

DISCIPLINE DECISION Mr. Ward Houghton

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

AND IN THE MATTER OF Ward Houghton, 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

Order and Reasons

This panel of the Discipline Committee convened on July 3, 2013. The Member had retained Mr. Robert Taylor, Barrister and Solicitor, and Mr. Houghton, O.L.S., and Mr. Taylor were both present at the commencement of the hearing. The Association was represented by Mr. Robert Fenn, Counsel; both Mr. Fenn and the Association's Deputy Registrar, Ms. Maureen Mountjoy, were present throughout. The panel was assisted by counsel, Carol Street.

On convening, the panel was presented with an Agreed Statement of Facts and Undertaking. Counsel for the parties jointly proposed that the panel dismiss the allegations or charges before it, without costs to either party.

The panel recessed to consider counsel's proposal, followed by additional questions put to both counsel, and a further *in camera* discussion by the panel.

The panel ultimately concluded that it was prepared to accept the proposal put forward jointly by both parties that the allegations set out in the Notice of Hearing dated March 13, 2013 should be dismissed without costs to either party. A copy of the said Notice of Hearing is attached hereto as Appendix 1.

The initiating source of those allegations was a fee dispute between the member and another member. The panel was advised that this dispute has been resolved by agreement between those two members and that the determination of the appropriate fee will be dependent on whether the member pursues litigation in the Superior Court of Ontario

and, if so, the outcome of that litigation.

Having reviewed and considered the Agreed Statement of Facts, having questioned the parties regarding the circumstances surrounding the Joint Submission, and being mindful of the due consideration such a Joint Submission is to be given, the panel was satisfied that the proposed resolution put forward by the parties adequately protects the public interest, and is an acceptable resolution of the matters in issue between the member and the Association. For these reasons, the allegations made against the member as set out in the Notice of Hearing dated March 13, 2013 are dismissed, without costs to either party.

Pursuant to section 26(5) of the *Surveyors Act*, R.S.O. 1990, c. S.29 this decision is required to be published in an official publication of the Association.

This decision was provided orally on July 3, 2013 to the Association and its counsel, and to Mr. Houghton's counsel, Mr. Houghton no longer being present at that time.

This Order may be signed in counterparts and by electronic signatures.

Oral Decision given July 3, 2013.

Robert Jordan, O.L.S.

Tom Kristjanson, O.L.S.

Doug Hunt, O.L.S.

Robert Fligg, O.L.S.

Patricia Meehan, Lieutenant-Governor Appointee

Appendix 1

NOTICE

TO: Mr. Ward I. Houghton, O.L.S.
Houghton + Houghton Inc.
15 St. Catharine Street
St. Thomas, Ontario N5P 2V7

WHEREAS Section 26 of the *Surveyors Act*, R.S.O. 1990, Chapter S.29, as amended (the "Act") provides that where a discipline panel finds a member of the Association guilty of professional misconduct or incompetence, it may, by order,

- (a) revoke the licence or certificate of registration, as the case may be, of the member;
- (b) suspend the licence or certificate of registration, as the case may be, of the member for a

stated period, not exceeding twenty-four months;

- (c) accept the undertaking of the member to limit the professional work of the member in the practice of professional surveying to the extent specified in the undertaking;
- (d) impose terms, conditions and limitations on the licence or certificate of registration, as the case may be, of the member, including but not limited, in the case of a member, to the successful completion of a particular course or courses of study, as are specified by the discipline panel;
- (e) impose specific restrictions on the licence or certificate of registration, as the case may be, or on the certificate of authorization, including but not limited to,
 - i) requiring the member to engage in the practice of professional land surveying only under the personal supervision and direction of another member,
 - ii) requiring the member to not alone engage in the practice of professional land surveying,
 - iii) requiring the member to accept periodic inspections by the discipline panel or its delegate of the books, accounts, records and plans of the member in connection with the member's practice,
 - iv) requiring the member to report to the Registrar or to such Committee of the Council as the discipline panel may specify on such matters in respect of the member's practice for such period of time, at such times and in such form, as the discipline panel may specify;
- (f) require that the member be reprimanded, admonished or counselled and, if considered warranted, direct that the fact of the reprimand, admonishment or counselling be recorded on the register;
- (g) revoke or suspend for a stated period of time the designation of the member by the Association as a specialist in any branch of professional surveying;
- (h) impose the fine that the discipline panel considers appropriate, to a maximum of \$5,000, to be paid by the member to the Minister of Finance for payment into the Consolidated Revenue Fund;
- (i) require the member to repay, waive or reduce the fee charged by the member in respect of the practice of professional surveying related to

the finding of professional misconduct or incompetence;

- (j) Repealed
- (k) fix and impose costs to be paid by the member to the Association;
- (l) direct that the imposition of a penalty be suspended or postponed for the period and upon the terms or for the purpose that the discipline panel specifies, including but not limited to any combination of the following:
 - (i) the successful completion by the member of a particular course or courses of study;
 - (ii) the production to the Discipline Committee of evidence satisfactory to it that any physical or mental handicap in respect of which the penalty was imposed has been overcome.

AND WHEREAS pursuant to subsection 22(4.3)(a) of the Act, the Complaints Committee of the Association, by a Decision dated September 24, 2012 has directed that Mr. Houghton be referred to the Council of the Association with a recommendation for further disciplinary action.

