

PRACTICE REVIEW BOARD

CASE HISTORIES JANUARY 2009 TO DECEMBER 2009

PRACTICE REVIEW BOARD DISCIPLINE REPORTS PREAMBLE

The Applied Science Technologists and Technicians of British Columbia (ASTTBC) is incorporated under the Applied Science Technologists and Technicians (ASTT) Act RSBC 1979 c.16.1 in 1985; since revised as RSBC 1996 c.15 on April 21, 1997.

The ASTTBC provides professional certification to technologists and technicians in the applied science technologies related to Biological Sciences, Biomedical Engineering, Building, Chemical, Civil Engineering, Electrical, Electronics, Environmental, Forest Engineering, Gas & Petroleum, Geomatics, Industrial, Information, Instrumentation, Mechanical, Metallurgical and Mining disciplines. The ASTTBC also grants technical specialist certification in technical areas such as building design, construction safety, fire protection, house and property inspection, onsite wastewater, public works inspection, site improvements surveys, steel detailing and timber cruising.

Our ‘purpose’, as generally stated in the ASTT Act is, “To maintain, improve and increase the knowledge, ability and competence of technologists and technicians; to regulate standards of training and practice of and for its members, and to protect the interests of the public.” The ASTT Act and Regulations, in the provision of professional certification of technologists, technicians and technical specialists, requires that members adhere to a Code of Ethics, provides a disciplinary mechanism to deal with breaches of the Code and protects ASTTBC’s titles and designations.

The ASTTBC Council has charged the Practice Review Board (PRB) of ASTTBC with the responsibility for enforcement of the ‘Code of Ethics’ for member’s professional practice and conduct, as well as with protecting ASTTBC’s titles and designations. The following report reflects the activities and resolved case files of the PRB. It is the policy of ASTTBC to only report on the specific details of cases (names, places and dates etc.) when the case has resulted in censure as a result of a Disciplinary Hearing or the PRB has determined it is in the public interest to have such information provided.

Report from the Practice Review Board (PRB) for Complaint Cases resolved in PROPERTY INSPECTION from January 2009 to December 2009:

CASE 09-06

STATEMENT OF COMPLAINT:

It is alleged that the Client's Inspector gave money to another Inspector after he had completed a home inspection.

BACKGROUND:

The Client's Inspector was utilizing the house inspection to also complete one of his required Peer Reviews with another fully certified Inspector.

DISCUSSION:

While the optics of cash exchanging hands in this way may not be appropriately interpreted by the client, the situation was not a violation of the Code of Ethics. IT was pointed out to both Inspectors that exchanging a fee payment in view of the public could lead to a misinterpretation as to the circumstances.

INVESTIGATION:

The Investigator found that the money which was exchanged was the fee for Inspector. The money exchanged with the Inspector was for the Peer Review fee and that there was no wrong-doing in his actions.

OUTCOME:

The ASTTBC Practice Review Board determined that the candidate had satisfactorily explained the situation regarding a Peer Review and the Review fee, therefore, no further action was required and the file was closed. This compliant prompted the change in policy in that all mentoring and assessment fees are paid directly to ASTTBC for distribution.

CASE #09-18

STATEMENT OF COMPLAINT:

It is alleged that there was collusion between two ASTTBC Inspectors and a Realtor.

BACKGROUND:

It is alleged that the Realtor directs his client to his preferred Inspectors who drop their fees by \$150 to \$200 to secure the inspection. Once the deal goes through, the Realtor tops up the Inspector's remuneration by cash, thus there is no 'paper' trail to prove these allegations.

INVESTIGATION:

The Inspectors were asked to comment on the complaint and in a letter to the Investigator advised:

"We certainly have never and would never stoop to such action and any suggestion to that effect – especially unfounded and unsupported by fact and only being 'hearsay', plus originating anonymously - is borderline libel/slander and should be seen only as such. This has all the elements of someone with 'an axe to grind' for whatever reason. This is totally without foundation or any basis in fact whatsoever - please rest assured."

