



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.

Date of Hearing: August 30, 2018

Date of Decision: February 14, 2019

APEGA Discipline Case Number: 17-015-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 Douglas Mackie, P.Eng.

Under the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11, (the “EGP Act”) a hearing into this matter was held on August 30, 2018 by a Hearing Panel of the Discipline Committee to address the conduct of Mr. Douglas Mackie, P. Eng. (the “Member”).

The hearing dealt with the following allegations of unprofessional conduct:

1. The Member contravened one or more conditions imposed on his registration by the Practice Review Board (the “PRB”) on August 6, 2014, particulars of which included the following:
 - a. On or about August 6, 2014, the Member was notified that his application for reinstatement as a Professional Engineer was granted subject to the following conditions:
 - i. You may offer or provide engineering services as an employee to an APEGA permit holder that is licensed to practice engineering; and
 - ii. You may not offer or provide engineering services independently to others who are not engineering permit holders without the involvement of a professional engineer who reviews and accepts responsibility for your work and stamps such work if that is required.
 - b. Between August 7, 2014 and December 12, 2016, the Member stamped one or more of the following documents in contravention of the conditions imposed on his registration:



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- i. On or about August 7, 2014, stamped a letter regarding a review of the foundation drainage of a project located at Address 1, Calgary, Alberta;
- ii. On or about August 7, 2014, stamped a letter regarding a review of the retaining walls of a project located at Address 1, Calgary, Alberta;
- iii. On or about September 23, 2014, stamped a Form A: Design and Field Review of Construction for a project located at Address 2, Calgary, Alberta;
- iv. On or about September 23, 2014, stamped drawings of a Tall Wall and foundation design and lateral bracing for a project located at Address 2, Calgary, Alberta;
- v. On or about October 7, 2014, stamped a review of a non-combustible sidewall and cantilever construction for a project located at Address 3, Calgary, Alberta;
- vi. On or about October 24, 2014, stamped the following drawings for a project located at Address 4, Calgary, Alberta:
 1. The garage foundation; and
 2. Tall Wall;
- vii. On or about October 30, 2014, stamped a review of a non-combustible sidewall and cantilever construction for a project located at Address 3, Calgary, Alberta;
- viii. On or about November 14, 2014, stamped a letter regarding the adequacy of the Tall Wall framing of a project located at Address 5 and Address 6, Calgary, Alberta;
- ix. On or about November 14, 2014, stamped a letter regarding a missing floor joist review of a project located at Address 5, Calgary, Alberta;
- x. On or about November 19, 2014, stamped a drawing of the garage foundation for a project located at Address 4, Calgary, Alberta;
- xi. On or about December 10, 2014, stamped a drawing of the retaining wall details for a project located at Address 7, Calgary, Alberta;
- xii. On or about December 16, 2014, stamped a letter regarding the adequacy of the framing of a project located at Address 8, Calgary, Alberta;
- xiii. On or about January 18, 2015, stamped a letter regarding the structural adequacy of the framing of a project located at Address 3, Calgary, Alberta;



