

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

AND IN THE MATTER OF Nath Segaran, 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 August 16th, 2018. The Member was represented by Ian McLean, 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. Bill Buck, 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. Segaran, O.L.S to all allegations, followed by a Joint Submission with respect to what the parties jointly proposed was an appropriate penalty for consideration by the Panel.

The allegations against Mr. Segaran were set out in Schedule "A" to the Notice of Hearing, marked as Exhibit 1 by the Panel. Mr. de Rijcke summarized the facts for the Panel, and Mr. McLean confirmed that the facts as summarized were accurate. On the basis of those agreed facts, and after due consideration, the Panel accepted Mr. Segaran's guilty plea to the allegations set out in Schedule "A": a copy of Schedule "A" is attached to this Decision and Order.

Counsel then jointly put forward for the Panel's consideration the Joint Submission setting out the penalty the parties jointly proposed should be accepted by the Panel (Exhibit 7). An unsigned copy of it is also attached.

In summary, the penalty jointly proposed by the parties included:

- A one year suspension from the date of the hearing, such suspension to be "deferred" for 1 year from the date of the hearing
- A reprimand
- That Mr. Segaran be supervised by another OLS in his practice of professional surveying for a period of 2 years from the date of the hearing
- That Mr. Segaran not be the managing OLS for any Certificate of Authorization company or branch office for a period of two years, and that the Registrar must provide pre-approval in writing for 3 years thereafter
- That there be publication of the allegations and the Joint Submission in the Ontario Professional Surveyor magazine and posted on the AOLS website
- That Mr. Segaran pay \$8,000 for costs, inclusive of HST, which could be paid in installments but to be fully paid within 1 year of the hearing

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 penalty jointly proposed by the parties and

after a thorough *in camera* discussion reconvened and asked the parties to consider certain changes to the Joint Submission as marked. Specifically, the Panel had been told that Mr. Segaran was not currently employed as an OLS as of the date of the hearing. In light of that information, the Panel suggested that his 2 year period of supervision begin to run from the start of full time employment as an OLS, instead of from the date of the hearing (paragraph 5). The Panel also further proposed that payment of the costs of \$8,000 be paid in full within 1 year of the date on which Mr. Segaran starts full time employment and no later than 2 years from the date of the hearing, or by August 16, 2020.

Both Counsel, on behalf of their respective clients, agreed to these changes to the Joint Submission. Accordingly the penalty imposed by the Panel is as follows:

1. Mr. Segaran's licence shall be suspended for a period of one year from August 16, 2018, such suspension to be deferred for a period of one year, meaning that if he complies with the terms of this Order, the suspension will never take effect.
2. Mr. Segaran was reprimanded by the Panel at the conclusion of the hearing, and the reprimand will be recorded on the Register of the Association.
3. Mr. Segaran will engage in the practice of professional surveying only under the personal supervision and direction of another member for 2 years from the start of resuming full time employment as an OLS.
4. Mr. Segaran will not be the managing Ontario Land Surveyor for any Certificate of Authorization company or a branch office of any Certificate of Authorization company for the 2 year period referenced in paragraph 3, and, in any event the Registrar's pre-approval in writing will be required first for a 3 year period thereafter.
5. The Schedule "A" summary of allegations leading to this proceeding, as well as the original (but subsequently revised) Joint Submission, and this Decision and Order will be published in the Ontario Professional Surveyor Magazine and posted on the Association website.
6. Mr. Segaran will pay to the Association the sum of \$8,000 for costs, inclusive of HST. This amount may be paid in installments but in any case will be fully due and payable no later than 1 year from the date on which Mr. Segaran starts full time employment as an OLS and in any event no later than 2 years from the date of this hearing, or by August 16, 2020.

This Order may be signed in counterparts.

Tom Kristjanson, O.L.S.

Julia Meldrum Smith, O.L.S.

Paul Miller, O.L.S.

Gary Auer, O.L.S.

Kathleen Gowanlock, Lieutenant-Governor Appointee

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

AND IN THE MATTER OF Prashannath (Nath) Segaran, 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

JOINT SUBMISSION TO DISCIPLINE PANEL
ON CONSENT OF ALL PARTIES

WHEREAS the Association of Ontario Land Surveyors (“AOLS”) has commenced proceedings under the *Surveyors Act* against one of its members, namely, Prashannath (Nath) Segaran, OLS, for professional misconduct;

AND WHEREAS AOLS has specified and made allegations in respect of the member which have been acknowledged and admitted by the member for purposes of making a finding of guilt on the part of the Discipline Committee.