DISCUSSION:

Since the information came to ASTTBC anonymously as 'hearsay' and the Inspectors have denied the allegations, there is no evidence of wrong doing. The Registrar felt that it was important to make the Inspectors aware of the perception that existed related to his practice, such that he could dispel such perception in the future.

OUTCOME:

The ASTTBC Practice Review Board determined that no evidence existed to support any wrong doing on the part of the Inspectors, therefore no further action was required, and the file was closed.

CASE #09-30**STATEMENT OF COMPLAINT:**

That an ASTTBC Inspector In Training's website indicated he was offering services that as an IIT he is not authorized to perform.

BACKGROUND:

The Registrant was currently registered as an Inspector in Training 'IIT' with the ASTTBC Special Certification House and Property Inspection group. As such he was not permitted to offer any inspection services.

INVESTIGATION:

The Registrant was sent a cease and desist letter to which he verbally advised the Registrar that he was not offering any Inspection services and that he would not do so until he is certified with the House and Property Special Certification group and licensed with the CPBC. The Registrant sent a signed letter confirming his conversation with the Registrar.

DISCUSSION:

Since the Registrant had verbally confirmed that he would not offer any inspection services until he was certified with the House and Property Inspection Special Certification group and licensed with the CPBC, no further action was required.

OUTCOME:

The ASTTBC Practice Review Board determined that since the Registrant had sent in written confirmation that he would not do any inspection work until such time as he is certified by ASTTBC, no further action was required and the file was closed.

CASE #09-31**STATEMENT OF COMPLAINT:**

That an ASTTBC Inspector In Training's website indicated he was offering services he was not authorized to perform.

BACKGROUND:

It was also noted that he was using both the ASTTBC and ASTTBC logos in his advertising. As an IIT he is not permitted to perform inspection services nor is he permitted to use the logos.

INVESTIGATION:

The Registrant was sent a cease and desist letter requesting that he immediately cease advertising inspection services he was not certified to perform. In his response he advised that the logos were downloaded by an ad designer but he thought he could use them since he was a Registrant. The IIT was advised that he could not offer inspection services until such time as he was appropriately certified with ASTTBC.

DISCUSSION:

Note: The IIT's response was found to be acceptable to the Registrar; thus his certification application for reclassification from IIT to CHIP (P) was allowed to proceed and he was certified as a CHI(P) by the Board of Examiner's.

OUTCOME:

The ASTTBC Practice Review Board (PRB) determined that, since the IIT had confirmed that he did not do any inspection services until he was certified with ASTTBC, no further action was required and the file was closed.

CASE #09-48**STATEMENT OF COMPLAINT:**

An ASTTBC 'Inspector' completed two site inspections, for two different clients three months apart, on the 'Claimant's [Seller's] property. The 'Claimant's letter stated that the first inspection caused the collapse of the sale due to the Inspector's reporting of a scorch mark on the roof around the fire place chimney as a potential fire risk. The Claimant states the collapse of the second sale was due to the Inspector's reporting of a crawl space vapour barrier being incorrectly installed, perimeter footings issues and evidence of wet insulation. The Claimant also suggested that the 'Selling Agent' indicated that the Inspector advised the buyer not to buy the property.

BACKGROUND:

The complaint originates from the property Seller, the Claimant, with reported information from the Selling Agent and no comments from the Listing Agent. This is unusual within the industry, as the Listing Agent has the responsibility of ensure the best interests of the Seller. It must also be noted that it was same Listing Agent during the period of both of inspections.

INVESTIGATION:

The Investigator reviewed the Claimants letter, read the Inspector's inspection reports, his reply to the complaint and spoke with the Inspector. The Investigator also reviewed an inspection report from the Claimant provided by Fire Place Installer, a letter from the Inspector's Client [Buyer] of the second inspection, and reviewed the activity of the property based on data from the Vancouver Real Estate Board.

In the Investigator's conversation with the Inspector, he stated that the Selling Agent indicated that the cause of the collapse of the first sale was in fact the inability of the buyer to secure financing. The letter from the second buyer indicates she was completely satisfied with the findings of Inspector and they subsequently engaged him for another property, which they purchased. The inspection by the Fire Place Installer was completed six months prior to the Inspector's findings. It follows that the scorch marks would have occurred after the Installer's inspection. A property inspection is a report as to the condition of the components on the day of the inspection. Therefore with consideration to factors such as weather, owners' activities etc reported results can change immediately after an inspection is completed. The

Inspector confirmed that two inspections on the same property for different clients can be problematic and he would avoid doing this in the future.

