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## APEGA APPEAL BOARD DECISION

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**Date of Hearing:** January 17, 2025  
**Date of Decision:** February 25, 2025  
**Case:** 23-006-FH

**IN THE MATTER OF** the Engineering and Geoscience Professions Act

and

**THE APPEAL** by Mr. Antonio Ruggieri, from the decisions of the APEGA Discipline Committee in the matter of conduct of Mr. Ruggieri.

**HEARING PANEL:**

Heather Kennedy, P.Eng.	(Panel Chair)
Larry Staples, P.Eng.	(Panel Member)
Zobayur Rahman, P.Eng.	(Panel Member)
Harold Neth	(Public Member)

**INDEPENDENT LEGAL COUNSEL FOR THE APPEAL BOARD:**

Natalie Tymchuk, Emery Jamieson LLP

**APPEARANCES:**

Curtis Wolff, Miles Davison LLP, Legal Counsel for Antonio Ruggieri, Appellant  
Kimberly Precht, Field Law LLP, Legal Counsel for the Investigative Committee

### **SUMMARY**

The Appeal Board of the Association of Professional Engineers and Geoscientists of Alberta ("APEGA") has considered this appeal and, pursuant to section 69(3)(b) of the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11 (the "Act"), confirms the Discipline Committee's ("DC") findings and sanctions. Accordingly, the appeal is dismissed.

### **BACKGROUND**

- [1] This is an appeal pursuant to section 67 of the Act. The Appellant has appealed findings and sanctions levied against him by the DC.

[2] Charges were brought against the Appellant before the DC, relating to his professional duties on a project involving a custom-built home in Calgary.

[3] Two charges were brought forward to the DC but, in its decision dated March 29, 2024 (the "Findings Decision"), the DC determined that only one was proven:

Charge 2 – Antonio Ruggieri failed to fulfill his duties, as the registered professional of record who signed and sealed the relevant Alberta Building Code schedules and a General Framing Review Letter dated January 25, 2013, concerning the structural components of the Home, particulars of which include one or more of the following:

a) Failing to adequately conduct or supervise field reviews of the Home;

b) Failing to identify or appropriately address one or more structural deficiencies in the construction of the Home, including one or more of the following:

i) A 3-ply Laminate Veneer Lumber (LVL) beam was not installed on the main floor as per the drawings;

ii) Two LVL beams were not installed on the upper floor as per the drawings;

iii) A 2-ply LVL ledger board was not installed against the concrete foundation wall in accordance with the design detail, which called for anchor bolts to be installed in two rows and staggered in an alternating pattern every eight inches;

iv) A 3-ply LSL beam was not fastened to a Hollow Structural Section (HSS) column, despite fastener holes being present;

v) A 2-ply LVL beam was eccentrically bearing on the outside of a 2x6 post; and,

vi) An HSS adjustable column installed in the basement, used to support a beam, was not fastened at its base and the column was out of plumb;

c) Failing to make or maintain adequate records of any field reviews of the Home.

[4] The DC invited the parties to provide submissions on sanctions and costs orders.

[5] On June 24, 2024, the DC issued its decision on sanctions (the "Sanctions Decision") in which it ordered a reprimand, a payment to the Appellant's client for portion of services related to the proven charge, completion of the National Professional Practice Exam (NPPE), payment of \$30,000 in hearing costs, and publication.

- [6] The Appellant appealed both decisions on July 25, 2024.

### **PRELIMINARY MATTERS**

- [7] In December 2024, the Appellant submitted a formal request to introduce new evidence.
- [8] Response submissions were sought from the Investigative Committee ("IC") and both parties' submissions were considered prior to the hearing. On January 14, a letter was issued to the parties indicating that the Appeal Board was reserving its decision regarding the new evidence until after it had heard the appeal.
- [9] The parties have provided further submissions regarding the new evidence in their broader appeal submissions.
- [10] An appeal hearing date of January 17, 2025 was agreed upon by the parties and a hearing was held via video conference by a hearing panel of the Appeal Board.

