



APEGA Discipline Committee Decision

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Date of Hearing: April 9, 11-13, 2018, September 5, 2018 and November 6-7, 2018

Date of Decision: October 24, 2019

APEGA Discipline Case Number: 17-006-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 Wade Engineering Ltd. and Allan C. King, P.Eng.

Under the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11, (the “EGP Act”) a hearing into this matter was held by a Hearing Panel of the Discipline Committee on April 9, 11-13, 2018, September 5, 2018 and November 6-7, 2018. The hearing addressed the conduct of Allan C. King, P.ENG (the “Member”) and Wade Engineering Ltd. (the “Company”).

The hearing dealt with the following allegations of unprofessional conduct:

WITH RESPECT TO the engineering work and services provided by the Company and the Member to their client, the La Tierra Condominium Corporation (the “Corporation”), for building envelope review and reports dated April 2015 and November 2015 (the “Reports”) and subsequent service proposal agreement dated January 13, 2016 to provide consulting services for the restoration of building envelopes, balconies, and site drainage at the La Tierra Condominium in Lloydminster (the “Building”), IT WAS ALLEGED THAT:

- a. The Company failed to provide trained and qualified personnel to conduct proper tests;
- b. Testing was not completed on the Building in accordance with typical industry standards and using acceptable methodologies;
- c. The reported testing results were flawed, inaccurate or based on insufficient information;
- d. The April 2015 report was not properly authenticated;
- e. The Reports did not accurately reflect the overall condition of the Building’s stucco and envelope;



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- f. The Reports did not provide the client with viable options or alternatives to stage restorative work;
- g. The recommendations made by the Company were deficient in reasoning, lacked sufficient testing, and were unnecessary and excessive; and
- h. The Company failed to conduct itself in a professional or ethical manner and did not hold paramount the health, safety, and welfare of the public.

It was alleged that the above referenced conduct constituted unprofessional conduct or unskilled practice by the Member and the Company in breach of section 44(1) of the EGP Act and contrary to APEGA's Rules of Conduct.

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

The Hearing Panel heard evidence from 10 witnesses, including the Complainant and the Member.

The Hearing Panel determined that Charge d. had been proven on a balance of probabilities and that this proven conduct constituted unprofessional conduct. In respect to Charges a., b., c., e., f., g. and h., the Hearing Panel determined that none of these Charges had been proven on a balance of probabilities and therefore did not constitute unprofessional conduct.

Decision on the Charges of Unprofessional Conduct

Outline of the Events

1. The Corporation is a condominium complex in Lloydminster, Alberta. It is made up of two buildings, each three storeys high.
2. In September 2014, H.F., a Condo Board member approached the Project Manager at the Company, to inspect work at the Building. There was a subsequent meeting between H.F., the President of the Condo Board, and the Project Manager.
3. On October 9, 2014 and November 4, 2014, the Company delivered the first and a revised second service proposal to the Condo Board.
4. In the spring of 2015, the Company carried out work at the Building.
5. On May 4, 2015, the Company sent their first report (the "First Wade Report") to the Condo Board. The First Wade Report concluded that the balconies and the stucco on



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the walls surrounding the balconies needed to be replaced. The First Wade Report was not signed by a professional engineer.

6. On October 17, 2015, the Project Manager presented the First Wade Report to the owners of the condominiums at the Executive General Meeting (“EGM”). The Condo Board asked the Company to do further testing.
7. On October 20, 2015, the Company prepared a third service proposal which was accepted by the Condo Board. The Company was subsequently engaged to do a roof condition review and stucco review.
8. On November 27, 2015 the Company sent their second report (the “Second Wade Report”) to the Condo Board. The Second Wade Report recommended that all existing cladding be removed and replaced with new cladding.
9. On February 3, 2016 the Condo Board signed a contract with the Company.
10. On February 23, 2016, a condo unit owner filed a complaint with APEGA against the Company. The owner was upset with the quotes and reports from the Company and was not convinced that all the work that the Company had suggested needed to be done. The owner hired the Vice President of Engineering at Rupert’s Land Consulting Inc. to look into the matter.
11. In March 2016, the Condo Board was replaced with new board members (the “New Condo Board”).
12. On March 12, 2016, the Vice President of Engineering attended at the Building and subsequently provided a report (the “RLC Report”).
13. On March 21, 2016, the New Condo Board requested that the Company put their work on hold.

