



## APEGA Discipline Committee Decision

APEGA members and permit holders are required to practise engineering and geoscience skillfully, ethically, and professionally. They must meet all prescribed requirements and follow all applicable legislation and regulations, such as the [Engineering and Geoscience Professions Act, General Regulation, Code of Ethics, and APEGA bylaws](#). Investigation and enforcement—followed by, when necessary, judgment based on a fair hearing of the facts—are requirements of ours in service to the public interest. For more information, please visit [www.apega.ca/enforcement/discipline-decisions](http://www.apega.ca/enforcement/discipline-decisions).

**Date of Hearing: November 1, 2 and December 20, 2017**

**Date of Decision: June 25, 2018**

**APEGA Discipline Case Number: 17-001-FH**

### **IN THE MATTER OF A HEARING OF THE DISCIPLINE COMMITTEE OF THE ASSOCIATION OF PROFESSIONAL ENGINEERS AND GEOSCIENTISTS OF ALBERTA**

Pursuant to the *Engineering and Geoscience Professions Act*,  
being Chapter E-11 of the Revised Statutes of Alberta 2000  
**In the Matter of the Conduct of Mr. Richard Balliant, P.Eng**

Under the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11, (the “EGP Act”) a hearing into this matter was held by a Hearing Panel of the Discipline Committee on November 1, 2 and December 20, 2017. The hearing addressed the conduct of Richard Balliant, P. Eng. (the “Member”).

The hearing dealt with the following allegations of unprofessional conduct:

1. On or about January 16, 2012, the Member improperly authenticated a number of Schedules required to be submitted in accordance with the Alberta Building Code (“the Code”) in relation to Rosaterra Suites, a 12-unit condominium project in Red Water, Alberta (“the Project”) particulars of which include one or more of the following:
  - a. Signed and stamped Schedule A-1, *Letter of Commitment by the Owner and Coordinating Registered Professional*, without understanding his responsibilities as the Coordinating Professional in relation to the Project;
  - b. Signed and stamped Schedule A-2, *Confirmation of Commitment by Owner and Registered Coordinating Professional of Record*, in which he took on the responsibilities of the Registered Professional of Record in architecture, structural engineering, mechanical engineering, electrical engineering, and geotechnical engineering, all disciplines in which he was not qualified;
  - c. Signed and stamped Schedule B-1, *Letter of Commitment by the Registered Professional of Record*, and Schedule B-2, Summary of Design and Field Review



## APEGA Discipline Committee Decision

Requirements, in which he:

- i. Falsely indicated that he had prepared the architectural, structural engineering, mechanical engineering, electrical engineering, and geotechnical engineering plans for the Project;
  - ii. Gave assurances that the components described on the plans, specifications and other supporting documents complied with the Code, without undertaking any adequate review; and
  - iii. Purported to give assurances that the design of the architectural, structural, mechanical and geotechnical engineering complied with the Code, and undertook to be responsible for field reviews in each of these disciplines, without having the competence necessary to do so;
- d. Signed and stamped Schedule C-1, *Assurance of Compliance of Coordinating Professional*, in which he:
- i. Falsely gave his assurance that he had fulfilled his obligations for coordinating the necessary field reviews; and
  - ii. Confirmed that the Project complied with the Code and the plans, specifications and other documents submitted in support of the application for the Project's building permit, without having undertaken any or any adequate review;
- e. Signed and stamped Schedule C-2, *Assurance of Professional Field Review and Compliance Schedules ("C-2 Schedules")*, in which he:
- i. Falsely stated that he had fulfilled his obligations for field review as outlined in the Code;
  - ii. Confirmed that the components of the Project opposite his initials in Schedule B-2 substantially comply with the applicable requirements of the Code, without undertaking any or any adequate review;
  - iii. Purported to give assurances that the components of the Project relating to architectural, structural, mechanical electrical and geotechnical engineering complied with the Code, without having the competence to make such assurances.

