

PRACTICE REVIEW BOARD

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 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 2011 to December 2011:

CASE # 11-06

STATEMENT OF COMPLAINT:

A Claimant argued that a complaint submitted in 2010, was not properly adjudicated by the PRB. In the first complaint, it was alleged that the Inspector was incorrect in his judgment that the roof had remaining life of 5 to 8 years. This second complaint submits that the finding of the first complaint was incorrect because the roof still leaks.

BACKGROUND:

The Investigator has reviewed the second complaint from Claimant, the second reply by Inspector, the original file including the inspection report pertaining to this inspection and re-inspected the property. The inspection of the interior revealed water droplet stains on the curtain valance and adjacent ceiling of the valance of the master bedroom on the southwest corner of the dwelling. It must be noted that the water ingress was from the inner part of the valance and not the ceiling of the bedroom. The attic was also inspected with no signs of water ingress over or in the surrounding area of the water stains on the valance. Likewise there were no water stains on any of the ceilings within the main level of the dwelling.

INVESTIGATION:

The new investigation revealed that the new leak was present on the living room ceiling in the north east corner of the dwelling adjacent to the roof drain. The master bedroom stains found in the first complaint were now a little larger. The living room ceiling stain and the master bedroom stains increasing in size coincided with the snow fall in January 2011.

DISCUSSION:

Typically a tar and gravel roof has a twenty year life. The Investigator inspected the entire roof of the subject and found it to be approximately 15 years of age and reflective of this age. The inspector report states "Tar and gravel roof show signs of deterioration, estimated remaining life of roof covering 5-8 years" Both the Claimants and the Inspector have had roofers examine the roof; the Claimants roofer suggests the roof should be replaced immediately with a touch on membrane at \$8,000 as tar and gravel is no longer installed, and the Inspectors roofer indicates the roof has remaining useful life and could be repaired for \$3,000.

The Inspector voluntarily agreed to participate in the cost of the roof replacement by contributing an amount based on the following calculation:

The value of a replacement tar and gravel covering

- Depreciated to the remaining 5 years on an expected life of 25 years.
- The settlement amount calculated and agreed to was calculated at \$1,016.16

OUTCOME:

The Practice Review board determined that since there was no evidence of a breach to the code of Ethics or Standards of Practice, no further action was required and the file was closed.

CASE # 11- 19

STATEMENT OF COMPLAINT:

The complainant alleges that an ASTTBC Inspector identified the air conditioner as a heat pump in working order although he did not test it and overstated the age of the hot water tank as two years when it was 8 years old. In addition the claim questions whether the Inspector was licensed at the time of the inspection.

BACKGROUND:

The 'Claimant' engaged the 'Inspector' to complete a full inspection on a potential home purchase.

INVESTIGATION:

The Investigator has reviewed the complaint letter, completed a lengthy phone conversation with the Claimant and reviewed his response with the Inspector. The Claimant completed a search of the Consumer Protect BC website in early March 2011 to find that the Inspector was not licensed. The understating of the hot water tank age at between one and two years by the Inspector was actually established by the Claimant at eight years.

The Investigator confirmed the Inspector met with the Claimant prior to filing of the formal complaint to confirm repayment of the inspection fee and to assist the Claimant in litigation against the previous owner for non disclosure of deficiencies. The Investigator has received confirmation from Consumer Protection BC that Inspector was licensed on the date of inspection, but is not currently licensed.

DISCUSSION:

The Inspector was engaged by the Claimant for a pre- purchase inspection to which the Claimant would accompany the Inspector during the physical inspection. The Inspector's response suggests that the Claimant's concerns of the steep site topography were a distraction and he did not correctly identify the air conditioner nor adequately inspect it.

The Claimant confirmed that the Inspector has repaid the inspection fees and did assist in litigation resulting in an award of \$900 for non- disclosure of a faulty air conditioner by the previous owner. The Claimant agrees that the exterior of an air conditioner and a heat pump are identical in appearance and easily confused, although it is not an excuse for an Inspector. The hot water tank has not presented any problems and the Claimant confirms that they have now considered this event as history.

