

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

AND IN THE MATTER OF Richard A. MacKenzie, 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 matter convened before a duly constituted panel of five members of the Discipline Committee on January 7th, 2008. The member, Richard A. MacKenzie, O.L.S., attended without representation by counsel, though fully given the opportunity to do so.

Mr. MacKenzie was served with Exhibit 1, the Notice, which attaches as Schedule A to it the Allegations of Professional Misconduct asserted by the Association of Ontario Land Surveyors, on November 21st, 2007. Mr. MacKenzie was also served at the same time with copies of all documents to be relied upon by the Association (Exhibit 4).

After Mr. MacKenzie was given a further opportunity to review these Allegations and the supporting documents he advised the Discipline Committee that he wished to enter a guilty plea to the allegations and acknowledged that the facts as set out in Schedule A are accurate and unchallenged.

The Discipline Committee accepted Mr. MacKenzie's guilty plea and found him to be guilty of professional misconduct. The Discipline Committee then considered the submissions of both parties with respect to the appropriate penalty to be imposed.

In considering the proper penalty, the Discipline Committee noted that Mr. MacKenzie had previously appeared before a differently constituted panel of the Discipline Committee in April of 2002. At that time, Mr. MacKenzie provided the Association with his personal undertaking to answer and respond promptly to any correspondence or query directed to him by any officer of the Association or any of its Committees.

Notwithstanding that undertaking, the facts as set out in Schedule A, which are admitted as correct by Mr. MacKenzie, indicate that he has failed to honour that undertaking. He has consistently failed to respond to many communications and requests for documentation and information from the Association, despite being given every opportunity, including extensions of time, to do so. Two members of the public have also complained to the Association of Mr. MacKenzie's failure to respond to their enquiries.

Mr. MacKenzie, although given the opportunity to do so, provided no satisfactory explanation for his actions.

The Discipline Committee therefore agrees with the submissions of Counsel for the Association that the appropriate penalty is as follows:

1. The license of Mr. MacKenzie is hereby revoked, and the Registrar is instructed to cancel any associated Certificates of Authorization, effective as of the date of the hearing, January 7th, 2008;
2. Mr. MacKenzie shall forthwith make a payment towards the costs incurred by the Association in the amount of \$5,000;
3. This Decision and Order, and the Allegations as set out in Schedule A of Exhibit 1 will be published in the next edition of the Ontario Professional Surveyor.

This Decision and Order may be signed in counterparts.

Decision rendered the 7th day of January, 2008.

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 Richard A. MacKenzie, 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 pursuant to Section 25(5) of the Surveyors Act, by a Resolution dated October 23, 2007, directed the Discipline Committee to hold a hearing in respect of allegations of professional misconduct.
2. It is alleged that Richard A. MacKenzie, O.L.S. (herein referred to as "Mr. MacKenzie"), is guilty of professional misconduct within the meaning of Section 35 of Regulation 1026, R.R.O. 1990, as amended, on the following grounds:

3. On April 25, 2002 Mr. Richard A. MacKenzie appeared before a Panel of the Discipline Committee of the AOLS on charges of Professional Misconduct. These charges resulted from a referral by the Complaints Committee and were the direct result of Mr. MacKenzie's failure to respond to repeated requests and warnings from that committee. The Discipline panel accepted the contents of a joint submission from the Association and Mr. MacKenzie, and on April 25, 2002 issued a Decision and Order based on this submission. Item 4 of this Decision and Order stated:

"The Member has signed and delivered to the Association a written personal undertaking that he will answer and respond promptly to future requests from any officer or committee of the Association, which undertaking is part of Exhibit 5."

Since that time, and in spite of numerous warnings, Mr. MacKenzie has continued to miss deadlines and fail to respond to requests from both the Registrar and the Survey Review Department, contrary to both the Decision and Order of the Discipline Committee, and Section 34(2)(g) of Regulation 1026, R.R.O. 1990, as amended (the Standards of Practice).

4. On June 17, 2003, as the result of an investigation by the Survey Review Department into the apparent use of the same Plan Submission Form on more than one plan, the Registrar sent a letter to Mr. MacKenzie, requesting a response from him by no later than July 18, 2003. This deadline was missed and on August 14, 2003 the Registrar called Mr. MacKenzie, who promised that he would respond. On May 18, 2004 the Registrar sent another letter to Mr. MacKenzie stating that his failure to respond to this letter by June 4, 2004 might trigger a Registrar's Investigation of his behaviour. On June 30, 2004 Mr. MacKenzie was granted a further extension to July 7, 2004. This deadline was met and after further correspondence Mr. MacKenzie eventually paid \$1,848.67 to the Survey Review Department to compensate for his admitted duplicate use of several Plan Submission Forms. Mr. MacKenzie's failure to respond promptly to the Registrar's requests was contrary to both the Decision and Order of the Discipline Committee, and Section 34(2)(g) of Regulation 1026, R.R.O. 1990, as amended (the *Standards of Practice*).
5. On December 5, 2002 the Complaints Committee issued an Interim Decision for File C-02-06 that directed the Registrar to investigate Mr. MacKenzie's practice more fully. Mr. MacKenzie's Comprehensive Review was in progress at this time and therefore a separate Registrar's Investigation was not conducted. On May 17, 2004 the results of Mr. MacKenzie's Comprehensive Review were reported to the Registrar for further action. After meeting with Mr. MacKenzie on June 22, 2005 the Registrar ordered that a follow-up review of Mr. MacKenzie's practice be conducted. The Registrar sent a letter to Mr. MacKenzie on July 14, 2005 stating that a follow-up review of his practice would be carried out within one year. The follow-up review was begun on August 15, 2006, with a letter to Mr. MacKenzie from Mr. David Norgrove, the Manager of the Survey Review Department (herein referred to as "Mr. Norgrove"), requesting a copy of Mr. MacKenzie's Plan Submission tracking log.

