

IN THE MATTER OF a hearing by a Discipline Panel of the Discipline Committee of the Association of Ontario Land Surveyors regarding John G. Boyd, O.L.S. pursuant to the *Surveyors Act*, R.S.O. 1990, chapter S.29, as amended, Section 26.

Hearing held at the offices of the Association of Ontario Land Surveyors
1043 McNicoll Avenue, Toronto, Ontario on Monday, August
13, 2018 at 10:00 a.m.

BEFORE: Richard Murray, O.L.S. (Chair)
Leslie Higginson, O.L.S.
David Wilton, O.L.S.
Nancy Grozelle, O.L.S.
Patricia Meehan, Lieutenant Governor in Council Appointee

Appearances: Izaak de Rijcke, Counsel for AOLS
John G. Boyd, O.L.S. Self-Represented
Carol Street, Independent Legal Counsel to the Panel
William Buck, Registrar

DECISION AND ORDER

PURPOSE OF THE HEARING:

The Member, John G. Boyd, was the subject of a complaint by a member of the public. That complaint was investigated by the Complaints Committee of the Association of Ontario Land Surveyors (the 'AOLS' or the 'Association') and ultimately referred the matter to Council of the AOLS, with a recommendation that Council refer the matter to the Discipline Committee.

Council considered the matter and, by Motion 18-23 dated May 7, 2018, referred the Member to the Discipline Committee.

This Panel of the Discipline Committee was constituted, and the hearing proceeded on August 13, 2018 to consider the allegations of professional misconduct against Mr. Boyd, O.L.S.

THE EVIDENCE

The evidence at the hearing consisted of the oral testimony of William Buck, Registrar, and John G. Boyd, O.L.S. and the following Exhibits:

- Exhibit #1 Notice of Hearing and Schedule "A" Allegations of Professional Misconduct dated June 13, 2018
- Exhibit #2 Notice under the Evidence Act dated July 3, 2018
- Exhibit #3 Book of Documents (July 2018) consisting of 17 tabs of documents put forward by the AOLS
- Exhibit #4 Affidavit of Service dated July 12, 2018 confirming service by the AOLS on Mr. John Boyd of Exhibits 1, 2, and 3
- Exhibit #5 Correspondence dated July 10, 2018 from Izaak de Rijcke to Mr. John Boyd, O.L.S.

- Exhibit #6 Registrar's Certificate Regarding Evidence dated August 13, 2018
- Exhibit #7 Order and Reasons dated November 18, 2009; Written Reasons released December 16, 2009 with respect to John G. Boyd of a Discipline Panel of the AOLS Discipline Committee
- Exhibit #8 Correspondence dated June 1, 2018 from John Boyd to the Registrar, Mr. Buck
- Exhibit #9 Email exchange between July 30 and August 13, 2018 between Mr. de Rijcke and Mr. Boyd
- Exhibit #10 Correspondence dated February 23, 2018 from John Boyd to the Registrar, Mr. Buck
- Exhibit #11 Handwritten note from John Boyd dated August 13, 2018 addressed 'To Whom it may concern'
- Exhibit #12 Unsigned and undated Joint Submission to Discipline Panel on Consent of All Parties

REVIEW OF THE EVIDENCE

The evidence established the following.

Mr. Boyd was the subject of an earlier Discipline Hearing which took place on November 18, 2009. The Panel convened to deal with that matter noted that the allegations of professional misconduct that gave rise to those proceedings set out repeated promises by Mr. Boyd to the representative of his client, the Ministry of Natural Resources, to complete a project on which Mr. Boyd was retained. In spite of those promises, the Panel noted, Mr. Boyd failed to complete the project as promised and as required (Exhibit 7).

That hearing concluded by way of a Joint Submission between the

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AOLS and Mr. Boyd, and accepted by the Panel, in which Mr. Boyd agreed, among other things, to provide a written undertaking that he would not accept any work that he was not reasonably certain he could complete within an agreed upon time frame.

The specified undertaking was provided to the AOLS by Mr. Boyd on February 8, 2010 (Exhibit 3 tab 1).

