

Date: June 6, 2018

Case No.: 18-005 RDO

IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT, AND IN THE MATTER 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], P.Eng., (the “Member”), of [Company B] (the “Company”).

The investigation was conducted with respect to a complaint initiated by [Complainant C], P.Eng., (the “Complainant”), who submitted a letter of complaint dated April 18, 2017. The complaint involved two members under investigation. The other member under investigation was the Member’s colleague.

A. BACKGROUND

The Complainant filed a complaint against the Member alleging that the Member had critiqued the work of the Complainant and shared the critique findings without prior notice to and review with the Complainant.

B. THE COMPLAINT

[Person D] of [Company E], (the “Owner”) hired the Complainant as the structural engineer for his development projects (the “Projects”). The Owner hired the Company to conduct a review of the structural designs that were developed by the Complainant. The Complainant did not receive notification from the Member before the Member commenced his review.

The Owner hosted a meeting at his office that included the Complainant, the Member, and other people associated with the Projects. The Complainant was unaware the Member was going to participate in the meeting until he and his colleague arrived. At the meeting, the Member proceeded to share his critique findings of the Complainant’s design work for the first time in front of the Owner and others.

The Investigative Committee conducted an investigation to determine if the actions of the Member contravened Section 44(1) of the *Engineering and Geoscience Professions Act* (the “Act”). Specifically, the

Investigative Panel considered whether the Member acted unprofessionally toward the Complainant when he critiqued the Complainant’s designs.

C. AGREED STATEMENT OF FACTS

1. The Member was a professional member of APEGA.
2. During the second week of April 2017, the Owner contacted the Company to perform a review of the Complainant’s design work (the “Review”).
3. The Review was to be conducted by the Member and his colleague. The Member’s role was to technically review the Complainant’s design work and report to his colleague the items he found to be wrong or suspicious.
4. The Member’s colleague drafted a letter (the “Notification Letter”) dated April 17, 2017, to the Complainant regarding the Company’s forthcoming Review of both of the Projects. The Notification Letter advised the Complainant that the Company had been retained to review the Owner’s Projects.
5. The Review was to rely on a set of drawings provided by [Architect F] (the “Architect”).
6. On April 17, 2017, the Complainant was notified by the Owner that the Complainant would be contacted by another engineer who would be reviewing the Complainant’s design work at the Owner’s request. On the same day, the Architect provided the Member’s colleague with a copy of the Owner’s notice to the Complainant of the forthcoming Review.
7. On April 17, 2017, at 10:33 a.m., the Member’s colleague’s secretary sent the Notification Letter by email (the “Email”) from the colleague’s email account. The Email indicated that the Company’s Review would take a few days and that they wanted to sit down with the Complainant to review their findings with him prior to issuing their final conclusion.

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8. The Email was sent to an email address that does not exist.
9. Understanding that the Member's colleague sent the Notification Letter to the Complainant, the Member made no effort to contact the Complainant prior to conducting a review of the Complainant's design work.
10. Before noon on April 17, 2017, the Member and his colleague picked up the drawings from the print shop. Unbeknownst to the Member and his colleague, the set of drawings provided by the Architect were not the most current set of drawings for the Projects. The Complainant had released an updated set of drawings about four months after releasing the original set.
11. On April 17, 2017, at 6:30 p.m., the Architect informed the Complainant of the April 18 meeting at the Owner's office. The Architect had told the Complainant that it would just be the Complainant, the Architect, and the Owner at that meeting.
12. The Member knew that the Complainant was going to be at the April 18 meeting, but he was not aware of the Architect's inaccurate communications with the Complainant.
13. The Complainant, the Owner, the Member, his colleague, and the Architect attended the April 18 meeting.
14. At the beginning of the April 18 meeting, the Member became aware that the Complainant was surprised at his attendance in the April 18 meeting, and the Member became aware that the Complainant did not receive the Notification Letter from the Member's colleague.
15. The April 18 meeting was the first time the Complainant was aware that the Member was specifically reviewing the Complainant's designs.
16. The Member and his colleague asked the Complainant if he would continue with the meeting. The Complainant agreed to proceed with the April 18 meeting, but did not expect his work would be critiqued during the April 18 meeting. However, during the April 18 meeting, the Member and his colleague verbally discussed their concerns with the Complainant's designs.
17. Later during the April 18 meeting, the Complainant requested that a formal review letter be sent to him instead of proceeding further, and the Member's colleague indicated that such a letter (the "Review Letter") could be done for the end of the following day.
18. On April 19, 2017, the Member and his colleague sent a report outlining the findings of their Review (the "Report") to the Owner and the Architect. However, neither the Member nor his colleague sent the Report or the Review Letter to the Complainant.
19. On April 20, 2017, the Complainant received the Report from the Owner. On the same day, the Complainant responded to the Report via email to the Owner, and the Owner forwarded the Complainant's response to the Member. One issue raised by the Complainant was that the Review was performed on the outdated set of drawings. Later that same day, the Member received the updated set of drawings from the Architect.
20. The Member compared the two sets of drawings and determined there was no difference except for two drawings. The Member's opinion was not changed by the differences.
21. The Owner released the Complainant from the Projects within six days of the Report having been sent to the Owner. The Owner hired the Company to replace the Complainant as the structural engineering contractor on the Projects.

D. CONDUCT

22. The Member freely and voluntarily admits:
 - a. He critiqued the design work of the Complainant without assuring the Complainant was aware.
 - b. He provided his critique findings for the first time in front of the Complainant's client, thus preventing the Complainant the opportunity to defend his designs.
 - c. His conduct sufficiently questioned the technical competence of the Complainant in front of the Complainant's client that the client released the Complainant from employment.

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23. The Member acknowledges that his conduct is a breach of Section 44(1)(b) of the Act and therefore constitutes unprofessional conduct as defined in the Act.
24. The Member acknowledges that his conduct contravenes Rule of Conduct #3 and #5 of the *Code of Ethics*:
- 3. *Professional engineers and geoscientists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.*
 - 5. *Professional engineers and geoscientists shall uphold the honour, dignity and reputation of their professions and thus the ability of the professions to serve the public interest.*
25. The Member also acknowledges that his conduct contravenes the *Guideline for Ethical Practice (Reviewing the Work of Other Professionals)*:
- 4.5.3. *Professionals should undertake an assignment to critique the work of another professional engineer or geoscientist that calls into question the professional conduct or technical competence of that individual only with the knowledge of and after communication with that individual, such that the review is fully apprised of all relevant information.*

E. RECOMMENDED ORDERS

26. On the recommendation of the Investigative Committee, and by agreement of the Member

and following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:

- a. The Member write a letter of apology to the Complainant within 30 days after the Discipline Committee Case Manager approves the Recommended Order.
- b. The Member shall pay a fine in the amount of \$1,000 within 60 days after the Discipline Committee Case Manager approves the Recommended Order.
- c. If the orders are not completed within the timelines above, the Member’s registration will be suspended until completion of such orders.
- d. This matter and its outcome will be published on APEGA’s website and in *The PEG* magazine without names, given that this matter did not put the safety of the public at risk and the risk to the public safety is not reduced by withholding names.

Signed,

[PROFESSIONAL MEMBER A], P.ENG.

ROY SUDIPTO, P.ENG.

Panel Chair, APEGA Investigative Committee

NASER RABBANI, P.ENG.

Case Manager, APEGA Discipline Committee

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