

**DISCIPLINE COMMITTEE OF THE
ASSOCIATION OF ONTARIO LAND SURVEYORS**

B E T W E E N:

ASSOCIATION OF ONTARIO LAND SURVEYORS

- and -

DAVID U MAUGHAN O.L.S.

SUMMARY OF THE DECISION OF THE DISCIPLINE PANEL

A discipline hearing into allegations of misconduct by David U. Maughan, O.L.S. proceeded before a Panel of the Discipline Committee on June 3, 2019. The Association and Mr. Maughan jointly advised the Panel that Mr. Maughan was prepared to plead guilty to certain allegations; that the parties had prepared an Agreed Statement of Facts as well as a Joint Submission on Order with respect to the penalty they proposed the Panel should accept.

The Statement of Agreed Facts provided facts regarding complaints made by CB, a member of the public, and by a couple, NM and DM, also members of the public. Those facts can be summarized as follows.

The CB complaint

In October of 2016 Mr. Maughan provided a written proposal to provide surveying services required by CB in order to purchase the original Shore Road Allowance in front of her property. Mr. Maughan provided a fee estimate of \$3,500 to \$4,000 excluding HST, and that he anticipated having his plan completed by the spring of 2017. He further advised that unforeseen complexities could affect the timing of the project and potentially increase his fees to \$5,000 to \$6,000.

Between April and December of 2017 CB contacted Mr. Maughan on several occasions to request status updates regarding the project. Mr. Maughan told CB that there had been some complexities in the retracement of the parcel's boundaries.

By December of 2017 Mr. Maughan had submitted his plan to the Land Registry Office. He then told CB that his invoice would be sent to her after he received a response from the Land Registry Office and would be around \$15,000, excluding taxes.

The Land Registry Office rejected Mr. Maughan's submission on the basis that it did not contain a supporting document of which there was only an illegible copy at that Office.

Shortly thereafter CB emailed Mr. Maughan expressing her shock at his proposed invoice, that he had not told her that his invoice would be this high, and that she wanted to discuss it with him.

Mr. Maughan took the position that CB must pay the entire amount of his invoice in order to deposit the plan. He resubmitted his plan with the illegible document.

CB then instructed Mr. Maughan that further expenditures by him were not authorized. Mr. Maughan responded, among other things, that the plan had been escalated to the Regional Surveyor, that he would do no further work until the issue of his invoice was resolved, and that further work by him might or would increase his hourly rate from \$120 to \$400 per hour.

In early February of 2018 Mr. Maughan sent an interim invoice to CB for \$15,367 including HST. CB did not pay the invoice and complained to the Association about Mr. Maughan's conduct in March of 2018.

The NM and DM complaint

In May of 2018, the Association received an official complaint from NM about the following.

In December of 2013 Mr. Maughan provided the M's with a written proposal to provide certain surveying services required in order to complete the sale of a property in DM'S father's estate. Mr. Maughan stated that he estimated his fees would be in the range of \$8,000 to \$9,000, excluding HST. The M's accepted this proposal and provided Mr. Maughan with a deposit of \$1,500.

In March of 2014 Mr. Maughan told the M's that his field work was substantially completed with some final work to be done once the ice and snow were gone and that the plan of survey would then be finalized. He included an invoice of about \$8,100 that appeared to represent the total cost of the surveying services. DM then provided payment of \$7,000, stating that any further work by Mr. Maughan would be limited to the completion of the current plan of survey.

Mr. Maughan emailed the M's twice in April of 2014 regarding water levels and potential rights of way.

In December of 2015 DM contacted Mr. Maughan to say he had some concerns that the plan was not yet registered and that he had hired a realtor who would be in touch with Mr. Maughan. Mr. Maughan responded that he would work to "wrap things up" in the next few weeks.

In April and in August of 2016 DM contacted Mr. Maughan to ask for an update on the status of the survey.

By March of 2017 the plan was still not registered although Mr. Maughan had made repeated assurances that it was about to be completed for registration.