DISCUSSION:

The Investigator could not find the Inspector negligent as a result of his inspections of this property especially with concerns by the Seller that he solely caused the collapse of the two potential sales. In reading the Inspector's response to this complaint and through telephone conversations, it appears that this complaint had resulted in a useful learning experience for him.

OUTCOME:

The ASTTBC Practice Review Board determined that there was no evidence of wrong doing or a violation of the Code of Ethics on the part of the Inspector, therefore no further action was required and the case was closed and the parties notified.

CASE # 09-50

STATEMENT OF COMPLAINT:

An ASTTBC 'Inspector' completed a pre-purchase inspection in the company of his client the 'Buyer' of the Seller's residence, the 'Claimant'. As a result of the inspection report, which the Claimant obtained from the Buyer, the sale collapsed. The Claimant alleges the inspection report was unprofessional, unethical, slanderous, and arrogant; composed of assumptions, with no relevancy to a proper building inspection report.

BACKGROUND:

The complaint originates from the property Seller who blames the Inspector not directly for the collapse of the sale of their home, but for his unprofessional and unethical report and breach of the ASTTBC Code of Ethics. The Seller purported to support the complaint with opinions of others who have read the report.

INVESTIGATION:

The Investigator reviewed the Claimant's letter, read the Inspector's inspection report, and his reply to the complaint. In addition, the Investigator spoke with the Inspector to discuss the nature of the complaint. The Investigator also reviewed the activity of the property from the Fraser Valley Real Estate Board Website and pictures attached to the listing. The Inspector's written reply states that the report is an informal and abbreviated list of opinions from his partial inspection and was strictly confidential without prejudice. Further, he states that the bottom of page I of his report contains "STRICTLY CONFIDENTIAL Without Prejudice* See back of this page." In his defence the Inspector also claims the report was never intended to be circulated to anyone else. On the phone the Inspector repeated his written statement and also his apology for the report. He admitted that it was not a good reflection of himself or ASTTBC. He repeated the comment "I wished I had done better.

DISCUSSION:

There is no evidence to support that the Inspector was negligent in the inspection of the major components of the property or in what was discussed between him and his client. What is obvious is the unacceptable quality of the report he provided to his client and the damage caused to the image of ASTTBC, BCIPi and himself.

OUTCOME:

The ASTTBC Practice Review Board (PRB) determined that the Inspector was required to provide a written statement (minimum 500 words), acceptable to the PRB, that ensured that he understood the importance of writing an appropriate report in all circumstances and that he appreciates the potential

liability and perception/ impact on his profession. In addition, he was required to provide ASTTBC with his next three inspection reports, for review.

CASE # 09-52

STATEMENT OF COMPLAINT:

An ASTTBC 'Inspector' completed a site inspection of the Claimant's (Seller's) property. The letter of complaint alleges that an extremely negative report was written about her home by the Inspector. She goes on to say that she did not personally review the report, but when the potential buyers did not complete their purchase they gave an outline of the report to her.

BACKGROUND:

The 'Claimant's letter refutes the Inspector's report related to structure damage and that a crumbling foundation is occurring. The Seller indicated that an engineer was engaged to investigate possible structural damage and reported results that varied from those of the Inspector.

INVESTIGATION:

The Investigator reviewed the complaint letter, the Inspector's report, and the Inspector's reply to the complaint. In addition, the Investigator met with the Inspector to discuss the nature of the complaint. The Investigator also reviewed the activity of the property on the Fraser Valley Real Estate Board Website and pictures attached to the listing.

DISCUSSION:

The complaint originates from the property Seller (Claimant), who blames the Inspector for the collapse of the sale of her home. The Claimant purported to support the complaint with an engineer's report, which after many requests by the Investigator was not provided. There were no comments from the Listing Agent, which is unusual within the industry as the Listing Agent has the responsibility of ensure the best interests of the Seller and would normally assist should inspection discrepancies occur. There are many reasons why a potential Buyer will collapse a sale; the inspection report has become a common escape, whether legitimate or not. The Inspector's report summary verbally provided by the potential Buyer may have been interpreted as harsh, however, there is nothing to indicate they are untrue.

