

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

**AND IN THE MATTER OF** Mr. Fred Petrich, O.L.S.

**AND IN THE MATTER OF** a Hearing  
of the Discipline Committee of the Association of  
Ontario Land Surveyors held in accordance with  
Sections 26 and 27 of the said *Act*

**O R D E R**

This hearing proceeded before a duly constituted panel of the Discipline Committee on Monday, September 22<sup>nd</sup>, 2008. The member was represented by Counsel.

At the outset of the hearing, Counsel for the Association and Counsel for the member advised that the member, Fred Petrich, O.L.S., (“Mr. Petrich”) was prepared to enter a guilty plea to the allegations set out in Schedule “A” to the Notice of Hearing (Exhibit 1).

Those allegations asserted that Mr. Petrich was guilty of professional misconduct within the meaning of Section 35 of Regulation 1026, R.R.O. 1990, as amended, on the following grounds:

- a) The Complaints Committee rendered an Interim Decision dated June 18, 2007 which required Mr. Petrich to comply with the decision within 3 weeks of that date;
- b) Mr. Petrich failed to comply with the decision within that time;
- c) On July 10, 2007 the Complaints Committee received correspondence from Mr. Petrich in which he disagreed with the direction of the Complaints Committee and asked for a meeting with it;

- d) The Complaints Committee agreed to meet with Mr. Petrich, as requested, on November 21<sup>st</sup>, 2007;
- e) On November 20<sup>th</sup>, 2007 Mr. Petrich faxed a letter to the Registrar of the Association advising that he could not attend the meeting on November 21<sup>st</sup>, 2007 and setting out his detailed reasons for disagreeing with the June 18, 2007 Interim Decision;
- f) The Complaints Committee reviewed Mr. Petrich's arguments as expressed in his November 20<sup>th</sup>, 2007 letter and issued a second Interim Decision dated November 30<sup>th</sup>, 2007 instructing Mr. Petrich to comply with the original Interim Decision of June 18<sup>th</sup>, 2007 by December 12<sup>th</sup>, 2007;
- g) By December 12<sup>th</sup>, 2007 Mr. Petrich had failed to comply with the Interim Decision of June 18<sup>th</sup>, 2007 and the second Interim Decision of December 12<sup>th</sup>, 2007;
- h) On February 14<sup>th</sup>, 2008 the Complaints Committee noted that Mr. Petrich had still not complied with either of the Interim Decisions and referred the matter to the Discipline Committee.

In light of these facts, the Association alleged that Mr. Petrich had failed to comply with Section 34(2)(g) of Regulation 1026, R.R.O 1990 (the *Standards of Practice*), contrary to Section 33(2)(b) of Regulation 1026, R.R.O. 1990, as amended (the *Code of Ethics*), and that failure to comply with the *Code of Ethics* or the *Standards of Practice* constitutes Professional Misconduct within the meaning of Section 35 of Regulation 1026, R.R.O. 1990, as amended.

After reviewing the Exhibits, and hearing the submissions of both counsel, as well as Mr. Petrich, the Discipline Committee accepted the guilty plea of Mr. Petrich to these allegations.

Both counsel then advised the Discipline Committee that they agreed that the appropriate penalty was an admonishment, pursuant to section 26(4)(f) of the

*Act.* The Discipline Committee agrees that in the circumstances of this case, where there is no allegation or evidence of incompetence, an admonishment of the member is the appropriate penalty. There is no suggestion that Mr. Petrich's actions warrant suspension or revocation.

Mr. Petrich was verbally admonished by the Chair of the Discipline Committee.

Counsel did not agree as to the nature of the further penalty to be imposed, and the Discipline Committee heard submissions in this regard from both Counsel, and from Mr. Petrich.

Section 26(4)(f) provides that where the Discipline Committee finds a member of the Association guilty of profession misconduct, it may

“require that the member be...admonished...and, if considered warranted, direct that the fact of the ... admonishment ...be recorded on the register”

Counsel for the Association submitted that in this case the fact of the admonishment should be recorded on the register. Counsel for Mr. Petrich submitted that the facts of the case did not warrant recording the admonishment on the register.