OUTCOME:

The ASTTBC Practice Review Board determined that since there was no evidence to substantiate a violation of the Code of Ethics or Standards of Practice, no further action was required and the file was closed.

CASE #11 -25

STATEMENT OF COMPLAINT:

The Claimant's Realtor submits that an ASTTBC 'Inspector' inspected the 'Buyers' newly purchased home and upon occupancy found a leak in the house, which was not mentioned in the inspection report. Further the Claimant alleges that the Inspector did not respond to calls for assistance.

BACKGROUND:

The inspection took place on February 6, 2011 and, from the photographs taken by the Inspector it was a rainy day.

INVESTIGATION:

The Investigator has reviewed the complaint written by the Claimants and ‘Buyer (the current owner), who was present at the time of the inspection. The Investigator visited the subject to inspect the areas of concern, which were mainly the exterior front of the dwelling, the interior living / dining / kitchen ceilings, the second level decks and adjacent roof areas. This was completed in the presence of and in discussion with both the Claimant and the Buyer. The Investigator also reviewed the Inspector’s response to the complaint, his inspection report and the 289 photographs taken at the time of the inspection.

The Claimant has referenced a helper that assisted the Inspector, which the Investigator discovered was a brother visiting from abroad, who helped by carrying the tools and ladder. The Inspector also stated that the brother had been introduced as such to both the Claimant and Buyer. The Investigator’s inspection revealed brown water staining of the soffits under the upper decks and white stains on the stucco, as if the water penetrating the soffits was washing the paint off the fascia boards, depositing the residue onto the stucco and brick of the building envelope. Fourteen pictures taken by the Investigator during his inspection were compared with those taken on the date the Inspector completed his inspection; the comparison revealed the same staining.

On February 6, 2011 the Inspector inspected the property, on March 28, 2011 the Claimant took possession, on April 1, 2011 the Claimant moved into the dwelling, on April 7, 2011 the wife of the Claimant called the Inspector to report a water leak and on April 9, 2011 the Inspector visited the property to inspect the reported problem.

The following notations are in red type within the Inspectors report to the Buyer:

- Page7 - #3 Patched/pop-up flooring was noted on decks.
- Page 11 - #2 Water leaking was noted on soffits in S. deck.
- #4 Water stains were noted on soffits.
- #5 Cracks were noted on stucco wall.
- Page 13 - #3 Water leaking was noted in attic.
- #4 Waters stains were noted in attic

DISCUSSION:

The photographs submitted by the Inspector support this information and he stated he reviewed these items with the Claimant and Buyer at the time of the inspection and the statements have not been challenged by the Claimant or Buyer. The Investigator did not find any signs of current water penetration on the interior of the dwelling.

OUTCOME:

The Practice Review Board determined that since there was no evidence to substantiate a violation of the Code of Ethics or Standards of Practice, no further action was required and the file was closed.

CASE # 11-26

STATEMENT OF COMPLAINT:

The ‘Claimant’, Seller of the property, alleges that an ASTTBC ‘Inspector’ was in violation of the Code of Ethics & Practice Guidelines (May 27, 2010), on the following counts:

- a) Failure to disclose a major conflict of interest
- b) Use of an unlicensed assistant to conduct a critical element of the inspection.
- c) Failure to adequately inform the client of what they could expect from the inspection process.
- d) Failure to ensure the clients understood the content of his report.
- e) Inclusion of confabulated details within the inspection report.

- f) Error of omission that lead to erroneous speculation.
- g) Inclusion of confabulated details about the home inspection process.
- h) Inclusion of a 'Complimentary Inspector Supplement' that contains information that is significantly plagiarized and potentially harmful or even fatal to the general public.