AND WHEREAS the Council of the Association pursuant to Section 25(7)(a) of the *Surveyors Act*, by a Motion dated December 20, 2012, directed the Discipline Committee to hold a hearing in respect of allegations of professional misconduct against Ward I. Houghton, O.L.S.

AND WHEREAS a copy of the aforesaid allegations is attached as Schedule "A" to this Notice.

NOW THEREFORE TAKE NOTICE that the Discipline Committee has appointed the 3rd, 4th, 10th and 11th day of July, 2013 at the hour of 10:00 o'clock in the forenoon (local time) at the office of the Association of Ontario Land Surveyors, 1043 McNicoll Avenue, in the City of Toronto, in the Province of Ontario, to conduct a hearing to inquire and investigate the above-mentioned allegations made against you in accordance with the provisions of the above-mentioned Act.

AND TAKE FURTHER NOTICE that you are required to produce the original notes, letters and correspondence, in connection with the subject matter of the said complaint.

AND TAKE FURTHER NOTICE that if you do not attend at the above-mentioned hearing, the Discipline Committee of the Association may proceed therewith in your absence and you will not be entitled to any further notice of the said hearing or the proceedings in connection therewith.

You are entitled to be represented by Counsel or agent at the said hearing and to adduce or introduce such evidence on your behalf as you consider desirable or necessary.

DATED at Toronto this 13th day of March, 2013

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SCHEDULE "A"

ALLEGATIONS OF PROFESSIONAL MISCONDUCT

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

I, MAUREEN V. MOUNTJOY, O.L.S. of the City of Brampton, in the Region of Peel, am the Deputy 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 22, 2012, directed the Discipline Committee to hold a hearing in respect of allegations of professional misconduct against Ward I. Houghton, O.L.S.
2. It is alleged that Ward I. Houghton, O.L.S. (herein referred to as "Mr. Houghton"), in his personal capacity, and as the official representative for the firm Houghton + Houghton Inc., 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) By a letter dated April 15, 2012 to the Registrar of the AOLS, Robert Stirling, O.L.S. filed an official complaint against Ward Houghton, O.L.S. alleging that Mr. Houghton was not complying with the AOLS guidelines for the distribution of field records and that Mr. Houghton's actions were preventing him from completing his work in a timely manner.
 - (b) On May 25, 2012, the Complaints Committee of the AOLS issued an Interim Decision that offered Mr. Houghton an opportunity to review his response to this complaint in light of the recent resolution to previous complaint file C-11-04 which considered similar issues.
 - (c) Upon reviewing Mr. Houghton's responses to the committee's May 25, 2012 Interim Decision, the committee purported to separate the issues of the content of the field records from the amount that could be charged for the said records. It issued a Second Interim Decision, dated July 16, 2012 directing Mr. Houghton to release specific materials to Mr. Stirling within 5 days, and advised him that the issue regarding his fees for supplying this information could be resolved at a later date in a different forum.
 - (d) By letter to the AOLS Registrar dated July 19, 2012, Mr. Houghton's counsel, Mr. Tracy Warne, advised that Mr. Houghton was prepared to submit the fees dispute to arbitration by the Fees Mediation Committee of the AOLS.
 - (e) On September 24, 2012, the Complaints Committee was advised by the Registrar that Mr. Houghton had agreed to refer the fees dispute to the Fees Mediation Committee. However, Mr. Houghton had not yet supplied his field notes and records to Mr. Stirling, as requested in the Second Interim Decision dated July 16, 2012. Therefore, the Complaints Committee issued a Final Decision that referred Mr. Houghton to Council with a recommendation that he be referred to the Discipline Committee.
 - (f) On October 22, 2012, AOLS Council passed a Motion referring Mr. Houghton to the Discipline Committee.
 - (g) On November 2, 2012, AOLS Council passed a Motion that the question of the fees Mr. Houghton was entitled to charge Mr. Stirling for the requested materials be determined by the Fees Mediation Committee in a binding arbitration.
 - (h) Council, by Motion passed December 20, 2012, reconsidered and rescinded its Motion passed November 2, 2012. Council concluded that the question of what materials are to be included in responding to a request for field records and what associated costs of those records might reasonably be charged are not severable. It referred all matters in dispute between Mr. Houghton and Mr. Stirling, being both the content of the field records to be provided, as

well as the reasonable cost for those records, to the Discipline Panel assigned to conduct the discipline hearing.

3. It is alleged that the member has committed an act of professional misconduct, as defined by Section 35(1) of Regulation 1026 of the *Surveyors Act*, in that he contravened Section 4 of the *Surveyors Act*, which states that “Every surveyor shall make and preserve exact and regular field notes of all his or her surveys and shall keep a proper record and index of all such field notes and shall exhibit or give copies of the same to any

surveyor for a reasonable charge.”

4. It is alleged that the member has committed an act of professional misconduct, as defined by Section 35(21) of Regulation 1026 of the *Surveyors Act*, in that his failure to comply with a decision of the Complaints Committee and with his own commitment to comply with AOLS Bulletin 2007-1 would reasonably be regarded by members as dishonourable or unprofessional.

Dated at Toronto, Ontario, this 13th day of March, 2013.