



# APEGA Recommended Discipline Order

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:** January 21, 2021

**Discipline Case Number:** 20-010

**IN THE MATTER OF A RECOMMENDED DISCIPLINE ORDER 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  
Regarding the Conduct of [A PROFESSIONAL MEMBER]; [A PROFESSIONAL MEMBER];  
AND [A PERMIT HOLDER]

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (“APEGA”) has investigated the conduct of [a professional member], [a professional member], (collectively, referred to as “the Professional Members”) and [a permit holder] (the “Permit Holder”) (all three parties collectively referred to as the “Company”) with respect to a complaint initiated by an individual (the “Complainant”) dated January 17, 2019 (the “Complaint”).

## **A. THE COMPLAINT**

The Complainant alleged that the Company engaged in unprofessional conduct and/or unskilled practice arising from a restorative work project conducted to the exterior of the Complainant’s duplex located in Calgary, Alberta (the “Property”).

The Investigation Panel investigated the following allegations:

1. Whether the Company failed to adequately fulfill their obligations to inspect work and to provide reports as per the scope of the work as outlined in the Contract.
2. Whether the Company failed to provide an adequate solution to repair the soffiting issue.
3. Whether the Company failed to respond to the Complainant’s concerns in a professional manner.



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Based on the recommendations of the Investigation Panel, the Investigative Committee found sufficient evidence that the Company had contravened the *Engineering and Geoscience Professions Act* (the “Act”) with regards to Allegation 1 above.

### **B. AGREED STATEMENT OF FACTS**

As a result of the investigation, it is agreed by and between the Investigative Committee and the Company that:

#### **(i) Background:**

1. At all relevant times, the Company was an APEGA Professional Member and held a valid Permit to Practice and was thus bound by the Act and the APEGA Code of Ethics.
2. The subject matter of the investigation was about a unique 3-storey duplex home, constructed using steel and concrete as the structural components, that was purchased by the Complainant.
3. Shortly after taking possession of the home, a major rain event led to water ingress in the home.
4. Water ingress occurred through some windows and at the base of stairs that were located in the detached garage. The stairs in the garage connected to a tunnel leading into the basement of the home.
5. The Company was retained to investigate and make recommendations to resolve the water ingress issues.
6. After receiving the Company’s report and recommendations, the Complainant retained the Company to:
  - a. Assist in preparing a tender document;
  - b. Assist in recommending a contractor;
  - c. Conduct site reviews during restoration to ensure repairs were adequately completed;
  - d. Be accountable for and inspect the work to ensure it would comply with the Order issued by the City of Calgary; and



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- e. Be the expert witness for the lawsuit against the Builder by the Complainant.
7. The Company provided a proposal which outlined the details of the scope of work and served as the contract for the project (the "Contract"). This was signed by both parties.
8. The situation came to a point where the Complainant wanted a letter of assurance about the repairs made to the tunnel, however the Company would not provide it. The Company indicated they could not write the letter assuring repairs were adequately completed, as they were not present for the repairs.
9. The dispute, along with allegations related to soffit repairs and alleged unprofessional conduct, went unresolved and led to the letter of complaint to APEGA.

### (ii) Facts Relating to Allegation #1:

**Whether the Company failed to adequately fulfill their obligations to inspect work and to provide reports as per the scope of the work as outlined in the Contract.**

10. Page 2 of the Contract, bullet point #1, states the Company shall:  
*For the duration of the work, conduct regular quality assurance site observations while the contractor is on site. Site visit reports will be emailed or faxed to both the Owner and the Contractor after each visit.*
  - a. Written reports were not emailed or faxed to the Complainant after each site visit.
  - b. The Company indicated the scope of work had changed at the request of the Complainant, indicating she wanted to save costs.
  - c. Correspondence of this change in scope was verbal, no written record of the change had been documented.
11. Page 2 of the Contract, bullet point #3, states the Company shall:  
*Coordinate a final observation with representatives of the Contractor and the Owner to ensure that all parties are satisfied to the restoration.*



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- a. A final observation, as outlined above, was not completed.
  - b. The Company indicated the scope of work had changed at the request of the Complainant, indicating she wanted to save costs.
  - c. Correspondence of this change in scope was verbal, no written record of the change had been documented.
12. Page 3 of the Contract states the following:

