

COMPLAINTS COMMITTEE: VOLUNTARY UNDERTAKING UNDER SUBSECTION 24(2)(C) OF THE *PROFESSIONAL ENGINEERS ACT*

In the matter of a complaint regarding the actions and conduct of Ludmila (Lucy) Shaw, P.Eng., a member of the Association of Professional Engineers of Ontario, and LKS Consulting Inc., a holder of a certificate of authorization.

BACKGROUND

1. The complaint relates to work done by Ludmila (Lucy) Shaw (Shaw) and LKS Consulting Inc. (LKS) in relation to an as-built survey for a single-family dwelling (SFD), located in Toronto.
2. At all material times, LKS held a certificate of authorization (C of A), and Shaw was named as the individual accepting professional responsibility for engineering services provided under the C of A.
3. In or about September 2016, a contractor commenced construction of the SFD, and during the construction process, the contractor and related parties were advised that the City of Toronto requires an as-built survey to verify the setbacks and finished floor elevation (FFE) for the SFD under construction at the site.
4. In or about February 2017, Toronto Land Surveyors Inc. (TLSI) contacted Shaw. Shaw advised that she could review and seal an as-built survey for the SFD. Shaw did not have a written contract with the homeowners, the contractors or TLSI.
5. On or about March 13, 2017, Shaw issued an LKS invoice dated March 11, 2017, to TLSI, for the as-built survey. The LKS task description stated:
 - “Reviewed the ‘as-built’ set-backs as per the proposed designed and approved set-backs, as provided by Toronto Land Surveyors Inc.”
 - “Stamped the drawing and provided to Toronto Land Surveyors Inc.”
6. On or about March 15, 2017, the as-built survey with Shaw’s seal and signature was submitted to the city.
7. The City Inspection Report entries dated March 15 and 16, 2017, noted that the as-built survey

showed an encroachment of 0.06m, and an Order to Comply was issued to the owner and contractor.

8. On review of the as-built survey, the city reported the matter to the Association of Ontario Land Surveyors (AOLS). The AOLS subsequently filed an application before the courts claiming that Shaw et al. conducted cadastral survey work without a licence, as required under the *Surveyors Act, RSO 1990, c. S.29, s.11*. In particular, TLSI prepared an “as built survey” for the SFD, signed and stamped by Shaw, which depicted the boundaries of land.

THE COMPLAINT

9. The complaint raised issues concerning the actions of Shaw and LKS with regards to providing a survey showing property boundaries, work that is governed by the *Surveyors Act*. In addition, it was noted by the Complaints Committee (committee) that there was no record of disclosure of liability in the absence of liability insurance to the client.
10. The committee received a response to the complaint in which the respondents stated that they stamped the verification of the topographic elevation of the slab and verification of the setback. The respondents also stated that they checked the drawings and the grades compared with the Site and Grading Plan dated October 18, 2016, that had been submitted with the building permit application, and that they were unaware that TLSI did not provide cadastral surveying.

THE CONSIDERATION OF THE COMPLAINTS COMMITTEE

11. The committee considered the complaint five times between May 15, 2019, and July 15, 2020. The committee considered the response received and carefully considered the issues raised in this matter. The committee considered whether a referral to the Discipline Committee was warranted in all the circumstances and whether it was in the interest of the public and the profession to proceed with the matter. The committee decided that if the issues raised in the complaint were addressed through certain proactive remedial efforts on the part of the member and holder, as well as publication of a summary of this matter, that the public interest issues raised by the complaint would be addressed.

VOLUNTARY UNDERTAKING

12. Shaw and LKS voluntarily undertook:
 - a. To not undertake cadastral survey work governed by the *Surveyors Act*.
 - b. To complete a written contract or agreement for every client which clearly documents the scope of engineering services to be completed and to document disclosure of liability in the absence of liability insurance.
 - c. To prepare and submit to PEO a Quality Manual that would include policies and procedures for field reviews, review/supervision of measurements or inspections by others, appropriate use of seal and retention of engineering documents.
13. Shaw and LKS voluntarily agreed that a summary of this matter and the voluntary undertaking would be published in PEO's Gazette with reference to their names.
14. The voluntary undertakings described above were completed and accepted by the committee as a dispositive measure and, pursuant to its powers under section 24(2)(c) of the act, the committee decided that this matter would not be referred to the Discipline Committee.