AND WHEREAS AOLS and the member are now desirous of making a Joint Submission as to penalty and disposition by the Discipline Committee pursuant to the *Surveyors Act*;

THE PARTIES, on a consent basis, hereby agree to dispose of this matter before a panel of the Discipline Committee by way of a joint resolution 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 charges and allegations of professional misconduct against the Member (the “Charges”) as alleged.
3. The Member’s Licence shall be suspended for a period of one year from August 16, 2018, such suspension to be deferred for a period of one year.
4. The Member shall be reprimanded and the reprimand will be recorded on the Register of the Association.

5. The Member engage in the practice of professional surveying only under the personal supervision and direction of another member for two years from the date of this hearing.
6. The member will not be the managing Ontario Land Surveyor for any Certificate of Authorization company or a branch office of any Certificate of Authorization company for a period of two years but, in any event, the Registrar’s pre-approval in writing will be required first for a three year period thereafter.
7. The publication of the summary of 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.
8. The Member shall pay to the Association the sum of \$8,000.00 for costs, inclusive of HST. This amount may be paid in installments 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 period the member’s licence will be cancelled.
9. 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 13 June 2018.

Dated this 16th day of August, 2018

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 |
| |) | |
| PROVINCE OF |) | AND IN THE MATTER OF Prashannath (Nath) Segaran, 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 the sections 26 and 27 of the said Act. |

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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 May 8, 2018, directed that Mr. Nath Segaran be referred to the Discipline Committee.

2. It is alleged that Nath Segaran, O.L.S. (herein referred to as “Mr. S”), in his personal capacity, and as a former employee of the firm Barich Grenkie Surveying Ltd., 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 May 4, 2016 the Registrar of the AOLS received a letter from Mr. P. Douglas Reitsma, O.L.S., a consultant to the AOLS Survey Review Department (SRD), reporting that the Comprehensive Review report of the firm Barich Grenkie Surveying Ltd. (herein referred to as “BGS”), indicated numerous instances of non-compliance with the standards, regulations and other applicable rules for surveys, such that the average number of demerit points per plan for the seven plans reviewed was 35.75, which exceeded the threshold of 25 points per plan, after which SRD policy requires that the member be referred to the Registrar.

(b) On or about May 6, 2016 the Registrar informed Mr. Edward Grenkie, O.L.S., the then holder of the Certificate of Authorization for BGS, by letter that a follow-up review of his practice would take place in approximately one year, said review to consist of a limited Comprehensive Review of two of his plans, and would not include a field examination.

(c) On or about November 30, 2016 Edward Grenkie retired as the managing Ontario Land Surveyor for the Stoney Creek office of BGS, at which time Mr. S became the managing O.L.S.

(d) The Final Report of the BGS follow-up review, dated August 23, 2017, which was based on two survey plans signed by Mr. S indicated many serious deficiencies such that the demerit point average was 69 points per plan, significantly higher than the initial review.

(e) The Registrar considered that the deficiencies noted in the BGS follow-up review report were of such a serious nature that they warranted a referral to the Complaints Committee of the AOLS in accordance with Section 40(8) of Regulation 1026 of the *Surveyors Act*.

(f) The report of the BGS follow-up review indicated many serious deficiencies, including the following:

Re: SRD File 17-468-R-01 (Part of Block 20, R.P. 62M-1170, City of Hamilton)

(i) Section 8(a) of O. Reg. 216/10, which requires that a licensed member refer to the documentary evidence related to the property and the land adjoining the land under survey, in that Mr. S failed to perform an adequate search of title at the Land Registry Office, and obtained no, or incomplete, records from other land surveyors having performed surveys in the area;

(ii) Section 8(b) of O. Reg. 216/10, which requires a licensed member to carry out a thorough field investigation for the best available evidence of all lines, boundaries, and corners of the land under survey, in that the survey evidence which existed on the ground was not looked for, not found, or not considered by Mr. S;

(iii) Section 16 of the AOLS Interpretive Guide and Supplement to O. Reg. 216/10, which requires that a plan should only be prepared from a current survey, in that new field notes should have been prepared for the May 18, 2017 plan to confirm that the information shown on that plan is complete and up-to-date;

(iv) Section 12 of O. Reg. 216/10, which requires that measurements be verified by mathematical closure or by independent measurement, in that Mr. S did not include sufficient redundancies to confirm his measurements;

(v) Section 23 of O. Reg. 216/10, which requires a plan to show comparisons with bearings or distances shown on other plans or in any metes and bounds description, in that the plan did not show all the comparisons which should have been made and considered;