This is taken from the report summary:

- Stucco Cracks in cracks over carport indicating sagging of load bearing beam.
- North facing Garage floor / foundation, concrete cracked foundation wall with displacement.
- Joists/Trusses: 2 x 10 joists & 2x4 rafters.
- Significant sagging visible of roof structure, due to undersize strength of rafter system.
- A structural engineer is recommended to evaluate and estimate repairs.
- Bedroom #3 Ceiling: Spray Textured Drywall Water stains present under location of sag in roof.

There was no evidence to support the allegation that the Inspector was negligent as a result of his inspection, especially that he solely caused the collapse of a potential sale. A typical buyer or seller, reading the report, will be subject to their personal knowledge. There is no evidence to suggest that the Inspector did not fully and actually report his findings to the client.

OUTCOME:

The ASTTBC Practice Review Board determined that there was no evidence of a violation of the Code of Ethics or failure to adhere to acceptable practice standards, therefore no further action was required and this case was closed. Further, the parties were informed of the PRB decision.

CASE # 09-54

STATEMENT OF COMPLAINT:

The 'Claimant' alleges to have lent an ASTTBC Inspector in Training, 'IIT', money, which has not been repaid as per their agreement.

BACKGROUND:

The Claimant was supposed to receive \$50 per month but the IIT changed his phone number and could not be contacted.

INVESTIGATION:

The response from the IIT regarding the loans from the Claimant indicates that he mostly used the money for House Inspection courses at BCIT; the Claimant suggests this is not true, that the Government paid for those courses and the IIT used the money for things other than what he claimed he would use it for. The IIT claims that he is willing to communicate and negotiate with the Claimant to find a solution suitable to both parties.

DISCUSSION:

This appears to be a case of 'he said - she said' and is an issue to be decided by other means, as it does not fall within the mandate of ASTTBC. However, there is an issue of whether the IIT's behaviour is ethical under the Code of Ethics. The Claimant was one of only two references for the IIT for both his ASTTBC and House and Property Inspection certification applications (he is an Associate member and an IIT). The Claimant now states in her letter that, "I misjudged this man greatly". To be a certified member with ASTTBC and/or the House and Property Inspectors, he requires a minimum of three appropriate references.

OUTCOME:

The ASTTBC Practice Review Board determined that the IIT be advised that, should he wish to reclassify as a certified member with ASTTBC or the House and Property Inspection technical specialist group, he will be required, in addition to all other academic and experience requirements, to submit three appropriate references suitable to the Board of Examiners. Further, he was advised that the issue of the money he owes to the Claimant will have to be settled by other means as it does not fall within the ASTTBC mandate. The Claimant was also advised accordingly. The file was then closed.

CASE # 09-56

STATEMENT OF COMPLAINT:

A new member of ASTTBC with the designation of Inspector in Training 'IIT' was offering services, which at the time, he was not certified to perform.

BACKGROUND:

The IIT was sent a cease and desist letter advising that as an IIT he was not permitted to perform any inspections services.

INVESTIGATION:

The IIT responded that he had been on a family vacation in Hawaii and was not aware of the Government licensing until advised by ASTTBC. He also advised that he would not perform any further inspections until such time as he was certified. He subsequently completed additional mentorship and assessment requirements with ASTTBC and was reclassified to CHI (P), Provision Certified House Inspector and a candidate for a CPBC License.

DISCUSSION:

The IIT response was found to be acceptable to the Registrar; thus his certification application for reclassification from IIT to CHI(P) was allowed to proceed and he was certified as a CHI(P) by the Board of Examiners.

OUTCOME:

The ASTTBC Practice Review Board determined that since the IIT confirmed that he would not perform inspection services until he was certified with ASTTBC, no further action was required and the file was closed.

