



APEGA Discipline Committee Decision

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Date of Hearing: October 24, 2019

Date of Decision: June 30, 2020

APEGA Discipline Case Number: 18-014-FC

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 Romano Viglione, 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 October 24, 2019. The hearing addressed the conduct of Mr. Romano Viglione, 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 charges:

1. On or about May 1-4, 2009, the Member conducted an inadequate field review of the general framing of a single family residence and garage, in Calgary, Alberta (the “Home”), particulars of which include one or more of the following:
 - a. Failing to identify one or more of the following deficiencies in the framing of the Home, or failing to bring such deficiencies to the attention of the constructor of the Home, or both:
 - i. The absence of crush blocks to support one or more main floor joists at load bearing locations, which were called for in the design plans;
 - ii. The absence of crush blocks to support one or more second floor joists at load bearing locations, which were called for in the



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design plans;

iii. The absence of one or more support posts in the walls of the main floor where loads from above were to be transferred down, which were called for in the design plans;

iv. The absence of one or more support posts in the walls on the main floor despite a note in the design plans specifically stating "B.U. post to support point load from girder bearing post on upper floor (to align with column in basement below)" and the absence of one or more support posts in the walls on the second floor despite a note in the design plans specifically stating "Designer recommends location of girder truss point load to align w/ adjustable steel column location in basement";

b. On or about May 4, 2009, despite one or more deficiencies in the framing of the Home, authenticating a letter (the "Authenticated Letter") addressed to the City of Calgary (the "City"), certifying that the framing of the Home was acceptable and, to the best of the Member's knowledge, complied with the Alberta Building Code requirements in force at that time;

2. The Member failed to maintain adequate records in relation to conducting a field review of the Home on or about May 1-4, 2009, or failed to provide relevant records and information to the Investigative Committee in relation to conducting a field review of the Home on or about May 1-4, 2009, or both.

It was alleged that the above conduct constituted unprofessional conduct or unskilled practice as set out in section 44 of the Act, and contravened one or more of the Rules of Conduct in APEGA's *Code of Ethics*, and/or was inconsistent with one or more of APEGA's Practice Standard for Authenticating Professional Documents, APEGA's Guideline for Professional Practice, APEGA's Guideline for Responsibilities for Engineering Services for Building Projects, and APEGA's Guideline for Management of Risk in Professional Practice.

AGREED STATEMENT OF FACTS

Charge 1: The Member failed to identify one or more deficiencies in the framing of the Home, or failed to bring such deficiencies to the attention of the constructor of the Home

The homeowner (the "Complainant") retained a builder to build a custom home and detached garage in Calgary, Alberta. The builder retained the Member to conduct a field review of the general framing of the Home. The Member attended the Home on May 1, 2009 to conduct the field review.



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The building permit issued by the City for the Home included a condition requiring “a field review bearing the seal of a registered professional engineer for the as-built structure at the framing inspection”.

Section 2.20 of the APEGA Guideline, Responsibilities for Engineering Services for Building Projects, V1.2 (March 2009) defines “Field Review” as follows:

Field Review

Field review means a review of the work:

- a. at the project site of a development to which a building permit relates, and
- b. where applicable, at fabrication locations where building components are fabricated for use at the project site for which the building permit is issued. It covers situations where a registered professional in his or her professional discretion considers it necessary to ascertain whether the work substantially complies in all material respects with the plans and supporting documents prepared by the registered professional.

Perform (or conduct) Field Review

The terms “perform” or “conduct” when used in conjunction with “field review” mean “accept responsibility for”. In keeping with the language of the Alberta Building Code, an engineer is responsible for field reviews; it is not interpreted, however, that the engineer is to personally perform the field reviews. The engineer may rely on an individual to conduct the field review, but, never the less, the engineer remains responsible for matters associated with the field review.

Truss Drawings prepared by Company 1 (the “Truss Drawings”) and architectural plans prepared by Company 2 (the “Architectural Plans”) were available onsite at the Home. The Member did not review and did not request to review either the Truss Drawings or the Architectural Plans.

The notes on the top right of the Truss Drawings identified point loads and stated: “CONTRACTOR TO SOLID BLOCK ALL LOADS TO FOUNDATION.” This meant that point load locations needed to be identified and solid blocking needed to be installed to ensure the weight of the Home was properly transferred down to the Home’s foundation.

The Truss Drawings also included DETAIL B2 (CRUSH BLOCKS), which required crush blocks to be installed on either side of floor joist webbing in order to transfer the load through the main floor to the foundation of the Home. DETAIL B2 was found along Beams B3 and B4 on the Truss Drawing for the Main Floor.

On the Architectural Plans for the Main Floor, there were two notes (in the vicinity of the Family Room and the Kitchen, respectively) that stated: “B.U. post to support point load from girder bearing post on upper floor (to align with column in basement below)”. The “built up post” and



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“girder bearing post” referenced in each of these notes corresponded to point loads existing along Beam B3 of the Truss Drawings.