Discussion and Consideration of the Charges

Charge a: The Company failed to provide trained and qualified personnel to conduct proper tests.

14. The Hearing Panel found that Charge a. was not factually proven and therefore did not constitute unprofessional conduct or unskilled practice under section 44(1) of the EGP Act.
15. The Investigative Committee admitted that there was insufficient evidence to prove this allegation. The Hearing Panel agreed that there was no evidence presented to prove this



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allegation on a balance of probabilities. The Member gave evidence concerning the background and experience of the individuals who did the testing and his confidence in their ability to conduct the tests that he instructed should be done. There was no evidence establishing that the individuals who did the testing lacked training or did not conduct proper tests.

Charge b: Testing was not completed on the Building in accordance with typical industry standards and using acceptable methodologies.

16. The Hearing Panel found that Charge b. was not factually proven and therefore did not constitute unprofessional conduct or unskilled practice under section 44(1) of the EGP Act.
17. The Investigative Committee admitted that there was insufficient evidence to prove this allegation. The Hearing Panel agreed that there was insufficient evidence presented to prove this allegation on a balance of probabilities. The Hearing Panel was not provided with any evidence as to what were “typical industry standards” or “acceptable methodologies”.

Charge c: The reported testing results were flawed, inaccurate or based on insufficient information.

18. The Hearing Panel found that Charge c. was not factually proven and therefore did not constitute unprofessional conduct or unskilled practice under section 44(1) of the EGP Act.
19. The Investigative Committee admitted that there was insufficient evidence to prove this allegation. The Hearing Panel agreed that there was insufficient evidence presented to prove this allegation on a balance of probabilities. There was no evidence as to how the reported testing results were flawed, inaccurate or based on insufficient information.

Charge d: The First Wade Report was not properly authenticated.

20. The Hearing Panel found that Charge d. was proven on a balance of probabilities. The First Wade Report was not properly authenticated. The First Wade Report was not signed, stamped or dated by a Professional Engineer at the Company; it was only signed by the Manager, Building Envelope Services at the Company. This was contrary to section 49 of the *Engineering and Geoscience Professions General Regulation*, which states:

Signing and sealing of documents

49 When the practice of engineering or geoscience is carried on by a partnership,



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corporation or other entity pursuant to a permit under section 48, all final plans, specifications, reports or documents of a professional nature must

- a) be signed by and be stamped or sealed with the stamp or seal of
 - i. the professional member or licensee who prepared them or under whose supervision and control they were prepared, or
 - ii. in the case of plans, specifications, reports or documents that were prepared by other persons, the professional member or licensee who thoroughly reviewed and accepted professional responsibility for them,

and

- b) show the permit number issued to the partnership, corporation or other entity under section 48.

21. The First Wade Report provided an engineering opinion and therefore fell under the definition of the practice of engineering defined in section 1(q) of the EGP Act. Further, the First Wade Report contained technical information resulting from the practice of engineering, the report was completed for its intended purpose and was relied upon by the public (the Condo Board and the condo unit owners). As a result, the First Wade Report required proper authentication, but the Member failed to do so.

22. Although the Member admitted that he did not stamp the First Wade Report or the Second Wade Report and that this failure was a mistake, the Hearing Panel found that the Member failed to appreciate the importance of the engineer's seal and stamp based on his testimony on this issue. The Hearing Panel found it was careless for the Member to have omitted the required authentications in the First Wade Report. The Member's conduct breached section 49 of the *Engineering and Geoscience Professions General Regulation*.

23. The Second Wade Report was not part of Charge d. Nonetheless, the Hearing Panel noted that the Member testified that he signed that report, but it did not have his stamp on it. The reason for this was because he had seen a variety of different reports and different stamp dates on other engineering reports and therefore thought it was permissible. The Hearing Panel noted that the Member's explanation for not stamping the Second Wade Report was inadequate. The Hearing Panel recognized that failing to provide a stamp is a common error and impresses that Professional Engineers and Professional Geoscientists who improperly authenticate documents need to take their responsibility more seriously.

