

Case No. 17-010-RDO continued

1. SE Design is to submit to APEGA's Practice Review Board a revised Professional Practice Management Plan that outlines a suitable process to ensure the section on quality control addresses appropriate communication procedures for future business clients. Upon approval of the PPMP, the matter will be concluded.
2. If this order is not completed within 30 days after the Case Manager reviews the matter with the primary contact, the Permit Holding company (SE Design) will be suspended from practice until completion of such order.

3. This matter and its outcome will be published by APEGA as deemed appropriate and such publication will name SE Design and Consulting Inc.

Signed,

[CONTACT A]

Primary Contact, SE Design and Consulting Inc.

HANAN SAMAN, P.ENG.

Panel Chair, APEGA Investigative Committee

WANDA GOULDEN, P.ENG., P.GEO.

Case Manager, APEGA Discipline Committee

Date: October 11, 2017

Date: September 18, 2017

Case No.: 16-014-RDO

IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT AND IN THE MATTER OF THE CONDUCT OF [PROFESSIONAL MEMBER A], 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 A] (the "Member") with respect to a complaint initiated by [Complainant B] (the "Complainant"), dated August 5, 2014, (the "Complaint").

A. THE COMPLAINT

The Complainant alleged that the Member engaged in unprofessional conduct and/or unskilled practice arising from an inspection conducted by the Member with respect to the installation of stone veneer to the exterior of a rental property owned by [Complainant B] in Calgary, Alberta (the "Property").

The Investigative Committee conducted an investigation with respect to the following allegations outlined in the Complaint:

1. Whether the Member had the permission of [Complainant B] or his tenant to enter the residential lot at [Address C] in Calgary, Alberta,

for the purposes of conducting an inspection of the stone cladding;

2. Whether the Member improperly engaged in the practice of engineering through [Company D] or [Company E] without obtaining a permit to practice;
3. Whether the Member engaged in unprofessional conduct or unskilled practice when he authored an inspection report, dated April 12, 2013, in which the Member concluded that "the stone veneer material installation had met the manufacturer's specification."

B. AGREED STATEMENT OF FACTS

Background

4. The Complainant retained [Contractor F] (the "Contractor") to undertake renovations and repairs with respect to the Property.
5. The work done by the Contractor included the installation of stone cladding on the exterior of the Property.

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6. The Contractor retained the Member to conduct an inspection of the Contractor's installation procedure for the stone cladding, in accordance with the City of Calgary's requirements.
7. The City of Calgary did not require that a Form A be completed. However, at the relevant time, the City of Calgary required that a field review be conducted during construction to inspect the exterior wall cladding system to ensure that the procedure conformed with the cladding manufacturer's installation procedure for (a) cladding support, movement control and thermal expansion and (b) moisture management including protecting from precipitation and water ingress control.
8. The Member attended at the Property with [Contractor F] on or about April 12, 2013, to conduct a field review. At the time he attended the Property, installation of the stone veneer was underway but was not finished. The initial substrate work was completed, and a few rows of veneer had been installed.
9. Subsequent to his attendance at the Property, the Member issued and authenticated a letter (the "First Letter") on behalf of [Company D], dated April 12, 2013, addressed to the Contractor. The First Letter stated the following:

"[Company D] has completed a site review of the stone cladding veneer inspection and confirm that this stone veneer material installation had met the manufacturer's specification.

"[Company D] confirmed that the installation procedure as follow [sic]:

1. *Remove existing wall siding.*
2. *Install base trim at the bottom of the stone veneer wall.*
3. *Install 3/4" exterior grade sheathing on top of the existing exterior wall.*
4. *Install building paper.*
5. *Install steel wire mesh.*
6. *Install stone veneer with mortar.*
7. *Install top flashing to cover the top of the veneer wall."*