### **STANDARD OF REVIEW**

- [11] The parties have indicated agreement that the DC's findings are entitled to deference, referring to the guidance set out in *Yee v College of Professional Accountants of Alberta*, 2020 ABCA 98, which summarized the standard of review applicable to an internal appeal from a disciplinary tribunal as follows:

When reviewing the decision of a discipline tribunal, the appeal tribunal should remain focused on whether the decision of the discipline tribunal is based on errors of law, errors of principle, or is not reasonably sustainable. The appeal tribunal should, however, remain flexible and review the decision under appeal holistically, without a rigid focus on any abstract standard of review (at paragraph 34)

### **ANALYSIS**

- [12] The Appellant's arguments in this appeal are structured upon the following issues:
- [a] Whether the DC erred by relying on faulty assumptions of expert evidence, failing to understand and apply engineering and/or analysis principles, and finding that the building suffered from structural deficiencies;

[b] Whether the DC erred in not considering updated drawings (the new evidence);

[c] Whether the DC erred in its assessment of the scope of the Appellant's responsibilities relating to the drawings and conducting of field reviews; and

[d] Whether the DC erred in assessing the timing and impact of the Appellant's server crash and in finding that the Appellant failed to maintain records of field reviews.

[13] The Appellant also argues that he should not be subject to sanctions if he is successful in this appeal, and that the monetary sanction should be reduced if he is partially successful.

*Did the DC err by relying on faulty assumptions of expert evidence, failing to understand and apply engineering and/or analysis principles, and finding that the building suffered from structural deficiencies?*

[14] In the DC hearing, an expert witness provided a report and oral evidence on expectations applicable to professional engineers acting as registered professionals of record ("RPRs") for structural engineering services in residential custom home construction.

[15] Particulars 2(a) and 2(b) of the charge at issue in this appeal relate to the Appellant's failure to adequately conduct or supervise field reviews and his failure to identify six structural deficiencies listed under particular 2(b) (the "6 Items"). The expert's evidence was that each of those 6 Items was in fact a structural deficiency which should have been identified during a field review.

[16] The Appellant notes that the expert did not conduct any calculations to determine whether the building was structurally deficient. The Appellant asserts that the only way to demonstrate structural deficiencies in the home was to run mathematical calculations demonstrating that a construction flaw could lead to structural failure.

[17] The Appellant also argues that the expert did not give clear evidence regarding what is a 'discrepancy' versus a 'deficiency'. The Appellant suggests that the missing beams referred to in particulars 2(b)(i)-(ii) are discrepancies according to the expert, citing the following from the expert's evidence:

"Discrepancy mean[s] that something is not present from a structural component. Like, missing -- like, I ask for a 3-ply beam, and they install 2-ply beam, for example. So this is discrepancy. So this is not complete structure in my opinion. I ask for a load rating telepost of 10,000 pounds, and they got 5,000 pounds. That is discrepancy and deficiency as well. (February 15, 2024 transcript at page 133, lines 16-24)"

[18] The Appellant suggests it can be implied from the expert's evidence that determining the existence of a deficiency – as opposed to a discrepancy – requires consideration of the integrity of the structure. The Appellant further asserts that the expert did not inquire, based on engineering principles, whether the missing components compromised the home's structural integrity.

[19] The Appellant has provided explanations as to why each of the 6 Items were not deficiencies in his view. The explanations regarding the first two of the 6 Items relate to the proposed new evidence, which will be addressed later in this decision. For the remaining items, the Appellant raises the following (in reference to the particulars under charge 2(b)):

[a] 2(b)(iii): The 2-ply LVL ledger board was supported by anchor bolts and also by a bearing wall underneath the board.

[b] 2(b)(iv): The 3-ply LSL beam did not need to be fastened to the HSS column. The fastener holes did not exist to facilitate the ongoing structural integrity of the home. The beam is supported from its underside. The side fastener can be removed once the structure is erected and framed in.

[c] 2(b)(v): There was minimal loading on the 2-ply beam that was eccentrically bearing on the outside of a 2x6 post, and the built-up post was fully laterally supported from the masonry.

[d] 2(b)(vi): The expert did not prove that the HSS column was out of plumb such that it was structurally inadequate or outside of construction tolerances.

