

PRACTICE REVIEW BOARD

ETHICS ENFORCEMENT CASE HISTORIES JANUARY 2011 TO DECEMBER 2011

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 and Registrants 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 or Registrant’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 resolved Complaint Cases that are related to Ethics enforcement from January 2011 to December 2011:

CASE #10-50

STATEMENT OF COMPLAINT

It was alleged that a CTech (Certified Technician) Member of ASTTBC was providing substandard work in possible violation of Principle #2 of the Code of Ethics.

BACKGROUND

A complaint to ASTTBC was received from a staff member of a municipality with regards to a CTech Member's practice. The complaint referred to two projects by the Member that were submitted for a building permit. The complainant had contacted ASTTBC to complain about the lack of detail on the drawings. The member responded saying that, the two drawings in question were preliminary and not intended to be submitted for a building permit. The member also alleged that his client submitted the drawings for a permit without his knowledge.

INVESTIGATION

The ASTTBC investigator requested at least two recent drawings from the CTech Member that were sent for a building permit and the two drawings in question from the municipality. The investigator also attempted to make contact by email and telephone with the complainant. Three examples of the Member's work as well as the two drawings in question were received for review.

The investigator did not hear any further from the complainant. The investigator reviewed all the plans provided. When reviewing the three recent plan submissions, the investigator concluded that the Member does know the minimal requirements as to what is required to produce a set of house plans that would be accepted by a municipality for building permit and construction. This would include site data including floor space ratio and site elevations, foundation and floor plans, building sections, details and elevation. This being said, it was also noted that the plans were not complete. Several code issues and missing details were noted. According to the Member, the three additional drawings provided were accepted for building permits. When reviewing the original two drawings cited in the complaint, it was noted that they have all the same requirements he provided on the three example drawings that were accepted. However, they were not complete, being that there were some major code issues. The dates on the plans were also missing. It appears that the plans in question, which were the basis of the complaint by the complainant, were intended to be the final set given to the client for a building permit application. They do not have "Preliminary Drawing" or "Not for Permit" anywhere on the plans.

DISCUSSION

The CTech Member states that the two drawings in question were 'preliminary' and not meant for permit application, but when comparing the two drawings to the three example drawings of previously accepted work, the investigator believed that the two plans in question were the final drawings. It was concluded that the work being provided by the Member was substandard and needed improvement.

OUTCOME

The Practice Review Board determined that, since the CTech Member's drawings and plans appeared to be substandard related to Part 9 Building Code requirements, he voluntarily take a refresher course in the Part 9 Building Code. In addition, he must provide ASTTBC with his next building plan that is to be submitted for a Building Permit, for review and possible mentoring. Alternatively, the member could request a Discipline Hearing to review the complaint.

The CTech Member subsequently advised the Registrar that rather than complete the PRB recommended conditions or proceed to a Disciplinary Hearing, he would resign his CTech and Associate Designer registrations. The Practice Review Board then decided no further action was required and the file was

closed. Should the CTech Member wish to reinstate his membership in the future he will be required to successfully complete all PRB conditions and, in addition, meet the certification requirements for both CTech certification and Associate Designer registration that are in place at that time. The database was flagged to indicate these requirements.

CASE #11-09

STATEMENT OF COMPLAINT

It was alleged by a community Ratepayers Association that an ASCT Member, who was the Chief Administration Officer for the community, was rude, discourteous, and less than professional to members of the public.

BACKGROUND

A community Ratepayers Association submitted documentation regarding their allegations of alleged wrong doings by an ASCT Member. The community Mayor stated in his letter that when the ASCT Member was hired for the position of Chief Administrative Officer, it was with an agreement of Council that they would conduct business in a different manner than was previously the norm, effectively changing the business culture of the community. A management team came forward with a list of issues they felt had to be overcome if the community was to move forward. They included:

