



# APEGA Recommended Discipline Order

APEGA members and permit holders are required to practise engineering and geoscience skillfully, ethically, and professionally. They must meet all prescribed requirements and follow all applicable legislation and regulations, such as the [Engineering and Geoscience Professions Act, General Regulation, Code of Ethics, and APEGA bylaws](#). Investigation and enforcement—followed by, when necessary, judgment based on a fair hearing of the facts—are requirements of ours in service to the public interest. For more information, please visit [www.apega.ca/enforcement/discipline-decisions](http://www.apega.ca/enforcement/discipline-decisions).

**Date:** June 12, 2019

**Discipline Case Number:** 19-004

**IN THE MATTER OF A RECOMMENDED DISCIPLINE ORDER OF THE ASSOCIATION OF  
PROFESSIONAL ENGINEERS AND GEOSCIENTISTS  
OF ALBERTA**

Pursuant to the Engineering and Geoscience Professions Act,  
being Chapter E-11 of the Revised Statutes of Alberta 2000  
Regarding the Conduct of [A PROFESSIONAL MEMBER A] P.ENG.

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of [Professional Member A], P.Eng. (the “Member”).

The investigation was conducted with respect to allegations of unprofessional conduct and/or unskilled practice pursuant to Section 44(1) of the *Engineering and Geoscience Professions Act* (“the Act”).

## **A. THE COMPLAINT**

The APEGA Director, Examinations forwarded the matter to APEGA’s Investigative Committee, alleging that the Member may have engaged in unprofessional conduct and/or unskilled practice, contrary to Section 44(1) of the Act, by offering copyrighted Pearson Education Canada practice National Professional Practice Exam (NPPE) questions to the purchaser of his textbook *Practical Law of Architecture, Engineering, and Geoscience*, published by Pearson Education Canada.

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

1. At all relevant times, the Member was a professional member of APEGA and was thus bound by the Act and the *APEGA Code of Ethics*.
2. On October 21, 2018, the Member purchased the NPPE practice test bundle from APEGA, which included *Practical Law of Architecture, Engineering, and*



## APEGA Recommended Discipline Order

*Geoscience* ("the textbook"), published by Pearson Education Canada.

3. The textbook included a sealed Student Access Card for online materials, including copyrighted NPPE practice exam questions ("the exam questions"). The Member registered to access the online materials with the Student Access Code provided, and thereby agreed to the terms of use.
4. While reviewing the exam questions, the Member made a personal electronic backup copy of the exam questions on his Macintosh computer (in HTML format using the Save Page As command). This was consistent with the terms of use which stated, "you are authorized to download one copy of the material on this website on one computer for your personal, non-commercial use only."
5. On January 28, 2019, the Member challenged and passed the NPPE.
6. On February 9, 2019, the APEGA Director, Examinations received an automated alert from Kijiji pointing him to an advertisement posted by the Member containing the key word "NPPE." The heading of the advertisement read, "APEGA NPPE exam books latest edition with test internet access."
7. The APEGA Director, Examinations subsequently determined (through a review of the ad, purchase records, subsequent communication with the seller, and the APEGA member database) that the seller was the Member.
8. On February 9, 2019, shortly after posting the Kijiji advertisement, the Member modified the ad to remove "test internet access" from the listing. This was consistent with the instructions on the Student Access Card which stated, "The Student Access Code in the kit is redeemable one time only! If this code has already been used, you may be able to purchase access online with a credit card".
9. The Member did not advertise the inclusion of electronic copies of exam questions with the sale of the textbooks in either the original or modified listings.
10. On February 11, 2019, the Member received his P.Eng. designation and became a professional member of APEGA.
11. On February 11, 2019, posing as a potential buyer, the APEGA Director, Examinations contacted the Member through Kijiji for additional information regarding the "test internet access" offered in the original version of the ad, as APEGA and other organizations sell copyrighted NPPE practice test questions which have been illegally copied and distributed in the past.