[20] The DC addressed the Appellant's arguments that the missing components were unnecessary. The Findings Decision states:

The Hearing Panel accepts that the structural components identified in Particulars 2.b.i.– vi. were designed and intended to serve the structural integrity of the Home. [...] Design drawings from professional engineers should include all necessary components. In this case, there is little to no evidence suggesting that the components identified in the particulars are unnecessary. (at paragraph 77)

[21] The IC also points out that, on cross-examination in the DC hearing, the expert disagreed with the Appellant's suggestion that calculations are required to identify structural deficiencies, and the expert testified that a visual could be sufficient. The Appellant provided no evidence before the DC, including calculations, to refute the expert's evidence that the structural deficiencies listed in particular 2(b) could be visually identified from photographs.

[22] The IC further observes that the Appellant's appeal submissions includes factual assertions about particulars 2(b)(iii)-(vi), which are new evidence. The IC argues that the Appeal Board should not put any weight on these assertions, noting the following:

[a] 2(b)(iii): The Appellant has not disputed that the anchor bolts were not installed according to the details designed by his company (Alberta Engineering Ltd.). The expert was cross-examined on whether the ledger board had adequate support from below, but he maintained his evidence that the bolt design was intended to transfer loads safely to the foundations. The Appellant did not advance any evidence before the DC challenging the expert's evidence on this point.

[b] 2(b)(iv): The Appellant cross-examined the expert regarding the Appellant's assertion that there was no need to fasten the beam to the column. The Appellant did not advance any evidence before the DC challenging the expert's evidence that the fasteners were to prevent the beam from sliding horizontally and that they were not intended to be temporary.

[c] 2(b)(v): The Appellant provided no evidence before the DC that the post was supported by the masonry, and he did not cross-examine the expert on this point.

[d] 2(b)(vi): The Appellant provided no evidence before the DC to challenge the expert's evidence that a telepost installed out of plumb and not mechanically fastened to the concrete foundation is a structural deficiency.

- [23] In the Appeal Board's view, the DC Findings Decision clearly sets out the expert evidence that it considered in arriving at its conclusion that the 6 Items were structural deficiencies. It was reasonable for the DC to rely on the expert's evidence in the absence of evidence from the Appellant to the contrary.
- [24] As noted by the IC, the Appellant's assertions regarding particulars 2(b)(iii)-(vi) are not based on evidence that was before the DC or any proposed new evidence in this appeal. In contrast, the expert's evidence clearly set out his review of the structural elements and observations relating to each of the 6 Items, and his explanation of how each amounted to a structural deficiency. The expert also provided further explanation as to the structural deficiencies in the final remarks of his report (at pages 22-23) and on cross-examination. The Appellant provided no evidence to the DC, in the form of calculations, standards, or otherwise, refuting the expert's evidence or establishing that the expert's conclusions required calculations.
- [25] The Appeal Board is not persuaded by the Appellant's suggestions that the expert viewed any of the 6 Items simply as discrepancies having no impact on the structural integrity of the home. As noted above, the expert provided evidence of how the structural integrity was impacted by each of the 6 Items. It was reasonable for the DC to conclude that the structural components identified in particular 2(b) were designed and intended to serve the structural integrity of the Home. The Appellant provided no evidence to the contrary.
- [26] In addition, the structural components at issue were clearly not constructed in accordance with the approved drawings stamped by the City of Calgary for this project. For some of the particulars, there were pieces missing from the approved drawings. For others, elements were not constructed as designed. These are differences from the approved drawings that should have been identified in the field review that was conducted by the Appellant's company.
- [27] The Appellant's arguments regarding the scope of his responsibility are addressed later in this decision. However, for the deficiency described in particular 2(b)(iii), the Appeal Board further notes the IC's comment that the Appellant himself had authenticated the structural drawing which called for specific anchor bolt installation. The Appellant did not provide an explanation, either before the DC or in this appeal, for his failure to identify that the anchoring of the ledger beam did not accord with even his own drawing.

- [28] In summary, the DC reasonably relied on the expert's evidence and application of engineering principles and reasonably found that the building suffered from structural deficiencies.