On the Architectural Plans for the Upper Floor & Roof, there were two notes (in the vicinity of the Guest Suite and the Master Suite, respectively) that stated: “Designer recommends location of girder truss point load to align w/adjustable steel column location in basement.” The girder truss point loads referenced in each of these notes also corresponded to point loads existing along Beam B3 of the Truss Drawings.

During the field review on May 1, 2009, the Member failed to identify the following deficiencies in the framing of the Home:

- a. DETAIL B2 had not been followed at all, such that there were no crush blocks installed along Beams B3 and B4, and the weight of the Home was not properly transferred through these beams to the foundation;
- b. Solid blocking had not been installed to support point loads along Beam B2 on the Truss Plans for the Second/Upper Floor;
- c. Solid blocking had not been properly installed on the outside wall of the Kitchen Nook (as shown on the Architectural Drawings for the Main Floor), to support Beam B3 shown on the Truss Plans for the Second/Upper Floor;
- d. A support post had not been installed in the Main Floor walls at Girder G7 on the Truss Plans for the Main Floor to support a point load from Girder G12 on the Truss Plans for the Second/Upper Floor; and
- e. The “built up posts” and “girder bearing posts” referenced in the Architectural Plans for the Main Floor were missing, such that the girder truss point load referenced in the Architectural Plans for the Upper Floor & Roof was not properly transferred down to the Home’s foundation.

Without identifying the deficiencies set out above, the Member provided the builder with the Authenticated Letter, addressed to the City of Calgary, in which the Member stated:

This letter is to confirm that a site inspection was completed on the general framing at the above mentioned location on May 1, 2009. The general framing includes roof trusses, floor joists, engineered wood beams, hangers, columns, and overall wood structure. NOT included in the inspection was the foundation and concrete work.

This inspection found the framing to be acceptable and to the best of my knowledge, complies with the Alberta Building Code requirements in force at the time this certificate was signed.



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The Member signed the Authenticated Letter on behalf of RV Engineering Inc. and applied his seal as a Professional Engineer.

In 2013, the Home was flooded during a major flood event. As part of remediation steps taken following the flood, a Professional Engineer inspected the basement structure of the Home. As a result of this inspection and subsequent inspections that occurred, it was discovered that the crush blocks and support posts were missing.

Charge 2: The Member failed to maintain adequate records in relation to conducting a field review of the Home or failed to provide relevant records and information to the Investigative Committee

On January 16, 2017 the Investigative Committee issued a Notice to Produce to the Member, which requested that he produce a written response, which would include all documents in his possession relating to the complaint and any other information that he believed to be relevant and wanted to the Hearing Panel to consider, as well as a copy of the Professional Practice Management Plan ("PPMP") for RV Engineering Inc.

The Member provided a copy of the PPMP for RV Engineering Inc. but did not provide any documentation regarding the complaint. He stated, "I have checked my files and have not found any documentation concerning [the Home]." The PPMP stated, under "Professional Documents and Records" that "Electronic documentation is kept for a period of ten year[s]."

The Member was later interviewed by the Investigative Committee. He stated he had no record of being retained by the builder in relation to the Home and that he had no specific recollection of attending the Home. When the Investigative Committee directly asked about the allegation that he was retained to inspect the framing of the house, the Member responded: "I don't know if I was or was not. I could have – I'm not denying it, but I'm not saying I did because I do not remember, and I don't have backup for it."

At no point did the Member provide a copy of the invoice he sent to the builder or any other documentation relating to the Home to the Investigative Committee. The builder was able to provide the Investigative Committee with a copy of the invoice he received from the Member on May 4, 2009 along with the Authenticated Letter that the Member provided regarding the framing of the home addressed to the City.

Although the Member's bookkeeper (the Member's wife) later located the invoice provided to the builder, the Member did not provide it to the Investigative Committee during the investigation.

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 Charges were proven and were serious enough to constitute unprofessional conduct.



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Regarding Charge 1, the Member admitted that both the manner in which he conducted the field review with respect to the framing of the Home on May 1, 2009, and his provision of the Authenticated Letter to the City displayed a lack of diligence and judgment in the practice of engineering, and amounted to unprofessional conduct. The Member acknowledged that during the field review he failed to identify a number of deficiencies in the framing of the Home and despite not having identified the deficiencies, provided the Authenticated Letter, on which he applied his seal as a Professional Engineer, to the City.

The Hearing Panel found that critical structural elements had been missed in the construction of the Home and were not identified by the Member when he conducted the field review. The Member's field review was so obviously deficient that the Hearing Panel questioned whether the Member even attended at the Home. Further, the Member's conduct was detrimental to the public, compromised the safety of the public and could have caused harm. The public expects Professional Engineers to provide quality work that can be relied on. The Member's conduct undermined the public's trust in the profession.

Regarding Charge 2, the Member admitted that he did not provide the Investigative Committee with any relevant records and information in relation to the field review he conducted on May 1, 2009. The Member acknowledged that he had an obligation as a regulated member of APEGA to cooperate with the Investigative Committee during an investigation, which included the provision of relevant documents and information. The Member further acknowledged that this failure amounted to unprofessional conduct. The Hearing Panel noted that a regulated member must fully cooperate with an investigation. Cooperating with APEGA is foundational to APEGA's ability to function as a self-governing profession. The public should also be able to trust that when APEGA receives a complaint, the member is going to be forthcoming and cooperative in the investigation. The Member's conduct breached what the public and the profession expect of regulated members.

