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

AND IN THE MATTER OF Seyed Abdolmajid (Majid) Fathi, O.L.S.

AND IN THE MATTER OF a Disciplinary Hearing
of the Discipline Committee of the Association of
Ontario Land Surveyors held in accordance with
Sections 26 and 27 of the said Act

Decision and Order

This Panel of the Discipline Committee convened on March 13th, 2019. The Member was represented by Ceili Andrew, Counsel: both were present at the hearing. The Association was represented by Mr. Izaak de Rijcke, Counsel; both Mr. de Rijcke and the Association Registrar, Mr. Kevin Wahba, were also present. The Panel was assisted by Independent Legal Counsel, Carol Street, who was present.

On convening, the Panel was advised that the parties proposed to proceed by way of a guilty plea by Mr. Fathi, O.L.S to the allegations of professional misconduct (but not incompetence) set out in Schedule "A" to the Notice of Hearing (Exhibit 4). An Agreed Statement of Facts was provided to the Panel and marked as Exhibit 7. Mr. de Rijcke summarized the facts for the Panel, and Ms. Andrew confirmed that the facts as summarized were accurate.

On the basis of those agreed facts, and after due consideration, the Panel accepted Mr. Fathi's guilty plea to the allegations of professional misconduct as set out in Schedule "A", a copy of which is attached to this Decision and Order.

Counsel then put forward for the Panel's consideration the Joint Submission setting out the penalty the parties proposed should be accepted by the Panel (Exhibit 8). After some discussion, and agreement by Counsel, an amended version of the Joint Submission was made Exhibit 9. A copy of the Amended Joint Submission, Exhibit 9, is also attached.

The Panel heard submissions from both Counsel as to why the penalty set out in the Joint Submission should be accepted. The Panel was reminded by Independent Legal Counsel that pursuant to the Supreme Court of Canada, (in *R. v. Anthony-Cook*, 2016 SCC 43) it should only depart from a joint submission in very limited circumstances, where the sentence proposed would bring the administration of justice into disrepute or is otherwise not in the public interest.

The Panel considered the amended penalty jointly proposed by the parties and after a thorough *in camera* discussion accepted the amended Joint Submission.

Accordingly, the penalty imposed by the Panel is, in summary, as follows:

1. Mr. Fathi's licence is revoked, but that revocation is suspended for a period of one year and will never take effect if the Member complies with the terms and requirements set out in the amended Joint Submission for one year from March 13, 2019.
2. The Member undertakes to no longer prepare and issue SRPR products under the title, "Topographic Survey" and to fully comply with legislation, regulations and Standards of Survey as these may prevail and apply to SRPR's from time to time and to permit access to surveyor project files under his supervision and control to be inspected by an Inspector on a random basis for the 12 months following March 13, 2019.
3. The Member agrees to the appointment of an OLS chosen by the Registrar to act as a Mentor to assist with implementing a higher quality of survey practice by the Member and by the firm, Barich Grenkie Surveying Ltd. (the "Firm"). The Mentor will also have the delegated power of the Registrar to conduct investigations of the Member's survey work, including all work produced by the Firm, on a random basis, and on a physical attendance at offices of the

Firm over the coming 12 months of not less than 4 inspections. All expenses shall be at the expense of the Member.

4. In addition to this Decision and Order, the allegations as set out in Schedule "A" will be published, as well as the Joint Submission, as amended, in the Ontario Professional Surveyor Magazine and posted on the Association website.
5. With respect to the allegations of incompetence, all such allegations are stayed for one year from March 13, 2019. If the Member complies with the Panel's Decision and the terms of the Joint Submission, the allegations of incompetence will be withdrawn. The stayed allegations of incompetence may be brought back and returnable before the Discipline Committee if the Member fails to comply with the Decision and Order of this Panel and the terms of the Joint Submission.
6. The Member will pay \$15,000 to the Association on account of costs, inclusive of HST, which can be paid in instalments of \$3,000, every 3 months, but in any event the total amount must be paid in full no later than one year from the date of this hearing, March 13, 2019. Should full payment not be received within that time, the suspension of the cancellation of the Member's licence will be lifted.