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- xiv. On or about February 24, 2015, stamped a letter regarding the adequacy of the installation of exterior wall concrete panels at a property located at Address 9, Calgary, Alberta;
- xv. On or about March 31, 2015, stamped a letter regarding the structural adequacy of a project located at Address 10, Calgary, Alberta;
- xvi. On or about April 7, 2015, stamped a letter regarding the adequacy of the framing of a project located at Address 1, Calgary, Alberta;
- xvii. On or about July 14, 2015, stamped a letter regarding the adequacy of the framing of a project located at Address 4, Calgary, Alberta;
- xviii. On or about August 27, 2015, stamped a Schedule C-2: Assurance of Professional Field Review and Compliance for a project located at Address 11, Calgary, Alberta;
- xix. On or about September 8, 2015, stamped a main floor beam design for a project located at Address 12, Calgary, Alberta;
- xx. On or about October 5, 2015, stamped a footing design for a project located at Address 12, Calgary, Alberta;
- xxi. On or about October 6, 2015, stamped a letter regarding the adequacy of the garage door headers for a project located at Address 4, Calgary, Alberta;
- xxii. On or about October 19, 2015, stamped a letter regarding the adequacy of the framing of a project located at Address 1, Calgary, Alberta;
- xxiii. On or about October 22, 2015, stamped drawings of the garage foundation for a project located at Address 12, Calgary, Alberta;
- xxiv. On or about October 22, 2015, stamped drawings of the garage foundation for a project located at Address 13, Calgary, Alberta;
- xxv. On or about November 4, 2015 stamped the following for a project located at Address 14, Calgary, Alberta:
 - a. Radon Drawing;
 - b. A letter regarding the foundation; and
 - c. Drawing of the Temporary Shoring Detail;
- xxvi. On or about February 5, 2016, stamped a letter regarding the adequacy of the retaining walls of a garage for a project located at Address 7, Calgary, Alberta;



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- xxvii. On or about February 22, 2016, stamped drawings for the retaining wall of a project located at Address 14, Calgary, Alberta;
 - xxviii. On or about March 23, 2015, stamped a Letter of Commitment for Design and Field Review of a Retaining wall for a project located at Address 14, Calgary, Alberta;
 - xxix. On or about April 13, 2016, stamped a letter regarding the structural adequacy of a project located at Address 15, Calgary, Alberta;
 - xxx. On or about September 19, 2016, stamped an Assurance of Engineering Field Review and Compliance regarding the review of retaining walls for a project located at Address 1, Calgary, Alberta;
 - xxxi. On or about December 12, 2016, stamped a letter regarding the structural adequacy of an aluminum column located at Address 16, Calgary, Alberta.
2. The Member failed to comply with his duty to cooperate with APEGA's investigation into the complaint received from the Chair of the PRB, dated January 26, 2017, alleging that the Member had violated a condition on his scope of practice, and/or failed to provide a response to the complaint particulars of which include:
- a. On or about January 27, 2017 the Member was notified that a complaint had been received by the PRB that he had violated a condition on his scope of practice (the "Complaint");
 - b. On or about March 6, 2017, the APEGA Staff Investigator (the "Investigator"), notified the Member that a Panel had been appointed to investigate the Complaint and requested a response to the allegation that the Member authenticated a document relating to a front entrance column for a residential property located at Address 15, by March 31, 2017;
 - c. The Member did not respond and on or about April 5, 2017, the Investigator sent a further letter to the Member enclosing a Notice to Produce and requesting a response by April 14, 2017;
 - d. On April 6, 2017, the Member submitted an email, copied to the Investigator, requesting an extension until April 30, 2017, which was granted by the Investigator;
 - e. The Member did not respond, and on or about May 9, 2017, the Investigator sent a further letter to the Member requiring a response by May 15, 2017, and notifying him that failure to respond by the deadline may constitute unprofessional conduct;
 - f. On April 28, 2017, the Member requested a further extension so that he could obtain assistance from legal counsel, which was granted by the Investigator;



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- g. On May 24, 2017, the Investigator left the Member a voice mail message requesting a response;
- h. The Member did not respond and on May 31, 2017, the Investigator sent the Member a further letter notifying him that the investigation was being expanded to include an allegation that he failed to respond promptly and appropriately to the request for a response by the deadline noted, and notifying him that he was required to respond by June 6, 2017;
- i. On June 28, 2017, the Member contacted the Investigator and advised him that he had sent a reply to APEGA on two occasions and after the Investigator notified him that no response had been received, the Member agreed to re-send his response;
- j. Following the telephone call on June 28, 2017, the Member did not provide a written response and did not contact the Investigator by telephone;
- k. On August 11, 2017, a further letter was sent to the Member confirming that no response had been received, that additional documents had been obtained from the City of Calgary that appeared to have been stamped by the Member in violation of the restrictions on his registration, that the Investigative Committee would be considering an interim suspension, and provided the Member with an opportunity to respond by August 30, 2017; and
- l. The Member never provided a response to the Complaint and did not respond to the additional concerns raised in the letter to the Member dated August 11, 2017.