CASE # 09-69

STATEMENT OF COMPLAINT

The 'Claimant' was the owner of property listed for sale. The defendant, a property 'Inspector', was engaged by a 'Buyer' to complete pre purchase inspection as part of the condition to purchase.

BACKGROUND:

As part of the inspection the Inspector proceeded to check the perimeter drainage system by adding water to the system by use of a garden hose. The consequence was the flooding in the finished basement area causing damage to a newly installed laminate floor. The Claimant places the blame for the damage on the inspection procedures.

INVESTIGATION:

The Investigator reviewed the Claimant's letter of complaint, read the Inspector's reply, visited the site to inspect the damage and discussed the complaint with the Inspector. The Investigator's site inspection revealed that the down pipe in which the garden hose was placed as part of the test, had no back side to the drain pipe and the foundation was post and beam in this location. As the drain pipe was plugged the water from the garden hose ran across the shadow crawlspace to the finished in ground basement. A teenager of the owner was in the basement and notified the Inspector of the water ingress.

DISCUSSION:

In discussion with both parties it was obvious that the owner wanted compensation and the Inspector agreed to make a fair financial settlement. An agreement was completed by the parties with no further action required. The Inspector agreed that water testing of this nature is not a recommended procedure and agreed to discontinue this practice in the future.

OUTCOME:

The Practice Review Board determined that this is a case of errors and omissions and not a breach of the Code of Ethics or Standards of Practice; given the matter was settled by the use of facilitator, the case was closed with no further action required.

CASE NO. 09-74

STATEMENT OF COMPLAINT:

An ASTTBC 'Inspector' completed an inspection in the company of his client (prospective 'Buyer'), of the 'Claimant's residence. The Claimant heard from the Realtors as to the contents of the inspection with emphasize on the poor condition of the roof; resulting in a collapsed sale.

BACKGROUND:

The complaint originates from the property 'Seller's Friend', who blames the Inspector for adversely influencing the Buyers regarding the purchase of the property. The Seller' Friend purported to have overheard a conversation suggesting that the house needed a new roof when in fact the roof was 9 years old

INVESTIGATION:

The Investigator reviewed the letter of complaint, the Inspector's reply to the complaint; spoke with both the Inspector and the Claimant who stated that he saw the Inspector checking the roof from the road and would not be able to comment on the condition from that distance. The Investigator also reviewed the activity of the property on the Fraser Valley Real Estate Board Website and pictures attached to the listing.

The Real Estate photos illustrate the topography of the narrow site to be very steep and that the only vantage point to view the roof would be the front street. There is no evidence to support that the Inspector was negligent in the inspection of the major components of the property or in what was discussed between him and his client.

DISCUSSION:

The Inspector's written reply and verbal conversation suggests that he had no contact with the Seller or the Friend. Further, the Inspector suggests that the Realtors may have used the roof as a lever for a price adjustment or collapse the sale.

OUTCOME:

The ASTTBC Practice Review Board determined since there was no supportive evidence that a breach of the Code of Ethics or Standards of Practice had been breached, the file was closed and no further action was necessary.

CASE # 09-93**STATEMENT OF COMPLAINT:**

The 'Claimant' also the seller alleges the Inspector acted in an unprofessional manner, causing property damage during a home inspection for his 'Buyer' client.

BACKGROUND:

The alleged damage to several areas of the house included the exhaust pipe of the furnace, two holes in wooden railing attached to the house and damage to several cedar shakes on the roof by gouging pieces from the shakes.

THE INVESTIGATION:

The investigation determined the methods used by the Inspector during his inspection are those typically used in the examination of the components of any dwelling. Where decay or rust is evident the process may appear destructive however the search is only to determine the severity of the damage and safety risks. When the Investigator left the premise the owners appeared satisfied with the explanations and appreciated the safety concerns voiced by the Inspector regarding the furnace.

DISCUSSION:

As the ASTTBC Standards of Inspection (Purpose, Scope and Limitations of the Inspection) states 'the inspection is a visual inspection by direct observation of the existing conditions at the time of inspection; therefore, no breach of the ASTTBC Code of Ethics could be determined. However the Investigator also

contacted Consumer Protection BC to confirm the status of the inspector status only to find the inspector was not licensed. As the Inspector was not licensed to undertake a home inspection assignment, since he was in violation of the Consumer Protection BC (CPBC) Home Inspector Licensing Regulations, his actions needed to be reported to CPBC.