24. The Hearing Panel therefore determined that the factual allegations made in Charge d. had been proven on a balance of probabilities. The Hearing Panel next determined if the proven factual allegation constituted unprofessional conduct. The Hearing Panel also determined the Member's actions breached section 49 of the *Engineering and Geoscience Professions General Regulation*.

25. The purpose of a Professional Engineer's stamp and signature is to authenticate the documents, to provide a mark of reliance and it signifies to the public that they can rely on the opinions and recommendations that are in the sealed documents. A sealed document



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is a visible commitment to the standards of the profession by a professional who is required to hold high standards of knowledge, skill, and ethics. An engineer who affixes his or her seal or stamp is accepting professional responsibility for the matters under seal or stamp. The Member's failure to put his signature and stamp on the First Wade Report disregarded the purpose and significance of authentication of documents. The Member also failed to follow the clear direction provided in section 49 of the *Engineering and Geoscience Professions General Regulation*.

26. The Hearing Panel found that this conduct displayed a lack of knowledge or a lack of skill or judgment in carrying out his duty to authenticate his reports and this conduct was serious enough to constitute a breach of section 44(1)(e) of the EGP Act and to constitute unprofessional conduct.
27. The Hearing Panel also found that the breach of section 49 of the *Engineering and Geoscience Professions General Regulation* was a serious enough contravention to constitute unprofessional conduct under section 44(2) of the EGP Act.

Charge e: The Reports did not accurately reflect the overall condition of the Building's stucco and envelope.

28. The Hearing Panel found that Charge e. was not factually proven and therefore did not constitute unprofessional conduct or unskilled practice under section 44(1) of the EGP Act.
29. The Hearing Panel considered all the evidence and found, based on the wording of the Charge, that it was not proven on a balance of probabilities. The Charge required the Investigative Committee to prove that the overall condition of the Building's stucco and envelope was not accurate in the Reports. The Investigative Committee failed to present such evidence to the Hearing Panel and no engineering evidence was presented to establish the actual condition of the building and stucco in the areas in which there was more limited testing.
30. It was clear that there were differences in opinion between the Member and the two expert witnesses about the impact of the stucco over the Tyvek building envelope and how to address this problem and the building envelope problems. The Investigative Committee's expert (R.S.) preferred a more cautious approach and more testing and possibly doing the work in stages whereas the other expert and the Member, were more aggressive in their approach to what should be done. However, differences in opinion between engineers did not, in themselves, prove unprofessional conduct or unskilled practice.
31. Based on the evidence, the Hearing Panel did not know if the Reports accurately reflected the overall condition of the building's stucco and envelope and had no way of determining that issue based on the evidence presented.



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32. The Hearing Panel found there was insufficient evidence provided by the Investigative Committee to allow for the Hearing Panel to evaluate the overall condition of the building and determine whether the Reports accurately reflected the overall condition of the building's stucco and envelope.

Charge f: The Wade Reports did not provide the client with viable options or alternatives to stage restorative work.

33. The Hearing Panel found that Charge f. was not factually proven and therefore did not constitute unprofessional conduct or unskilled practice under section 44(1) of the EGP Act.
34. The Investigative Committee argued that the Member and the Company had a professional duty to discuss viable options to the full replacement of the Building envelope with the owners of the condominium units at the owners' meetings where the Project Manager of the Company attended.
35. The Hearing Panel agreed that a professional duty was owed to the client, the Corporation. However, in dealing with corporate clients, engineers deal as a matter of standard with the elected officers and the board of directors of the corporation who provide instructions and receive information and advice on behalf of the corporation rather than dealing with individual shareholders of a corporation or individual unit holders in a condominium corporation.
36. The Hearing Panel found that the Condo Board had explicitly asked for the Company not to include further options in the Second Wade Report. Although these further options were not included in the Wade Reports, the Hearing Panel found that the Company did provide the Condo Board with viable options or alternatives to stage restorative work. The President of the Condo Board at the relevant time provided instructions, on behalf of the Condo Board, to the Company, specifically the Project Manager of the Company, on the Wade Reports. The instructions from the Condo Board were conveyed to the Company in advance of the Second Wade Report and it was to not include other options in the Second Report.
37. As a result of the above evidence, the Hearing Panel found that the Company, specifically the Project Manager, had discussions with the President of the Condo Board, about a phased approach to the repairs, and the Condo Board asked the Company to not include other recommendations. The Hearing Panel found that it was reasonable for the Company to rely on the instructions it received from the President of the Corporation speaking on behalf of the Board of Directors.
38. The evidence was that the Company took instructions from their client, the Condo Board.