The Joint Submission also required Mr. Boyd to provide, beginning on January 1, 2010 for a period of one year, monthly reports to the Registrar listing all jobs begun on or after November 18, 2009 and indicating the date the job file was opened, the completion date (if any) agreed to with the client and the date on which the job was actually completed. A suspension of Mr. Boyd's Licence and Certificate of Authorization for a one year period was deferred for one year, but if he failed to comply with any of the terms of the Order or Decision, including providing the specified reports, the deferral of the suspension would cease, and the suspension would come into effect.

On October 27, 2010 the Registrar wrote to Mr. Boyd advising him that because he had failed to provide the required monthly reports in a timely way or at all, his licence and Certificate of Authorization was suspended for a one year period, effective November 5, 2010 (Exhibit 3 tab 2).

On October 27, 2017 a complaint was received from a member of the public who had retained Mr. Boyd on August 8, 2017 to prepare certain grading plans. Mr. Boyd advised the client that he estimated the work would be done by September 5, 2017 at the latest (Exhibit 3, Tab 3).

The client followed up with Mr. Boyd on September 5, again on September 11, and again on October 14, 2017. Mr. Boyd was advised that his delay was costing the client a lot of money, and he asked for the final date on which Mr. Boyd would have the plans completed (Exhibit 3, Tab 3).

On October 23, 2017 Mr. Boyd advised the client that he would deliver the plans to the client's office on the morning of October 26, 2017. He did not do so, and on October 27, 2017 the client sent a completed Complaint Form to the AOLS (all part of Exhibit 3, tab 3).

As is normal procedure, Mr. Boyd was advised of the complaint and given an opportunity to respond to it by November 14, 2017 (Exhibit 3, tab 4). On December 4, 2017 Mr. Boyd emailed the Registrar to advise that he was working on the Grading Plans for the client, expected to complete them by the end of that week, and would forward them to the Registrar. He provided an explanation of certain difficulties in the work and said that he was prepared to waive his fee not only for the preparation of the plans but to also provide all of the construction layout at no cost to the client.

The client was provided with this offer but did not respond. The Registrar never received the plans from Mr. Boyd.

The Complaints Committee convened and considered the complaint on January 18, 2018. That Committee concluded that Mr. Boyd's conduct in this case was similar to that in the previous disciplinary proceeding in 2009, and that Mr. Boyd appeared to have contravened the paragraph in the Undertaking he had provided to the AOLS, namely that he would not accept any work that he was not reasonably certain he could complete within an agreed upon time frame. The Complaints Committee referred the matter to Council with a recommendation that it be referred to the

Discipline Committee (Exhibit 3, tab 11).

Mr. Boyd was advised of the decision of the Complaints Committee and by letter of February 23, 2018 wrote to the Registrar. He asked that Council be advised that he was prepared to relinquish his Certificate of Authorization by no later than April 30, 2018, and to refrain from accepting any new work in the interim. That period of time, he said, would allow him to complete work in progress and to inform his current clients of his intention to retire from active practice. He proposed that he be allowed to retain his licence in order to be able to work for another survey company should there be an opportunity to do so (Exhibit 3, tab 14 and Exhibit 10).

On February 27, 2018 Council considered all matters with respect to Mr. Boyd, including his letter and proposal of February 23, 2018. By Motion 17-57 Council accepted Mr. Boyd's offer to relinquish his Certificate of Authorization no later than April 30, 2018, and resolved to defer consideration of whether Mr. Boyd should be referred to the Discipline Committee, with all issues to be reconsidered after April 30, 2018 by which time Mr. Boyd was to provide evidence that he had completed all outstanding work, as he had proposed (Exhibit 3, tab 15).

Mr. Boyd was advised of Council's decision (Exhibit 3, Tab 16).

Mr. Boyd did not provide evidence that he had completed all outstanding work by April 30, 2018. Accordingly, on May 7, 2018 Council reconsidered the matter and, by way of Motion 18-23, referred him to the Discipline Committee on the basis that he had failed to meet the terms set out in Motion 17-57 (Exhibit 3, tab 17).