BACKGROUND:

The Inspector lived close to the complainant and was selling his own home around the same time as the complainant.

INVESTIGATION:

The Investigator reviewed the initial letter of complaint from the Claimant, a follow up addition to the initial complaint, his rebuttal to the Inspector's response to the complaint, and had multiple phone conversations concerning aspects of the complaint. In addition, the Investigator reviewed the Inspector's response to the claim, the inspection report he provided to his client, and spoke with him many times on the phone.

DISCUSSION:

a) As the Claimant's house is for sale 100 yards from the Inspectors, he implies that the Inspector is spreading rumours about the condition of his property. The Inspector placed his home for sale by owner in December 2010 for \$395,000, and The Claimant's was listed on MLS April 7, 2011 for \$345,000. According to the Inspector there is no similarity between the two properties.

b) The Inspector had a serious fall in 1995 that has left him with chronic back pain. His wife is not technically trained but helps as an assistant providing the physical part, moving ladders etc.

c) & d) The Inspector engaged an interpreter to accompany the client during the inspection as well as explain the report.

e) The Claimant alleges the Inspector did not spell the clients name correctly on the contract nor did he provide sufficient legal advice to his client as to the limitation of the inspection. He does not provide the source to support this allegation.

f) Quote of the Claimant "The Inspector's main error of omission that lead to erroneous speculation, creating an effort of commission that is beyond merely acting as advocate for the client." The Claimant goes on to say that the water observation in the crawlspace was correct but not explained correctly. The buyer's interpretation of the foundation was that "it was of a type of mixed foundation", the report had it as a combination of plywood and concrete foundation. Plywood is a much cheaper foundation than concrete but was only used for a very short period due to the unacceptability by the buyers. The Inspector uses the term mice to explain his observations whereas the Claimant insisted to the interpreter that there was only one mouse.

g) Inclusion of confabulated details about the home inspection process appears to have resulted from the Claimant's attempt to obtain a copy of the inspection report. After several attempts to secure a copy of the report which is a copyright document of the Inspector's, the Claimant purchased a copy directly from the buyer without the consent of Inspector. The inspection report is not a standalone document. In this case the inspection was for the sole benefit of the Buyer and not the Seller; although the Claimant purchased the inspection report he did not participate in the inspection with the Inspector, nor had the opportunity to hear the complete explanation of the finding.

h) Supplement articles are a part of most inspection reports to help explain the component, either as to its use, maintenance or replacement. The Inspector inserted an article concerning mould that was also a part of his explanation to the client during the inspection.

OUTCOME:

The ASTTBC Practice Review Board determined that since there was no evidence to substantiate a violation of the Code of Ethics or Standards of Practice, no further action was required and the file was closed.

CASE NO. 11-38

STATEMENT OF COMPLAINT:

The 'Claimant' (Seller) disliked the approach and method of inspection the 'Inspector' displayed, along with the negative comments he made about the exterior stucco. Further, he felt that the Inspector was rude and offensive.

BACKGROUND:

The Inspector did a curb-side inspection of the dwelling an hour prior to the appointment, as his long time clients had concerns about the building envelope. At the appointed hour he introduced himself to the Claimant to take a closer look at the stucco with his clients, discuss his finding and leave the site.

INVESTIGATION:

The Investigator reviewed the Claimant's complaint, made a site visit to review the components in question, and interviewed the Claimant and his wife as to the items of concern. The Investigator reviewed the Inspector's response to the complaint, visited his web site, reviewed the Realtor's sale contract addendum and spoke with him on several occasions.

The Investigator was informed by the Claimant that he personally supervised the construction of his house 18 years ago, and he felt that what the Inspector was telling the buyers could not be true. The Claimant's complaint alleges that the Inspector, with a smile, told him that the problem could be fixed for a thousand dollars. The Contract of Purchase and Sale Addendum, states "Subject to the Buyer, on or before June 9, 2011 at the Buyer's expense, obtaining and approving an inspection report against any defects whose cumulative cost of repair exceeds \$1,000 and which reasonably may adversely affect the property's use or value."