*Did the DC err in not considering updated drawings? (the new evidence)*

- [29] Much of the Appellant's arguments in this appeal center upon his proposed new evidence consisting of updated drawings, and the failure of both the expert and of the DC to consider that evidence.
- [30] The evidence before the DC was that earlier versions of the drawings at issue, dated March 8, 2011, were approved by the City of Calgary. The new drawings proposed by the Appellant in this appeal were dated September 15, 2011. The Appellant states that the September drawings demonstrate that missing beams referred to in particulars 2(b)(i)-(ii) were intended to be removed and he had discharged his duty to ensure the home was constructed according to design.
- [31] The Appellant initially provided submissions to the Appeal Board regarding the new evidence falling under an exception to the implied undertaking rule. However, as legal counsel involved in the litigation granted permission for the drawings to be used in this appeal, the IC did not dispute that the new evidence now falls under that exception.
- [32] The Appellant states that he did not present this evidence to the DC because he had discovered it during litigation proceedings over the course of the DC hearing, IC counsel had expressed some concern over it, the hearing was to resume the next day, and the Appellant was unable to seek timely legal advice.
- [33] The Appellant has repeated arguments in this appeal that he raised before the DC regarding correspondence dated June of 2011 which referred to changes in the home's design. In his view, those arguments show that the existence of the September drawings was raised before the DC.
- [34] As cited by the IC, the test for new evidence applicable to an appeal from the DC to the Appeal Board was confirmed in *Essa v APEGA*, 2021 ABCA 116. The IC has raised the following factors in arguing that the September drawings do not meet the requirements of that test:



- [a] The Appellant had the opportunity to seek legal advice and to at least request that the September drawings be put into evidence before the DC. After IC counsel noted to the DC that the Appellant may wish to raise a preliminary issue, the Appellant stated to the DC that he had conversations with his litigation legal counsel about a document he found to be relevant but he did not want to delay the hearing, so he had decided not to submit the document. In the IC's view, this is not an exceptional circumstance where the Appellant should have a second chance to raise evidence.
- [b] On their face, the September drawings do not provide a defence to particulars 2(b)(i)-(ii). These drawings raise more questions than they answer. They were not stamped as approved by the City of Calgary. There was no evidence that the Appellant had actually seen these drawings prior to the litigation. The Appellant provided no evidence of whether or how these drawings may have been used or relied upon, or why they were prepared.
- [c] Even if the Appeal Board overturned the DC's findings on particulars 2(b)(i)-(ii) based on the new evidence, the DC's overall findings on particulars 2(a), 2(b)(iii)-(vi), and 2(c) would not be impacted. The IC asserts that the sanctions would remain proportionate and therefore reasonable.
- [35] Based on the factors listed by the IC, the Appeal Board finds that the Appellant has not met the onus to establish that the September drawings satisfy the applicable new evidence criteria.
- [36] It is clear the Appellant was presented with ample time to prepare his case and to raise the existence of the September drawings before the DC. However, even if he had been able to present the drawings as evidence in the DC hearing, he has not established that the outcome of the hearing would have been different.
- [37] The Appellant has not proposed how the drawings would be received by the Appeal Board, other than presenting them on their face. The Appellant has not provided any explanation or proposed evidence of how the September drawings relate to the home's Alberta Building Code schedules that were approved by the City. The Appellant's June 2011 correspondence may have referred to changes in the home's design. However, the City approved the stamped design (in evidence before the DC) in August of 2011, after the changes were noted in June, but before the date of the September drawings. There is no evidence that the City received or approved the September drawings.

- [38] The Appellant has also not addressed when or how he received the September drawings, if at all, prior to the litigation proceedings, or if and why the builder would have had different drawings than the Appellant had when performing the field review. The Appeal Board agrees with the IC's comments that the Appellant's lack of explanation for the September drawings, and his discovery of them more than a decade after his company performed its field review of the home, further demonstrates his failure to make or maintain adequate records.
- [39] The September drawings do not meet the test for new evidence. The new evidence would not change the outcome and has no impact on a decisive or potentially decisive issue in this appeal. Accordingly, the Appeal Board declines to admit or place any weight on the new evidence received.
- [40] There is also no basis to conclude that the DC erred in not considering the September drawings.

*Did the DC err in its assessment of the scope of the Appellant's responsibilities relating to the drawings and conducting of field reviews?*

- [41] Referring to Schedules A-2 and B-1, and repeating his argument before the DC, the Appellant claims that he was only responsible for the components of the project that were prepared by his company.
- [42] In response, the IC notes the following evidence that was before the DC on this issue beyond the two schedules focused on by the Appellant:
- [a] A General Framing Review Letter, signed and authenticated by the Appellant, was accepted by the City of Calgary in lieu of a completed Schedule C. That letter indicted the Appellant's company had reviewed the site in January 2013 "for a general review of the framing of the structure and to verify its conformance with the requirements of the joist and truss layouts (as per TECH WOOD BUILDING COMPONENTS) and general structural requirements for wood framed structures."
  - [b] The "structural" section of Schedule B-2 included "2.1 Structural capacity of structural components of *buildings*, including anchorage and seismic restraint" and "2.4 Review of all applicable shop drawings", the field review of which the Appellant had undertaken to be responsible for under Schedule B-1.