On June 1, 2018 Mr. Boyd wrote to the Registrar. He said that he was unable to complete his work in progress by April 30, 2018 as previously promised. He now proposed to complete this work by June 30, 2018 and took the position that he had not yet relinquished his Certificate of Authorization but would officially do so on June 30, 2018 (Exhibit 8).

On June 13, 2018 the AOLS prepared the Notice of Hearing and Schedule "A" Allegations, which were served on Mr. Boyd on July 10, 2018 (Exhibits 1, 2, 3, 4). Mr. Boyd was thereby advised of the hearing date before this Panel, being August 13 and 14, 2018.

The Panel was provided with certain communications between AOLS Counsel and Mr. Boyd. Mr. Boyd took the position that he had, by way of his letter of June 1, 2018, resigned his Certificate of Authorization and his commission as of June 30, 2018.

AOLS Counsel responded that the AOLS had never received a formal resignation of either the Certificate of Authorization or of Mr. Boyd's licence (Exhibit 9).

At the Hearing Mr. Boyd provided a handwritten document in which he stated that he relinquished his Certificate of Authorization and membership as of August 13, 2018 (Exhibit 11).

THE LAW

Surveyors Act, R.S.O. 1990, c.S.29 as amended.

Relevant Provisions

s. 5 (3) A member may resign his or her membership by filing with the Registrar a resignation in writing, and the member's licence or certificate is thereupon cancelled, subject to the continuing jurisdiction of the Association in respect of any disciplinary

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action arising out of his or her professional conduct while a member.

s. 26(2)(b) A member of the Association may be found guilty of professional misconduct by a discipline panel if, ... in the opinion of the discipline panel, the member is guilty of professional misconduct as defined in the regulations.

R.R.O. 1990, REGULATION 1026

Section 35 Professional Misconduct

Section 35. "Professional misconduct" means,

18. Undertaking work the member is not competent to perform by virtue of his or her training and experience or that is beyond the member's resources to complete in the time agreed upon with the client.

21. Conduct relevant to the practice of professional surveying, that having regard to all the circumstances, would reasonably be regarded by members as dishonourable or unprofessional. R.R.O. 1990, Reg. 1026, s. 35; O. Reg. 506/93, s. 2; O. Reg. 327/12, s. 13.

DECISION WITH RESPECT TO PROFESSIONAL MISCONDUCT

The evidence, as reviewed above, persuaded the Panel that Mr. Boyd is guilty of professional misconduct. As long ago as 2009 he was before a differently constituted Panel of the Discipline Committee for similar reasons of failing to meet commitments to provide work within a promised timeframe. At that time he recognized and acknowledged his failing in that regard, and provided an Undertaking intended to avoid falling into the same behaviour. Shortly after giving that Undertaking he again repeated that conduct by failing to provide the Registrar with the monthly reports he had committed to complete.

The present complaint raises the same issues. He committed to providing a client with the specified grading plans by September 5, 2017, and when this date was not met he provided a second promise to provide them by October 26, 2017. He failed to meet either date.

When notified of the Complaint he was given until November 14, 2017 to provide his response: he failed to do so until December 4, 2017.

Once the matter was referred to Council by the Complaints Committee, Mr. Boyd promised not to take on any new work and to complete all outstanding work by April 30, 2018 at which time he would resign his Certificate of Authorization. On the basis of that commitment Council accommodated him by deferring any decision to refer him to the Discipline Committee until after April 30: he was required to produce evidence that he had in fact completed all outstanding work by that date.

Mr. Boyd did not complete all outstanding work by April 30, 2018 as promised, and did not relinquish his Certificate of Authorization as of that date. He provided no explanation or information until, on June 1, 2018 he advised that he would complete all outstanding work by June 30, 2018, and would only then relinquish his Certificate of Authorization and his licence.

He provided no further information to the Association regarding completing all outstanding work. On August 9, 2018 he stated his position that he had resigned his Certificate of Authorization and licence effective June 30, 2018, by way of his letter of June 1, 2018. The Association can be forgiven for not acting on this information in the June 1, 2018 letter, given the requirement in section 5(3) of the Act that a resignation must be specifically provided in writing, and given that Mr. Boyd had already previously promised that he would resign his Certificate of Authorization as of April 30, 2018, but had not in fact done so.

