

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

AND IN THE MATTER OF Omari Mwinyi, 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

SUMMARY OF THE DECISION OF THE DISCIPLINE PANEL

A discipline hearing into allegations of misconduct by Omari Mwinyi, O.L.S., proceeded before a Panel of the Discipline Committee on June 18, 2019. The Association and Mr. Mwinyi jointly advised the Panel that Mr. Mwinyi was prepared to plead guilty to certain allegations; 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 Facts provided facts regarding the complaint made by the Registrar, Kevin Wahba, O.L.S. Those facts can be summarized as follows.

The Registrar's Complaint

On or about May 15, 2013 the former Registrar, William D. Buck of the AOLS received a letter and report from Mr. J. Drew Annable, O.L.S., a consultant to the AOLS Survey Review Department (SRO) reporting that the result of the current Comprehensive Review of Mr. Mwinyi's surveying practice had exceeded the threshold of twenty-five points per plan, which required a referral to the Registrar.

The Comprehensive Review report of Mr. Mwinyi's practice indicated numerous instances of non-compliance with the Standards, Regulations and other applicable rules for surveys, such that the average number of demerit points per plan for the ten plans reviewed was 33.9, which

exceeded the threshold of 25 points per plan, after which Survey Review Department policy requires that the member be referred to the Registrar.

On June 11, 2013 the Registrar informed Mr. Mwinyi by letter that a follow-up review of his practice would take place in approximately one year, said review to consist of a limited Comprehensive Review of two of his plans.

The Final Report of Mr. Mwinyi's Follow-up Review dated April 1, 2015 indicated minor improvements, however, deficiencies remained, and the demerit point average was 33 points per plan, only slightly lower than the initial review.

The Registrar considered that since the Follow-Up Review showed improvement and efforts on the part of Mr. Mwinyi to implement the recommendations of the Survey Review Department discussed in its original Comprehensive Review Report, he decided not to refer the matter, but rather wait for the results of Mr. Mwinyi's next Comprehensive Review which was scheduled to take place in 2017.

On or about September 19, 2018, Mr. Buck received a Comprehensive Review Report regarding the Survey Review Department's 2017 Comprehensive Review of Omari Mwinyi Surveying Ltd. The average valuation of the four plans reviewed by the SRO consultant was 42, triggering another automatic referral to the Registrar. The former Registrar, Mr. Buck, noted that the score increased by 9 points since Mr. Mwinyi's 2012 review and agreed with the recommendations in the Report: on November 2, 2018, he referred the matter to the Complaints Committee.

On November 2, 2018, Mr. Buck submitted a formal complaint in writing to the Complaints Committee explaining that his concerns arose due to poor comprehensive and referral reviews dating back to 2012. In response, Mr. Mwinyi delivered a reply to the Deputy Registrar, Ms. Maureen Mountjoy, acknowledging receipt of the complaint. Mr. Mwinyi did not seek or have any further discussion or documentation in his response.

On January 17, 2019 the Complaints Committee issued a final decision, which referred Mr. Mwinyi to Council with a recommendation that he be referred to the Discipline Committee. Thereafter, Council passed a motion referring Mr. Mwinyi to the Discipline Committee for a hearing on the allegations set out in the Complaints Committee's final decision.

Mr. Mwinyi's guilty plea

Mr. Mwinyi pled guilty to the following allegations with respect to the complaint:

1. That he had failed to comply with the Code of Ethics of the AOLS in that he had repeatedly failed to abide by the Standards of Practice, which is contrary to Section 33(2)(b) of Regulation 1026, R.R.O. 1990, as amended. Failure to comply with the Code of Ethics constitutes Professional Misconduct within the meaning of Section 35(3) of Regulation 1026, R.R.O. 1990, as amended.
2. That he had failed to comply with the Code of Ethics of the AOLS in that he signed survey plans which did not comply with all relevant legislative requirements and all standards of the AOLS, which is contrary to Section 33(2)(f) of Regulation 1026, R.R.O. 1990, as amended. Failure to comply with the Code of Ethics constitutes Professional Misconduct within the meaning of Section 35(3) of Regulation 1026, R.R.O. 1990, as amended.
3. All of the foregoing failures constitute breaches of sections 35(1), (2), (3) and (21) of Regulation 1026, R.R.O. 1990, as amended and the Code of Ethics at sections 33(2)(a) of said Regulation 1026.

