

Recommended Orders

Date: October 16, 2018

Case No.: 18-009-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 a permit-holding company (the “Company”) and a responsible member [Professional Member A], P.Eng., (the “Member”). The investigation has been conducted with respect to a complaint initiated by an architect (the “Complainant”), who submitted a letter of complaint dated June 20, 2016.

A. BACKGROUND

The Complainant was hired to complete a project in [an Alberta city]. The Complainant subcontracted out the lighting designed for both the interior and exterior of the building to the Company. At about 75 per cent completion of the project, the Complainant learned that there might be a problem with the level of lighting. The Complainant notified the Company and informed them that there might be some potential problems with the lighting and that they should pay close attention to the last portion of the project so they could monitor the lighting levels. The Complainant was assured by the Company that the lighting levels for the project would be sufficient.

At 98 per cent completion, the Complainant claimed that the interior lighting was not meeting the owner’s requirements. A dispute between the owner of the project (the “Owner”), the Complainant, and the Company ensued.

The Owner was able to retain a third-party engineer to assess the lighting levels. The report revealed that the illuminance levels for the main areas did not meet recommendations of the *Illuminating Engineering Society*

Lighting Handbook 10th Edition and Occupational Health and Safety Regulations of Canada.

The Member is the responsible member for the Company. At the project’s 75 per cent completion stage, the Company’s project manager noted that the colours painted in the space were not as originally specified. Dark, light-absorbing colours were used and the Company had not been notified of these colour changes made by the Owner. The project manager explained to the Owner that dark colours will negate the effect of indirect lighting.

Despite the Member providing alternative cost-effective solutions to the Owner, the Owner would not accept any additional costs. The Company did replace some of the lighting and did relocate some fixtures at their cost. The Member indicated that the project proceeded to completion and all requirements were met and occupancy provided.

B. THE COMPLAINT

The Investigative Committee appointed an Investigative Panel to conduct an investigation into whether the Member engaged in unprofessional conduct, unskilled practice, or both with respect to the allegations outlined in the complaint.

C. AGREED STATEMENT OF FACTS

1. The Member is the principal owner of the Company and has been a member in good standing with APEGA since 2005.
2. The Member was retained by the Complainant to provide the lighting design for the interior and exterior of the project and contract administration.

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3. The project commenced in 2012 with the Company providing their scope of work which included:
 - a. Electrical design for the 12,000-sq.-ft. office/retail building
 - b. Lighting layout and control design
 - c. Lighting design review
4. The Member declared a conflict of interest with the project and was not directly involved as his father was the owner of the electrical company that was awarded the electrical services contract through a tender process.
5. The project manager of the project (who is a senior partner at the Company) was the lead designer and primary contact person for the project. The Member was, at all relevant times, the Responsible Member for the Company.

D. PANEL FINDINGS

6. There was no evidence of the Complainant defining any requirements with respect to lighting guidelines, lighting recommendations, lighting industry standards, or any other lighting design guide.
7. With respect to the general lighting levels on this project, both inside and in the parking lot, there is insufficient evidence to support an allegation of unskilled practice, or unprofessional conduct.
8. The Member issued engineering schedules for this project verifying compliance with the *Alberta Building Code* (the ABC), without sealed lighting designs or field verification or both of light levels. It is agreed that the light levels on the main stairs did not meet the minimum levels as required by the ABC.
9. With respect to light levels mandated by the ABC, the Panel found sufficient evidence to support an allegation of unskilled practice, unprofessional conduct, or both regarding the light levels installed on the main stairs. Specifically, the Member failed to meet the *Alberta Building Code 2006*, Part B, Section 3.2.7.1:

3.2.7.1. Minimum Lighting Requirements

1) An exit, a public corridor, or a corridor providing access to exit for the public or serving patients' sleeping rooms or classrooms shall be equipped to provide illumination to an average level not less than 50 lx at floor or tread level and at angles and intersections at changes of level where there are stairs or ramps.

E. CONDUCT

10. The Member freely and voluntarily admits that the light levels installed on the main stairs failed to meet the *Alberta Building Code 2006*, Part B, Section 3.2.7.1.
11. The Member acknowledges that the conduct, described above, constitutes unprofessional conduct as defined in Section 44(1)(b) of the *Engineering and Geoscience Professions Act*.
12. The Member also acknowledges that the conduct described above contravenes 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 practices.*

F. RECOMMENDED ORDERS

13. On the recommendation of the Investigative Committee, and by agreement of the Member and following a discussion and review with the Discipline Committee's Case Manager, the Discipline Committee hereby orders that:
 1. The Member shall receive a letter of reprimand to be retained on his APEGA file.
 2. The Member shall pay a fine in the amount of \$1,000 to APEGA within 60 days after the Discipline Committee's Case Manager approves the Recommended Order.
 3. If the Member fails to submit the above-mentioned requirements within the designated timelines, his registration will be suspended until such time as he does.
 4. If the Member fails to meet the above requirements after a one-year period from

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the date the Discipline Committee's Case Manager approves the Recommended Order, the Member's registration with APEGA shall be cancelled.

5. This matter and its outcome will be published by APEGA in any form or media as deemed appropriate and such publication will not name the Company or the Member.

Signed,

[PROFESSIONAL MEMBER A], *P.ENG.*

GEORGE CARAGANIS, *P.ENG.*

Panel Chair, APEGA Investigative Committee

DIANA PURDY, *P.GEOL.*

Case Manager, APEGA Discipline Committee

Date: October 16, 2018

Date: September 24, 2018

Case No.: 18-006-RDO

**IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT,
AND
IN THE MATTER OF THE CONDUCT OF MR. TERRANCE WALKER SMITH, P.ENG.**

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has investigated the conduct of Mr. Terrance Walker Smith, P.Eng., (the "Member") with respect to a complaint initiated by [the Complainant], dated February 7, 2017.

A. BACKGROUND

The investigation related to allegations that the Member improperly permitted documents to be authenticated or initialed or both by employees at his company, TWS Engineering Ltd. (TWS).

B. THE COMPLAINT

The Investigative Committee conducted an investigation into whether the Member improperly allowed employees under his supervision to apply his electronic stamp and signature (Allegation #1); failed to maintain control of his stamp (Allegation #2); and improperly allowed employees under his supervision to apply his initials onto building schedules (Allegation #3).

C. AGREED STATEMENT OF FACTS

1. Certain employees at TWS had access to the Member's electronic stamp and signature through the TWS AutoCAD system.
2. The Complainant estimated that he applied the Member's electronic stamp and signature to professional documents approximately 30 times. The Complainant observed other employees apply the Member's electronic stamp and signature to documents.
3. The Member requested that certain employees cross out portions of building schedules that did not apply to a given project and apply the Member's initials, after which the Member would review the schedules. However, the Complainant stated that on many occasions the Member did not request to review the documents prior to them being sent to clients.
4. The Complainant notified the Member about his concern with the process of authentication and provided him with a copy of the *APEGA Practice Standard for Authenticating Professional Documents* (the Practice Standard).