This Order may be signed electronically and in counterparts.

Robert Fligg, Chair, O.L.S.

Nancy Grozelle, O.L.S.

Richard Miller, O.L.S.

Gary Auer, O.L.S.

Patricia Meehan, Lieutenant-Governor Appointee

IN THE MATTER OF the *Surveyors Act*, R.S.O. 1990,

Chapter S.29, as amended

AND IN THE MATTER OF Majid Fathi, O.L.S.

AND IN THE MATTER OF a Hearing of the Discipline
Committee of the Association of Ontario Land Surveyors
held in accordance with sections 26 and 27 of the said Act

**JOINT SUBMISSION TO DISCIPLINE COMMITTEE
ON CONSENT OF ALL PARTIES**

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

1. The Member represents to the Association of Ontario Land Surveyors and the Discipline Panel that, before entering into this agreement, he has been advised to obtain independent legal advice as to the consequences of signing same, that the Member has either obtained independent legal advice or he has voluntarily waived his right to obtain independent legal advice knowing the consequences of signing same and that the Member is doing so voluntarily and without undue influence or pressure from anyone.
2. The Member pleads guilty to the charge and allegations of professional misconduct against the Member (the "Charge") as alleged by the Registrar.
3. The Member's licence is hereby revoked, but this provision is suspended for one year, providing that the terms and requirements of the Member in this joint submission and the Order of the Discipline Committee have been complied with. After one year, the revocation is withdrawn. If the Member complies with an order based on these Joint Submissions, the said term of the Order of the Discipline Committee regarding the revocation of his licence will never take effect.

4. The Member undertakes to the Association to no longer prepare and issue SRPR products under the title, "Topographic Survey" and to fully comply with legislation, regulations and Standards of Surveys as these may prevail and apply to SRPRs from time to time and to permit access to surveyor project files under his supervision and control to be inspected by an Inspector on a random basis for the next 12 months from the date of this hearing.
5. The Member shall agree to the appointment of an Ontario Land Surveyor by the Registrar, of the Registrar's choosing, to act and function as a mentor (herein referred to as the "Mentor") to assist with implementing a higher quality of survey practice in the Member's practice and Barich Grenkie Surveying Ltd. (herein referred to as the "Firm"), and who shall also have the delegated power of the Registrar to conduct investigations of the Member's survey work, including all survey work produced by the Firm, on a random basis, and on a physical attendance at offices of the Firm over the next year of not less than 4 inspections, and all at the expense of the Member.
- 5A. The Member and the AOLS further agree that the charge of incompetence in the Notice of Allegations be stayed for one year. If the Member has complied with the Committee's decision and the Joint Submission, then the charge of incompetence shall be withdrawn. The stayed charge may be brought back and returnable before the Discipline Committee if the Member has not complied with the decision of this panel and the Joint Submission.
6. The publication of the allegations leading to this proceeding, as well as the contents of the Joint Submission, shall be published in the Ontario Professional Surveyor Magazine and posted on the Association website.
7. The Member shall pay to the Association the sum of \$15,000.00 for costs, inclusive of HST. This amount may be paid in installments of \$3,000.00 each and every 3 months for 5 separate instalments, but in any case, will be fully due and payable no later than one year from the date of this agreement. Should the member's licence be terminated for any reason full payment of these costs will be required as a condition of the reinstatement of the member's licence. Should full payment not be received

within the above one year period, the suspension of the cancellation of the Member's licence will be lifted.

8. The Member and the Association acknowledge and agree that this Joint Submission document has been prepared by both parties and reflects a fair disposition of this matter, under all of the circumstances. In the event the Discipline Panel does not adopt this Joint Submission document as a basis for making its determination, finding, and disposition, the parties agree that this matter will then continue on the basis of a full hearing before a Discipline Panel on a date to be fixed by the Discipline Committee and that same shall proceed on the basis of all of the allegations set out in the Notice dated 30 November 2018.

