



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: January 22, 2020

Date of Decision: May 25, 2020

APEGA Discipline Case Number: 19-008-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 Mark Weber, P.Eng.

Under the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11 (the “Act”), a hearing into this matter was held by a Hearing Panel of the Discipline Committee on January 22, 2020. The hearing addressed the conduct of Mr. Mark Weber, P.Eng. (the “Member”). The hearing proceeded by Agreed Statement of Facts, Admission of Unprofessional Conduct and a Joint Submission on Penalty.

The hearing dealt with the following amended charges:

1. On or about March 20, 2018, the Member rendered a report regarding the Complainant's home (the "Report") in which, without creating a safety issue he incorrectly concluded one or more of the following:
 - a. The wall dividing the kitchen from the living room of the Complainant's home was a load bearing wall; and
 - b. As a result of his assessment that the wall dividing the kitchen from the living room was load bearing, that extensive structural modifications were necessary.
2. On or about March 20 to April 12, 2018, the Member failed to act with integrity, honesty, fairness and objectivity when responding to the concerns regarding the Report, particulars of which include one or more of the following:



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- a. Failed to discuss and/or respond to concerns regarding the Report with the Complainant and her contractor; and
- b. Failed to discuss a contrary report provided by a second engineer with the Complainant.

It was further alleged that this conduct constituted unprofessional conduct as set out in section 44(1) of the Act, APEGA Guidelines for Ethical Practice 2.2 section 2.1 and 4.3.1, and contravened one or more of Rules of Conduct 3, 4 and 5 of APEGA's *Code of Ethics*.

AGREED STATEMENT OF FACTS

Charge 1: The Member rendered a Report regarding the Complainant's home in which, without creating a safety issue, he made incorrect conclusions

On March 9, 2018, the Member was retained by the Complainant to inspect her home (the "Home") and render a report on whether two internal walls were load bearing or not and whether there were any structural implications of the walls being removed. The Complainant paid \$735.00 for this service.

On March 12, 2018, the Member attended the Home to conduct a site review. He observed that the roof trusses were engineered Howe Trusses.

Following the site review, the Member rendered the Report in which he concluded that the first wall was not a load bearing wall and could be removed without structural implications, and that the second wall was a load bearing wall and was supporting the roof trusses of the Home.

The Member's conclusion that the second wall was load bearing and could not be removed without a structural support system replacing it was incorrect. The roof trusses were engineered Howe Trusses that could span the width of the Home without internal support.

As a result of the Member's conclusion that the second wall was load bearing, the Member also incorrectly concluded that extensive structural modifications were necessary to replace the second wall and to carry the load from the roof trusses. The structural modifications included: installation of a W8x21 steel beam supported by teleposts installed at each end of the beam located inside the external walls going down into the basement, requiring new concrete footings for the teleposts.

While the structural modifications recommended by the Member did not create a safety issue, the recommendations were overly extensive and would have resulted in significantly more cost to the Complainant.

Charge 2: The Member failed to act with integrity, honesty, fairness and objectivity when responding to the concerns regarding the Report



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The Complainant attended the Member's office to obtain the Report. The Complainant had several questions to clarify and understand the extensive structural modifications in the Report. The Member spent about 30 minutes with the Complainant and attempted to explain the Report, but his explanation fell short of the Complainant's expectation and the Complainant continued to have questions and concerns regarding the Report and the extensive recommendations.

After receiving the Report, the Complainant sought guidance from her contractor regarding its substance and what the recommendations would entail. She understood that the recommendations would cost much more than she had budgeted. The Complainant's contractor also had further questions about the recommendations, specifically the teleposts and new concrete footings required.

The Complainant's contractor contacted the Member directly to ask questions about the Report's recommendations. During this discussion, the Member failed to entertain these questions and instructed the contractor to follow the Report.

The Complainant later contacted a second engineer, B.L., and retained him to conduct an inspection of the Home and provide a second opinion on whether the two walls were load bearing.

B.L. rendered a report concluding that the walls were not load bearing walls and therefore could be removed without the need for a replacement load bearing system.

After receiving B.L.'s report, the Complainant contacted the Member by telephone to discuss her concerns with his Report and the fact that she had received a second engineering report concluding that the second wall was not load bearing. At this time, the Complainant requested a refund of the fees paid for the Report.

During this conversation, the Member refused to discuss the Complainant's concerns regarding the Report. He maintained that it was correct and it was the Complainant's decision whether or not to follow it. The Member further failed to discuss B.L.'s report and its conclusions. He also refused the Complainant's request for a refund.

Afterwards, the Complainant emailed the Member reiterating her concerns with the Report. She also attached B.L.'s report and repeated her request to be reimbursed for the fees associated with the Report. The Member did not respond to the email or contact her in another manner in order to further discuss her concerns with the Report or the conclusions in B.L.'s report.

During the telephone call and in the email sent by the Complainant to the Member, the Complainant did not identify B.L. to the Member by name. B. L.'s name and business information were redacted on the copy of the second engineering report sent to the Member by email.



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Having received no response from the Member, the Complainant emailed him again. She expressed her disappointment that they could not resolve the concerns raised and notified the Member that she had filed a complaint with APEGA.

Based on B.L.'s report, the Complainant obtained a permit from the City of Calgary to remove the two walls. This was completed without any issue to the structural integrity of the Home to date.

Decision Regarding Unprofessional Conduct

The Hearing Panel accepted the Agreed Statement of Facts and the Member's Admission of Unprofessional Conduct. The Hearing Panel found that both amended Charges were proven and serious enough to constitute unprofessional conduct.