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

Penalty

As stated above, the Panel was presented with a Joint Submission on Order (the "JSO", marked as Exhibit 2) regarding the appropriate penalty to be imposed on Mr. Mwinyi. After considering and clarifying its terms, the parties agreed to the addition of the following paragraph 5(a) to the terms of the JSO:

"If the Inspector/Mentor finds sufficient concern that is reported to the Registrar, then the Registrar may request a panel of the Discipline Committee to convene in order to address that alleged non-compliance and, if necessary, to seek a cancellation of the licence suspension in order to revoke the Member's licence."

With this addition to the JSO, it was accepted by the Panel. The penalty imposed by the Panel is as set out in paragraphs 3 to 7 of the JSO, with the addition of paragraph 5(a) as set out above. The Panel imposed those terms on Mr. Mwinyi.

The JSO as signed by the parties, and dated June 13, 2019, is attached to this Summary as Appendix A. Reference should be made to paragraphs 3 to 7 of Appendix A to identify the penalty imposed on Mr. Mwinyi by the Panel, as well as paragraph 5(a) as set out above.

Appendix "A"

IN THE MATTER OF the Surveyors Act, R.S.O. 1990,
Chapter 8.29, as amended

AND IN THE MATTER OF Omari Mwinyi, 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

JOINT SUBMISSION TO DISCIPLINE COMMITTEE ON CONSENT OF ALL PARTIES

The Association of Ontario Land Surveyors (the "Association") and the Member, Omari Mwinyi, 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 regarding penalty on the following terms:

1. The Member represents to the Association of Ontario Land Surveyors and the Discipline Committee that, before entering into this joint submission agreement, he has been advised to obtain independent legal advice as to the consequences of signing same, that the Member has either obtained independent legal advice or he has voluntarily waived his right to obtain independent legal advice knowing the consequences of signing same and that the Member is doing so voluntarily and without undue influence or pressure from anyone.
2. The Member pleads guilty to the charges and allegations of professional misconduct against the Member (the "Charges") as alleged by the Registrar.
3. The Member's licence is hereby cancelled, but this provision is suspended for one year, providing that the terms and requirements of the Member in this joint submission and

the Order of the Discipline Committee have been complied with. After one year, the cancellation is withdrawn.

4. The Member undertakes to the Association to fully comply with legislation, regulations and Standards of Survey as these may prevail and apply to SRPRs and all survey products and services rendered by the Member and the Firm, from time to time and to permit access to surveyor project files under his supervision and control to be inspected by an Inspector on a random basis for 12 months from the 14th day after the date of the hearing.
5. The Member shall agree to the appointment of an Ontario Land Surveyor by the Registrar, of the Registrar's choosing as the Inspector, to act and function as a mentor (herein referred to as the "Mentor") to assist with implementing a higher quality of survey practice in the Member's practice and Omari Mwinyi Surveying Ltd. (herein referred to as the "Firm"), and who shall also have the delegated power of the Registrar to conduct investigations of the Member's survey work, including all survey work produced by the Firm, on a random basis, and on a physical attendance at offices of the Firm over the next year of not less than 4 inspections, and all at the expense of the Member.
6. The publication of the summary of allegations leading to this proceeding, as well as the contents of this Joint Submission, shall be published in the Ontario Professional Surveyor Magazine and posted on the Association website.
7. The Member shall pay to the Association the sum of \$15,000.00 for costs, inclusive of HST. Should the Member's licence be terminated for any reason full payment of these costs will be required as a condition of the reinstatement of the Member's licence. Should full payment not be received within the above one year period, the suspension of the cancellation of the Member's licence will be lifted.
8. The Member and the Association acknowledge and agree that this Joint Submission document has been prepared by both parties and reflects a fair disposition of this matter, under all of the circumstances. In the event the Discipline Panel 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 Discipline Panel 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 Notice dated April 29, 2019.