It was alleged that the above referenced conduct constituted unprofessional conduct as set out in section 44(1) of the EGP Act and contravened one or more of Rules of Conduct 1, 2, 3 and 4 of APEGA's Code of Ethics, and/or was inconsistent with APEGA's Practice Standard for Authenticating Professional Documents.



## APEGA Discipline Committee Decision

The role of the Hearing Panel was to determine whether the charges were factually proven and, if so, whether the proven conduct was unprofessional conduct under the EGP Act.

The Hearing Panel determined that all the charges had been proven on a balance of probabilities and that this proven conduct constituted unprofessional conduct.

The Hearing Panel heard evidence from seven witnesses, including the Complainant, R.M.

### **Decision on the Charges of Unprofessional Conduct**

1. The Hearing Panel found that the charges of unprofessional conduct made in the Notice of Hearing were very limited in scope. They all related to Schedules required under the Code which were signed and stamped by the Member on or about January 16, 2012. The Member acknowledged that he signed and stamped the Schedules and provided them to E.G., the building inspector for the Project, prior to a requested inspection of the Project.
2. On February 15, 2012, E.G. refused to accept the Schedules provided by the Member because he was not satisfied that the Member had the qualifications and professional involvement to issue the Schedules and because the Schedule A and Schedule B documents submitted were dated after the construction was complete.
3. At the hearing, the Member acknowledged that he signed and stamped Schedules A-1, A-2, B-1, B-2, C-1, and C-2 and that he “made a mistake” in signing all the Schedules; however, the Member disputed the allegation that this “mistake” constituted unprofessional conduct.

### The Signing of the Schedules

4. The Hearing Panel reviewed the Schedules signed by the Member. These made clear that the Member and Bal-Comp Engineering (“the Member’s Company”) signed and stamped Schedules A-1, A-2, B-1, B-2, C-1, and C-2. In providing these Schedules, the Member certified that he was the Registered Professional of Record and had assumed responsibility for all aspects of the Design and Field Review requirements of the Project including architectural, structural, mechanical, electrical and geotechnical. He also certified that the design of all the components complied with the Code and undertook to be responsible for field review of all of the components.
5. In Schedule C-1, the Member provided the Assurance of Compliance of the Coordinating Registered Professional. In this Schedule, the Member certified that he had fulfilled his obligation for coordinating all field reviews and certified that the project complied with the Code requirements and with the plans, specifications and other documents submitted in support of the application for the building permit. This Schedule was to be submitted after the completion of the Project and before permission to occupy was provided by the authority having jurisdiction.
6. In Schedule C-2, the Member provided the Assurance of Professional Field Review



## APEGA Discipline Committee Decision

and Compliance on behalf of all the registered professionals of record confirming that all required field reviews had taken place and that the components of the project compiled with the Code and the plans, specifications and other documents submitted in support of the application for a building permit.

7. These documents were submitted to E.G. on February 1, 2012 in order to request the final inspection of the Project. On February 15, 2012, E.G. refused to accept the Schedules because he was not satisfied that the Member had the qualifications and professional involvement to issue the Schedules and because the Schedule A and Schedule B documents submitted were dated after the construction was complete.
8. The evidence at the hearing made clear that:
  - a. The Member acknowledged that he did not prepare and was not qualified to prepare or review the architectural, structural engineering, mechanical engineering, electrical engineering and geotechnical engineering plans for the Project.
  - a. The Member was not the Registered Professional of Record for the Project.
  - b. The Member and the Member's Company had no involvement with the Project for several years while the Project was under construction. The Member was therefore not in a position to conduct any of the field reviews referred to in the Schedules that he signed.
  - c. There was nothing in the signed and stamped Schedules or in the covering emails provided to E.G. to indicate that they were qualified or limited in any way. They were presented as the required Schedules necessary to establish substantial completion of the Project prior to a final inspection.
9. The Hearing Panel found that the factual allegations in the Notice of Hearing had been proven on a balance of probabilities, in particular:
  - a. The Schedules authenticated by the Member on or about January 16, 2012 were improperly authenticated and submitted as alleged in Allegation 1;
  - b. The Member signed and stamped the Schedule A-1, *Letter of Commitment by the Owner and Coordinating Registered Professional*, when he knew or should have known that Mr. Brandt was the Coordinating Registered Professional and had submitted a Schedule A-1 in September 2007 and when he should have known that he had not acted as the Coordinating Registered Professional on the Project. In taking these actions, he demonstrated that he did not understand the responsibilities of the Coordinating Registered Professional that he was now assuming after construction of the project as alleged in Allegation 1a;
  - c. It is clear that as alleged in Allegation 1b, the Member signed and stamped Schedule A-2, *Confirmation of Commitment by Owner and by Registered Professional of Record*, in which he took on the responsibilities of the Registered



