

IN THE MATTER OF
ASSOCIATION OF BRITISH COLUMBIA LAND SURVEYORS
V.
RANDY ARNOLD, B.C.L.S.

(File C-521)

(Re: Sections 60, 61, 62, 63 and 64 of the *Land Surveyors Act*,
and the Bylaws of the Association of British Columbia Land
Surveyors)

Representing the Association of
British Columbia Land Surveyors

K. Stofer, BCLS
for the Complaint Inquiry Committee

R. Arnold

on his own behalf

Date & Place of Hearing

16 February 2017
Sidney, British Columbia

DECISION OF THE BOARD OF MANAGEMENT
ISSUED February 25, 2017

1. The Secretary did not participate in the deliberations of the Board.
2. Mr. Arnold is a British Columbia Land Surveyor, and has engaged in the practice of land surveying since receiving his commission on June 2nd, 1983.
3. The facts giving rise to this complaint are summarized as follows:

Plan EPP30192, and Posting Plans EPP27171 and EPP32683

- (a) Mr. Arnold completed the posting of Lot 1, District Lot 30, Group 1, New Westminster District, Plan 2890, under checklist number 144108, on December 11, 2012.
- (b) He completed the posting of Lot 7 of Lot 10, Suburban Block 11, Plan 2620, under checklist number 150903, on July 10, 2013.
- (c) On the 16th day of April, 2013, Mr. Arnold prepared a reference plan of Part of Lot 1, Section 15, Township 16, New Westminster District, Plan 5053, filed in the Land Title Office under number EPP30192.
- (d) Mr. Arnold received a Conditional Plan Review Report dated December 5, 2013, in which the Practice Advisory Manager:

- (i) identified two dimensional errors on Plan EPP30192;
- (ii) noted that Mr. Arnold had not filed posting plans in respect of the postings completed under checklists 144108 and 150903, within the time required under section 68(2) of the *Land Title Act*,

and required Mr. Arnold's response within thirty days.

- (e) Mr. Arnold did not respond to the Conditional Plan Review Report despite reminders sent by the Practice Advisory Manager on February 20, 2014 and May 30, 2014.
- (f) The Practice Advisory Panel sent a letter to Mr. Arnold on July 21, 2014, giving him one final opportunity to respond before referring the matter to the Complaint Inquiry Committee.
- (g) Mr. Arnold filed a statutory declaration to correct the errors on Plan EPP30192 on August 22, 2014, some eight months after these errors had been brought to his attention.
- (h) Mr. Arnold filed Posting Plans EPP27171 and EPP32683 on October 31, 2014, with respect to the postings completed under checklists 144108 and 150903 following a further reminder as part of a Conditional Practice Review Report dated September 25, 2014. In all, it took approximately twenty-two months to file Plan EPP27171 and about 15 months to file Plan EPP32683.

Plan NWP81800

- (i) Mr. Arnold prepared a subdivision plan of Portions of Section 20, Township 13, New Westminster District, filed in the Land Title Office under number NWP81800 on June 7, 1989.
- (j) In July 2013, the Practice Advisory Manager notified Mr. Arnold of a significant error concerning his interpretation of the old iron post at the northwest corner of Lot 2 – specifically, Mr. Arnold had mistakenly concluded that the old iron post marking the corner was instead on a 0.61-metre offset. The error was not corrected, and the Practice Advisory Manager raised it again with Mr. Arnold again in July 2014.
- (k) By way of a Conditional Practice Review Reports issued in September 2014 and July 2015, the Practice Advisory Manager required Mr. Arnold to correct the error in Plan NWP81800.
- (l) To date, Mr. Arnold has not corrected the error in Plan NWP81800.

Strata Plan EPS3440

- (m) Mr. Arnold prepared a strata plan of Parcel 1, Section 26, Township 10, New Westminster District, Reference Plan EPP59692, filed in the Land Title Office under number EPS3440 on February 11, 2016.
- (n) In a Conditional Plan Review Report issued on July 4, 2016, the Practice Advisory Manager identified 15 deficiencies, including an incorrect total area for strata lot 2,

missing dimensions for yard area designated as limited common property, and incorrect depiction of strata lot geometry.