1. Negativity
2. Prejudice
3. Lack of respect for the rule of law
4. Dishonesty
5. Hidden agendas
6. Culture of entitlement, self interest and nepotism
7. Lack of trust in people and process
8. Little or no knowledge of the roles and responsibilities of leadership and management (Council and Staff)
9. Micromanagement
10. Blaming others for problems that are created in Lillooet by people in Lillooet
11. Maintaining status quo to avoid issues
12. Reacting to the demands of special interests groups
13. Lack of planning for decision making
14. Lack of positive communication with the public and staff
15. Backroom meetings and deals
16. Accusation, innuendo and rumor without accountability or fact

INVESTIGATION

The Mayor stated that while many of the above issues have been addressed, there were certain groups in the community, namely the Ratepayers Association, which wanted to do business by utilizing many of the actions that had to be overcome. The ASCT Member advised that many of the issues brought forward by the Ratepayers Association had gone through the public process at regular Council meetings and that the Ratepayers Association had not agreed with the action taken by Council or staff on the issues. It was also claimed that the Ratepayers Association were now trying to undermine the Member's credibility with professional organizations in which he holds membership and professional certification. The Member stated: "I believe that the Ratepayers have now escalated defamation and harassment to a new level."

DISCUSSION

In review of the documents provided by the Ratepayers Association, there was no clear evidence of a violation of the Code of Ethics by the ASCT Member. There were allegations that many of the professional recommendations made by the Member to the Council, for 'their approval', were technically flawed, but there was insufficient evidence to substantiate this. It appears from the comments by the Mayor and the Member that most actions brought forward by the Ratepayers Association have gone through the public process at regular Council meetings. It would also appear that there are no concerns

by the Mayor with respect to the Member's conduct or professional expertise and the Member's role is fully supported by the Mayor. This appears to be an attempt by the Ratepayers Association to discredit the Member before the community Council for political gain. It should be noted that ASTTBC had been unable to substantiate the name of the individual from the Ratepayers Association who submitted the complaint. Since there appeared to be no substantiated evidence from the Ratepayers Association, of a breach of the Code of Ethics it was recommended that the complaint be dismissed and the file closed.

OUTCOME

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

CASE #11-13

STATEMENT OF COMPLAINT

It was alleged that an ASCT Member, employed by a large engineering firm acting as project consultants, failed to disclose appropriately to the complainant that a large amount of clay fill had been placed on his property prior to purchase. The complainant thereby incurred significant additional construction costs due to the excessive amount of undisclosed fill, placed on the property, which he claims was not documented by the ASCT Member. The complainant further alleges that:

- 1) the developer and/or the contractor collaborated with the engineering firm to allow the fill and a post-construction topographic survey was done to produce the amended contours for the revision drawing or,
- 2) the developer and/or the contractor agreed to place the fill on the lots, to avoid the cost of offsite disposal and a person or persons with the engineering firm performed a post-construction topographic survey on the site, developed contours and produced the drawing without comparison with the approved plan.

BACKGROUND

ASTTBC received supporting documentation / correspondence related to the above noted complaint. Upon review of the information provided, various parties were identified as being directly or indirectly involved in the dispute, including the complainant, the ASCT Member, the professional engineer of record, individuals from the development company, a land Surveyor, a municipal employee, the purchasing & listing realtors, an employee of the prime contractor and legal counsel for the complainant.

The ASCT Member provided detailed information regarding the project and the corresponding subject property of the complaint. In addition, four different drawings showing design elevations and corresponding as-constructed elevations of the subject property owned by the complainant were submitted. This complaint had two distinct issues, both regarding technical competency and ethical conduct. Specifically:

- 1) review of technical competency and ethical conduct related to collection & use of survey field data and,
- 2) review of undisclosed clay fill placed on the property and ethical conduct related to this.

INVESTIGATION

- 1) Review of Complaint Regarding Survey Data Technical Competency and Alleged Non-Ethical Practice.