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There were discussions about options and the instructions were to provide a report for a complete repair of the building. The Company then prepared the Second Wade Report, which was what the client had requested. The Hearing Panel agreed with the Investigative Committee's point that these instructions from the Condo Board should have been documented by the Company but the Hearing Panel accepted that these instructions were given to the Company.

39. The Hearing Panel accepted that the Second Report was not what many of the individual condo unit owners wanted. It was clear that the Second Report and the presentation left a significant number of owners angry and feeling that they had not been shown that the entire building envelope needed replacing.
40. Eventually, those concerns led to the members of the Condo Board being replaced with other unit holders who rejected the recommendation to replace the entire building envelope and terminated the business relationship with the Company. The new Condo Board chose not to continue working with the Company and was strongly opposed to proceeding with full replacement of the building envelope.
41. The evidence presented to the Hearing Panel also showed that there were serious divisions between unit owners who supported the builders of the Condominium, some of whom still owned units and lived in the building, and other unit owners, including members of the Condo Board providing instructions to the Company who were concerned about potential action against the builders for the proven need to replace the decks and windows on the entire building.
42. These tensions and the understandable concern of individual unit owners who were advised of the need for very extensive repairs were evident in the evidence presented by the witnesses at the hearing who were also unit owners. They were also shown in the witnesses' descriptions of the two EGMs to consider the First and Second Wade Engineering Reports and the very acrimonious Annual General Meeting of March 16, 2016 at which the President and a number of other Directors were not re-elected to the Condo Board.
43. Lastly, the Hearing Panel noted that if the Second Report was examined in isolation, the Hearing Panel agreed that the Report failed to provide viable options or alternatives to stage repair work. However, given the evidence that the Company did discuss other options and alternatives to stage repair work with the Condo Board of the Corporation and were instructed to prepare a report that focused on the complete replacement of the building envelope, the Hearing Panel found that the factual allegation in Charge f. was not proven on a balance of probabilities.

Charge g: The recommendations made by Wade Engineering were deficient in reasoning, lacked sufficient testing, and were unnecessary and excessive.



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44. The Hearing Panel found that Charge g. was not factually proven and therefore did not constitute unprofessional conduct or unskilled practice under section 44(1) of the EGP Act.
45. The evidence presented at the hearing by R.S. and the Member showed a clear divergence in professional opinions as to whether sufficient testing was done and as to whether a recommendation of a full replacement of stucco was appropriate. The Member's expert witness supported the opinions and recommendations of the Member.
46. It was not the Hearing Panel's role to choose between the opinions of R.S., the Member and the Member's expert to determine which opinion was correct. As both experts acknowledged in their evidence, professional opinions on a matter may differ. The role of the Hearing Panel was to determine whether the opinion given by the Company was deficient in reasoning, excessive and unnecessary, and failed to follow the proper approach required in this situation to a degree sufficient to constitute unprofessional conduct or unskilled practice.
47. The Hearing Panel noted that arguments can be and were made to support either the Member's approach or R.S.'s approach. This was a case where experienced professionals had divergent opinions on the best approach to the water penetration problems. The fact that two professional engineers had different opinions on a particular issue or project did not, in itself, establish that one of the professional engineers was unprofessional or unskilled. Proving that one of the opinions may be preferable to a particular client or to a Hearing Panel does not prove that the other opinion is unprofessional or unskilled.
48. To prove unprofessional conduct or unskilled practice, the Investigative Committee must prove that the approach used to reach the opinion and the opinion expressed fell sufficiently below the standard of practice required of professional engineers so as to constitute unprofessional conduct or unskilled practice. In the opinion of the Hearing Panel, the Investigative Committee did not meet the onus to prove this allegation.

Charge h: Wade Engineering failed to conduct itself in a professional or ethical manner and did not hold paramount the health, safety, and welfare of the public.