- (o) Mr. Arnold failed to respond to the July 4, 2016 Conditional Plan Review Report within the time required by the Practice Advisory Manager.
 - (p) The errors in Strata Plan EPS3440 have not been corrected.
4. The purpose of this hearing is to consider the circumstances surrounding the allegations, and to determine the appropriate disciplinary action.
5. Mr. Arnold admits to this Board that:
- (a) he conducted himself unprofessionally by failing to file Posting Plans EPP27171 and EPP32683 within the period required according to Section 68 of the *Land Title Act*;
 - (b) in preparing Plan NWP81800 and Strata Plan EPS3440, he breached Bylaw 14.1(b), and in failing to correct errors in Plan NWP81800 and Strata Plan EPS3440, he is guilty of unprofessional conduct;
 - (c) he conducted himself unprofessionally by not responding to the December 5, 2013 Conditional Plan Review and the July 4, 2016 Conditional Plan Review within the time required, pursuant to Bylaw 23(a).

Disposition

6. The Board is tasked with setting an appropriate penalty, which must be reasonable, and balanced, but which must also consider the underlying facts and the Board's obligation to ensure that the public interest is served.
7. Mr. Arnold acknowledges that he has not been diligent in keeping up with changes in practice standards. He says that his appearance before the Board results from the failure to educate himself with respect to the change from paper to electronic plan filing. He says that he did not (and still does not) have the ability to file plans electronically. Delinquent posting plans were ultimately filed only with the assistance of a fellow surveyor.
8. Mr. Arnold also acknowledges that procrastination is a large part of his problem, and it is both the reason for his failure to respond to the Practice Advisory Manager, the Practice Advisory Panel, and, in a timely fashion, the Complaint Inquiry Committee. It is why, he says, these items "fell through the cracks".
9. While he is contrite, the Board is not convinced that Mr. Arnold has a plan to address these issues, beyond offering that he does not intend to undertake any more work which would require him to sign a legal survey or to otherwise deposit a plan in the Land Title Office.
10. It is in the public interest that some constraints be placed on Mr. Arnold's practice, at least on an interim basis.
11. Accordingly, the Board orders that:
- (a) Mr. Arnold must take those steps reasonably necessary:

- (i) to either correct Plan NWP81800 or, otherwise, lodge a statutory declaration against Plan NWP81800 confirming that the plan contains an error and is not to be used as a reference source;
 - (ii) to correct the five significant defects identified in the July 4, 2016 Conditional Plan Review Report for Strata Plan EPS3440; and
 - (iii) to provide the Practice Advisory Manager, no later than June 30, 2017, with written confirmation that all such corrections or notations have been deposited in the Land Title Office.
 - (b) Mr. Arnold be censured, according to Section 60(1) and 60(2) of the *Land Surveyors Act*.
 - (c) Mr. Arnold be fined the sum of \$2,000.00, to be paid within thirty (30) days following receipt of this Decision, according to Section 60(1) and 60(2) of the *Land Surveyors Act*.
 - (d) Mr. Arnold's right to practice land surveying be suspended for a period of ten (10) consecutive working days, commencing on a date to be set by the Secretary but starting no later than March 21, 2017. For clarity, during the suspension period Mr. Arnold must not hold himself out as a British Columbia Land Surveyor, engage in the practice of land surveying (as defined in the *Land Surveyors Act*), or otherwise do anything that a land surveyor would ordinarily do.
 - (e) Following his return to practice, Mr. Arnold must, at his cost, submit to the Practice Advisory Manager for review, the first five statutory survey plans which he completes.
 - (f) Mr. Arnold must, at his cost, attend both the next *Getting it Right in BC* workshop to be conducted in the lower mainland of British Columbia, and the professional development seminar at the lower mainland group meeting of the Association of British Columbia Land Surveyors scheduled for June 1, 2017. These requirements are remedial in nature, and are intended to help put Mr. Arnold on a path that, hopefully, will not see him come before this Board again.
 - (g) Mr. Arnold must pay the full costs of this hearing within thirty (30) days following receipt of a certificate of costs from the Secretary.
12. In setting the fine at \$2,000.00, the Board is mindful of the fact that Mr. Arnold is a sole practitioner, and notes that the costs of the hearing will not be insignificant.
13. The Board remains hopeful that Mr. Arnold will take this opportunity to improve the manner of his practice. Mr. Arnold recognizes that a failure to do so may result in another appearance before the Board and, perhaps, a more drastic outcome.

14. Entries and Gazette publication of the penalties will be made in accordance with Section 65 of the *Land Surveyors Act*.

Dated at Sidney, British Columbia, this 16th day of February 2017.

**BY THE BOARD OF MANAGEMENT OF THE ASSOCIATION OF BRITISH
COLUMBIA LAND SURVEYORS**

**Ron Johns, BCLS
President**