

Recommended Discipline Orders

Date: November 7, 2018

Case No.: 18-008-RDO

IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT, AND IN THE MATTER OF THE CONDUCT OF [PROFESSIONAL MEMBER], P.ENG.

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of [Professional Member], P.Eng., (“the Member”), with respect to a complaint initiated by [the Complainant], dated August 21, 2017.

A. BACKGROUND

The Complainant filed a complaint against the Member alleging that the Member engaged in unprofessional conduct and unskilled practice with respect to the manner in which he permitted documents to be authenticated by the Complainant. The Complainant stated that she had an agreement with the Member to apply his electronic stamp and signature to professional documents and send the documents to a home builder without the Member having conducted a review.

B. THE COMPLAINT

The Investigative Committee investigated the following allegations outlined in the Complaint:

1. Whether the Member allowed an employee (the Complainant) to apply his electronic stamp and signature.
2. Whether the Member failed to maintain control of his stamp.

The Investigative Committee expanded its investigation to also include an assessment of the Member's current work performing welding inspections for Alberta welding companies. The investigation included consideration of information received respecting the Member's health and his ongoing fitness to practise engineering.

AGREED STATEMENT OF FACTS

(i) Background

3. The Member graduated from the University of Western Ontario (B.Eng. in mechanical engineering) in 1972.
4. The member was the owner of the company.
5. The Complainant is the Member's daughter. She was employed on a contract basis at the company from 2010–2017.
6. The Complainant estimated that she applied the Member's electronic stamp and signature to professional documents hundreds of times.
7. Investigative Committee members and investigative staff received information from the Complainant and the Member's family expressing concern that the Member's health, including hearing and cognitive functioning, was in decline. In his written response to the Notice of Investigation, the Member stated that his health had been failing for the prior two-to-three years. Those concerns have been considered in assessing the alleged misconduct.

(ii) Facts Relating to Allegation #1:

Whether the Member improperly allowed the Complainant to apply his electronic stamp and signature.

8. The Complainant had an agreement with the Member to authenticate professional documents on his behalf starting in 2007 and continuing until August 2017. The Complainant was paid \$50 per document.
9. The Complainant applied the Member's electronic stamp and signature to two different types of

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professional documents, which were then sent to an Edmonton-area homebuilder without the Member's review.

10. The documents in question were:
 - a. Letters stating that the manufactured stone and brick used in the exterior wall cladding system was in compliance;
 - b. Cover letters confirming that the company will produce drawings such as stairwell opening detail, lateral bracing detail and tall wall detail.
11. Both types of documents contained an electronic image of the Member's stamp and signature.
12. The use of manufactured stone and brick in residential construction is not covered under the *Alberta Building Code* as an exterior finish. The authority having jurisdiction (in this case, the City of Edmonton) requires the document *Manufactured Stone and Brick Used in Exterior Wall Cladding System* to be authenticated by a professional engineer.
13. The Member failed to comply with the *Engineering and Geoscience Professions Act* ("the Act"), the *APEGA Practice Standard for Authenticating Professional Documents* ("the Practice Standard"), the *General Regulation* and the *APEGA Guideline for Ethical Practice* ("the Guideline").
 - a. As per section 78(1) of the Act, "A professional member, licensee or restricted practitioner shall, in accordance with the regulations, (a) sign documents or records, and (b) stamp or seal documents or records."
 - b. As per section 54(3) of the *General Regulation*, "When a stamp or seal is applied, the professional member or licensee to whom it was issued shall ensure that the stamp or seal is accompanied with that person's signature and the date on which the stamp or seal is applied."
 - c. As per the Practice Standard, "A professional member shall personally sign the documents to which his or her stamp has been applied."
 - d. As per the section 4.2.4 of the Guideline, "Professionals shall only stamp and sign reports, plans or documents that they have prepared or

that have been prepared under their direct supervision and control. In the case of work prepared by others, they shall only stamp and sign after having thoroughly reviewed the work and accepted responsibility for it." Section 4.2.4 of the Guideline also states, "If other members of the engineering or geoscience team prepared the documents, the responsible professional shall have exercised sufficient supervision and control, or have thoroughly reviewed the document, so that he or she can sign based on personal knowledge." Additionally, as per the Guideline, "Professionals shall only stamp and sign reports, plans or documents that they have prepared or that have been prepared under their direct supervision and control. In the case of work prepared by others, they shall only stamp and sign after having thoroughly reviewed the work and accepted responsibility for it." The Guideline also states that, "If other members of the engineering or geoscience team prepared the documents, the responsible professional shall have exercised sufficient supervision and control, or have thoroughly reviewed the document, so that he or she can sign based on personal knowledge."

- e. As per the Practice Standard, "A professional member shall personally sign the documents to which his or her stamp has been applied."

