



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.

Date: May 22, 2019

Discipline Case Number: 19-005

**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 a complaint initiated by two individuals (“the Complainants”), dated April 13, 2017 (“the Complaint”).

A. THE COMPLAINT

The investigation related to the allegation that the Member engaged in unprofessional conduct when he registered as a director for a new, competing business without informing or gaining the consent of his current employer. The Complainants alleged the Member breached the confidentiality and non-compete clauses of his employment contract and he therefore acted unprofessionally.

The Investigative Committee investigated the above allegation, in addition to other allegations that were outlined in the Complaint. The Panel determined the allegation outlined above contained sufficient evidence to refer the matter to a formal hearing.

B. AGREED STATEMENT OF FACTS

1. The Member graduated in 1996 from the University of Alberta with a B.Eng. in mechanical engineering.



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2. The Member was employed with [Company B] from May 2012 to November 2015.
3. The Member, while still employed at [Company B], was registered as a director of [Permit Holder B] on July 14, 2015. [Company C] was a newly registered company on this date.
4. Both [Company B and Company C] are downhole tool service companies which engage in the design, development, and deployment of downhole technologies for the oil and gas industry in Canada.

C. CONDUCT

5. The Member freely and voluntarily admits that:
 - a. At all relevant times he was a professional member of APEGA and was thus bound by the *Engineering and Geoscience Professions Act* and the *APEGA Code of Ethics*.
 - b. The Member acknowledges that registering as a director with [Company C] while being gainfully employed by [Company B] is conduct that contravenes Section 44(1)(b) of the Act, specifically #3 of the *Code of Ethics*, which were attached as Appendix A.

Code of Ethics #3: Professional engineers...shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.

6. The Member acknowledges he has breached a fiduciary duty.

According to the textbook *Practical Law of Architecture, Engineering and Geoscience* (2011 Sanders and Samuels), a fiduciary duty is defined as:

A fiduciary duty is a relationship of special trust in a partnership. Each partner owes the other partner a fiduciary duty. For example, fiduciary duty forbids partners from operating separate competing businesses and from taking profits of the business solely for themselves. In addition, they must always act in the best interest of the partnership and declare conflicts of interest. Moreover, a partnership agreement cannot negate or alter fiduciary duties.



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Officers and directors owe a fiduciary duty to the corporation. For example, officers and directors cannot operate separate competing businesses or take profits of the business solely for themselves.

A fiduciary duty is a heightened duty to care for the interest of another party in priority to one's own interest and a duty not to act against the interest of the other party.

D. RECOMMENDED ORDERS

7. On the recommendation of the Investigative Committee, and by agreement of the Member with that recommendation, and following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:
 1. The Member will receive a Letter of Reprimand, a copy of which will be maintained permanently in the Member's registration file and be considered at any future date by APEGA;
 2. The Member will be assessed, and will pay, a fine in the amount of \$1,000 pursuant to Section 64(1)(b) of the Act;
 3. In the event the fine is not paid within 60 days of this order's approval by a Discipline Committee Case Manager, the Member shall be suspended from the practice of engineering until such payment has been received in full; and
 4. The Member shall provide evidence to the Director of Enforcement, within one year of being served with a copy of the Discipline Committee's decision, that he has successfully completed the National Professional Practice Examination. The course will be undertaken at his own cost. If the examination is not completed by the above-noted date, the Member shall be suspended from the practice of engineering until the examination is successfully completed.
8. It is the Panel's opinion that the matter would be best resolved through a Recommended Discipline Order rather than a formal hearing. The Panel considered the following: there is no risk of harm to the public, the admission by the Member, the timely cooperation of the Member in this investigation, the acknowledgment expressed by the Member, and the Panel's finding that although the Member's conduct demonstrated an error in judgment, it was not malicious. The same considerations apply to the Panel's recommendation that this matter and its outcome should be published without naming the Member.



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Signed,

[PROFESSIONAL MEMBER A], P.ENG.

WILLIAM SATTLEGGER, P.GEO.
Panel Chair, APEGA Investigative Committee

JEFF PIEPER, FEC, P.ENG.
Case Manager, APEGA Discipline Committee

Date: May 22, 2019