## APEGA Recommended Discipline Order

12. On February 11, 2019, the Member confirmed that he was no longer offering internet access to test questions but offered to include his backup electronic copy of the exam questions at no additional cost with the purchase of the textbooks.
13. On February 11, 2019, at the request of the APEGA Director, Examinations, the Member supplied a sample exam question to the APEGA Director, Examinations via email. The Member supplied one exam question ("APEGA-Style Practice Examination Part A - Question 01"), a JPG of which he created from his electronic backup file.
14. As the sample exam question did not originate from the APEGA NPPE practice test site (nppepractice.com), the APEGA Director, Examinations asked the Member to confirm the source of the question. The Member confirmed that the exam questions came with the textbooks he purchased from APEGA.
15. On February 12, 2019, the APEGA Director, Examinations confirmed with Pearson Education Canada that the sample exam question at issue was indeed the copyrighted work of Pearson Education Canada.
16. On February 13, 2019, the APEGA Director, Examinations referred an unprofessional conduct complaint against the Member to the APEGA Director, Investigations.
17. On February 18, 2019, prior to receiving notification of the complaint from the APEGA Acting Director, Investigations, the Member sold his textbooks for \$250. At no additional charge, the Member voluntarily provided the purchaser with the backup electronic copy of the exam questions originally created on his Mac.
18. In providing the APEGA Director, Examinations with a sample exam question, and the purchaser with his backup electronic copy of the exam questions, the Member made an error in judgment by not considering that the exam questions were the copyrighted work of Pearson.
19. It was never the Member's intention to provide the exam questions to any party other than the sole purchaser of his textbooks, nor was it the Member's intention to profit from the sale of the questions.
20. On February 19, 2019, the Acting APEGA Director, Investigations notified the Member of the complaint.
21. On February 19, 2019, immediately after the Acting APEGA Director, Investigations notified him of the Complaint, the Member, on his own volition, sent a letter of apology to Pearson Education Canada, deleted his backup copy of the exam



## APEGA Recommended Discipline Order

- questions, and instructed the purchaser of his textbooks to immediately destroy the electronic file containing the exam questions.
22. The purchaser confirmed that she never viewed the exam questions (she was unable to open/access the file) and that the file was deleted.
  23. The Member's cooperation with the investigation was exemplary. The Member took responsibility and expressed remorse for his lack of judgment in the matter.
  24. The Panel's recommends resolving the matter through a Recommended Discipline Order rather than a formal Discipline Hearing, having consideration for the following: there is no risk of harm to the public, the admission by the Member, the timely cooperation of the Member, the remorse expressed by the Member, the Member's apology letter to the publisher, the Member's efforts to ensure all screenshots of the exam questions were deleted, the Member's agreement to proceed by way of Recommended Order, and the Panel's finding that although the Member's conduct demonstrated a lapse in judgment, it was isolated and is unlikely to be repeated in the future.
  25. The same considerations outlined in paragraph 24 above apply to the Panel's recommendation that this matter and its outcome should be published without naming the Member.

### C. CONDUCT

26. The Member freely and voluntarily admits that his conduct, described above, constitutes unprofessional conduct.

Section 44(1) of the Act states:

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

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



## APEGA Recommended Discipline Order

*carrying out of any duty or obligation undertaken in the practice of the profession,*

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

27. The Member acknowledges that his conduct breached the Act and therefore engaged in unprofessional conduct by contravening Rules of Conduct #3 and #4 of the *Code of Ethics*, by:

#3: Failing to conduct himself “with integrity, honesty, fairness and objectivity” by copying and distributing screenshots of copyrighted NPPE practice examination questions from Pearson Education Canada.

#4: Failing to comply with the provisions of the Copyright Act by copying and distributing screenshots of copyrighted NPPE practice examination questions from Pearson Education Canada.

### D. RECOMMENDED ORDERS

28. On the recommendation of the Investigative Committee, and by agreement of the Member, and following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders pursuant to Section 63 of the Act that:
1. The Member will receive a Letter of Reprimand, a copy of which will be maintained in the Member’s registration file for a period of five years.
  2. This matter and its outcome will be published by APEGA in any form or media deemed appropriate but having regards to the established publication practices of APEGA in prior cases, and such publication will not name the Member.
  3. The Member shall pay a fine in the amount of \$500, pursuant to Section 64(1)(b) of the Act. The fine shall be paid within 90 days of the date this order is approved by the Discipline Committee Case Manager.
  4. The Member shall deliver a Letter of Apology to the APEGA Director, Examinations and provide the Discipline Committee with a copy of said letter and proof of delivery within 90 days of the date this order is approved by the Discipline Committee Case Manager.



## APEGA Recommended Discipline Order

5. If the Member fails to comply with the orders set out in (3) and (4) above, his registration will be suspended until he complies.

Signed,

**[PROFESSIONAL MEMBER A]**, P.ENG.

**W.R. SATTLEGGGER**, P.GEO.  
Panel Chair, APEGA Investigative Committee

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

*Date: June 12, 2019*