In June of 2017 Mr. Maughan submitted his certified plan to the Land Registry Office. It was not accepted.

Between June of 2017 and May of 2018 there were ongoing communications between DM and Mr. Maughan. By May of 2018 the plan was still not registered. The M's then made a complaint to the Association. It was acknowledged at the Hearing that after the Agreed Facts were finalized, Mr. Maughan deposited the plan for the M's.

Mr. Maughan then billed the M's for \$1,697.03 for "Communications and Management" with various Land Registry staff etc, and with Mr. Maughan's MPP and for review and reconsideration of his plan as per comments from the Assistant Examiner of Surveys. He suggested the M's contact a knowledgeable solicitor and indicated that his rate for additional "high order" work would increase from \$140 per hour to \$250 per hour.

Mr. Maughan's guilty plea

Mr. Maughan pled guilty to the following allegations with respect to both complaints:

1. That he had failed to comply with the *Code of Ethics* in that he repeatedly failed to ensure that his client CB was aware of the type of surveys recommended and the nature of fees for service, contrary to Section 33(2)(e) of Regulation 1026, R.R.O. 1026, as amended (the "Regulation"). Failure to comply with the *Code of Ethics* constitutes professional misconduct within the meaning of Section 35(3) of the Regulation.
2. That he had failed to comply with the Code of Ethics in that he failed to meet the project time frame that he committed to in his original proposal to CB, failed to respond to this client's concerns in a timely manner, misrepresented the work that would be required to meet Registry Office corrections, and responded to this client in what she perceived to be an unprofessional manner, all of which is contrary to Section 33(2)(a) of the Regulation.
3. That with respect to his actions regarding both complainants he had committed acts of professional misconduct as defined in Section 35(21) of the Regulation: his actions would reasonably be regarded by members of the Association as unprofessional.

On the basis of the agreed facts the Panel accepted Mr. Maughan's guilty plea.

Penalty

As stated above, the Panel was presented with a Joint Submission on Order (the "JSO", marked as Exhibit 5) regarding the appropriate penalty to be imposed on Mr. Maughan. After considering and clarifying its terms, the Panel accepted the terms of paragraphs 1 to 8 of the JSO and imposes those terms on Mr. Maughan.

The JSO as signed by the parties, and dated June 3, 2019, is attached to this Summary as Appendix A. Reference should be made to Appendix A to identify the penalty imposed on Mr. Maughan by the Panel.

**DISCIPLINE COMMITTEE OF THE
ASSOCIATION OF ONTARIO LAND SURVEYORS**

BETWEEN:

ASSOCIATION OF ONTARIO LAND SURVEYORS

- and -

DAVID U MAUGHAN O.L.S.

JOINT SUBMISSION ON ORDER

The parties, after receiving legal advice from their respective counsel, agree that the order proposed below is fair and reasonable and protects the public interest and, as such, jointly submit to the Discipline Committee that it order the following:

1. The Discipline Committee orders that Mr. Maughan appear before the panel of the Discipline Committee following the hearing on June 3, 2019, to be reprimanded and that the reprimand be recorded in the register.
2. The Discipline Committee orders that Mr. Maughan's Licence and Certificate of Authorization shall be suspended for a period of twelve months from June 3, 2019, but that such suspension be deferred and will never take effect so long as Mr. Maughan complies fully with all of the provisions of this Order, failing which, the deferral of the suspension shall be revoked.
3. The Discipline Committee imposes the following terms, conditions and limitations on the licence of Mr. Maughan for a period of eighteen months commencing on June 3, 2019:
 - (a) Mr. Maughan shall consistently and uncompromisingly use an approved client confirmation of scope of engagement form before undertaking a project for a client, using a form that has been approved by the Registrar of AOLS, which form shall

identify the specific project or tasks to be undertaken by him, including a quote or cost estimate and also, where applicable, identifying any tasks or projects that were discussed with the client but not undertaken by him. Written direction shall also be obtained from the client each time that the scope or nature of the terms for the project are changed.

