

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

AND IN THE MATTER OF David Raithby, 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

SUMMARY OF THE DECISION OF THE DISCIPLINE PANEL

A discipline hearing into allegations of professional misconduct and incompetence by David Raithby, O.L.S., proceeded before a Panel of the Discipline Committee on June 11, 2020. Due to ongoing restrictions on public meetings resulting from the coronavirus pandemic, the Panel, with the consent of both parties, had concluded that the Hearing should take place virtually in accordance with Rule 9.2.1 of the Discipline Panel Rules. Because the Hearing was proceeding virtually, the Chair, on behalf of the Panel, ordered that the Hearing would not be open to the public, pursuant to Rule 9.2.2 of the Discipline Panel Rules. At the Hearing, the Panel was advised by Association Counsel that the Association was no longer proceeding with any allegations of incompetence; that those allegations were to be considered withdrawn as having no reasonable prospect of conviction; and that the only allegations to be considered by the Panel were those of misconduct as set out in Schedule A attached to the Notice of Hearing.

The Association and Mr. Raithby jointly advised the Panel that Mr. Raithby was prepared to plead guilty to certain allegations; the parties had prepared an Agreed Statement of Facts as well as a Joint Submission on Order with respect to the penalty they proposed the Panel should accept.

The Statement of Facts provided facts regarding the complaint made by the Registrar, Kevin Wahba, O.L.S. Those facts can be summarized as follows.

The Facts

The allegations against Mr. Raithby arose out of three Survey Review Department (SRD) reviews which exceeded the threshold of twenty-five points per plan as set out in Reports delivered to the Registrar in December of 2016, February of 2018 and June of 2019. Following receipt of the SRD review in June of 2019, the Registrar submitted a complaint to the Complaints Committee. After investigating, the Complaints Committee issued a decision to refer Mr. Raithby to Council with a recommendation that he be referred to the Discipline Committee. Council resolved that the matter be referred to the Discipline Committee.

Mr. Raithby's guilty plea

Mr. Raithby was found to have breached Sections 33(2)(a), 33(2)(f), 35(1), 35(2), 35(3), and 35(21) of the *Surveyors Act*, R.R.O. 1990, Regulation 1026.

On the basis of the agreed facts the Panel accepted Mr. Raithby's guilty plea.

Penalty

The Panel accepted the Joint Submission after confirming that the parties would agree to small clarifications. The penalty imposed by the Panel including those clarifications was:

- a cancellation of Mr. Raithby's licence to be deferred provided Mr. Raithby complies with the remaining terms of the Order;
- Mr. Raithby would fully comply with all legislation, regulations and Standards of Survey as these may prevail and apply to SRPR's and all survey products rendered by him and his firm, NA Geomatics (the "Firm) and to permit access to surveyor project files under his supervision to be inspected by an Inspector on a random basis for 12 months from the 14th day after the date of the Hearing, calculated as June 25, 2020;
- certain terms, conditions and limitations on Mr. Raithby's licence, being:
 - o Mr. Raithby is to practice in consultation with a Monitor (a current or retired OLS accepted by the Registrar);
 - o To cooperate fully with the Monitor;
 - o To implement any reasonable (in the opinion of the Registrar) recommendations made by the Monitor;
 - o To make best efforts to ensure that the Monitor provides quarterly reports regarding Mr. Raithby's practice to the Registrar;
 - o To reimburse the AOLS for the cost of the Monitor;
- Costs of the discipline hearing in the amount of \$9,000 to be paid in 18 equal monthly instalments of \$500 by postdated cheques;
- Publication of a summary of the decision and reasons in the Quarterly, in In Sight, and on the AOLS website.

Discipline Panel Members

Robert Fligg (Chair)

Terry Dietz

Gerhard (Gary) Auer

Robert Jordan

Peter Meerveld, LGA