

Date: October 11, 2017

Case No.: 17-010-RDO

IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT, AND IN THE MATTER OF THE CONDUCT OF SE DESIGN AND CONSULTING INC.

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of [Contact A], the primary contact on behalf of SE Design and Consulting Inc. (SE Design). The investigation has been conducted with respect to a complaint initiated [Complainant B], who submitted a letter of complaint dated June 22, 2015.

A. BACKGROUND

The Complainant was involved in residential development since 1985, having developed over 250 residential lots in the Bonnyville area.

The Complainant through his company [Company C] retained the services of SE Design in 2010 to develop 3 phases (Phases IV, V, and VI) of a land development project called [Project D] (the "Project") which consisted of 56 lots.

The Complainant's letter of complaint contained allegations of unskilled practice and unprofessional conduct regarding services provided by SE Design and numerous disputes encountered.

SE Design is a civil/municipal engineering firm that was formed in 2004. The firm is located in Cold Lake, Alberta, and employs approximately 20 people specializing in a wide range of planning, engineering, and construction services.

[Contact A] referred to the Complainant's concerns as always being related to the cost of work. He disputes the allegations made by the Complainant, indicating SE Design is a reputable company that was recently recognized by the local business chamber for their exemplary work done in the [Project D] community, earning a Business of the Year Award for a large business in 2015.

B. THE COMPLAINT

The Investigative Committee conducted an investigation with respect to the following allegations to determine if the actions of [Contact A] and SE Design (collectively herein referred to as "SE Design") contravened Section 44(1) of the *Engineering and Geoscience Professions Act*: Specifically, the Investigative Panel considered whether:

1. SE Design was competent and had the necessary means and experience to complete the land development work required for the Project.
2. The execution of the required services was completed as per the contractual obligations and in a professional and/or skilled manner. Specifically:
 - a. Whether services for Phase IV were allegedly installed on the wrong side of the lot, when comparing the original drawings (May 12, 2010) to the "as built" drawings (July 13, 2010).
 - b. Whether the project completion dates for Phase V were satisfied and if not, that the consequences for not meeting the deadlines were fulfilled as outlined in the contract.
 - c. Whether the water leak discovered in Phase V was a result of unskilled practice.
 - d. Whether the incomplete status of the lane and its elevations (located on the north side of six lots in Phase V) were not completed as per the contractual agreement.
 - e. Whether SE Design overbilled and/or was deceitful to [Complainant B] regarding the invoicing related to the sanitary sewer servicing for Phase VI — specifically SE Design billed [Complainant B] \$60,000 in excess of the original contract price of \$420,000.

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- f. Whether SE Design exhibited unskilled practice for having to bury the sanitary lines an additional metre deep.
 - g. Whether SE Design acted unprofessionally with regards to the circumstances related to the storm pond versus sceptor systems. Specifically, did SE Design disregard [Complainant B's] preference of wanting a sceptor system?
 - h. Whether SE Design billed [Complainant B] for the storm pond designs even though they were not wanted or required.
 - i. Whether SE Design overbilled and/or was deceitful to [Complainant B] regarding the invoicing for electrical supplies. Specifically, billing [Complainant B] \$14,000 higher than the original contracted price of \$97,000.
 - j. Whether SE Design failed to complete the sidewalk and street pavement located alongside a corner lot as per the contract. Note: The lot is located in Phase VI — on the southeast corner of [the Project D community]. The orientation of the lot was changed from facing east to facing south.
3. SE Design acted in an unprofessional manner with regards to continued correspondence with [Complainant B's son], despite the father's requests to cease correspondence.
 4. SE Design engaged in unprofessional conduct and/or unskilled practice that contravened Section 44(1) of the *Engineering and Geoscience Professions Act*.
8. The primary source leading to the Complainant's allegations was based on miscommunication.
 9. SE Design had an obligation to convey, in a clear and concise manner, various details of what their scope of work was. Some scope of work details were not clearly communicated to the client.
 10. SE Design had an obligation to convey and explain in a clear and concise manner the costs of certain components of the Project. As an example, the matter of the sanitary sewer servicing for Phase VI, and the allegation that SE Design billed the Complainant \$60,000 more than the original contract price:
 - a. Although this matter may be viewed as contractual in nature, it could not be determined if SE Design effectively communicated that the original cost of the sewer servicing was a tendered price, based on preliminary engineering plans, and that it was used to enable the developer to establish costs and to arrange/schedule the contractor for summer construction.
 - b. SE Design had an obligation to effectively communicate any contingencies that might arise during the course of work that would affect the initial contract price. This needed to be clearly communicated to the Client.
 - c. SE Design had an obligation to effectively communicate with its client, [Company C], in a timely and appropriate manner about any potential material changes to the contract price.