Dated this 13th day of March, 2019

SCHEDULE "A"

ALLEGATIONS OF PROFESSIONAL MISCONDUCT AND INCOMPETENCE

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

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

1. The Council of the Association of Ontario Land Surveyors (AOLS) pursuant to Section 25(7)(a) of the *Surveyors Act*, by a Motion dated October 23, 2018, directed that Mr. Seyed Abdolmajid Fathi, O.L.S. be referred to the Discipline Committee.

2. It is alleged that Seyed Abdolmajid Fathi, O.L.S. (herein referred to as “the member”), in his personal capacity, and as an employee of the firm Barich Grenkie Surveying Ltd. (A Division of Geomagle Canada Inc.), is guilty of professional misconduct within the meaning of Section 35 of Regulation 1026, R.R.O. 1990, as amended, and incompetence within the meaning of Section 26(3) of the *Surveyors Act*, R.S.O. 1990, c.S.29, as amended.

3. The particulars of the allegations in paragraph 2 above are as follows:
 - (a) On or about January 18, 2018 [an error in the date in the original document was corrected] the Registrar of the AOLS received a formal written complaint in the form of a Complaints Help Form signed by Mr. Seyed Yadollahi, O.L.S., which alleged that the member, who is the managing Ontario Land Surveyor for the firm Barich Grenkie Surveying Ltd. (herein referred to as "BGS"), had prepared and issued “Site Plans” that were not in compliance with the standards, regulations and other applicable rules for surveys in Ontario.

 - (b) Mr. Yadollahi’s written complaint included copies of several Site Plans signed by the member that Mr. Yadollahi claimed were not in compliance with the AOLS Standards of Practice.

 - (c) In his initial response to the Complaints Committee, on or about January 31, 2018 the member explained that his Site Plans were part of a “Builder’s Package” and he claimed that these Site Plans were not a Surveyor’s Real Property Report or a Plan of Survey and did not therefore illustrate all survey evidence and methodology.

 - (d) In his subsequent submission to the Complaints Committee on or about March 14, 2018 the member stated that he had changed his procedures and that his future plans would comply with the AOLS Standards of Practice.

- (e) On or about May 18, 2018 the Complaints Committee of the AOLS issued an Interim Decision that directed the Registrar to randomly select three of the member's current Builder Package files for examination by the committee.
 - (f) On or about August 21, 2018 the Complaints Committee issued a final decision that referred the matter to AOLS Council with a recommendation that the member be referred to the Discipline Committee.
 - (g) In the reasons section of the decision the Complaints Committee noted that the member's files did not contain evidence to confirm that adequate research for documentary evidence had been undertaken and also that the plans were not consistent with AOLS performance standards or with AOLS Council Bulletins 2013-01 and 1990-036 regarding sketches.
4. It is alleged that the member failed to comply with the Code of Ethics of the AOLS in that he has repeatedly failed to abide by the standards of practice, which is contrary to Section 33(2)(b) of Regulation 1026, R.R.O. 1990, as amended. Failure to comply with the Code of Ethics constitutes Professional Misconduct within the meaning of Section 35(3) of Regulation 1026, R.R.O. 1990, as amended.
 5. It is alleged that the member failed to comply with the Code of Ethics of the AOLS in that he signed survey plans which did not comply with all relevant legislative requirements and all standards of the AOLS, which is contrary to Section 33(2)(f) of Regulation 1026, R.R.O. 1990, as amended. Failure to comply with the Code of Ethics constitutes Professional Misconduct within the meaning of Section 35(3) of Regulation 1026, R.R.O. 1990, as amended.
 6. All of which are breaches of sections 35(1), (2), (3) and (21) of Regulation 1026, R.R.O. 1990, as amended; and the Code of Ethics at sections 33(2)(a) of said Regulation 1026 and, collectively constitute incompetence within the meaning of Section 26(3)(a) of the *Surveyors Act*, R.S.O. 1990, c.S.29.

DATED at Toronto this 30th day of November, 2018