It was further alleged that the above referenced conduct constituted unprofessional conduct as set out in section 44(1) of the EGP Act, section 32.1 of the *Bylaws*, and contravened one or more of the Rules of Conduct 3, 4, and 5 of the *APEGA Code of Ethics*.

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

The Member did not attend the hearing on August 30, 2018. The Hearing Panel considered evidence presented by the Investigative Committee and the APEGA Director of Enforcement regarding correspondence with the Member. The Hearing Panel found that he had been served in accordance with the Regulation and was notified of the time and purpose of the hearing, and therefore the Hearing Panel decided to proceed in his absence. On the merits, the Hearing Panel heard from two witnesses. The Hearing Panel found that Charge 1 and Charge 2 had been proven on a balance of probabilities and that the proven conduct constituted unprofessional conduct.

Background

The Member's registration with APEGA lapsed due to non-payment of fees and his registration was cancelled in 2011. He submitted an application for reinstatement on April 10, 2014.

The PRB considered his application for reinstatement in July 2014 and imposed two conditions on the Member's practice, which were communicated in a letter to the Member dated August 6, 2014 (the "Reinstatement Letter"). The conditions were that the Member could offer engineering services as an employee through an APEGA permit holder that was licensed to practice



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engineering and he could not offer engineering services independently to others without the involvement of a Professional Engineer who had to accept responsibility for the work and stamp such work, if required.

The Reinstatement Letter provided two options for the Member to have those conditions lifted. He could provide two references from Professional Engineers or after a year, he could submit some other information about professional activities that he was engaged in, during the one-year period.

In 2016, the PRB received information that the Member had stamped documents in breach of conditions imposed on his registration.

Discussion and Consideration of the Charges

Charge 1: The Member contravened one or more conditions imposed on his registration by the Practice Review Board

The Hearing Panel reviewed the evidence, which showed that the Member contravened the conditions imposed on his registration by the PRB on August 6, 2014 on at least 34 occasions. More specifically, based on this evidence, the Hearing Panel found that between August 7, 2014 and December 12, 2016, the Member stamped the documents listed in Charge 1(b)(i) to (xxxi), in contravention of the conditions imposed on his registration.

The Reinstatement Letter included two options for the Member to have the conditions lifted. The Hearing Panel found there was no evidence or record that the Member made any effort to have the conditions removed and no evidence or record of the Member contacting APEGA to raise any questions or concerns about the conditions imposed on his registration.

The Hearing Panel noted that there was no permit number on the documents that were stamped by the Member. Consequently, the Hearing Panel accepted, on a balance of probabilities, that the Member was not working for an APEGA permit holder at the time and there was no evidence that there was any objective review by another professional member who took responsibility for and provided engineering oversight. Therefore, the Hearing Panel found that the factual allegations contained in Charge 1 were proven.

By engaging in this conduct, the Member breached Rule of Conduct 3 of the APEGA *Code of Ethics*, which states that a Professional Engineer “shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.” As per Rule of Conduct 3, Professional Engineers in Alberta are required to conduct themselves with integrity, which includes complying with conditions that are imposed on them by their regulator.

It is a basic professional requirement of the practice of engineering that a Professional Engineer will abide by any conditions placed on their registration. Conditions are also a way for APEGA to protect the public, and if a member does not abide by the conditions imposed on their registration, that is detrimental to APEGA’s ability to protect the public and is detrimental to the public interest.