Following the Investigator's review of the drawings submitted, he questioned the accuracy of the data due to the erratic fluctuation in recorded values, and suspected that an error had occurred in the field or during documentation. When reading through the remaining correspondence, the Investigator's findings were consistent with those arrived at by the land surveyor and the ASCT Member. In a letter by the Member to ASTTBC it states, "all parties concluded that there was a numeric transposition of one of the as-constructed survey points". The conclusion was that there is no question that an error, possibly a numeric

transposition, occurred effecting the results of design calculations and field measurements. However, there is no evidence to support the complaint statement that the engineering firm's staff members either participated in this variant or that they were negligent in their duties. There was also no indication that numbers were deliberately altered to conceal the error, or of non-disclosure, once the error was realized. It was noted that even though the AScT Member and the complainant both used the same land surveyor, while working to try and resolve the dispute, it is questionable whether this was a possible conflict of interest. The documentation submitted supports that all parties were aware of the conflict without objection. Consequently, the Investigator found that there was no evidence supporting a question of technical competency and non-ethical practice related to collection and use of survey field data.

2) Review of Complaint Regarding Undisclosed Placing of Clay Fill and Alleged Non-Ethical Practice.

Following the Investigator's review of the photographic information submitted by the complainant, there does appear to be evidence of a clay layer, approximately 2' in depth, overlaying the organic layer located on the subject property. In fact, this issue is specifically addressed by the AScT Member in a letter to the developer, which states "At the prompting of (complainant) a re-evaluation of the data was completed...the re-evaluation indicated the original elevation was correct, localized mounding of material (above the pre-construction grade) had occurred, and that (complainant's) assertions of 2' of fill could be corroborated to some extent".

All parties agree that there was a layer of fill on the complaint's property. Consequently, the question remains, how did the layer of clay fill get there, and who is responsible? In his complaint the complainant states "Regardless of what actually happened, (engineering firm consultant) staff members either participated in this variant to the approved drawings or were negligent in their duties".

The Investigator's evaluation of the events leading up to the time of the complaint was as follows:

- The prime contractor was tasked with installing the off-site utilities located within the subdivision municipal road allowance. A letter by the supervising consultant, states that "it would appear that while material from pipe trenching within the roadway was side cast onto the lot during construction, the majority of this material was loaded and hauled offsite..." however, in the letter from the contractor it states "To make it absolutely clear, at no time were any lots excavated or filled by our forces". On this point, the contract between contractor and the developer was for a lump sum and there is not a cost savings to the developer in collaborating with the contractor to place fill (spoils) on the lots. Correspondingly, due to the lump sum pay item it would be easy for the consultant to think that there was no need for them to supervise load counts of unsuitable material being hauled off-site. The only party with anything to gain, by dumping spoils on-site, was the contractor. Taking into consideration that without the proper contractor supervision by the consultant it would be very easy for the contractor to dump/loose spoils on-site with the aim being double dipping on a contract pay item. Although the contractor clearly states this was not the case, they do not have any record (dump slips) for loads disposed of off-site.
- In a letter by the consultant, the AScT Member states that "(consultant) was only onsite infrequently, as required to satisfy municipal river requirements for inspection". In addition, the Member also states in an email that "(consultant) was not on the site full time during construction nor did we attend the site after you provided your assertions, so we could not advise our client based on direct observations, if fill had been placed. Instead we relied on the assurance of the contractor".
- Included with the contractor's bid it is clearly printed "Notes: Construction by home builders may necessitate excess spoils removal off site, this can be discussed before construction commences. Clearing debris to be left stock piled on next phase." The contractor does not define what "spoils" mean however, in the industry this is commonly regarded as unwanted or unsuitable fill.

In addition to the above, in a letter by the consultant the ASCT Member states that “localized mounding of material (above the pre-construction grade) had occurred, and that the complainant’s assertions of 2’ of fill could be corroborated to some extent”. However, the Member failed to explain what “localized mounding” means or how this would occur. In the Investigator’s experience, the dirt did not move by itself.

- As an additional note, the Member also states in a letter that “(contractor) met with (the complainant) on (date) and outlined a proposal, in which some landscaping/site upgrading would be completed with the understanding and written assurance the (complainant’s) current claims be retracted and no future claims be put forth. Assuming (the complainant) accepts (contractor’s) proposal of (date), the additional works would be completed at no cost to (developer).”

There is no question that fill was placed without proper authorization. The consultant failed in their duty, to protect the interests of their developer client by not providing proper on-site contractor supervision of the work being performed. In addition, the consultant also failed in their duty to protect the safety of the public and the Environment by only providing the minimum level of site inspection / contractor supervision required to satisfy the municipal requirements.