Further, based on the documents provided, the Hearing Panel expressed concern with the Member's record keeping practices. The Hearing Panel was surprised by the fact that the Member did not provide the Investigative Committee with any relevant records and information in relation to the field review. The Hearing Panel would have expected the Member to have some records, including pictures or drawings. Although the conduct at issue only related to the one Home, the documents provided led the Hearing Panel to question whether there was a larger issue with the Member's practice.

The Member's conduct was detrimental to the best interests of the public. The manner in which he conducted the field review with respect to the framing of the Home and his provision of the Authenticated Letter to the builder displayed a lack of diligence and judgment in the practice of engineering and his conduct in failing to provide relevant documentation and information to the Investigative Committee during the investigation contravened the Code of Ethics and harmed the standing of the profession generally. The Member's conduct also breached the Rules of Conduct 1, 3 and 5 of the Code of Ethics.



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Decision Regarding Orders for Penalty

The parties made a joint submission on penalty. The Hearing Panel accepted the joint submission with some minor 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 shall serve as the reprimand;
- b. The Member shall undergo a practice review conducted by the Practice Review Board, to be initiated within three months after the issuance of the Discipline Committee's order regarding penalty;
 - i. In the event unprofessional conduct or unskilled practice is discovered during the practice review, the Practice Review Board may refer it to the Investigative Committee for investigation;
 - ii. In the event deficiencies with the Member's practice are identified during the practice review, and the Member fails to remedy such deficiencies as directed by the Practice Review Board, the Practice Review Board may refer such failure to the Investigative Committee for investigation;
- c. The Member shall not be permitted to act as a Responsible Member until the practice review has been completed and the Member has remedied any deficiencies identified by the Practice Review Board;
- d. The Member shall pay fine of \$5,000;
- e. The Member shall pay a portion of the hearing costs in the amount of \$2,500;
- f. The fine and costs referred to in paragraphs (d) and (e) are a debt owing to APEGA;
- g. The fine and costs referred to in paragraphs (d) and (e) above shall be paid in six equal monthly installments of \$1,250, with the first installment to be paid within 30 days after the issuance of the Discipline Committee's order regarding penalty; however, the Member may pay the full amount sooner if he chooses to do so. Failure to pay as set out in this paragraph shall result in immediate suspension of the Member's registration until payment is made;
- h. 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 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.



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The Hearing Panel found that the Member's conduct constituted serious unprofessional conduct. The Hearing Panel was of the view that the deficiencies left undiscovered in the field review could have been much more serious if not for the flood, which made the deficiencies apparent. The Hearing Panel also had concerns about the Member's practice beyond this incident and questioned whether this was indication of a broader issue or if it was a single incident that may have been related to poor record keeping.

The Hearing Panel found that the orders will protect the public. Although the proven Charges involved one incident, the Member was required to undergo a practice review. This requirement was intended to identify any gaps, concerns or deficiencies in the Member's practice and would serve as a protective measure if deficiencies were found. These orders are also necessary given the lapses that related directly to safety of the public. A practice review will strengthen the Member's practice, where required, and provide the member with feedback on areas for improvement. This education for the Member will in turn protect the public. Therefore, the Hearing Panel found that the orders related to a practice review will provide necessary oversight that is reasonable and appropriate given the proven charges.

In combination with the practice review, the Member would not be permitted to act as a Responsible Member until the practice review was completed and any deficiencies remedied. This was a significant restriction on the Member's practice. The order was necessary given the identified and concerning deficiencies in the Member's field review and record keeping practices or lack hereof.

The Hearing Panel also found that this decision will protect the public and the integrity of the profession through publication of the decision, which will show that actions of this nature will have serious consequences. This decision shall serve as a reprimand and will also serve as a specific deterrent to the Member in the future.

The decision will also serve as a warning to the profession that when you work with other professionals and rely on their skills, the engineer who provides the authenticated letter remains responsible for matters associated with the field review. Members must ensure that other professionals have also done their work to acceptable standards, if they are going to rely on it.

With respect to the portion of hearing costs (\$2,500) the Member is responsible for, the Hearing Panel noted that had this matter not proceeded by way of a joint submission on penalty, it would have ordered more costs against the Member.

The Member's cooperation allowed the hearing to be completed in an efficient and timely manner. The Hearing Panel accepted the mitigating factors being that the Member is a long-standing member of the profession (since 1996) with no previous complaints. The Hearing Panel found that the Member's mitigating factors were appropriately reflected in the orders.



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Signed,

DR. DEAN MULLIN, *Ph.D., MBA, P. ENG.*

Panel Chair, APEGA Discipline Committee

THOMAS SMEKAL, *P. ENG.*

Panel Member, APEGA Discipline Committee

RALPH TIGNER, *P. ENG.*

Panel Member, APEGA Discipline Committee