

DISCIPLINE DECISION Mr. Bryan A. Jacobs

SCHEDULE "A"

ALLEGATIONS OF PROFESSIONAL MISCONDUCT

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

I, WILLIAM D. BUCK, O.L.S., C.L.S., P. ENG., of the Town 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 22(4.3)(a) of the *Surveyors Act*, by a Motion dated February 8, 2010, directed the Discipline Committee to hold a hearing in respect of allegations of professional misconduct against Bryan A. Jacobs, O.L.S.
2. It is alleged that Bryan A. Jacobs, O.L.S. (herein referred to as "Mr. Jacobs"), in his personal capacity, and as the official representative for the firm B. A. Jacobs Surveying Ltd., 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 or about June 11, 2008 Mr. Jacobs, as a representative of B. A. Jacobs Surveying Ltd., signed and submitted three letters to his client Mr. Stephen Armstrong of Empire Myers Road Inc. These letters certified that the exterior boundaries and all street corners, and beginning and ending of all curves had been found or replaced on three Plans of Subdivision, namely 58M-70, 58M-138 and 58M-186.

(b) In his dealings with his client, Mr. Jacobs engaged in a course of performance, communications and representations with his client as to a state of affairs which was subsequently determined to be neither true, nor accurate, and in fact false, and therefore contrary to the *Code of Ethics* of the AOLS and the *Standards of Practice* of Professional Land Surveying in that:

- i.) Mr. Jacobs submitted signed letters to his client on or about June 11, 2008, certifying that certain professional surveying work had been completed when he knew that this work had not in fact been completed, and the letters were false, contrary to Sections 33(2)(a) and 35(21) of Regulation 1026, R.R.O. 1990, as amended;
- ii.) Mr. Jacobs undertook work which was beyond his firm's capacity and resources to complete within the required time frame, contrary to Section 35(18) of Regulation 1026, R.R.O. 1990, as amended;

all of which are breaches of sections 35(1), (3), (18) and (21) of Regulation 1026, R.R.O. 1990, as amended, and the Code of Ethics at section 33(2)(a) of said Regulation 1026;

In carrying out the survey remonumentation of the subject subdivisions, namely 58M-70, 58M-138 and 58M-186, Mr. Jacobs failed to comply with the requirements of the *Surveys Act* and the *Standards of Practice* of the AOLS, contrary to:

- iii.) Section 4(1) of the *Surveys Act* and Section 9 of Regulation 42/96 of the *Surveyors Act*, and Part II of the Interpretive Guide and Supplement to the Regulation for *Performance Standards for the Practice of Cadastral Surveying* (Currently O. Reg. 42/96) in that for each survey, field notes shall be prepared in the field and shall contain a clear and detailed account of everything found, observed and done in the field in the course of a relevant to the survey. Mr. Jacobs failed to make any field notes of his survey remonumentation work, making it impossible for future users of these monuments to verify the origin of their re-establishment and placement.
- iv.) Section 7 of Regulation 42/96 of the *Surveyors Act*, which requires that all survey measurements shall be verified by mathematical closure or independent measurement. Mr. Jacobs' methodology was to establish the required monument locations using radial measurements from existing control monuments without making any check measurements between established points or independent checks from other control monuments,

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 section 33(2)(a) and (b) of said Regulation 1026;

Dated at Toronto, Ontario, this 4th day of March, 2010.

DISCIPLINE DECISION

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

AND IN THE MATTER OF Bryan A. Jacobs, 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 May 25th, 2010 and continued on May 26th, 2010. The Association was represented by its Counsel, Izaak de Rijcke. The member, Bryan A. Jacobs, attended, without counsel.

As Mr. Jacobs did not agree that he was guilty of all of the matters with which he was charged, a plea of not guilty was therefore entered. The Association proceeded to call the Registrar, Bill Buck, as a witness. Mr. Buck gave evidence with respect to the documents included in Exhibit 3.

Mr. Jacobs then gave evidence and produced to the Panel Exhibits 5 through 9 in response to the charges, and Exhibit 10 for the Panel's consideration with respect to both the charges and the appropriate penalty.

The Decision that follows was rendered orally at the hearing on May 26th, 2010.

The charges against Mr. Jacobs are set out in Schedule “A” of the Notice, which was made Exhibit 1 to these proceedings. On the basis of the evidence before it, the Panel finds as follows with respect to those charges.

1. Paragraph 2(b)(i) of the Notice alleges that Mr. Jacobs sent letters to a client on or about June 11th, 2008, certifying that certain professional surveying work on three Plans of Subdivision, namely Plans 58M-70, 58M-138, and 58M-186, was completed, when this was false.

In particular, the letters in question certified that all of the monuments marking the exterior boundaries of the subdivisions had been located and/or re-established with standard iron bars, and that all street corners and the beginning and ending of all curves within the subdivisions had been monumented with standard iron bars.

Mr. Jacobs admitted that the letters of June 11th, 2008 were not true with respect to two of the three plans (namely Plans 58M-138 and 58M-186), and the Panel therefore finds him guilty of the allegations in paragraph 2(b)(i) with respect to these two plans. With respect to Plan 58M-70, the third Plan referenced in Paragraph 2(b)(i), Mr. Jacobs denied the charge and stated that all work certified had in fact been completed by the time he sent the letter of June 11th, 2008. As the Association put forward no compelling evidence to the contrary (other than a letter written by Mr. Jacobs which he explained to the satisfaction of the Panel), the Panel finds Mr. Jacobs not guilty of the charge regarding Plan 58M-70.

2. Paragraph 2(b)(ii) alleges that Mr. Jacobs undertook work which was beyond his firm’s capacity and resources to complete within the required time frame.