## APEGA Discipline Committee Decision

Professional of Record in architecture, structural engineering, mechanical engineering, electrical engineering, and geotechnical engineering when he was not qualified to do so;

- d. As alleged in Allegation 1c, it is clear that when the Member signed and stamped Schedule B-1, *Letter of Commitment by the Registered Professional of Record* and Schedule B-2, *Summary of Design and Field Requirements*, he was:
  - i. falsely indicating that he had prepared the architectural, structural engineering, mechanical engineering, electrical engineering, and geotechnical engineering plans for the Project;
  - ii. giving assurances that the components described on the plans, specifications, and other supporting documents complied with the Code when he had not taken any or any adequate review of the documents;
  - iii. purporting to give assurances that the design of the architectural, structural, mechanical, electrical and geotechnical engineering complied with the Code and undertaking to be responsible for field reviews in each of these disciplines without having the competence to do so and without having been involved with project during the construction phase;
- e. As alleged in Allegation 1d, the Member signed and stamped Schedule C-1, *Assurance of Compliance of Coordinating Registered Professional* in which he:
  - i. falsely gave his assurance that he had fulfilled his obligations for coordinating the necessary field reviews;
  - ii. confirmed that the Project complied with the Code and the plans, specifications and other documents submitted in support of the application for the Project's building permit, without having undertaken any or any adequate review;
- f. As alleged in Allegation 1e, the Member signed and stamped Schedule C-2, *Assurance of Professional Field Review and Compliance Schedules ("C-2 Schedules")* in which he:
  - i. falsely gave his assurance that he had fulfilled his obligations for field review as outlined in the Code;
  - ii. confirmed that the components of the Project opposite his initials in Schedule B-2 substantially comply with the applicable requirements of the Code, without undertaking any or any adequate review;
  - iii. purported to give assurances that the components of the Project relating to architectural, structural, mechanical, electrical and geotechnical engineering complied with the Code, without having the competence to



## APEGA Discipline Committee Decision

make such assurances.

10. As a result, the Hearing Panel went on to determine if the proven factual allegations were serious enough to constitute unprofessional conduct.

### Do the Proven Factual Allegations Constitute Unprofessional Conduct

11. The Hearing Panel found that the proven factual allegations constituted unprofessional conduct.
12. At the hearing, the Member presented seven arguments in support of his position that his mistake in signing the Schedules did not constitute unprofessional conduct.
13. First, the Member argued that his conduct did not constitute unprofessional conduct because the Schedules he signed were not accepted or relied upon by E.G. and the problem was resolved over the next 18 months by getting appropriate professionals to sign the architectural, structural engineering, mechanical engineering, and geotechnical engineering plans and assurances. Therefore, the Member's "mistake" did not have any serious impact.
14. The Hearing Panel accepted that the impact of the Schedules was limited because E.G. did not accept or rely on the Schedules and that ultimately, the appropriate professionals in each discipline provided the required signed and stamped Schedules. However, this did not excuse the serious error made by the Member in preparing and submitting the Schedules. In signing and stamping these Schedules, the Member was providing professional certifications that he knew or should have known he was not qualified to provide and he certified information regarding field reviews that he knew he had not done or supervised.
15. The EGP Act and the Practice Standard for Authenticating Professional Documents make clear the important professional responsibility involved in signing and stamping documents. The Code makes clear the fundamental importance of the required Schedules to the review and approval of projects. The actions taken by the Member in signing these Schedules and submitting them to E.G. showed a serious misunderstanding or indifference by the Member in respect to his professional duties regarding the Schedules required for the Project.
16. Second, the Member suggested that he signed and stamped the Schedules as a temporary measure to facilitate the inspection by E.G. and to enable further funds to be advanced for the Project and he always understood that final Schedules would need to be signed by the appropriate professionals.
17. The Hearing Panel did not accept this submission. The Code does not authorize temporary or interim Schedules. The Schedules in question were not qualified or limited in any way and the Member did not say anything to E.G. about further final Schedules that would be provided later. The Schedules submitted suggested that the Project was substantially completed and that all appropriate field reviews had been completed. If the Member believed that it was



