

# ALLEGATIONS OF PROFESSIONAL MISCONDUCT

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

**AND IN THE MATTER OF John G. Boyd, O.L.S.**

**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 Complaints Committee of the Association of Ontario Land Surveyors (AOLS) pursuant to Section 22(2)(a) of the *Surveyors Act*, by a Decision dated July 31, 2009, 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 March 23, 2007 Mr. Boyd accepted responsibility on behalf of the Ministry of Natural Resources (herein referred to as “MNR”) for the preparation of a number of Plans of Survey to be deposited as Reference Plans, for purposes of assisting in the closing, transfer and eventual regulation of portions of municipal lands, municipal road allowances and former rail lands in the geographic township of Caledon. The specifications for the project required completion of the survey and submission of deliverables by June 29, 2007. Mr. Boyd signed a Memorandum setting out the contract survey requirements and specifications on March 23, 2007 indicating that he could meet this deadline. Two addendums to this Memorandum were issued. An Addendum dated April 4, 2007 extended the submission date to July 13, 2007 and an addendum dated July 17, 2007 extended the submission date to August 7, 2007.
  - (b) As to issues of professional misconduct, it is alleged that:
    - i) Mr. Boyd failed to submit the required deliverables on or before the agreed upon due date of August 7, 2007.

- ii) Mr. Boyd was contacted on several occasions by MNR staff between August 8, 2007 and September 18, 2007, however the first deliverables were not submitted to MNR until September 19, 2007.
- iii) The September 19, 2007 submission was incomplete, containing only one of the expected four plans and no cover letter, survey report or title report, contrary to the contract survey Requirements and Specifications.
- iv) On March 31, 2008 Mr. Boyd delivered 3 of his 5 plans. This submission was also incomplete and contained no cover letter, survey report or title report, contrary to the contract survey Requirements and Specifications.
- v) Plan 4 of 5 was received by MNR on April 1, 2008.
- vi) In spite of numerous requests from MNR and promises by Mr. Boyd, no final plans and supporting materials were received by MNR until November 12, 2008, when Plans 1 and 2 and their supporting material were delivered. Plan 3 was received by MNR on November 13, 2008 and two prints of draft Plan 4 were delivered on November 18, 2008.
- vii) On December 3, 2008, after receiving promises from Mr. Boyd that plan 5 would be delivered no later than December 2, 2008, which promise was not kept, Mr. Brian Maloney submitted an official complaint to the AOLS from, and on behalf of, MNR.
- viii) On May 1, 2009 the Complaints Committee of the AOLS issued an Interim Decision that directed Mr. Boyd to communicate immediately and directly with Brian Maloney to develop a realistic schedule, agreed upon by both parties, for the completion of the remaining work. On May 14, 2009 Mr. Boyd tendered his schedule to Mr. Maloney stating that Plans 1, 2 and 3 and supporting information would be delivered by May 25, 2009 and Plans 4 and 5 would be delivered by June 1, 2009.
- ix) On June 12, 2009 Mr. Maloney advised the AOLS that he had agreed with Mr. Boyd to revise this schedule, with plans 1 and 2 being delivered on June 22, 2009, plans 3 and 4 on June 24, 2009 and plan 5 on July 7, 2009.
- x) On June 24, 2009 MNR advised the Registrar of the AOLS that they had received no plans, correspondence or phone calls from Mr. Boyd and requested that the Complaints Committee be so advised.
- xi) On July 15, 2009 MNR advised the Registrar of the AOLS that they had still not received any submissions from Mr. Boyd.

all of which constitutes professional misconduct on the part of Mr. Boyd.