10. On August 15, 2013, the Complainant filed a Statement of Claim against the Contractor alleging breach of contract for deficient renovation work on the Property (the "Civil Claim"). The Civil Claim alleged defects with respect to a number of aspects of the work performed by the Contractor, including installation of the stone veneer.
11. In or about September of 2013, [Contractor F] requested that the Member return to the Property to advise whether there was any indication of a problem with the stone veneer work. The Member returned and conducted a further inspection at [Contractor F's] request, and issued and authenticated a second letter dated September 24, 2013 (the "Second Letter").
12. On August 5, 2014, the Complainant submitted the Complaint to APEGA.
13. The Complaint was referred to the Investigative Committee, and a Panel was appointed to investigate the Complaint.
14. The Panel conducted an investigation, and issued its report on December 16, 2015. The Panel concluded that there was sufficient evidence to refer the following two issues to hearing:
 - a. Whether the Member issued a letter, dated April 12, 2013, that relayed information that was apt to be misinterpreted since it stated the stonework was installed according to directions when the stonework had not been completely installed at that time; and
 - b. Whether the Member was practising engineering through [Company E] without having a valid permit to practice.
15. The Panel determined that there was insufficient evidence to refer the following matters also raised in the Complaint to a hearing:
 - a. Whether the Member inappropriately or incorrectly issued a report indicating that the stone veneer material installation had met the manufacturer's specification; and
 - b. Whether the Member attended at the Property for the purpose of conducting a field review without the Complainant's consent.
16. On or about February 25 and March 2, 2015, a trial was held with respect to the Civil Claim in the

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Provincial Court of Alberta. Upon conclusion of the trial, the Civil Claim against the Contractor was dismissed.

17. The Complainant subsequently appealed the dismissal of his claim against the Contractor. The appeal was heard in the Court of Queen's Bench of Alberta on April 22, 2016. The Justice in Chambers upheld the trial judge's dismissal of the Civil Claim, including the trial judge's finding that the work performed by the Contractor was satisfactory.

Facts Relating to Allegation #2 — Whether the Member improperly engaged in the practice of engineering through [Company D] or [Company E] without obtaining a permit to practice

18. The Member incorporated a company called [Company D] in September of 2003. [Professional Member A] was the sole shareholder of [Company D], which was struck from the corporate register in March of 2013.
19. The Member also incorporated a company called [Company E], in 1998. [Professional Member A] is the sole Director and Shareholder of [Company E] (the "Corporation"), which is an active corporation.
20. [Company D] is a trade name of [Company E].
21. Neither [Company D] nor the Corporation has ever applied for or obtained a practice permit from APEGA.
22. Section 2(1) of the *Engineering and Geoscience Professions Act* (the "Act") states that: "Except as otherwise provided in this Act, no individual, corporation, partnership or other entity, except a professional engineer, a licensee so authorized in the licensee's license, a permit holder so authorized in its permit or a certificate holder so authorized in the certificate holder's certificate, shall engage in the practice of engineering."
23. The Corporation has been engaged to provide design/build and engineering services to clients on a number of occasions since 1998, including the submission of Forms A and C to the City of Calgary.

24. The Member contacted APEGA on several occasions to inquire as to whether if he is carrying on business as a sole proprietor, he must obtain a Permit to Practice. The Member was advised on each occasion that it was not necessary for him to obtain a practice permit.
25. Although a Member who provides engineering services through a sole proprietorship is not obliged or eligible to obtain a practice permit, if a Member is providing engineering services through a corporate entity, it is necessary to obtain a permit to practice. At the time he contacted APEGA, the Member did not advise APEGA that he was a director and shareholder in a corporate entity, or that he was providing some services and issuing invoices for non-engineering services through the corporate entity.
26. The Member states that he incorporated the Corporation for the purpose of reporting income relating to project management and other activities that do not specifically involve the practice of engineering. The Member also states that he reported income to the Canada Revenue Agency for engineering services he provided on his personal tax return, and that the income he earned for project management, estimating services, and construction was reported on the income tax returns for the Corporation.
27. Although the Member states that he did not intend to practise engineering through the Corporation and was not aware that his use of his tradename could cause others to believe he was in contravention of s. 2(1) of the Act, the Member acknowledges that some of the activities that he engaged in, including the field review resulting in the letter dated April 13, 2013, constitute the "practice of engineering." The Member admits that the suffix "Inc." was and is inappropriate for a sole proprietorship, and was and is liable to cause confusion in this regard.

Facts Relating to Allegation #3 — Whether the Member engaged in unprofessional conduct or unskilled practice when he authored an inspection report, dated April 12, 2013, in which the Member concluded that "the stone veneer material installation had met the manufacturer's specification."