- On September 1, 2006, Mr. Norgrove advised Mr. MacKenzie, in a letter sent by both facsimile and mail, that the list he had submitted was incomplete and that the Department had therefore chosen eight plans from their records of Mr. MacKenzie's Plan Submission Form purchases. This letter directed that Mr. MacKenzie's returns for these plans were to be submitted no later than September 22, 2006. As of October 23, 2006 this request had not been completed, contrary to both the Decision and Order of the Discipline Committee, Sections 33(2)(a) and (b) of Regulation 1026, R.R.O. 1990, as amended (the *Code of Ethics*) and Section 34(2)(g) of Regulation 1026, R.R.O. 1990, as amended (the *Standards of Practice*).
6. On October 23, 2006 Mr. Norgrove sent another letter to Mr. MacKenzie, by both facsimile and mail, noting that he had missed the September 22, 2006 deadline, and allowing him until October 30, 2006 to provide the requested information. This deadline was also missed, and on November 1, 2006 Mr. MacKenzie was given another deadline of November 16, 2006. This deadline was also missed, all of which are contrary to both the Decision and Order of the Discipline Committee, Sections 33(2)(a) and (b) of Regulation 1026, R.R.O. 1990, as amended (the *Code of Ethics*), and Section 34(2)(g) of Regulation 1026, R.R.O. 1990, as amended (the *Standards of Practice*).
 7. Due to Mr. MacKenzie's failure to respond to the Survey Review Department's repeated requests for information, on November 27, 2006 the Registrar sent a letter to Mr. MacKenzie stating that the \$500 fine allowed by AOLS By-Law 94-3 was being imposed. On March 7, 2007 having received no response from Mr. MacKenzie, the Registrar sent another letter to Mr. MacKenzie, officially providing him with the required two months notice that his licence would be cancelled on May 11, 2007, in accordance with Section 20(1) of the *Surveyors Act*. A reminder letter was sent to Mr. MacKenzie on May 4, 2007 and although the fine was paid on May 16, 2007, all of Mr. MacKenzie's actions were contrary to both the Decision and Order of the Discipline Committee, Sections 33(2)(a) and (b) of Regulation 1026, R.R.O. 1990, as amended (the *Code of Ethics*), and Section 34(2)(g) of Regulation 1026, R.R.O. 1990, as amended (the *Standards of Practice*).
 8. On August 2, 2007 the Registrar was advised by Mr. Norgrove that Mr. MacKenzie had failed to respond to his final deadline of June 25, 2007 for submission of information required to complete his follow-up review. The Registrar sent a letter to Mr. MacKenzie on August 8, 2007 giving him a final deadline of August 24, 2007 and warning him that he would be referred to AOLS Council with a recommendation that he be referred to the Discipline Committee if he failed to respond. Although Mr. MacKenzie submitted some information on August 24th, much of the required data was missing. The missing information was detailed in another letter from Mr. Norgrove to Mr. MacKenzie on September 12, 2007, which gave another deadline of October 17, 2007. This deadline was not met by Mr. MacKenzie, and another extension, to October 31, 2007 was given, all of which conduct by Mr. MacKenzie are contrary to both the Decision and Order of the Discipline Committee, Sections 33(2)(a) and (b) of Regulation

1026, R.R.O. 1990, as amended (the *Code of Ethics*), and Section 34(2)(g) of Regulation 1026, R.R.O. 1990, as amended (the *Standards of Practice*).

9. On August 13, 2007 Mr. Glenn Miller called the Registrar to inquire about a recent survey that Mr. MacKenzie had carried out on his property. Mr. Miller said that he had tried several times to contact Mr. MacKenzie but had received no response to the messages he had left on Mr. MacKenzie's office voice mail. After Mr. Miller's call, the Registrar left two separate messages on Mr. MacKenzie's office voice mail but neither call was returned, contrary to both the Decision and Order of the Discipline Committee, Sections 33(2)(a) and (b) of Regulation 1026, R.R.O. 1990, as amended (the *Code of Ethics*), and Section 34(2)(g) of Regulation 1026, R.R.O. 1990, as amended (the *Standards of Practice*).
10. On August 14, 2007 the Registrar received a telephone inquiry from a former MacKenzie client Mr. John McPherson. Again, this former client had tried without success to contact Mr. MacKenzie regarding a survey performed by him, which apparently conflicts with a recent survey on his neighbour's property. Again, messages left by the Registrar on Mr. MacKenzie's office voice mail were not returned. On September 14, 2007 the Registrar sent a letter by both facsimile and regular mail asking Mr. MacKenzie to respond immediately and reminding him of his duty to comply with the 2002 Decision and Order of the Discipline Committee. As of October 17, 2007 no response had been received, at which time the Registrar referred Mr. MacKenzie to AOLS Council.
11. Mr. MacKenzie has failed to abide by the *Standards of Practice*, and with his own personal undertaking dated 2002, that "he will answer and respond promptly to future requests from any officer or committee of the Association", all contrary to Section 33(2)(b) of Regulation 1026, R.R.O. 1990, as amended (the *Code of Ethics*).
12. Failure to comply with the *Code of Ethics* or the *Standards of Practice* constitute Professional Misconduct within the meaning of Section 35 of Regulation 1026, R.R.O. 1990, as amended.

Dated at Toronto, Ontario, this 25th day of October, 2007.