The Discipline Committee concludes that the fact that a verbal admonishment had been given to Mr. Petrich at the hearing should be recorded on the register. The Discipline Committee notes that there is a public interest in ensuring that its proceedings are as transparent as possible and available to both members of the public and the Association. The Discipline Committee therefore orders the Registrar to record the fact that an admonishment was given to Mr. Petrich at this hearing on the register.

Counsel also disagreed as to whether or not there should be publication of the Discipline Committee's findings and the order in an official publication of the

Association, either in detail or in summary, and either with or without including the name of Mr. Petrich. Mr. Petrich's Counsel argued that in the absence of an order of revocation or suspension, the Discipline Committee had no jurisdiction to order publication.

Section 26(4)(j), including its introductory words, says:

"Where the Discipline Committee finds a member of the Association guilty of professional misconduct ... it **may**, by order,

subject to subsection (5), in respect of orders of revocation or suspension, direct that the finding and the order of the Discipline Committee be published in an official publication of the Association in detail or in summary and either with or without including the name of the member;"

Section 26(5) says:

"The Discipline Committee **shall** cause an order of the Committee revoking or suspending a licence or certificate of registration to be published, with or without the reasons therefor, in an official publication of the Association together with the name of the holder of the revoked or suspended licence, certificate of authorization or certificate of registration." [emphasis added in both cases]

While there must be publication when a Discipline Committee issues an order of revocation or suspension, including identification of the affected member, when an order for something less than revocation or suspension is made, this Committee concludes that it has a discretion, under section 26(4)(j) regarding publication. It may direct no publication of any sort; it may direct publication in detail or in summary, and it may direct that the member's name be included or not.

In this case, the Discipline Committee concludes that it is appropriate that there be publication in the Ontario Professional Surveyor and on the Association's website, with a summary of the facts and with Mr. Petrich identified by name. The Committee considers it important that members of the public be able to determine how the Association regulates itself in disciplinary matters.

The Committee also considers it important to identify Mr. Petrich by name as a deterrent to other members: if there is no identification there may be a perception that being disciplined by the Association has no significant effect. In this case, the Discipline Committee notes that the basis for the underlying complaint considered by the Complaints Committee came from a member of the public and concerned events that took place on February 26<sup>th</sup>, 2007. The Complaints Committee concluded that the complaint warranted attention from Mr. Petrich (including an apology to the member of the public), and gave him to mid-July, 2007 to comply. However, by the time the Notice of this hearing was served (on March 28<sup>th</sup>, 2008) these issues had still not been addressed by Mr. Petrich. The Discipline Committee accepts that Mr. Petrich subsequently complied with the direction of the Complaints Committee by way of an undated letter with a fax notation of May 1, 2008 (Exhibit 6).

While Mr. Petrich said he did not realize that the next step in the complaint process would be to refer the matter to the Discipline Committee (because of the use of the word “Interim” on the decisions of the Complaints Committee), section 22(2)(a) of the *Act* makes it clear to any member that the Complaints Committee may take this step. Mr. Petrich was also advised by the Registrar on December 13<sup>th</sup>, 2007 that past decisions of the Complaints Committee suggested that the matter would be referred to the Discipline Committee (Exhibit 3, tab 26).

The Discipline Committee was provided with no evidence of any personal reasons why publication should not include Mr. Petrich’s name.

In all of the circumstances, the Discipline Committee concludes that it is appropriate and in the public interest that publication be as set out above, in a summary form, with Mr. Petrich’s name identified, in the Ontario Professional Surveyor and on the Association website.

Pursuant to section 26(4)(k) of the *Act*, the Discipline Committee, on making a finding of professional misconduct, may fix and impose costs to be paid by the member to the Association. As partial payment of the costs incurred by the Association in this matter, the Discipline Committee orders that costs in the amount of \$5,000 be paid by Mr. Petrich to the Association within 90 days, or such longer period as may be agreed by the Registrar.

This decision may be signed in counterparts.

DECISION MADE THE 22<sup>ND</sup> DAY OF SEPTEMBER, 2008