C. AGREED STATEMENT OF FACTS

5. SE Design was retained by [Company C, Complainant B, and Complainant B's son] (the Client) to provide land development services for the development of 56 lots located in the [Project D community] in the Bonnyville area.
6. Issues of contention between SE Design and the Complainant ranged from contractual matters to overall allegations of unskilled practice and unprofessional conduct.
7. SE Design was competent and had the necessary means and experience to complete the land development work required for the Project, having been directly involved in the construction

Panel Findings

11. The Panel determined there was insufficient evidence of unprofessional conduct or unskilled practice with respect to the *Code of Ethics* Rules #1, #2, #3, and #5 to refer the matter to a disciplinary hearing.
12. The investigation determined SE Design engaged in extensive communication with the Complainant. However, much of this did not adequately resolve misunderstandings between the Complainant and SE Design. Despite a great deal of back-and-forth communications, the content did not effectively

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clarify scope, conditions, contractual matters, and other obligations. SE Design had an obligation to communicate in a professional manner until their client is clear on what was happening, and what the cost implications were.

13. It was determined that SE Design requires a more formal communication process, either included its standard clauses for provision of engineering services to clients and/or in its Professional Practice Management Plan (PPMP). This then would establish a guideline that may increase the chances of their being able to formally rectify any misunderstanding or differences of opinion that arise.
14. These are essential matters that the Panel found lacking in SE Design's Professional Practice Management Plan (PPMP).
15. As per APEGA's *Guideline for Professional Practice Management Plans v1.4*:
Section 1, "If the public is to have confidence in the quality of the services of professional engineers...there needs to be a structured process in place for managing professional practice."; and
Section 3.4, The PPMP should describe, "Policies and procedures on dispute/conflict resolution between professionals and with clients."
16. The Panel determined there was sufficient evidence that SE Design did not have an adequate Professional Practice Management Plan (PPMP) in place (as per Section 48(1)(d) of the *Engineering and Geoscience Professions Act*) that might have provided further direction and guidance to more effectively communicate their scope of work and related responsibilities to their client. This is in contravention of the *Code of Ethics*, Rule #4 in the *Act*.
4 Professional engineers and geoscientists shall comply with applicable statutes, regulations and bylaws in their professional practice.
17. The Panel realizes not all situations may be addressed through a Professional Practice Management Plan (PPMP); however, the investigation revealed a deficiency in the procedures of SE Design, (e.g., in the area of dispute/conflict resolution). Formally addressing

this deficiency in a revised PPMP should work towards ensuring more meaningful communication takes place between SE Design and their clients, particularly in matters relating to differing interpretations of key items, as well as dispute/conflict resolution.

C. CONDUCT

18. SE Design's primary contact freely and voluntarily admits that:
 - a. SE Design's Professional Practice Management Plan (PPMP) was not sufficiently detailed in terms of outlining their policies and procedures to more effectively address communication issues with their clients.
 - b. SE Design requires a more robust process to improve their communication procedures with their clients. Specifically, to address and clarify items such as:
 - i. ensuring sufficient detail in scope of work and specific responsibilities/obligations.
 - ii. Specific and clear pricing for work to be done.
 - iii. Identification of pricing that may be contingent on various factors.
 - iv. A more formal dispute resolution process should communications breakdown.
 - c. The primary contact acknowledges that the conduct described above constitutes unprofessional conduct as defined in the *Act*.
 - d. The primary contact also acknowledges that the conduct described above contravenes Section 44(1)(b) 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

19. On the recommendation of the Investigative Committee, and by agreement of the primary contact and SE Design and following a discussion and review with the Discipline Committee's Case manager, the Discipline Committee hereby orders that:

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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.