In any event Mr. Boyd confirmed to the Panel and provided the handwritten resignation that is Exhibit 11, that he has relinquished his Certificate of Authorization and membership (or licence) effective as of the date of the Hearing, or August 13, 2018.

The Panel accepts Mr. Boyd's resignation. The Panel also concludes that Mr. Boyd failed to comply with the Undertaking given to the Association on February 8, 2010 (Exhibit 3, Tab 1) in that he accepted work that he could not and did not complete in a time frame he provided. Further, he has continued to show an unwillingness or inability to meet time frames imposed on him by the Association, and time frames he himself committed to.

The Panel is satisfied that this conduct is professional misconduct as defined in R.R.O. 1990, Reg. 1026, s. 35(18) and (21). Mr. Boyd undertook work that was beyond his resources to complete in the time agreed upon with the client (s. 35(18): his conduct both with the client and in his dealings with the Association would reasonably be regarded by members as unprofessional (s. 35(21)). We do not find that he has acted dishonourably and note that there was no suggestion of incompetence.

Mr. Boyd was advised orally of the Panel's decision on August 13, 2018.

PENALTY

As noted above, the Panel accepted and acknowledged Mr. Boyd's resignation of both his Certificate of Authorization and his licence as of August 13, 2018. A suspension was therefore no longer an issue.

This decision in its entirety will be published in the Ontario Professional Surveyor Magazine and be posted on the Association website.

A reprimand was ordered and was administered on August 13, 2018.

The Association sought costs in the amount of \$15,000 and after due consideration the Panel ordered Mr. Boyd to pay this amount. The Panel noted that the repetitiveness of Mr. Boyd's problematic conduct contributed to his responsibility for this amount in costs.

Mr. Boyd requested that he be permitted to pay these costs in 10 post-dated cheques of \$1,500/month: the Association did not object to this and the Panel so orders.

This penalty was also communicated orally to Mr. Boyd at the Hearing on August 13, 2018.

This Decision and Order may be signed in counterparts.

It was signed electronically and dated Oct. 23 or Oct. 29, 2018 by all Panel members.

SCHEDULE "A"

ALLEGATIONS OF PROFESSIONAL MISCONDUCT

CANADA) **IN THE MATTER OF the *Surveyors Act***
) **R.S.O. 1990, Chapter S.29**
)
PROVINCE OF) **AND IN THE MATTER OF *John G. Boyd, 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.

The Council of the Association of Ontario Land Surveyors (AOLS) pursuant to Section 25(7)(a) of the *Surveyors Act*, by a Motion dated May 8, 2018, directed the Discipline Committee to hold a hearing in respect of allegations of professional misconduct.

2. It is alleged that John G. Boyd, O.L.S. (herein referred to as "Mr. Boyd"), in his personal capacity, and as the official representative for the firm JEMAP Holdings Limited, is guilty of professional misconduct within the meaning of Section 35 of Regulation 1026, R.R.O. 1990, as amended, all on the following grounds:
 - a) On October 27, 2017 The Registrar received an official complaint against Mr. Boyd from Mr. Gurmeet Bagga alleging that Mr. Boyd had failed to complete the survey work that he had been retained to perform in the time frame that he had agreed to.
 - b) On January 18, 2018 the Complaints Committee of the AOLS issued a final decision for Mr. Bagga's complaint file C-17-17 referring Mr. Boyd to AOLS Council with a recommendation that he be referred to the Discipline Committee.
3. It is alleged that the member is guilty of Professional Misconduct in that he failed to comply with his undertaking of February 8, 2010 which is contrary to Section 35(18) of Regulation 1026, R.R.O. 1990, as amended of the *Surveyors Act*.
4. It is alleged that the member has committed acts of professional misconduct as defined by Section 35(21) of Regulation 1026, R.R.O. 1990, as amended of the *Surveyors Act* in that his actions would be reasonably be regarded by members as dishonourable or unprofessional.

Dated at Toronto, Ontario, this 13th day of June, 2018.