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

A member of a regulated profession cannot ignore conditions imposed on them by their regulator. The Member breached Rule of Conduct 5 of the *APEGA Code of Ethics*, which states that a Professional Engineer shall "uphold and enhance the honour, dignity and reputation of their profession." The Member's conduct was detrimental to the best interests of the public. His conduct in stamping documents in contravention of the conditions imposed on his registration multiple times over a more than two-year period, was unprofessional conduct and his conduct harmed the standing of the profession generally.

The Member's conduct clearly breached Rules of Conduct 3 and 5 of the *APEGA Code of Ethics*. As a result, the Hearing Panel concluded that the factual allegations were serious enough to constitute unprofessional conduct under section 44(1) of the EGP Act. In the opinion of the Hearing Panel, the Member's conduct in this matter fell well below the standard required for a Professional Engineer in Alberta.

Charge 2: The Member failed to comply with his duty to cooperate with APEGA's investigation into the complaint received from the Chair of the PRB

The Hearing Panel reviewed all the evidence, and specifically the evidence that detailed the efforts the Investigator made in contacting and notifying the Member between January 2017 and August 2017. This evidence included a Notice to Produce from April 5, 2017, in which the Investigator notified the Member that a failure to respond may constitute unprofessional conduct.

The Hearing Panel accepted the Investigator's evidence that he never received a response from the Member and the Member never provided a response to the complaint and did not respond to the additional concerns raised in the letter of August 11, 2017.

The Hearing Panel also accepted the Investigator's evidence that the Investigator's correspondence (letters and emails) were sent to the physical address and email address located on the Member's personal record held within the APEGA database and contained on his application for reinstatement.

The Hearing Panel noted that the Member did, on two occasions, respond to emails from the Investigator that were sent to the same email address APEGA had emailed the Member in January 2018 and the same email address that the Member accepted the Microsoft Outlook invitation for the hearing. The Hearing Panel further noted that on one occasion, the Member answered a telephone call from the Investigator at the number he provided on his application for reinstatement.

As a result, the Hearing Panel found that the Member received the correspondence from the Director of Investigations and the Investigator between January 2017 and August 2017 but failed to provide a response as requested.



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The Hearing Panel found that the factual allegations contained in Charge 2 were proven, and accordingly the Hearing Panel considered whether the proven Charge 2 constituted unprofessional conduct or unskilled practice.

In the opinion of the Hearing Panel, the Member's failure to comply with the duty to cooperate with his regulator was conduct that fell well below the standard required for a Professional Engineer in Alberta. Given the importance of responding to communications from APEGA, his conduct was clearly unprofessional in the carrying out of his duties and obligations undertaken in the practice of the profession of engineering.

The ability of a regulatory body to investigate complaints is vital to the concept of self-regulation of a profession and the refusal of a member to cooperate in an investigation and failing to respond is not only a very serious matter but is unacceptable behaviour. There is a duty for a member of APEGA to cooperate with the regulator, and in this case, the Member breached that duty.

The Hearing Panel found that the Member did not cooperate with APEGA's staff members in relation to the investigation and failed to respond, thus violating section 32.1 of the Bylaws and Rules of Conduct 3 and 4 of the APEGA *Code of Ethics*.

Section 32.1 of the APEGA Bylaws, provides:

Professional members, licensees, permit holders [...] shall respond promptly and appropriately to any duly served communication of a regulatory nature received from the Association that contemplates a reply.

Rules of Conduct 3 and 4 of the APEGA *Code of Ethics* state that:

3. Professional engineers [...] shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.

4. Professional engineers [...] shall comply with the applicable statutes, regulations and bylaws in their professional practices.

For these reasons, the Hearing Panel found that Charge 2 had been proven by the Investigation Committee and found that the Member's lack of judgment and skill was serious enough to constitute unprofessional conduct under section 44(1) of the EGP Act.

Decision of the Hearing Panel on Sanctions

Date: July 31, 2019

The sanction portion of the hearing proceeded by written submissions. Written submissions were received from the Investigative Committee but no submissions on sanctions were provided by the Member.