49. The Hearing Panel found that Charge h. was not factually proven and therefore did not constitute unprofessional conduct or unskilled practice under section 44(1) of the EGP Act.
50. The Investigative Committee referred to APEGA's Guideline for Ethical Practice and submitted that "practicing in both a competent and ethical manner are two indivisible components vital to maintain a relationship of trust with individual clients and with the public in general" and that "professionals must, in all work for which they are responsible, guard against conditions which are threatening to the life, safety, longer



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term health, financial matters, societal welfare, or sustainable development within our environment.”

51. The Investigative Committee also suggested that “the Company’s assertion that the buildings contain a systemic issue with eminent failure is largely unsubstantiated and lacking reliable evidence to make those determinations. As such, the Company did not conduct itself in a professional or ethical manner and did not hold paramount the health, safety and welfare of the public”.
52. In the opinion of the Hearing Panel, the Company’s recommendation to repair the entire building envelope did not threaten the health and safety of the public. There was nothing unsafe or threatening to health or safety of the public in the Company’s recommendation.
53. In terms of the welfare of the public, this allegation must be founded on the allegations made in Charges e., f., and g. The Hearing Panel found that those charges were not factually proven and there was therefore no evidentiary basis for an allegation that the Company and the Member failed to hold paramount the welfare of the public.
54. The Company concluded that the use of stucco over Tyvek was a fundamental design flaw in the buildings that had caused and was likely to cause significant moisture-related problems for the buildings. Having come to this opinion, it would have been an ethical breach for the Company to fail to bring this concern to the attention of the Condo Board.

Decision of the Hearing Panel on Sanctions

Date: May 23, 2020

Specific Orders made by the Hearing Panel

48. The Hearing Panel made the following orders:
 - a. The Member and the Company shall be reprimanded for their conduct and the Discipline Committee’s written decision on sanction shall serve as the reprimand.
 - b. The Member and the Company shall pay a fine in the amount of \$1,000 to be paid to the Director, Enforcement on or before August 30, 2020.
 - c. The Discipline Committee’s decision shall be published or circulated as follows:
 - i. A written summary of the decisions shall be published in the PEG, in a manner that identifies the Member and the Company; and



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- ii. if any member of the public inquires with APEGA as to whether the Member or the Company 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 complete copy of the Discipline Committee's decision.

Reasons for these Orders

48. The reprimand against the Member was appropriate to denounce the Member and the Company's failure to properly authenticate the First Wade Report (i.e. not stamped, signed and dated by a Professional Engineer at Wade Engineering) in accordance with section 49 of the *Engineering and Geoscience Professions General Regulation*, as this was a failure to comply with a fundamental practice of engineering. The Hearing Panel found that a reprimand would help to deter similar conduct in the future by the Member, the Company and by other members of the profession.
49. The fine of \$1,000 was appropriate to further confirm the serious and inappropriate nature of the Member and the Company's conduct and to address the Member and the Company's lack of appreciation for the importance of the engineer's seal. The amount of the fine also reflected the seriousness of the conduct. Fines are punitive measures, so the Hearing Panel was of the view that the fine would deter the Member and the Company and other members of the profession from engaging in similar conduct in the future and would put them on notice that such conduct has consequences. The amount of the fine reflected the fact that while this was serious unprofessional conduct, this single action justified a fine at the lower end of the possible fines that could be imposed.
50. Publication of the decision was important to protect the public interest. It was also important to make clear to the public and the profession that a failure to properly authenticate documents will not be permitted and to make the decision available to members of the public.
51. The Hearing Panel considered whether the Member should be required to attend APEGA's permit to practice seminar but since the Member attended this APEGA seminar while the hearing was underway and had implemented policies within his firm to ensure this conduct does not occur in the future, it was unnecessary to make an order to this effect. However, had the Member not completed the practice to permit seminar, the Hearing Panel would have required the Member to do so.
52. Lastly, the Hearing Panel did not order costs against the Member or the Company as only one of eight allegations were proven.



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Signed,

JOHN NICOLL, P. ENG.

Panel Chair, APEGA Discipline Committee

FRED RITTER, P.ENG.

Panel Member, APEGA Discipline Committee

ROBERT SWIFT, P. ENG.

Panel Member, APEGA Discipline Committee