During the site investigation it was obvious that the Claimant had pride of ownership and it follows that he would be devastated by any criticism about his home. The Investigator's inspection of the 18 year building envelope confirmed that deficiencies were evident, and current standards for rain screening were not in place. This is sufficient to conclude that further investigation by a specialist should be recommended should the Buyer wish to pursue the purchase.

DISCUSSION:

The Inspector was prepared to reduce his fee if the clients did not wish to purchase the property. It was at this point that the clients advised the Inspector of the \$1,000 clause in their purchase contract and he would have to complete a full inspection or they would lose their deposit. This later led to the discussion with the Claimant about the \$1,000. From interviewing both parties and reviewing the documents it appears that this comment is what created the apparent misunderstanding. Also, it is evident that the Claimant was purposely present during the inspection, which would irritate most Inspectors. This in itself created an abundance of unnecessary conversation between the Claimant and the Inspector.

OUTCOME:

The ASTTBC Practice Review Board determined that since there was no evidence to substantiate a violation of the Code of Ethics or Standards of Practice, no further action was required and the file was closed.

CASE # 11- 45**STATEMENT OF COMPLAINT:**

The 'Claimant' (Seller) complained that an ASTTBC 'Inspector' overstated the negative aspects and was silent on the positive aspects of the property telling the buyers there's a "deal breaker" problem and advising them not to buy the house. The complaint also states the Inspector did not inspect the attic nor inspect a newly installed switch.

BACKGROUND:

The buyer's agent, in making the appointment with the selling agent, did not request adequate privacy time from the sellers for the inspection and the owners returned home early; resulting in the Claimant hearing some of the conversation between the inspector and the buyers.

INVESTIGATION:

The Investigator has reviewed the complaint of the Claimant, their complaint to Consumer Protection BC and to the Better Business Bureau. The Investigator has also reviewed the response to complaint by the Inspector, the inspection report, the status of a 'Helper' and spoke with the Inspector at length concerning the events.

The Inspector writes within his report that he and his colleague, Helper, arrived early and asked the Claimant if they could start outside, which was approved. The Inspector further writes that the inspection concluded more quickly with two Inspectors. The Investigator confirmed that the Helper is licensed but not certified by ASTTBC therefore his qualification and standards of practice are widely different from those of ASTTBC. The Investigator did speak with Willis Canada, who in turn contacted the Insurance underwriters for clarification.

DISCUSSION:

The Claimant states in his letter of complaint, that he was well aware of the deficiencies reported by the Inspector, as they were pointed out to him 10 years prior when he had purchased the property. He continues to say that after 10 years in the home he did not experience any problems from the reported deficiencies, therefore the previous and current Inspectors had overstated the condition.

The Inspector found the attic inaccessible due to 4 fixed shelves piled with linen; asked the Claimant if they would provide access for him, which they refused to do; stating it was the Inspector's responsibility to create the access. The reported electrical deficiencies within the garage resulted from rewiring and relocation by the Claimant without removal of the original abandoned wires and boxes.

The Claimant was fully aware of the deficiencies documented and discussed by the Inspector but did not fully understand the potential for water penetration from the foundation, envelope, sunken patio, grade levels and inadequate drainage around the dwelling. A common occurrence is someone will hear a small portion of what occurred over three and one half hours and misinterpret the entire message. The Investigator found that during the inspection good observation and reporting seems to have been made by the Inspector.

OUTCOME:

The ASTTBC Practice Review Board determined that, as there is no evidence of Code of Ethics or Standards of Practice violations suggested in the complaint, no further action was required. However, the PRB should clarify the practice requirements when two Inspectors, using two separate Standards of Practice, complete the same assignment. The Registrar recommended that each inspector take responsibility for the items inspected and reflect this in the report's sign-off.