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The Hearing Panel convened on May 31, 2019 to consider the question of sanctions. After considering the submissions of the Investigative Committee, the Hearing Panel ordered the following sanctions:

- a. The Member's registration is cancelled immediately;
- b. The Member must pay a fine of \$2500.00 which is due within 60 days following the date on which the decision on sanctions is served on him;
- c. The Member will pay 100% of the costs of the hearing subject to the following terms:
 - i. The Member will pay the costs in equal monthly installments over a period of 24 months commencing 30 days following the date on which the sanction decision is served on him;
 - ii. The Member may instead elect to pay the full costs in a lump sum payment within 30 days following the date on which the sanction decision is served on him; and
 - iii. If the Member fails to make three successive payments of the costs order, the entire amount of the costs will become due immediately and will be owed by the Member to APEGA;
- d. The fine and costs ordered are a debt due to APEGA;
- e. The Member will not be eligible for reinstatement until:
 - i. He has successfully completed the National Professional Practice Exam;
 - ii. He has paid the fine;
 - iii. He has paid all costs of the hearing in accordance with the sanction decision;
 - iv. He successfully makes an application for reinstatement in accordance with section 75 of the EGP Act and section 47 of the General Regulations;
- f. The Hearing Panel's decision shall be published and circulated as follows:
 - i. A summary of the decision shall be published in the PEG Magazine, and placed on the APEGA website in a manner that identifies the Member;
 - ii. A full copy of the decision may be placed on the APEGA website; and



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- iii. 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 EGP Act, APEGA shall be at liberty to provide a full copy of the Hearing Panel's decision.

The proven allegations of unprofessional conduct were serious. The Member breached conditions placed on his registration by the PRB at least 34 times over a two year period. These conditions were imposed by the PRB to protect the public. It is a basic professional requirement of the practice of engineering that a Professional Engineer will abide by any conditions placed on their registration.

A member of a regulated profession cannot ignore conditions imposed on them by their regulator. Such conduct harms the standing and integrity of the profession and places the public at risk. It calls into question the willingness of the member to accept regulation from APEGA and shows a complete disregard for the authority of APEGA and the best interests of the public.

These concerns were increased and confirmed by the failure of the Member to comply with his duty to cooperate with the investigation of the PRB's complaint. The ability of APEGA to investigate complaints is vital to the protection of the public and the integrity of the profession. The refusal of a member to cooperate with an investigation is unacceptable and calls into question whether the member is prepared to accept regulation by APEGA.

Based on this serious unprofessional conduct, the Hearing Panel found that the Member's registration should be cancelled. A member who ignores conditions placed on his registration by the PRB and who refuses to cooperate with the investigation of the resulting complaint cannot be permitted to continue to practice. If the member will not accept the regulations and requirements of APEGA, then the public must be protected through cancellation of the member's registration.

The Hearing Panel also found that an order of cancellation was necessary as a matter of general deterrence and to protect the integrity of the profession. This order of cancellation will make clear to other members of the profession and to the public that APEGA cannot and will not tolerate or permit to continue conduct by a member such as that shown by the Member in this case.

The Hearing Panel also found that an order requiring the Member to pay 100% of the costs of the hearing to a maximum of \$31,000.00 was appropriate. The investigation and hearing in this matter arose because of the Member's deliberate breach of the conditions imposed on his registration and subsequent refusal to cooperate with the investigation or hearing. In these circumstances, the Hearing Panel did not see any reason why the Member should not be required to pay the full costs of the hearing.

The Hearing Panel agreed that no application for reinstatement should be permitted until the Member paid the fine and the costs and passed the National Professional Practice Exam.



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Signed,

DOUG COX, P.ENG.

Panel Chair, APEGA Discipline Committee

FARHAN HANIF, P.ENG.

Panel Member, APEGA Discipline Committee

JOHN NICOLL, P. ENG.

Panel Member, APEGA Discipline Committee