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28. The Court of Queen’s Bench upheld the finding of the Provincial Court of Alberta that the work performed by the Contractor, including the installation of the stone veneer, was satisfactory. The Investigative Committee did not refer that issue to a hearing.
29. The matters in issue relate solely to whether the wording of the First Letter and the Second Letter was appropriate in light of the scope of the Member’s retainer and the activities he performed.
30. At the time the First Letter was authored, the City of Calgary required an inspection to be performed by an appropriate professional during construction, so that the professional could opine on matters relating to moisture control.
31. The Member admits that the First Letter did not clearly confirm the scope of his retainer or the timing of his field review. In particular, while the First Letter expressly referred to and confirmed “the installation procedure,” it did not clarify that:
 - The purpose of the field review was limited to reviewing the Contractor’s installation procedure for the exterior wall cladding system for cladding support, movement control and thermal expansion and moisture control; or
 - The field review was conducted while installation of the stone veneer was still in progress.
32. Similarly, the Member admits that the Second Letter did not specifically confirm the scope of his retainer, the purpose for conducting a second field review, or that the installation of the stone veneer had been completed at the time of the second field review.
33. Although the Contractor understood the scope of the Member’s retainer and the timing of both field reviews, the Member acknowledges that both the First and the Second Letter ought better to have included clarification with respect to the purpose and scope of his retainer, and the timing of the field reviews that were undertaken on both occasions. The Member acknowledges that the lack of clarity, although unintentional,

could potentially create confusion for others who reviewed the letters after they were authored.

C. CONDUCT

34. The Member freely and voluntarily admits that:
 - a. He should not have issued correspondence under the name [Company E] or [Company D] related to the practice of engineering, and that he ought to have applied for a practice permit if he intended to do so.
 - b. The letter dated April 12, 2013, did not adequately clarify the scope of the retainer or the purpose for the field review, and did not adequately clarify that the installation of the stone veneer was still in progress at the time the field review was conducted.
 - c. The letter dated September 24, 2013, did not adequately clarify the scope of the retainer or the purpose of the field review, and did not clarify that the installation of the stone veneer was complete at the time of the field review.
 - d. The Member acknowledges that the conduct described above constitutes unprofessional conduct as defined in the Act:

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;*
 - e)** *Displays a lack of knowledge of or lack of skills or judgment in the carrying out 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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- e. The Member also acknowledges that the conduct described above breaches Rule of Conduct #4 of the *Code of Ethics*:
- 4 Professional engineers and geoscientists shall comply with applicable statutes, regulations and bylaws in their professional practice.**

D. RECOMMENDED ORDERS

35. On the recommendation of the Investigative Committee, and by agreement of [Professional Member A], P.Eng., with that recommendation, following a discussion and review with the Discipline Committee's Case manager, the Discipline Committee hereby orders that:
1. [Professional Member A] shall receive a letter of reprimand;
 2. [Professional Member A] shall pay a fine in the amount of \$1,500 within 30 days of being informed that the Recommended Discipline Order has been approved;
 3. As of the date that [Professional Member A] executes this Recommended Discipline Order, he will not cause or permit [Company E] or [Company D] to engage in the practice of engineering prior to submitting a permit to practice application to APEGA on behalf of [Company E] and being notified that a practice permit has been granted to [Company E]; and
 4. The details of this matter will be published on APEGA's website and/or in *The PEG* magazine without names or any other information that would identify [Professional Member A], the Complainant, or the Contractor.
36. Although the Investigative Committee and [Professional Member A] understand and

acknowledge that APEGA's usual policy is to publish Recommended Discipline Orders in a manner that identifies the Member by name, the parties understand that the decision to publish with or without name is discretionary. The parties submit that publication without name is appropriate, given the specific facts in this case, including the following:

- a. [Professional Member A] has been a Member of APEGA since August 20, 1993, and has had no prior findings of unprofessional conduct or unskilled practice since he has been a Member;
- b. [Professional Member A] intended to practise engineering as a sole proprietor and he was unaware that his failure to apply for a practice permit on behalf of [Company E] could be regarded as a contravention of s. 2(1) of the Act. Any breach of s. 2(1) was both unintentional and inadvertent.
- c. The Court of Queen's Bench determined that the work performed by the Contractor was satisfactory. Therefore, the unprofessional conduct arising from the letters prepared by [Professional Member A], dated April 12, 2013, and September 24, 2013, relates solely to the manner in which the letters were drafted.
- d. [Professional Member A]'s conduct was not disgraceful or dishonourable.

Signed,

[PROFESSIONAL MEMBER A], P.ENG.

REX PERCHARD, P.ENG.

Panel Chair, APEGA Investigative Committee

GRANT HALLAM, P.ENG.

Case Manager, APEGA Discipline Committee

Date: September 18, 2017