## APEGA Discipline Committee Decision

appropriate to sign and stamp the Schedules as a temporary measure, he showed a fundamental misunderstanding of the purpose and importance of the Schedules under the Code.

18. Third, the Member submitted that he prepared and provided E.G. with a detailed package of information setting out 21 Schedules of information so E.G. would have detailed information including architectural design, site grading/utilities drawings, electrical drawings, mechanical drawings, structural drawings, landscaping drawings, pile revisions – foundations, photos showing various stages of the construction process and a geotechnical report so that E.G. would have detailed information about the other professionals involved in the project.
19. E.G. acknowledged that he received a copy of the package of documents from the Member. However, the covering letter to these documents stated that the Member's Company had completed a review of the Project in accordance with the Code and enclosed all the Schedules signed and stamped by the Member.
20. It was not E.G.'s role to review or evaluate the detailed information that the Member provided to him. E.G. required properly signed and stamped Schedules to ensure compliance with the Code and to ensure that there had been appropriate professionals designing the Project and conducting the necessary field reviews. The detailed information provided by the Member was not a substitute for appropriate Schedules from the Registered Professionals of Record.
21. Fourth, the Member submitted that the mistake had been fixed and the final Schedules and assurances had been provided by the appropriate professionals at least six months prior to the complaint that was filed by R.M. in January 2014.
22. The fact that the Schedules provided by the Member were not relied upon and were ultimately replaced by the appropriate professionals did not change the serious nature of the improper Schedules provided by the Member. Once potential unprofessional conduct is drawn to the attention of the Investigative Committee, it had a duty to investigate that conduct.
23. Fifth, the Member suggested that the complaint by R.M. was an attempt to force him to pay money to R.M. that he and his company did not owe. The Member suggested that R.M.'s conduct and motives were improper.
24. The Hearing Panel recognized that the Member felt R.M. had ulterior motives. The Hearing Panel also noted that once R.M. had settled his financial claim against the Member, R.M. withdrew his complaint. However, the issue of the improperly signed Schedules was also part of R.M.'s complaint and it raised an issue of potential unprofessional conduct in respect to the Schedules. Once this matter was brought to the attention of the Investigative Committee, the Investigative Committee had a duty to investigate this allegation to determine if there was evidence of unprofessional conduct that justified referring the allegation to a hearing. This duty existed despite R.M.'s motives in raising the allegation.
25. Sixth, the Member participated in a mediation that settled his dispute with R.M. and resulted in R.M. withdrawing his complaint against the Member; however, despite this resolution, the Investigative Committee chose to refer the issues set out in the Notice of Hearing to a



## APEGA Discipline Committee Decision

hearing.

26. The Member's evidence on this submission was confirmed by R.M. and the records of the Investigative Committee. However, the fact that R.M. withdrew his complaint and refused to provide further information did not affect the right or the duty of the Investigative Committee to investigate the allegations concerning the Schedules signed and stamped by the Member. The Investigative Committee had the right to continue its investigation and to conclude that there was sufficient evidence to justify referring the allegations concerning the Schedules to a hearing.
27. Lastly, the Member submitted that the complaint and the subsequent investigation process (including an interim suspension from practice for a period of time), and the referral to this hearing have caused serious stress for the Member, his company and his family and severely damaged his financial position for what was a single mistake that had been corrected.
28. The Hearing Panel recognized and accepted this evidence. However, this evidence was not relevant to determine if the allegations had been proven and if they constituted unprofessional conduct. Instead, this evidence was relevant for the Hearing Panel in determining the appropriate sanction.