(vi) Section 4 of O. Reg. 216/10, which requires that upon completing a project a professional member shall provide a project report to the client, in that this did not occur;

(vii) Section 4(2)(e) of O. Reg. 216/10, which requires a licensed member to certify a plan of survey in a prescribed Form 1, in that the certification date on the plan is indicated as March 6, 2017 whereas the plan shows that it was completed on March 17, 2017; and,

(viii) AOLS By-Law 94-4, which requires that every Surveyor’s Real Property Report (SRPR) shall be affixed with a SRD Plan Submission Form, in that the May 18, 2017 plan should have been prepared as a separate SRPR with a separate Plan Submission Form;

Re: SRD File 17-468-R-02 (Lots 10 and 11 and Part of Lot 9, Registered Plan 728 and Part of Lot 2, Registered Plan 751, in the City of Hamilton)

(g) Mr. S prepared a Plan of Survey for properties known municipally as numbers 124, 128 and 132 Cline Avenue, City of Hamilton, dated April 21, 2017, which was deposited in the Wentworth Land Registry Office as number 62R-20556, hereinafter referred to as the “plan”, contrary to:

(i) Section 8(a) of O. Reg. 216/10, which requires that a licensed member refer to the documentary evidence related to the property and the land adjoining the land under survey, in that Mr. S failed to perform adequate search of title at the Land Registry Office, and did not obtain complete records from other land surveyors having performed surveys in the area;

(ii) Section 8(b) of O. Reg. 216/10, which requires a licensed member to carry out a thorough field investigation for the best available evidence of all lines, boundaries, and corners of the land under survey, in that the survey evidence which existed on the ground, was not looked for, not found, or not considered by Mr. S;

(iii) Section 15 of O. Reg. 216/10, which requires that

exact field notes for all surveys be made, in that the field notes made by Mr. S are not a complete, accurate, or legible portrayal of the data necessary for a complete depiction of information concerning the property surveyed;

- (iv) Section 12 of O. Reg. 216/10, which requires that measurements be verified by mathematical closure or by independent measurement, in that Mr. S did not provide sufficient evidence to indicate how he confirmed his measurements;
- (v) Section 2 of O. Reg. 525/91, which defines the monuments to be planted, in that Mr. S used items that were not prescribed as monuments;
- (vi) Sections 4(1) and 11(5) of O. Reg. 525/91, which require that monuments are to be set on corners and that witness monuments are to be no closer than one metre to the corner, in that the bar found near the southwest corner of Part 3 on the plan should have been removed and a new bar planted on the corner;
- (vii) Section 4(2) of O. Reg. 525/91 which requires that at least one quarter of the total number of angles must be monumented by a cut cross, rock bar, rock post, rock plug, or standard iron bar, in that all four parts of the plan did not have the required monumentation;
- (viii) Sections 7(1) and 7(2) of O. Reg. 525/91 which require that the limits of a route survey are to be marked with standard iron bars or equivalent, in that the bend in Cline Avenue was not correctly monumented and the field notes did not indicate why a sub-standard monument was used;
- (ix) Section 9 of O. Reg. 216/10, which specifies the minimum error of closure for a survey, in that the errors of closure for Parts 1 and 3 on the plan do not meet the minimum requirement;
- (x) Sections 24(1)(a)(ii) and (iii), which require that a plan show all topographic information that may indicate an interest in title to the surveyed parcel or that indicates an encroachment from the surveyed parcel onto the adjacent lands or from adjacent lands onto the surveyed parcel, in that while the field notes show fences and other features on or near the boundaries these features are not shown on the plan with ties to the boundaries sufficient to relocate them if necessary;
- (xi) Section 21(1)(d) of O. Reg. 216/10, which requires that a plan shall clearly and accurately show the prop-

erty identifiers assigned to the land surveyed, in that the plan incorrectly illustrates the extent of PIN 17460-0208 and PIN 17460-0210;

- (xii) Sections 18(1)(k) and 18(1)(l) of O. Reg. 216/10, which require that a plan show the procedure used in re-establishing all existing boundaries forming part of a survey or on which a survey is dependent and the source of the distance or direction if distances or directions are set, in that the plan did not show all such procedures and sources;
- (xiii) Section 27 of O. Reg. 216/10, which requires a plan to include a note indicating that the plan is to be read in conjunction with a written report, in that this did not occur; and,
- (xiv) Section 4 of O. Reg. 216/10, which requires that upon completing a project a professional member shall provide a project report to the client, in that this did not occur;

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.

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 Association, 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 13th day of June, 2018