[c] The expert gave evidence that Schedules A and B must be completed and submitted with design drawings as part of the application for a building permit.

[d] The Appellant's argument is inconsistent with the guidance provided in the March 2009 APEGA Responsibilities for Engineering Services for Building Projects document.

[e] The Appellant confirmed in cross-examination that his framing inspection process included a review of joist and floor layouts, to ensure the structure was compliant with those layouts.

[43] In its Findings Decision, the DC further observed that:

Even if Mr. Ruggieri was not responsible for the designs provided by others, he relied on those designs to provide inputs to the overall design of the Home for which he was taking responsibility. If construction did not accord with the designs created by other engineers, it could impact Alberta Engineering's overall design by potentially changing the loads or restrictions used as inputs.

[44] Based on the evidence before the DC, its conclusion regarding the Appellant's scope of responsibility was reasonable. It was clearly the Appellant's responsibility as RPR to review the structural components listed in Schedule B-2, even if he did not design them. It is also certainly the intent of Schedule C – or, in this case, the General Framing Review Letter – to confirm that the Appellant's company had performed a review aligning with the scope described by the expert and found by the DC.

*Did the DC err in assessing the timing and impact of the Appellant's server crash and in finding that the Appellant failed to maintain records of field reviews?*

[45] The Appellant's evidence before the DC regarding particular 2(c) was that his physical records were purged after seven years, and electronic copies were lost due to a server failure.

[46] The Appellant argues that the Findings Decision suggests there was no server crash, even though there was no evidence to demonstrate the crash did not occur. He also states that, had the crash not occurred, he would have had the September drawings available for the DC proceedings.

[47] The Appeal Board is not persuaded by the Appellant's arguments. It is concerning that there is no evidence of the field review of the home, including notes or any other documentation.

- [48] As noted above, there is no evidence that the Appellant had even seen the September drawings when his company performed its January 2013 field review. The IC also points to the Appellant's admissions that he could not confirm whether documentation of the field review existed, other than the review letter itself, and that he could not confirm whether the physical documents had actually been purged.
- [49] Contrary to the Appellant's assertion, the DC considered the possibility that a crash had occurred, but it found that the Appellant should have kept a backup in the event of a server failure, and that he should have kept physical documents, considering litigation proceedings which had begun within the seven-year period the Appellant had referred to. The Appellant had also been required to respond within the seven-year period to the complaint which led to the underlying APEGA disciplinary proceedings.
- [50] As noted by the IC, the DC considered all evidence about the Appellant's failure to make or maintain adequate records, not just the evidence regarding the impact of a server crash on his electronic records. There is no basis to overturn the DC's findings as to the adequacy of the Appellant's record-keeping.

### Sanctions

- [51] The Appellant has not suggested any basis to quash or vary the Sanctions Decision if the Findings Decision is fully upheld. Given the confirmation of the Findings Decision entirely, the Appeal Board also confirms the DC's orders.

### CONCLUSION

- [52] For the reasons noted above, the Appeal Board upholds both the Findings and Sanctions Decisions of the DC.
- [53] The Appeal Board has not yet ordered costs with respect to this appeal or directed publication of this decision and reserves the jurisdiction to do so. The IC has requested an opportunity to make written submissions about costs of this appeal. Accordingly, the Appeal Board directs that the IC provide its submissions on costs and publication by March 4, 2025. The Appellant will then have an opportunity to respond to the IC's submissions before the Appeal Board issues its decision regarding costs and publication.

Dated this 25<sup>th</sup> day of February, 2025

On behalf of the Hearing Panel of the APEGA Appeal Board

**Heather Kennedy**

Signed with ConsignO Cloud (2025/02/25)  
Verify with verifio.com or Adobe Reader.



Heather Kennedy, P.Eng.  
Chair, Appeal Board Panel

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