

## Report on Discipline Proceedings: ACLS Case No. 16-01

A discipline hearing involving Sylvain Lessard, CLS, and CAP Engineering Ltd. (“CAP”) was held electronically via the GoToMeeting system on May 31<sup>st</sup>, 2017 regarding changes laid on November 21<sup>st</sup>, 2016 with respect to surveys of the Whistle Bend Subdivision Project, undertaken for the Yukon Government in the City of Whitehorse, Yukon Territory, Canada from the year 2010 to the beginning of 2016. The Discipline Committee found Mr. Lessard and CAP Engineering Ltd. guilty of professional misconduct.

Mr. Lessard and CAP Engineering Ltd. admitted that none of the three contracts for the Land Development Branch of the Yukon Government that they entered into in respect to the Whistle Bend Subdivision Project were completed successfully. Extensive review and correction was required raising serious concerns as to the quality control checks that were performed for the work. In particular they make the following admissions:

- a. there were multiple gross measurement errors in the survey conducted for Phase 1 of the Whistle Bend Subdivision Project requiring a retracement survey that resulted in a plan recorded as “Field Notes of Survey Retracement” covering most of the original survey plan with updated measurements;
- b. some non-standard monumentation (shortened posts) were used on Phase 1 of the project;
- c. Mr. Lessard and CAP Engineering Ltd. performed two different control surveys within phases 1 and 2 of the subdivision based on different constraints resulting in a 13 cm vertical difference between the control networks;
- d. Mr. Lessard and CAP Engineering Ltd. were unable to provide complete records relating to the accuracy requirements for the control surveys;
- e. the survey plan of Phase 2 of the Project had drafting errors in relation to the labelling of lot boundaries and reversed plan dimensions requiring additional plan amendments;
- f. field notes were of poor quality and lacked fundamental data such as instruments, weather, purpose of survey, sketches, and check measurements, lacked descriptive title pages and sketches and were very difficult to follow;
- g. Mr. Lessard and CAP Engineering Ltd. failed to communicate with and inform the Yukon Government Land Development Branch of the errors discovered and the recording the Field Notes of Survey Retracement Plan to amend the errors;
- h. the errors made by Mr. Lessard and CAP Engineering Ltd. caused serious negative impact to the client, including resulting in extra work for the Yukon Land Development Branch and the Surveyor General Branch arising from concerns with the quality of the plans, contributing to delays in bringing the lots to market, and resulting in the complainant incurring third party consulting fees to resolve the issues.

In connection with item (b) above (non-standard monumentation or shortened posts), ACLS acknowledges that Mr. Lessard advises that he specifically instructed his field crew not to cut any posts. Mr. Lessard advises that he instructed the field crew to drill the start through compacted soils and purchased the crew a generator and a heavy drill to facilitate that work. ACLS has no contrary information. Mr. Lessard advises that when he became aware of the possibility some shortened posts were used, he reviewed the posts and located five shortened posts which he replaced with standard posts. Mr. Lessard advises that he completed a full resurvey of those lots and a final plan was recorded to show the new/replacement posts.

Mr. Lessard and CAP Engineering Ltd. admitted that there were serious issues in the field work for the surveys which reflect a lack of competent field staff and a lack of supervision in the field. They also admitted that the quality control checks and the plan checking that were performed for the work were inadequate and failed to meet the standards expected of a license holder and a permit holder.

Based on the admissions provided in an Agreed Statement of Facts, the submissions of the parties at the hearing, the Discipline Committee finds that the allegations of professional misconduct against Mr. Lessard and CAP have been proven, and finds both Mr. Lessard and CAP guilty of professional misconduct deserving of sanction.

Pursuant to section 31 of the *Canada Land Surveyors Act*, the Discipline Committee makes the following orders:

With respect to Mr. Lessard:

1. An order that Mr. Lessard's license to practice be suspended for a period of two months. The Registrar shall determine when the suspension shall begin, although the suspension must begin within one year of the date this decision is issued. For clarity, Mr. Lessard shall not be permitted to engage in any survey work during the period of suspension, including performing remedial work for the complainant.
2. An order directing that the members of the Association be notified of the sanctions imposed by the Discipline Committee.
3. An order that Mr. Lessard pay jointly with CAP all of the costs associated with the investigation and hearing in this matter, to be paid within 60 days of the date this decision is issued, unless the Registrar agrees to other payment terms.
4. An order directing that Mr. Lessard take all required steps to fix any remaining problems with the plans, subject to the complainant's willingness to have Mr. Lessard complete the remedial work, and within a time frame reasonably determined by the Registrar of ACLS
5. An order directing that Mr. Lessard take the Land Surveyors' course "Getting it Right" as soon as possible, but within one year of the date of this decision.

With respect to CAP:

1. An order imposing a penalty of \$5,000, to be paid within 60 days of the date this decision is issued, unless the Registrar agrees to other payment terms.
2. An order directing that the members of the Association be notified of the sanctions imposed by the Discipline Committee.
3. An order directing that CAP take all required steps to fix any remaining problems with the plans, subject to the complainant's willingness to have CAP complete the remedial work, and within a time frame reasonably determined by the Registrar of ACLS.
4. An order that CAP pay jointly with Mr. Lessard all of the costs associated with the investigation and hearing in this matter, to be paid within 60 days of the date this decision is issued, unless the Registrar agrees to other payment terms.

July 5<sup>th</sup>, 2017.

*(Signed)*

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Jim Gunn, CLS  
Chair, ACLS Discipline Committee