

**DISCIPLINE DECISION Mr. Peter Allen**

**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 Peter Allen, 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) On February 13, 2010 the Complaints Committee of the AOLS received an official complaint against Mr. Allen. The substance of this complaint, referred to as File Number C-10-02, was that Mr. Allen had failed to fulfill his professional obligation to follow and maintain the Performance Standards for the Practice of Cadastral Surveying by failing to conduct proper research, failing to properly catalogue field notes and failing to respond to a request from a fellow surveyor. The Complaints Committee issued a Final Decision regarding this complaint on May 17, 2010, which, pursuant to Section 22 (4.3)(a) of the *Surveyors Act*, R.S.O. 1990 Chapter S.29, as revised, referred Mr. Allen to AOLS Council with a recommendation for further disciplinary action.
- 2) The Council of the Association of Ontario Land Surveyors (AOLS) pursuant to Section 26(1) of the *said Act*, by a Motion dated October 25, 2010, directed the Discipline Committee to hold a hearing in respect of allegations of professional misconduct against Mr. Allen.
- 3) The Decision in Complaints Committee file C-10-02 referred to a previous complaint against Mr. Allen, File C-07-07, which resulted in Mr. Allen submitting to the Complaints Committee a proposed Quality Control process by which he agreed to structure his survey practice. This process included commitments to ensure that all work was properly researched, all plans were mathematically closed and all field notes would be reviewed by an O.L.S. Further, Mr. Allen submitted a Letter of Undertaking to the Complaints Committee on July 2, 2008 in which he agreed to conduct his survey practice within the terms of this Quality Control process.

- 4) It is alleged that Peter Allen, O.L.S. (herein referred to as “Mr. Allen”), in his personal capacity, and as the official representative for the firm Grange W. Elliott 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) In 1994 Mr. Allen prepared a draft Reference Plan, file number LO’H 14-26 C7015, which was not deposited in the Land Registry Office;
  - b) On September 24, 2009 Mr. Allen deposited Plan 13R-19658, which appears to be an updated version of his 1994 undeposited plan, contrary to:
    - (i) O. Reg. 42/96 S.3(a) and Interpretive Guide Section 1 which requires that when undertaking a survey a licensed member shall refer to the documentary evidence related to the land under survey and the land adjoining the land under survey in that the said plan 13R-19658 failed to consider and illustrate plan 13R-18431, which plan included a portion of the lands included in the said plan 13R-19658 and which had been deposited in the Land Registry Office on July 18, 2006, prior to the said plan 13R-19658.
    - (ii) Section 4 of The *Surveys Act*, RSO 1990 Chapter S.30, as amended, O. Reg. 42/96 S.9, and Interpretive Guide S.7 to S.10, in that for each survey, exact and accurate field notes shall be prepared and shall contain a clear and detailed account of everything found, observed, and done in the field in the course of and relevant to the survey. The notes shall clearly indicate the method and progression of the survey. No field notes exist.
    - (iii) O. Reg. 42/96 S.3(b) and S.19 in that proper quality control procedures were not followed during the preparation of the said plan 13R-19658. The said plan 13R-19658 contains several instances wherein existing survey monuments are either not indicated or are indicated incorrectly, including a discrepancy between the monument shown at the northerly end of Part 6 on the said plan and the monument shown in the corresponding Inset “A” for that same location, illustration of a Rock Bar on the northerly limit of Part 5 on the said plan which in fact does not exist, failure to illustrate a monument on the south side of Part 5 on the said plan that was planted during the survey for plan 13R-18431, failure to illustrate an existing monument on the easterly side of Part 7 on the said plan 13R-19658 where it meets with Part 12 on the said plan.
  - c) Mr. Allen prepared and deposited plan 13R-19781 on January 28, 2010, contrary to:
    - (i) O. Reg. 42/96 S.3(b) and S.19 in that the said plan contains several instances wherein existing survey monuments are either not indicated or are indicated incorrectly, including a discrepancy between the monument shown at the northerly end of Part 6 on the said plan and the monument shown in Inset “A” for that same location, illustration of a Rock Bar on the northerly limit of Part 5 on the said plan which in fact does not exist, failure to illustrate a monument on the south side of Part 5 on the said plan that was planted during the survey for plan 13R-18431, failure to illustrate an existing monument on the easterly side of Part 7 on the said plan 13R-19781 where it meets with Part 12 on the said plan, all of which are indications that proper quality control procedures were not followed during the preparation of the said plan 13R-19781;