### Conclusion on Unprofessional Conduct

29. The Hearing Panel recognized that the hearing concerned a single set of actions which resulted in the Member signing and stamping the Schedules of the Project on January 16, 2016. The Member suggested that he intended the Schedules to be an interim means to obtain the inspection and that he never intended to suggest that they were the final Schedules. However, nothing in the Schedules placed any limitation on the Schedules or suggested they were interim.
30. The Member also emphasized he was dealing with a difficult situation and that he understood that the Schedules had to be signed before E.G. would do an inspection. He suggested that he always knew that final Schedules were required from the appropriate professionals and he hoped by signing the Schedules and obtaining the inspection, further funds could be obtained to complete the Project.
31. In the opinion of the Hearing Panel, the Member made a serious error in judgment in signing these Schedules and allowing them to be provided to E.G. He knew or should have known that he was not qualified to sign and stamp Schedules regarding areas of architecture and engineering that were outside of his experience and qualifications. He also knew that he had not been involved in any of the field reviews for the Project and had no basis for certifying that these field reviews had been carried out.
32. It is a basic professional requirement of the practice of engineering that a professional engineer will only stamp and authenticate documents where the Professional Engineer is competent to do so and has the necessary knowledge concerning the plans or documents that are being signed and stamped. The public relies upon the professionalism of the engineering profession to ensure the safety of buildings that are constructed. The integrity of



## APEGA Discipline Committee Decision

the profession of engineering in the eyes of the public depends upon maintaining the public's trust.

33. In the opinion of the Hearing Panel, these proven breaches were serious and constituted unprofessional conduct under section 44(1) of the EGP Act. In particular, this proven conduct matter fell well below the standard required for a professional engineer in Alberta, was detrimental to the best interests of the public, displayed a lack of knowledge or a lack of skill or judgment in the practice of the profession and was conduct that harmed or tended to harm the standing of the profession generally.

### **DECISION OF THE HEARING PANEL ON SANCTIONS**

Date: February 26, 2019

The Hearing Panel reconvened in November 2018 to discuss the appropriate sanctions. The Hearing Panel considered written submissions on sanction made by the Investigative Committee and the Members representative, C.L.

### **Specific Orders made by the Hearing Panel**

- a) The Member shall be reprimanded for his conduct and the Discipline Committee's written decisions in determining unprofessional conduct and in setting these sanctions shall serve as the reprimand.
- b) The Member shall provide evidence to the Director of Enforcement within one year of being served with a copy of the Discipline Committee's decision that he has successfully completed the National Professional Practice Exam. The course and exam will be undertaken at his own cost.
- c) Until the Member has complied with order (b) above, the Member's entitlement to engage in the practice of engineering shall remain subject to the following conditions:
  - i. The Member shall not serve in the role of Coordinating Registered Professional as referred to by section 2.4.4.1(1) of the Alberta Building Code;
  - ii. The Member shall not authenticate plans, specifications, reports or documents of a professional nature with respect to areas of practice in which he is not qualified and competent, including the following disciplines:
    1. electrical engineering;



## APEGA Discipline Committee Decision

2. mechanical engineering;
3. structural engineering;
4. architecture; or
5. geotechnical engineering.

and upon having complied with order (b) above, the Member shall continue to refrain from practicing or purporting to practice beyond the scope of his professional competence and qualifications.