OUTCOME:

The Practice Review Board (PRB) determined that the Inspector, in a formal letter, be reprimanded for practicing without an appropriate license from CPBC and such letter be placed on his file for possible action should the Inspector violate licensing requirements in the future. Further that CPBC be notified of the license breach by the Inspector. No further action was required and the file was closed.

CASE # 09-94

STATEMENT OF COMPLAINT:

It is alleged that an ASTTBC 'Inspector' did not report deficiencies during an inspection.

BACKGROUND:

Upon occupancy the 'Claimant' found the French door between the living room and backyard to be decayed across the bottom. They claimed the French door was disregarded or overlooked by the Inspector during his inspection. After the investigation had begun a second complaint was received stating the Inspector had overlooked cracks in a ceramic tiled floor of the kitchen.

INVESTIGATION:

On two occasions the property was inspected by the Investigator and in both occasions the Claimant was interviewed concerning his interpretation of the inspection report and his recollection of the walk through process. The Claimant was repetitive in his claim that the Inspector had overlooked the deficiencies for which he wanted compensation for the required repairs. To the first claim the Inspector agreed to replace the French doors and tile the entry area rather than replace carpet to this heavy traffic area. The Claimant rejected the idea of the Inspector, who is also a new home builder, having any role in the repairs and instead wanted to take a cash settlement.

DISCUSSION:

To the second claim of the Claimant, after discussion with the Investigator, remembered the Inspector speaking to the deficiencies of the kitchen floor. The Realtor who was present during the process was not willing to speak to these discussions that occurred during the walk through process.

The alcove of the French door had approximately 20 house plants of various sizes restricting the opening of the doors for inspection from the interior and that the water of plants could have resulted in carpet decay. Without opening the doors, the condition would not be visible as these were metal covered doors with wood cores. The Inspector claims he pointed this out to the Claimant in the presence of the Realtor. The condition of the kitchen floor was pointed out to the plaintiff and, because it had previously been repaired, they were willing to accept it in its present condition.

The inspection report was not in English, therefore of no value to the Investigator. The Claimant obtained repair quotes for the French door, none of which he shared with Investigator. The Inspector had determined his cost with his sub to replace the French door and tile the floor. Neither agreed to the suggested dollars involved but both parties agreed that the Investigator could act as facilitator to end the dispute.

OUTCOME:

The two parties agreed that going to court was not an option which led to the Investigator to facilitate an agreement whereby the Inspector would pay the Claimant. The ASTTBC Practice Review Board (PRB) concluded that since the matter was resolved by facilitation and no breach of the Code or standards of inspection was determined, no further action was required and the file was closed.

CASE # 09-96**STATEMENT OF COMPLAINT:**

The letter of complaint by the 'Claimant' also the Seller of the property alleges that an ASTTBC 'Inspector', in his second inspection with a different Buyer than the first inspection, reported the same deficiencies in his second report even though they had been addressed.

BACKGROUND:

The second Buyer attempted to re-negotiate a lower price for the house based on the inspection but was unsuccessful.

INVESTIGATION:

The Inspector submits that the deficiencies mentioned in his report from the first inspection still existed in addition to others observed in his second inspection and that the initial deficiencies had not been properly addressed. The Claimant did not provide evidence to support the claim.

DISCUSSION:

After a few years in the Inspection business it is not unusual to inspect the same property for a second time and to use the previous report as the skeleton format for the new report. Likewise, if deficiencies listed in the first report are not properly repaired they will be again noted in the new report. In reviewing the documents this appears to be the case in this complaint.

The Inspector is obligated under the Code of Ethics to protect his client's interest, which may result in an unhappy seller. There is no evidence to indicate that the Inspector is in breach of the Code of Ethics or has not complied with the Standards of Inspection.

OUTCOME:

The ASTTBC Practice Review Board determined that since there is no evidence of a breach of the Code of Ethics or standards of practice, no further action was required and the file was closed.