- (c) In his dealings with his client, MNR, Mr. Boyd engaged in a course of performance, communications and representations with his client and its employees as to a state of affairs which was subsequently determined to be neither true, nor accurate, and was therefore contrary to the *Code of Ethics* of the Association and the *Standards of Practice* of Professional Land Surveying in that:
- (I) Mr. Boyd submitted initial, incomplete returns on September 19, 2007, over one month late, after having made several promises to deliver the plans, which promises were not kept, contrary to Sections 33(2)(a), 35(18) and 35(21) of Regulation 1026, R.R.O. 1990, as amended;
  - (II) Mr. Boyd repeatedly misled MNR and its employees as to the state of progress with respect to the plans, including:
    - 1. A statement by Mr. Boyd to MNR employees on August 16, 2007 that his plans would be submitted to MNR within two weeks, when no such submission was made, contrary to Sections 33(2)(a), 35(3), 35(18) and 35(21) of Regulation 1026, R.R.O. 1990, as amended;
    - 2. A statement by Mr. Boyd to MNR employees on September 17, 2007 that he would be submitting a package on September 18, 2009 when in fact same was not received, contrary to Sections 33(2)(a), 35(3), 35(18) and 35(21) of Regulation 1026, R.R.O. 1990, as amended;
    - 3. A personal conversation between Mr. Brian Maloney and Mr. Boyd on November 19, 2007 during which Mr. Boyd indicated that he expected to have draft plans to MNR within the next two weeks, when in fact these plans were not delivered, contrary to Sections 33(2)(a), 35(3), 35(18) and 35(21) of Regulation 1026, R.R.O. 1990, as amended;
    - 4. A telephone call from MNR employee Eric Ansell to Mr. Boyd on July 6, 2006, during which Mr. Boyd indicated he would submit his plans during the week of July 10, 2006, which submission was not made, contrary to Sections 33(2)(a), 35(3), 35(18) and 35 (21) of Regulation 1026, R.R.O. 1990, as amended;
    - 5. A telephone conversation between Mr. Boyd and Mr. Brian Maloney on January 11, 2008 during which Mr. Boyd indicated that he would be able to submit his deliverables by the end of the week of January 14, 2008 when in fact no such delivery was made, contrary to Sections 33(2)(a), 35(3), 35(18) and 35(21) of Regulation 1026, R.R.O. 1990, as amended;

6. A meeting between Mr. Boyd and Mr. Brian Maloney on February 23, 2008 during which Mr. Boyd indicated that he was prepared to complete the project and have it submitted before March 31, 2008, when in fact only three plans, without supporting data were submitted by said date, contrary to Sections 33(2)(a), 35(3), 35(18) and 35(21) of Regulation 1026, R.R.O. 1990, as amended;
7. A telephone call from Mr. Ansell to Mr. Boyd on August 20, 2008, during which Mr. Boyd indicated he would submit plan 5 by August 29, 2008, which submission was not made, contrary to Sections 33(2)(a), 35(3), 35(18) and 35 (21) of Regulation 1026, R.R.O. 1990, as amended;
8. A telephone call from MNR employee Jim McIntosh to Mr. Boyd on October 16, 2008, during which Mr. Boyd indicated he would submit plan 1 and outstanding supporting materials by October 21, 2008, which submission was not made, contrary to Sections 33(2)(a), 35(3), 35(18) and 35 (21) of Regulation 1026, R.R.O. 1990, as amended;
9. An e-mail from Mr. Boyd on November 26, 2008 in which he acknowledges receipt of a telephone message and e-mail from Mr. McIntosh on November 25, 2008 both of which advised Mr. Boyd that an official complaint would be filed with the AOLS should plan 5 not be delivered by December 3, 2008, and in which Mr. Boyd promised that said plan 5 will be delivered by December 2, 2008, which delivery was not made, contrary to Sections 33(2)(a), 35(3), 35(18) and 35(21) of Regulation 1026, R.R.O. 1990, as amended.

## **Discipline Decision**

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

**AND IN THE MATTER OF** John G. Boyd, 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 as scheduled on November 18<sup>th</sup>, 2009. It was presented with a Joint Submission by Counsel for the Association, Izaak de Rijcke, and by the member, John G. Boyd, who was unrepresented.

The Joint Submission is attached hereto as Exhibit A.