- d) The Member shall pay a fine of \$2500.
- e) The Member shall pay 50% of the hearing costs up to a maximum amount of \$38,287.62.
- f) The fines and costs referred to in paragraph (d) and (e) above shall be payable as follows:
  - i. The fine and costs shall be paid in equal monthly installments over a period of 48 months;
  - ii. The first installment for the fine and costs will be due within 60 days from the date that the Discipline Committee's decision on sanction is served on the Member; and
  - iii. when submitting his first payment, the Member shall submit post-dated cheques for the remainder of the installments to the Director of Enforcement;
- g) Should the Member require an extension to the deadline for the payments referred to above in paragraph (f), or should he wish to vary the payment schedule, he may apply to the Director of Enforcement for an extension or variation. If such an application is made, the Member shall provide the Director of Enforcement with the reason for his request, his proposal to extend the deadline, or his proposal to vary the payment schedule, and any other documentation requested by the Director of Enforcement.
- h) The fine and costs referred to in paragraph (d) and (e) above are a debt owing to APEGA.
- i) If the Member fails to comply with the orders set out in paragraphs (b), (c), (d), (e), or (f) his registration will be suspended until he complies.



## APEGA Discipline Committee Decision

- j) This Discipline Committee's decision shall be published or circulated as follows:
- i. A written summary of this decision shall be published in the PEG, in a matter that identifies the Member; and
  - ii. If any member of the public inquires with APEGA as to whether the Member was the subject of a discipline hearing or was found guilty of any charges under the *Engineering and Geosciences Professions Act*, APEGA shall be at liberty to provide a complete copy of the Hearing Tribunal's decision.

### Reasons for these Orders

The Hearing Panel found that a reprimand was appropriate in this case because the proven allegations were very serious in nature.

The Hearing Panel ordered the Member successfully complete the National Professional Practice Exam because it should have been obvious to the Member that he was not qualified or in a position to sign the Schedules and that it was wrong to submit such Schedules to the inspector as "interim schedules". While the Member agreed that it was a mistake, he did not seem to appreciate the seriousness of what he had done. This requirement for the Member to complete the National Professional Practice Exam ensured that the Member would demonstrate his understanding of the required professional and ethical standards for a professional engineer.

The purpose of the conditions placed on the Member's registration in Order "c" was appropriate to provide assurance to the public and the profession that the Member would not engage in similar unprofessional conduct in the future. These conditions did not create an undue burden for the Member because acting as the Coordinating Registered Professional or authenticating plans, specifications, reports or documents of a professional nature were not a normal part of the Member's practice. The restriction on authentication applied only to areas of practice in which the Member acknowledged that he was not qualified to authenticate documents.

The Member was ordered to pay \$2500 to make clear to the Member, the profession and the public that improperly stamping and authenticating documents and submitting them to a regulatory authority in areas of practice which a Professional Engineer is not qualified to practice is unprofessional conduct and will be subject to significant sanctions. The fine of \$2500 was appropriate in the circumstances and was not so large as to impose a significant financial burden on the Member.

In determining the amount of costs required to be paid by the Member, the Hearing Panel considered the Member's difficult financial circumstances. However, the hearing arose because of the unprofessional conduct of the Member. It proceeded to a contested hearing that extended over four days on an issue where the unprofessional conduct was clear and involved conduct that the Member admitted was a "mistake". Therefore, the Member should be responsible for payment of a portion of the costs (50%) of the hearing up to a maximum of \$38,827.68. In order for the Member to be able



## APEGA Discipline Committee Decision

to comply with the costs and fine order, the Hearing Panel made it payable in monthly instalments over a 48-month period, with the option for the Member to request an extension or variation on the orders.

Lastly, the Hearing Panel ordered that the Discipline Committee's decision be published on a named basis.

Signed,

**TOM GREENWOOD-MADSEN, P.ENG.**

Panel Chair, APEGA Discipline Committee

**DOUG COX, P.ENG., FEC, FGC (Hon)**

Panel Member, APEGA Discipline Committee

**ROBERT SWIFT, P.ENG.**

Panel Member, APEGA Discipline Committee

**MURIEL DUNNIGAN**

Public Member, APEGA Discipline Committee

### **DECISION OF THE APPEAL PANEL**

The Member appealed the Discipline Committee's merit and sanction decisions under s. 67 of the EGP Act, to the Appeal Board. On January 6, 2020, the Appeal Board dismissed the Member's appeal and upheld the merit and sanction decisions of the Disciplinary Committee.