The Member's conduct amounted to unprofessional conduct because the public should be able to trust that when they engage a Professional Engineer and receive a report from an engineer, that the report is correct and any recommendations made are suitable not only for the structural element and safety of the public, but suitable for the client's needs, including cost and design requirements. The Member failed to consider important factors such as the economic impact on the private homeowner and the undue hardship of making such a conservative recommendation.

Further, the Member's conduct was unprofessional because as a Professional Engineer providing services to the public, there is an obligation and expectation that the professional will discuss their report and recommendations with their client. This includes addressing any concerns arising from a report and ensuring the client understands the advice and recommendations that have been made. In this case, the Member failed to act with integrity, honesty, fairness and objectivity when responding to concerns by the Complainant regarding his Report. The Member did not discuss or respond to concerns about the Report when the Complainant's contractor contacted him directly. He failed to entertain the contractor's questions and simply instructed the contractor to follow the Report.

Additionally, the Member had an obligation to discuss the contrary report provided by B.L. with the Complainant. The Member was entitled to stand by his Report; however, he was obliged to come to a factually accurate conclusion and ensure that the Complainant understood the report and the recommendations being made. This obligation is a basic requirement for acceptably managing a client's expectations. Private homeowners are generally lay people who require more explanation, time and effort from the Professional Engineer so they can understand the recommendations made in a report and be confident that the Professional Engineer is acting in their best interest.

The Member was providing a service to a member of the public and this service included being open to others' points of view and at the least considering them. As a Professional Engineer, he should have taken more time to deal with the Complainant's concerns. It is not sufficient to render a report and withdraw entirely from client interaction.



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As a result of the above, the Member did not act in an ethical manner and his conduct breached APEGA Guidelines for Ethical Practice 2.2: Sections 2.1 Professions and 4.3.1 Acting Fairly. The Member's conduct also breached Rules of Conduct 3, 4, and 5 of the *Code of Ethics*.

Rules of Conduct 3, 4, and 5 of the APEGA *Code of Ethics* state that:

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

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

5 Professional engineers and geoscientists shall uphold and enhance the honour, dignity and reputation of their professions and thus the ability of the professions to serve the public interest.

Decision Regarding Orders for Penalty

The parties made a joint submission on penalty. The Hearing Panel accepted the joint submission with some modifications consented to by the parties. The Hearing Panel made the following orders:

- a. The Member shall be reprimanded for his conduct and the Discipline Committee's written decision (the "Decision") shall serve as the reprimand.
- b. The Member shall pay a portion of the hearing costs in the amount of \$2,000 within 60 days from service of the Decision.
- c. The Member shall repay the Complainant the full cost of the services rendered, totaling \$735.00 within 60 days from service of the Decision and provide confirmation to the Director, Enforcement of APEGA (the "Director").
- d. The Member shall complete the online course "Common Mid-Rise Structural Design Challenges" offered on-line at <https://woodworkselearning.com/>. The Member shall provide the Director with a certificate confirming successful completion of the course within 60 days of service of the Decision.

If such course becomes unavailable, an equivalent course may be substituted where approved in advance in writing by the Director.

- e. The Discipline Committee's decision shall be published and circulated as follows:
 - i. A written summary of the decision shall be published in the PEG, in



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- a manner 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 Act, APEGA shall be at liberty to provide a complete copy of the Discipline Committee's decision.
- f. Should the Member fail or be unable to comply with any of the above orders for penalty, or if any dispute arises regarding the implementation of these orders, the Discipline Committee may do any of the following:
- i. Refer the matter back to a panel of the Discipline Committee, which shall retain jurisdiction with respect to the penalty; or
 - ii. In the case of non-payment of costs described in paragraph (b) above:
 - 1. Suspend the Member's registration until such costs are paid in full, pursuant to section 64(2) of the Act, or the Discipline Committee is satisfied that such costs are being paid in accordance with a schedule of payment agreed to by the Discipline Committee; and/or
 - 2. Pursue a civil action for debt pursuant to section 64(3) of the Act.

The Hearing Panel found that the reprimand and order of publication on a named basis acts as a specific deterrent to the Member as it will hold him accountable for his actions and be part of his personal record. It will also serve as a general deterrent by reminding the profession that such conduct is not tolerated and will have consequences.

With respect to the repayment of the full costs of the services rendered to the Complainant, the Hearing Panel found there was both specific and general deterrence in the imposition of this order and since the parties jointly proposed the order, the Hearing Panel was prepared to accept it.

The Hearing Panel found that the course that the Member must take will be educational and remedial and therefore protects the public. Although the course on "Common Mid-Rise Structural Design Challenges" is not directly on par with the structure at issue, the Hearing Panel found that the issues leading to this matter concerned structural design of wood structures and basic engineering principles, so the course will provide remediation and learning for the Member.

The Hearing Panel also found it appropriate for the Member to pay a portion of the costs of the hearing, as the members of the profession should not have to bear costs that are a result of the Member's conduct.



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Overall, the Hearing Panel found that the proposed orders on penalty fell within a range of reasonable orders and were not contrary to the public interest.

Signed,

CHRIS GOULARD, P. ENG.

Panel Chair, APEGA Discipline Committee

FRED RITTER, P. ENG.

Panel Member, APEGA Discipline Committee

TOM GREENWOOD-MADSEN, P. ENG.

Panel Member, APEGA Discipline Committee

JEFF PIEPER, P.ENG., Ph.D.

Panel Member, APEGA Discipline Committee

MURIEL DUNNIGAN

Public Member, APEGA Discipline Committee