Mr. Jacobs provided the Panel with a letter (Exhibit 10) which made it clear that due to an ongoing staffing problem and personal issues, he was at the relevant time unable to complete the work he certified by the time he should have. He told the Panel that he turned work away in an effort to manage the workload. However, he also admitted that he failed to make use of other alternatives, such as hiring someone temporarily or turning to another O.L.S. for assistance.

The Panel therefore finds Mr. Jacobs guilty of this allegation as well.

3. Paragraph 2(c)(i) of the Notice alleges that with respect to the remonumentation of the same three Plans of Survey, Mr. Jacobs failed to make any field notes of his survey remonumentation work, making it impossible for future users of these monuments to verify the origin of their re-establishment and placement.

Mr. Jacobs provided evidence of computer data and a marked up copy of Plan 58M-186. The Panel finds that this documentation could be characterized as field notes, and therefore does not find Mr. Jacobs guilty of failing to make ANY field notes. However, the Panel does find that these notes are inadequate in that they are incomplete and difficult to interpret. Even Mr. Jacobs was unable to explain some of the notes of the electronic data.

The Panel therefore finds Mr. Jacobs guilty of failing to prepare notes that contain a clear and detailed account of everything found, observed and done in the field in the course of and relevant to a survey, with respect to Plan 58M-186.

There were no field notes put in evidence by either the Association or Mr. Jacobs regarding the other two Plans. However, Mr. Jacobs said that the notes he produced regarding Plan 58M-186 were typical and reflected his standard

practice. In addition, Exhibit 3, tab 3 contains handwritten notes of Mr. Buck, who gave evidence about his meeting with Mr. Jacobs on November 11th, 2009. Mr. Buck said that he checked a large book of Mr. Jacobs' field notes and found similar issues.

The Panel therefore finds Mr. Jacobs guilty of the allegations against him in paragraph 2(c)(i) regarding Plans 58M-70 and 58M-138, as well as Plan 58M-186.

4. The final allegation against Mr. Jacobs is set out in Paragraph 2(c)(ii) and concerns his field methods and practices. He is accused of establishing the required monument locations using radial measurements from existing control monuments without making any check measurements between established points or independent checks from other control monuments.

Once again, the Panel had only the field notes concerning 58M-186. These notes and Mr. Jacobs' evidence made it clear that he did not have checks in place to ensure that the work in the field is in fact following the required practices. As already stated, he was unable to explain some of the discrepancies in the notes.

The Panel therefore finds Mr. Jacobs guilty of the allegations set out in this paragraph. For the reasons given regarding paragraph 2(c)(i), the Panel also finds Mr. Jacobs guilty of the allegations in this paragraph regarding all three Plans.

PENALTY

The Panel considers these serious offences, and gave serious consideration to the Association's submission that Mr. Jacobs' licence should be revoked, but we have concluded that revocation is not the appropriate penalty.

However, we do think it important that Mr. Jacobs go through a period where his practice is monitored, and that he should be required to engage in some Professional Development.

The Panel therefore orders:

1. Mr. Jacobs' licence to practise as an Ontario Land Surveyor is suspended for a period of 16 months, starting from May 26th, 2010, but that suspension is deferred provided certain conditions are met. Those conditions are:
 - a. A monitor will be appointed by the Association to meet with Mr. Jacobs as often as s/he considers necessary to effectively review and monitor the whole of Mr. Jacobs' practice during the 16 months of deferred suspension;
 - b. While the appointed monitor will be directed to monitor the whole of Mr. Jacobs' practice, particular attention should be given to the adequacy of field notes and supervision;
 - c. The appointed monitor will prepare and provide to the Registrar quarterly reports of his/her observations and conclusions regarding the manner in which Mr. Jacobs is conducting his practice;
 - d. The Registrar will in turn provide quarterly reports to Council of the Association as to whether all of the conditions this Panel is imposing are being met, including the payment obligation set out in paragraph 3 below;
 - e. Mr. Jacobs will be responsible for payment of all costs of the monitor within 30 days of being invoiced for those costs, and will provide evidence to the Registrar that payment has been made as required;
 - f. Mr. Jacobs is required to attend at least two regional group meetings during the 16 month period of the deferred suspension and will provide evidence of attendance to the Registrar, the monitor or both;

- g. Mr. Jacobs is required to attend at least one seminar offered by the Association during the 16 months of the deferred suspension and will provide evidence of attendance to the Registrar, the monitor or both.
2. The Lieutenant-Governor in Council appointee on this Panel has orally reprimanded Mr. Jacobs, particularly for signing the two letters of June 18th, 2008 regarding Plans 58M-138 and 58M-186, and the fact that he has been so reprimanded will be recorded on the Register of the Association.
 3. Mr. Jacobs will pay the costs of these proceedings to the Association, in the amount of \$7,500, within 30 days of May 26th, 2010.
 4. If after 16 months all conditions have been fully complied with, and Council is satisfied that there are no further concerns with respect to the conduct of Mr. Jacobs' practice, the suspension will be lifted and Mr. Jacobs will be a member in good standing.
 5. Should Council conclude that there has been any failure on Mr. Jacobs' part to comply with any of the terms of this Decision and Order during the 16 months deferred suspension, Council will in writing direct the Registrar to notify him that the deferral of his suspension is revoked; that the suspension will come into effect immediately; and that it will apply thereafter for the full 16 months.
 6. This Decision and Order will be published in the next edition of The Ontario Professional Surveyor magazine and on the Association's website. Pursuant to section 26(5) of the Act, Mr. Jacobs will be identified as the member before this Panel.
 7. This Decision and Order may be signed in counterparts.

DATED at Toronto, Ontario this 26th day of May, 2010.