### *Engineering Change Orders*

*During the course of any design or construction activities, changes can and do occur. Should events or changes occur that are deemed to significantly affect the agreed-upon work scope and/or schedule, the Company will initiate the following actions:*

- *Notify the client in writing of the particular issue(s) via an "Engineering Change Order";*
  - *Describe effects relating to the work scope and/or schedule of offered services*
  - *Negotiate in good faith a fair rate or budget to implement said changes or schedule extension*
- a. An Engineering Change Order was not completed despite the Company indicated the scope of work had changed at the request of the Complainant.
  - b. Correspondence of this change in scope was verbal, no written record of the change had been documented.
13. During the investigation, the Company also provided evidence of gratuitous services that they provided without billing the Complainant or executing a change order for those additional services.

### **C. CONDUCT**

14. The Company freely and voluntarily admits that the conduct described above, as it relates to the obligations as per the Contract (Scope of Service and Engineering Change Orders) constitutes unprofessional conduct as defined in Section 44(1)(e) of the Act.
15. Section 44(1) of the Act states:



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*Section 44(1) Any conduct of a professional member, licensee, permit holder, certificate holder or member-in-training that in the opinion of the Discipline Committee or the Appeal Board,*

- a. is detrimental to the best interests of the public,*
- b. contravenes a code of ethics of the profession as established under the regulations,*
- c. harms or tends to harm the standing of the profession generally,*
- d. displays a lack of knowledge of or lack of skill or judgment in the practice of the profession, or*
- e. displays a lack of knowledge of or lack of skill or judgment in the carrying out of any duty or obligation undertaken in the practice of the profession,*

*whether or not that conduct is disgraceful or dishonorable, constitutes either unskilled practice of the profession or unprofessional conduct, whichever the Discipline Committee or the Appeal Board finds.*

16. The Rules of Conduct of the APEGA Code of Ethics state:

- 1. Professional engineers and geoscientists shall, in their areas of practice, hold paramount the health, safety and welfare of the public and have regard for the environment.*
- 2. Professional engineers and geoscientists shall undertake only work that they are competent to perform by virtue of their training and experience.*
- 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.*

### D. RECOMMENDED ORDERS

17. On the recommendation of the Investigative Committee, and by agreement of the Company with that recommendation, and following a discussion and review with the



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Discipline Committee Case Manager, the Discipline Committee hereby orders that:

- a. The Professional Members and Permit Holder will each receive a letter of reprimand, a copy of which will be maintained for a period of three years in that Member's registration file and be considered at any future date by APEGA.
- b. At the time of the investigation, the Permit Holder was engaged in a practice review with APEGA. Part of that review included the requirement to revisit and re-write their Professional Practice Management Plan (the "PPMP").

The Investigative Committee considered this as part of the sanction the Permit Holder would have required; however, the Investigative Committee will leave this matter with the Practice Review Board as they ultimately evaluate and determine if the PPMP is sufficient as part of their process.

18. Although the Investigative Committee and the Company understand and acknowledge that APEGA's usual policy is to publish recommended discipline orders in a manner that identifies the members and permit holders by name, the Investigative Committee and the Company understand that the decision to publish with or without name is discretionary. Publication without name is appropriate given the specific facts in this case, including the following:
  - a. Although there is an admission of unprofessional conduct, the Investigative Committee determined the actions of the Company did not pose a future risk to the public;
  - b. The Company fully cooperated with the investigation and admitted to a lapse in judgment that affected their contractual obligations. The Investigative Committee found the likelihood of those circumstances and events to occur again, highly unlikely; and
  - c. The Company has referenced the work they have engaged in with APEGA's Practice Review Board to update and improve their PPMP. The Investigative Committee recognizes this as a positive and proactive endeavour



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Signed,

**[PROFESSIONAL MEMBER]**, P. Eng.

**[PROFESSIONAL MEMBER]**, P. Eng.

**JIAN YAO**, P. Eng.  
Panel Chair, APEGA Investigative Committee

**ADAM WHITING**, P.Eng.  
Case Manager, APEGA Discipline Committee

*Date: January 21, 2021*