



**RECOMMENDED ORDER  
To The  
DISCIPLINE COMMITTEE**

**IN THE MATTER OF THE ENGINEERING,  
AND GEOSCIENCE PROFESSIONS ACT,**

**AND**

**IN THE MATTER OF THE CONDUCT OF  
[REDACTED], P.ENG.  
&  
[REDACTED]**

**APEGA**  
**Investigative Committee**  
**Recommended Order**

**In the matter of the Engineering and Geoscience  
Professions Act**

**And**

**In the matter of the conduct of  
[REDACTED], P.ENG.**

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of [REDACTED], P.Eng., with respect to a letter of complaint received on March 18, 2015. The complaint was submitted by [REDACTED], P.Eng., regarding the failure of a residential retaining wall.

**A. Complaints**

1. The Member has engaged in unprofessional conduct that was detrimental to the best interests of the public contrary to Section 44(1) (a) (b) of the *Engineering and Geoscience Professions Act* ("Act") and Rule of Conduct #1 of the *APEGA Code of Ethics* ("Code"). The original design and subsequent construction of the retaining wall did not hold paramount the best interests of the public.
2. The Member has engaged in unskilled practice that displayed a lack of judgement in the work undertaken contrary to Section 44(1) (b) (d) of the Act and Rule of Conduct #2 of the Code. The Member engaged in a project that was outside their field of expertise.
3. The Member has engaged in unprofessional conduct that displayed a lack of judgement in the work undertaken contrary to Section 44(1) (b) of the Act and Rule of Conduct #3 of the Code. The Member did not conduct himself with honesty, integrity and fairness.
4. The Member has engaged in unprofessional conduct that displayed a lack of judgement in the carrying out of a duty contrary to Section 44(1) (b) of the Act and Rule of Conduct #4 of the Code. The Member displayed a lack of skill or judgment in complying with applicable statutes, regulations and bylaws.

5. The Member has engaged in unprofessional conduct that displayed a lack of judgement in the carrying out of a duty contrary to Section 44(1) (b) of the Act and Rule of Conduct #5 of the Code. The actions of the Member did not uphold or enhance the reputation of the profession.

## **B. Agreed Statement of Facts**

As a result of the investigation, it is agreed by and between the Investigative Committee and [REDACTED], P.Eng., that:

1. [REDACTED] P.Eng., (Member) was a professional member of APEGA, and was thus bound by the APEGA Code of Ethics, at all relevant times;
2. At all relevant times, [REDACTED], held a valid Permit to Practice and was bound by the EGPA and the APEGA Code of Ethics.
3. The Member holds a Bachelor of Engineering Degree in Civil Engineering from the University of Saskatchewan [REDACTED].
4. The Member was engaged to design a retaining wall between two residential lots located in Calgary, Alberta.
5. The Member expressed regret for the retaining wall design and admitted that the drawings were under designed.
6. The Member accepted full responsibility for the situation, stating, "I am embarrassed and sorry for the error in my judgment."
7. The Member took immediate action to the situation and stated, "In all my direct contact with the client, they have not expressed any discontent with my involvement nor my professionalism. I have worked closely on any questions that arose and ensured the cost of the rebuild was handled by [REDACTED]."
8. The Member also imposed self-sanctions, restricting the company from providing any future work that involves the design or construction review of retaining walls.
9. Although [REDACTED] has taken responsibility and admitted to wrongdoing, stating the design of the retaining wall was, "...out of my normal field of practice" he did not admit wrongdoing to all of the Complainants allegations, specifically:
  - a. Soil testing – was done at an adjacent site and is considered acceptable
  - b. Field Reviews – were not part of the clients requested scope of work.



- c. Footing Check Certificate – provided their typical process and that their process is accepted by their clients.
  - d. Format of sealed documents – indicated the document provided by the Complainant was a copy of the rough draft for review and discussion purposes only.
  - e. Unprofessional conduct – unequivocally denied this claim.
10. The Member has fully cooperated with the APEGA investigation and freely and voluntarily admits that this work was outside his field of expertise and the scope of work should not have been accepted.

### **C. Conduct**

The Member freely and voluntarily admits that his conduct constitutes unprofessional conduct and that Complaint #1 and #2 set out above is admitted and proven. The Member has therefore engaged in unprofessional conduct that contravenes a code of ethics of the profession as established under the regulations contrary to Section 44(1)(a)(b)&(d) of the Act and Rules of Conduct #1 and #2 of the Code.

With regards to Complaints (#3, #4 & #5) set out above, there is no evidence that the Member has contravened Sections 44(1)(b) of the Act pertaining to the Rules of Conduct #3, #4 or #5 of the Code.

### **D. Section 44(1) of the Act and the Code of Ethics:**

#### **Section 44(1)**

Any conduct of a professional member, licensee, permit holder, certificate holder or member-in-training that in the opinion of the Discipline Committee or the Appeal Board

- a. is detrimental to the best interests of the public;*
- b. contravenes a code of ethics of the profession as established under the regulation;*
- d. displays a lack of knowledge of or lack of skill or judgment in the practice of the profession.*

whether or not that conduct is disgraceful or dishonorable, constitutes either unskilled practice of the profession or unprofessional conduct, whichever the Discipline Committee or the Appeal Board finds.

#### **Rules #1 and #2 of the APEGA Code of Ethics states:**

- 1. Professional engineers, geologists and geophysicists shall, in their areas of practice, hold paramount the health, safety and welfare of the public and have regard for the environment.*
- 2. Professional engineers, geologists and geophysicists shall undertake only work that they are competent to perform by virtue of their training and experience.*

### E. Orders

On the recommendations of the Investigative Committee, and by agreement of [REDACTED] [REDACTED], P.Eng., with those recommendations, following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:

- The Member receives a letter of reprimand;
- That the details of the case be published in the PEG magazine without names.
- Provide a letter to APEGA that states [REDACTED] P.Eng and [REDACTED] [REDACTED], will not be undertaking the design and/or construction review of retaining walls in the future.

[REDACTED]  
Panel Chair  
APEGA Investigative Committee

[REDACTED]  
[REDACTED], P.Eng. Don Cochran, M.Eng., P.Eng.

### APEGA Discipline Committee

Approved this 16 day of December, 2015

By: [REDACTED]  
Case Manager Doug Cox, P.Eng.