(ii) Facts Relating to Allegation #2:

Whether the Member failed to maintain control of his stamp.

12. The Complainant stated that she was given access to the Member's electronic stamp and signature.
13. There were no controls in place at the company between 2007 and 2017 to prevent the misuse of the Member's electronic stamp and signature.
14. The Member failed to comply with the *General Regulation*, the Practice Standard and the Guideline.
 - a. As per section 54(1) of the *General Regulation*, "A stamp or seal issued to a professional member or licensee must at all times remain under that person's direct control and must be applied by the professional member or licensee, or by a person acting under the professional member's

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or licensee's immediate and direct control, to all final plans, specifications, reports or documents of a professional nature (a) that were prepared by the professional member or licensee or under the professional member's or licensee's supervision and control, or (b) that were prepared by another person in circumstances where the professional member or licensee has thoroughly reviewed them and accepted professional responsibility for them."

- b. As per section 54(2) of the *General Regulation*, "No person shall permit a stamp or seal to be physically located in a manner that would allow its use by a person other than the professional member or licensee to whom it was issued."
- c. As per the Practice Standard, "A professional member is responsible for maintaining custody and control of his or her stamp at all times."
- d. As per section 4.2.4 of the Guideline, "As a matter of practice, professionals shall keep their stamps and seals under control."

(iii) The Member's health and its relationship to the misconduct.

15. The Member no longer operates the Company.
16. Prior to June 20, 2018, the Member's engineering duties related to being the retained engineer for 15 welding companies throughout Alberta.
17. The Member was required to conduct inspections pursuant to Canadian Welding Bureau (CWB) regulations every three months.
18. There have been no complaints received at APEGA from any of the welding companies expressing a concern with the Member's suitability to conduct inspections.
19. The Member's family expressed concern to APEGA regarding the Member's mental health and explained that this concern led to a family decision to limit the Member's scope of practice to conducting welding inspections.
20. On June 20, 2018, the Member voluntarily cancelled his APEGA membership.

21. On July 10, 2018, the Member returned his stamp to APEGA.

C. CONDUCT

22. The Member freely and voluntarily admits that:
 - a. At all relevant times he was a professional member of APEGA and was thus bound by the *Engineering and Geoscience Professions Act* and the *APEGA Code of Ethics*.
 - b. He breached the Act, the Practice Standard, the *General Regulation* and the Guideline by improperly allowing the Complainant to apply his electronic stamp and signature to professional documents on his behalf.

23. The Member acknowledges that the conduct described above constitutes unprofessional conduct and unskilled practice as defined in Section 44(1) of the Act:***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 regulations,*
- c) *harms or tends to harm the standing of the profession generally,*
- d) *displays a lack of knowledge of or lack of skill or judgment in the practice of the profession, or*
- e) *displays a lack of knowledge of or lack of skill or judgment in the carrying out of any duty or obligation undertaken in the practice of the profession,*

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

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24. The Member acknowledges that the conduct described above breaches Code of Ethics #1, #2, #3, #4, and #5, which state:

1. *Professional engineers and geoscientists 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 and geoscientists shall undertake only work that they are competent to perform by virtue of their training and experience.*
3. *Professional engineers and geoscientists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.*
4. *Professional engineers and geoscientists shall comply with applicable statutes, regulations and bylaws in their professional practices.*
5. *Professional engineers and geoscientists shall uphold and enhance the honour, dignity and reputation of their professions and thus the ability of the professions to serve the public interest.*

D. RECOMMENDED ORDERS

25. On the recommendation of the Investigative Committee, and by agreement of the Member with that recommendation, and following a discussion and review with the Discipline Committee Case Manager, the following recommended orders are issued pursuant to Section 52 of the Act:

1. The Member will receive a Letter of Reprimand, a copy of which will be maintained permanently in the Member's registration file and be considered at any future date by APEGA.

2. If the Member wishes to apply for reinstatement of his membership, the Member shall obtain an opinion from a qualified medical professional regarding his fitness to practise engineering. That medical opinion shall be provided to APEGA.
 3. If the Member wishes to apply for reinstatement of his membership, the Member shall successfully complete the National Professional Practice Examination within one year from the date that his membership has been reinstated.
 4. This matter and its outcome will be published by APEGA as deemed appropriate and such publication will not name the Member and the company.
26. Although there is a presumption that Recommended Orders should be published in a manner that identifies the name of the Permit Holder or Member who is the subject of the Recommended Order, publication without name is being recommended in this case, given that there is a mental health aspect to this matter which should remain confidential.

Signed,

[PROFESSIONAL MEMBER], P.ENG.

ALLAN YUCOCO, P.L.(ENG.)

Panel Chair, APEGA Investigative Committee

DOUGLAS F. COX, P.ENG., FEC

Case Manager, APEGA Discipline Committee

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