Paragraph 10 of the Joint Submission contains no agreement as to whether publication of this decision would include the identity of Mr. Boyd: it was originally intended that this matter would be left to be decided by the panel. However, on attending at the hearing, Mr. Boyd advised that he was prepared to change his position in that regard, and was now in agreement with the Association's submission that publication should include identifying information. Mr. Boyd advised that he recognized identifying information is a necessary principle to maintain public trust in the profession through transparency and accountability in the disciplinary process.

The Committee acknowledges the cooperation and forthright behavior of Mr. Boyd throughout this hearing and takes note of the fact that this is not a matter of competency but rather of conducting one's business affairs so as to maintain public trust and confidence in the profession. Specifically, the Allegations of Professional Misconduct that gave rise to these proceedings set out repeated promises by Mr. Boyd to representatives of his client, the Ministry of Natural Resources, to complete a project on which Mr. Boyd was retained. In spite of those promises, Mr. Boyd failed to complete the project as promised and as required.

The Committee has accepted the Joint Submission between the Member and the Association and hereby issues its Order adopting the terms of the Joint Submission in the form attached hereto as Exhibit A, subject to the change noted in paragraph 10: Mr. Boyd has agreed that the disclosure of his identity in the publication of this decision is appropriate.

This Order may be signed in counterparts.

Oral Decision given November 18, 2009, Written Reasons released December 16, 2009.

## **EXHIBIT A**

### **JOINT SUBMISSION TO DISCIPLINE COMMITTEE ON CONSENT OF ALL PARTIES**

The Association of Ontario Land Surveyors (the "Association") and the Member, John G. Boyd, O.L.S. (the "Member"), make joint submission to the Discipline Committee under the *Surveyors Act* in respect of this matter by asking the Discipline Committee to issue a consent Order on the following terms:

1. The Member pleads guilty to the charges and allegations of professional misconduct against the Member (the "Charges") as alleged.
2. The Member's Licence and Certificate of Authorization shall be suspended for a period of one year from November 18<sup>th</sup>, 2009, such suspension to be deferred for a period of one year.
3. The Member shall provide a written undertaking that he will not accept any work that he is not reasonably certain he can complete within an agreed upon time frame.
4. The Member shall provide his final submissions to the Ministry of Natural Resources of all deliverables as defined in the Memorandum of Terms and Conditions of Agreement for the Forks of the Credit Provincial Park project within 4 weeks of November 18, 2009.
5. Beginning on January 1, 2010 and continuing for a period of one year, the Member shall provide to the Registrar a cumulative report on a monthly basis 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. The Member shall retain records sufficient to confirm the information contained in said monthly report and provide them to the Registrar if requested; said records to be retained for a period of six months following the submission of the last monthly report.

6. The Member shall be reprimanded and the reprimand will be recorded on the Register of the Association.
7. The Member shall be prohibited from practicing cadastral land surveying for a period of one year from November 18, 2009, such prohibition to be deferred for a period of one year.
8. The Member pays to the Association, for its costs, the sum of \$7,500.00, payable by five post-dated cheques of \$1500.00 each, due monthly, beginning on February 15, 2010.
9. The Member shall be required to comply with the terms of the Order or Decision in all respects, failing which, the deferral of the suspension referred to above shall be revoked.
10. The allegations forming the Charges, as well as the Order or Decision of the Discipline Committee, shall be published in the next issue of The Ontario Professional Surveyor magazine. The issue of disclosure of identity of the Member in such publication shall be left to the decision of the Discipline Committee.
11. The terms of this Joint Submission are fair and reasonable and protect the public interest.
12. The Member acknowledges having been advised to obtain and has had the benefit of independent legal advice, or, has voluntarily declined to obtain same.
13. This Joint Submission and agreement thereto by the Member may be set up as a complete bar and answer by the Association to any appeal or judicial review of the Order or Decision of the Discipline Committee resulting therefrom.

DATED at Toronto, Ontario, this 29th day of October, 2009.