According to the municipality’s “Subdivision Servicing Maintenance Agreement” the developer is required to provide a one-year maintenance period where they are responsible for any deficiencies that arise.

The complainant started excavation of his lot site and upon discovery of the unauthorized layer of clay fill reported it to the consultants. After receiving no action, the complainant’s legal counsel drafted a letter to the developer outlining the concern regarding the discovery of the unauthorized fill. Consequently, as the reporting of the deficiency falls within the required maintenance period, the consultant placed itself and their developer client in a very difficult position. If required, the municipality could force the developer to pay for a solution and leave them to recover costs from the contractor and/or the consultant. It is fortunate that the parties are trying to work out an agreeable solution.

Throughout this entire sequence of events there are no letters, emails or comments from the engineer of record. The investigator was led to believe that a separate complaint had been filed with the Association of Professional Engineers and Geoscientists of BC regarding his actions in this matter. As per the Engineers and Geoscientists Act of BC., the ASCT Member is required to work under the direct supervision of a professional engineer, in this case, the engineer of record. As the engineer who sealed the drawing, it is his responsibility to assign the level of supervision required to fulfill his obligation of site inspections and field reviews. In this regard the ASCT member was not acting self-directed and is not responsible for the result of an inadequate level of contractor supervision being provided by the consultant.

However, based on a letter to the consultant from the developer, it is clear the client felt the ASCT Member and the consultant-engineering firm created a conflict of interest by engaging in direct dialogue with the complainant. This conflict of interest was partly demonstrated in an email where, without consulting his client, the ASCT Member recommended to the complainant that a conference call was in order to discuss “the developers / contractors willingness to entertain a claim for extra cost related to removing this fill”. All correspondence should have gone through his client the developer, not directly with the developer’s customer.

Investigation conclusions: There is no evidence that the ASCT Member collaborated with the contractor to allow fill to be placed. In addition, as the Member was working under the direct supervision of the engineer of record, there is no evidence that he was directly responsible for the result of inadequate contractor supervision.

The AScT Member was responsible for non-disclosure of conflict of interest between his client and the client's customer.

DISCUSSION

Following the Investigator's review of the supporting documentation submitted with the complaint file, the following speculation is made regarding a possible sequence of events that may have occurred:

- The consultant created a finished lot-grading plan prior to utility work starting.
- During trenching work for utilities there was a lack of contractor supervision by the consultant.
- This led to the contractor being able to dump spoils on-site without accountability.
- Due to their lack of supervision, the consultant signed off on the subdivision without knowing about the fill.
- The developer then requested a certificate of completion from the municipality.
- The consultant did not compare the pre and post trenching elevations of the lots.
- The developer sold a lot to the complainant.
- During excavation the building contractor identifies the layer of fill.
- The consultant becomes aware of the problem.
- Due to lack of contractor supervision the consultant cannot prove that contractor dumped on-site.
- The consultant, realizing the error, starts direct communication with the complainant.
- As the consultant-engineering firm is unwilling to correct the problem at their cost, the developer becomes aware.
- As the subdivision is still under a one year maintenance agreement the developer is responsible.
- The developer feels the consultant dropped the ball by not preventing fill from being placed.
- The consultant continues to work with the complainant to try and resolve the issue, thus creating a conflict with their client.
- The complainant becomes frustrated with the dysfunction of the situation.
- The complainant contacts legal council to assist with facilitating a solution.
- The complainant files a complaint with ASTTBC against the AScT Member.

On a separate note, this case demonstrates the value of proper pre-purchase due diligence and sub-surface investigation by purchasers. Several actions could have been taken by the complainant to protect him prior to closing of the sale on the lot.

OUTCOME

The Practice Review Board determined that:

- The AScT Member be levied a fine of \$250.00 for being in violation of the Code of Ethics Principle 4, in that he failed to recognize the conflict of interest he created when dealing directly with the complainant and not allowing this to happen through his client or;
- Complete a course in "Applied Ethics" approved by the ASTTBC Practice Review Board.