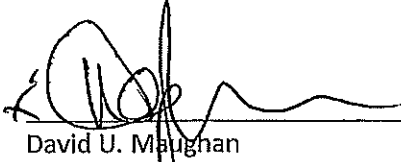
- (b) Mr. Maughan shall only practice the profession in consultation with a Monitor, who is a licenced OLS in good standing, or is a former licenced OLS who now has the designation of a retired OLS, who is accepted by the Registrar and who has signed an agreement acceptable to the Registrar, who will meet or speak with Mr. Maughan as often as they consider necessary to effectively review and Monitor the whole of Mr. Maughan's practice.
- (c) Initially the Monitor will be D. S. Urso. However, the Registrar may choose another Monitor, after consulting with Mr. Maughan, where the Registrar concludes that this would be in the public interest.
- (d) Mr. Maughan shall cooperate fully with the Monitor (or any replacement Monitor) including participating fully in meetings or conversations with the Monitor when requested and providing information to the Monitor within 48 hours when requested.
- (e) Mr. Maughan shall make his best efforts to communicate with clients or the Land Registry Office(s) / Service Ontario in writing or confirm all material conversations with them in writing and shall provide a copy of those communications / confirmations each week to the Monitor.
- (f) Mr. Maughan shall implement any recommendations made by the Monitor.
- (g) Mr. Maughan shall make his best efforts to ensure that the appointed Monitor prepares and provides to the Registrar monthly reports of their observations and conclusions regarding the manner in which Mr. Maughan is conducting his practice

and the extent of Mr. Maughan's cooperation with the Monitor. The Registrar may advise the Monitor in writing that the Monitor can reduce the frequency of the reporting by the Monitor to a frequency specified by the Registrar if the Registrar concludes monthly reports are no longer necessary to protect the public.

- (h) Mr. Maughan shall reimburse the AOLS for the cost of the Monitor within 30 days of being invoiced for them by the AOLS.
- 4. The Discipline Committee requires Mr. Maughan to repay the deposit fee of \$500 paid by CB by July 3, 2019. The \$500 will be paid to the Registrar who will then disburse it to CB.
- 5. The Discipline Committee requires Mr. Maughan to repay the fee of \$4250 paid by the M's in equal, consecutive monthly instalments of \$1000 beginning on July 3, 2019 and ending with the payment of the last \$250 on November 3, 2019. The \$4250 will be paid to the Registrar who will then disburse it to the M's.
- 6. The Discipline Committee fixes the cost of these proceedings at \$12,000 and requires Mr. Maughan to pay them in no more than 24 equal monthly instalments of \$500 due on the 15th of each month beginning on December 15th, 2019.
- 7. The Discipline Committee orders that the name of Mr. Maughan be published by the AOLS with the summary of the decision and reasons in this matter in its Ontario Surveyor Quarterly Magazine, its In Sight electronic newsletter and on the AOLS website.
- 8. Mr. Maughan and the Registrar will jointly submit to the Council that Mr. Maughan should not be liable to repay any claim for additional compensation that the Council of the AOLS may agree to pay either B or M from its Compensation Fund pursuant to s. 33 of the Surveyors Act.
- 9. In the event the panel of the Discipline Committee does not adopt this Joint Submission document as a basis for making its determination, finding, and disposition, the parties agree that this matter will then continue on the basis of a full hearing before a panel of

the Discipline Committee on a date to be fixed by the Discipline Committee and that same shall proceed on the basis of all of the allegations set out in the Notices of Hearing dated December 21, 2018.

Signed this 3 day of ~~May~~^{June}, 2019:



David U. Maughan

Signed this 3 day of ~~May~~^{June}, 2019, on behalf of the AOLS



Kevin Wahba, Registrar

DISCIPLINE COMMITTEE OF THE
ASSOCIATION OF ONTARIO LAND SURVEYORS

JOINT SUBMISSION ON ORDER AND PENALTY

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