- (ii) O. Reg. 42/96 S. 9 and Interpretive Guide S. 20 in that the said plan 13R-19781 states a date of completion of survey that is identical to that shown on plan 13R-19658, suggesting that the said plan 13R-19781 may not have been prepared from a current survey;
- (iii) Interpretive Guide S.33 and AOLS Bulletin 2007-01 in that Mr. Allen was unable to produce any field notes relating to the preparation of the said plan 13R-19781 when requested repeatedly to do so by a fellow surveyor;
- c) Plans 13R-19658 and 13R-19781, both prepared by Mr. Allen and both having the same date of completion, each indicate different fencing along or near the easterly limits of Parts 1 and 4 of the said plans and neither plan correctly illustrates the conditions as of the date of the said surveys, contrary to O. Reg. 42/96 S. 21 (1) and Interpretive Guide S. 16;
- d) The Surveyor's Certificates on Mr. Allen's 1994 draft Reference Plan and on plans 13R-19658 and 13R-19781 are all incorrect and do not comply with Form 1 of O. Reg. 42/96;
- e) The number of errors on the said plans 13R-19781 and 13R-19658 suggest that Mr. Allen has not maintained the level of quality expected from a professional surveyor and that he has failed to comply with his July 2, 2008 undertaking to the Complaints Committee;

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

Dated at Toronto, Ontario, this 13<sup>th</sup> day of December, 2010.

## **Discipline Decision**

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

**AND IN THE MATTER OF** Peter Allen, 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 March 23<sup>rd</sup>, 2011. Panel member Richard Dixon, O.L.S. was unable to attend in person due to a winter storm. All other Panel members were present in person. With the consent of both parties, it was agreed that the Panel would proceed with Mr. Dixon participating by speaker phone. The Hearing then proceeded on this basis.

The Panel was presented with a Joint Submission by Counsel for the Association, Izaak de Rijcke, and by the member, Peter Allen, who was unrepresented.

The Joint Submission was marked as Exhibit 8, and a copy is attached as Exhibit A.

The Panel took some time in order to understand the basis of the allegations against Mr. Allen, in order to assess whether the proposed penalty as agreed between the parties and as set out in the Joint Submission was appropriate and adequately dealt with any concerns of the Panel in protecting the public interest.

The Panel is satisfied that the proposed Joint Submission is an acceptable resolution to the charges, and has therefore accepted it.

The Panel hereby issues its Order adopting the terms of the Joint Submission.

This Order may be signed in counterparts. Signatures delivered as an attachment to an email are deemed to be original for purposes of this Decision and Order.

Oral Decision given March 23<sup>rd</sup>, 2011.

Gary Auer, O.L.S.  
Wayne Brubacher, O.L.S.  
Robert F. Sevigny, O.L.S.  
Richard C. Dixon, O.L.S.  
Mark Spraggett, Lieutenant-Governor Appointee

## **EXHIBIT A**

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

The Association of Ontario Land Surveyors (the “Association”) and the Member, Peter Allen, O.L.S. (the “Member”), make joint submission to this panel of 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 16 months from March 23, 2011, such suspension to be deferred for a period of 16 months.
3. The Association will appoint a monitor, as a representative of the Registrar, who will meet with Mr. Allen as often as s/he considers necessary to effectively review and monitor the whole of Mr. Allen's practice during the 16 months of deferred suspension;
4. Mr. Allen will develop a detailed quality control process and will have it approved by the Registrar, and the member will use the approved process on all future projects which he or his firm undertakes, supervises or manages.
5. Although the appointed monitor will be directed to monitor the whole of Mr. Allen's practice, particular attention will be given by the monitor to the adequacy of research, field notes, calculations, supervision and the use of the said quality control process by the member.
6. The appointed monitor will prepare and provide to the Registrar quarterly reports of his/her observations and conclusions regarding the manner in which Mr. Allen is conducting his practice with particular emphasis on the matters referred to in Paragraph 5 above.
7. The Registrar will in turn provide quarterly reports to Council of the Association as to whether all of the conditions set out in the Discipline Committee decision in this matter are being met, including the payment obligation set out in paragraph 12 below.
8. The Association will invoice Mr. Allen for the cost of the monitor and Mr. Allen will be responsible for payment of these costs within 30 days of being invoiced.
9. Mr. Allen will 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;
10. Mr. Allen will 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.

11. Mr. Allen shall be reprimanded and the reprimand will be recorded on the Register of the Association.
12. Mr. Allen will pay to the Association, for its costs, fixed in the sum of \$7,500.00, including HST, payable by five post-dated cheques of \$1500.00 each, due monthly, beginning on April 2, 2011.
13. The Member shall be required to comply with the terms of this Joint Submission in all respects, failing which, the deferral of the suspension referred to above shall be revoked.
14. 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 and shall be posted on the public side of the Association website.
15. The terms of this Joint Submission are fair and reasonable and protect the public interest.
16. The Member acknowledges having been advised to obtain and has had the benefit of independent legal advice, or, has voluntarily declined to obtain same.
17. 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 there from.

DATED at Toronto, Ontario, this 23<sup>rd</sup> day of March, 2011.