In addition, due to the total lack of correspondence from the engineer of record, there is no evidence to prove that the AScT Member was acting in a self-directed manner. If this were true the situation would be much more serious. However, to protect his own future interest, it is recommended that the Member consider registration with APEGBC as a Limited License Holder. This would allow him to provide work and services in a manner consistent with the Engineers and Geoscientists Act for self-directed practice of professional engineering.

Alternatively, the member was given the option of proceeding to a Disciplinary Hearing. Subsequently the AScT Member sent the Registrar a copy of confirmation of his registration in an APEGBC Law & Ethics Seminar. Since the member agreed to the PRB conditions, no further action was required and the file was closed.

CASE #11-21

STATEMENT OF COMPLAINT

It is alleged that an AScT Member, was responsible for instructing contractors to redirect effluent from a failed septic system on to lands owned by the complainant, thereby creating a public health and safety risk. If true, this would be a violation of Principle #1 of the Code Of Ethics.

BACKGROUND

The AScT Member, a Sustainable Housing Manager for a First Nation Tribe, was sent a copy of the complaint and asked to respond to the allegations by the complainant. The Member admitted that there had been an onsite wastewater system failure on the Tribe's rental property across the street from the complainant's property. Upon learning of this situation, the septic tank was pumped out and an ASTTBC Registered Onsite Wastewater Practitioner (ROWP) was contracted to inspect and advise on the condition of the system. The ROWP determined that heavy infiltration from surface run-off water from an adjacent hill behind the home was causing flooding of the sewerage system. To mitigate this condition, the ROWP installed a curtain drainage ditch to redirect the surface and run-off water away from the home and septic system to a drainage culvert at the property line along the roadway. According to the AScT Member, this drainage culvert had been previously installed about 30 years earlier and existed to permit surface and run-off water to cross the road and continue to follow its natural drainage path across the adjacent properties, which were owned by the complainant.

INVESTIGATION

The Member stated that the Tribe's Housing Department and Health Department staff met with the home's occupants to ensure that the septic backup was properly cleaned up. The Housing Department was also working with the ROWP, Health Canada, the Tribe's Health and the Maintenance Department to monitor site conditions, to ensure that the sewerage system was functioning properly and to control and mitigate run-off water discharge onto and from the rental property.

To support his assertion that everything is being reasonably done to protect the complainant's property from a potential health risk, the Member provided a recent report produced by First Nations and Inuit Health, Environmental Public Health Services. The report confirmed that the offending sewerage system now appeared to be working properly and any effluent contamination appeared to be dealt with. While the report indicated that level of sewage contamination was apparent on the complainant's property, there is no evidence to suggest that it was coming from the drainage culvert located on the property in question. Testing at regular intervals of the water at this location showed results of <2 fecal coliform compared to ranges of 64 to 1600 on the complainant's property. The report goes on to state "----- Tribes is practicing due diligence with respect to the excess water runoff. The septic tank and field are working efficiently now that the trench has been constructed."

DISCUSSION

It is not the job of ASTTBC to determine where any pollution on the complainant's property may have originated. The focus needs to be on the conduct of the AScT Member in response to the situation. First of all, the complainant does not allege that the Member is in anyway responsible for the sewerage system failure at the property in question, nor is there any evidence that this is the case. The matter for review by the Practice Review Board should be what actions did the Member take upon becoming aware of the situation.

Once aware of the situation the Member had the septic tank pumped to prevent further contamination. A ROWP professional was called in to assess and repair deficiencies. Health officials were consulted and water samples taken. It would appear that the Member did everything reasonably expected of a professional under the circumstances. If the complainant believes that contamination on his land resulted from the sewerage system failure of the adjoining property, he has the ability to have this matter resolved by litigation. There is no evidence to suggest that the creation of a curtain drainage ditch to redirect the surface and run-off water away from the home, on the property in question, to a drainage culvert

contributed to the level of contamination on the complainant's land as he has asserted. This is supported by the results of water tests performed at the exit point from this drainage system.

OUTCOME

The Practice Review Board determined that since there was no evidence of wrong doing by the ASCT Member in regards to the complaint, that no action was required and the case file was closed.