

Date: May 3, 2017

Case No.: 17-002-RDO

**IN THE MATTER OF THE ENGINEERING,
AND GEOSCIENCE PROFESSIONS ACT,
AND
IN THE MATTER OF THE CONDUCT OF
MR. ZAHER SHUKR, P.ENG.**

The Investigative Committee of the Association of Professional Engineers and Geoscientists of Alberta (APEGA) has conducted an investigation into the conduct of Mr. Zaher Shukr, P.Eng. 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”).

The investigation related to allegations that Mr. Zaher Shukr, P.Eng., sold electronic copies of copyrighted material, including 2003 National Professional Practice Exam (NPPE) questions and textbooks, through online advertisements.

A. COMPLAINTS

1. The APEGA Director of Examinations forwarded the following matters to APEGA’s Investigative Committee, alleging that Mr. Zaher Shukr, P.Eng., may have engaged in unprofessional conduct and/or unskilled practice, contrary to Section 44(1) of the Act, by advertising and selling copyrighted material on Kijiji including:
 - a) Electronic copy of APEGA National Professional Practice Examination (NPPE) 2003 Questions;
 - b) Electronic copy of the textbook *Practical Law of Architecture, Engineering and Geoscience Second Edition* (published by Pearson Canada);
 - c) Electronic copy of the textbook *Canadian Professional Engineering and Geoscience Practice and Ethics, Fifth Edition* (published by Nelson Education Ltd.).

B. AGREED STATEMENT OF FACTS

As a result of the investigation, it is agreed by and between the Investigative Committee and Mr. Zaher Shukr, P.Eng., that:

1. At all relevant times, Mr. Zaher Shukr, P.Eng., (“the Member”) was a Professional Member of APEGA, and was thus bound by the Act and the *APEGA Code of Ethics*.
2. On January 28, 2016, [Staff Member A], Director of Examinations at APEGA became aware of a Kijiji listing that advertised “sample questions” for the NPPE. He contacted the originator of the listing on behalf of APEGA and requested information.
3. The originator advised [Staff Member A] that he purchased the sample questions on Kijiji from the Member. The originator provided [Staff Member A] with the exam question PDFs, contact information for the Member, and a link to the Member’s Kijiji listing. [Staff Member A] conducted a search of APEGA’s database and determined the Member was an active Professional Member of APEGA.
4. On February 1, 2016, [Staff Member A] confirmed that one of the exam question PDFs sold by the Member was the actual NPPE administered in January 2003. [Staff Member A] further verified that the questions contained in the PDF were identical to the questions in the APEGA Legacy Item Bank, and the format of the scanned exam was identical to the printed 2003 exam.
5. On February 4, 2016, [Staff Member A] determined by reviewing APEGA records that he had previously spoken to the Member on September 24, 2015, regarding his Kijiji listing for “NPPE Prep Materials.” [Staff Member A]’s investigation at that time did not identify any copyrighted material.
6. On February 5, 2016, [Staff Member A], posing as a buyer, replied to the Member’s Kijiji listing. The Member responded with sample screenshots of the material for sale, including a screenshot of the previously administered January 2003 NPPE.
7. On February 8, 2016, [Staff Member A] replied to the Member and inquired if he was also selling scanned pages of the two textbooks (noted in Section A above) used by candidates to prepare for the exam. The Member confirmed that he was selling scans of all pages of both textbooks.
8. On February 9, 2016, posing as a buyer, [Staff Member A] purchased the material advertised by

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the Member through a \$100 PayPal transaction. [Staff Member A] received a Dropbox download link from the Member. The downloads included the following copyrighted material:

- a) Scan of APEGA National Professional Practice Examination (NPPE) 2003 Questions;
 - b) Scan of the textbook *Practical Law of Architecture, Engineering and Geoscience Second Edition* (published by Pearson Canada);
 - c) Scan of the textbook *Canadian Professional Engineering and Geoscience Practice and Ethics, Fifth Edition* (published by Nelson Education Ltd.).
9. On February 11, 2016, [Staff Member A] referred a complaint to the APEGA Director of Investigations, who notified the Member of the allegations. The Member apologized for his actions, pledged his cooperation with the investigation, and undertook to immediately remove his Kijiji listing.
 10. On April 21, 2016, [Staff Member A] received information that the Member sold the same copyrighted material to another individual. This individual subsequently confirmed that he purchased the copyrighted material from the Member in November 2015.
 11. The Member admits selling the copyrighted material to [Staff Member A] for \$100. Although the Member can't specifically recall selling the material to the other individual identified on April 21, 2016, he admits to selling the copyrighted material to approximately 10 people for a total of \$1,000.
 12. The Member obtained the electronic copy of the APEGA NPPE 2003 questions from another unidentified student during a 2009 course at the University of Calgary. The Member was not aware they were genuine, previously administered NPPE questions that were subject to APEGA copyright.
 13. The Member obtained electronic copies of the textbooks *Practical Law of Architecture, Engineering and Geoscience Second Edition* (published by Pearson Canada) and *Canadian Professional Engineering and Geoscience Practice and Ethics, Fifth Edition* (published by Nelson Education Ltd.) through a download link associated to an unidentified blog pertaining to the Ontario

NPPE. The Member was aware these textbooks were subject to copyright protection.

14. The Member reimbursed APEGA (\$100) for [Staff Member A]'s purchase of the copyrighted material, and confirmed the deletion of all NPPE related material from his computer.
15. The Member regrets his decision to sell the copyrighted material, and admits that his conduct was unprofessional.
16. In light of the Member's foregoing admissions respecting his conduct, the cooperation of the Member in this investigation, and the remorse expressed by the Member, it is the Panel's opinion that the matter would best be resolved through a Recommended Discipline Order rather than a formal hearing.

C. CONDUCT

Mr. Zaher Shukr, P.Eng., freely and voluntarily admits that his conduct, described above, constitutes unprofessional conduct.

D. SECTION 44(1) OF THE ACT AND THE CODE OF ETHICS**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 profession generally,*
- d) displays a lack of knowledge of or lack of skill or judgement in the practice of the profession, or*
- e) displays a lack of knowledge of or lack of skill or judgement in the 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.

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The Rules of Conduct of the APEGA Code of Ethics state:

- 1 Professional engineers, geologists and geophysicists shall, in their areas of practice, hold paramount the health, safety and welfare of the public and have regard for the environment.
- 2 Professional engineers, geologists and geophysicists shall undertake only work that they are competent to perform by virtue of their training and experience.
- 3 Professional engineers, geologists and geophysicists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.
- 4 Professional engineers, geologists and geophysicists shall comply with applicable statutes, regulations and bylaws in their professional practices.
- 5 Professional engineers, geologists and geophysicists shall uphold and enhance the honour, dignity and reputation of their professions and thus the ability of the professions to serve the public interest.

Mr. Zaher Shukr, P.Eng., has breached the Act, and therefore engaged in unprofessional conduct by:

1. Rule of Conduct # 3
Failing to conduct himself with integrity, honesty, fairness and objectivity by selling electronic copies of two copyrighted textbooks (*Practical Law of Architecture, Engineering and Geoscience Second Edition* and *Canadian Professional Engineering and Geoscience Practice and Ethics, Fifth Edition*) and electronic copies of the copyrighted APEGA National Professional Practice Examination (NPPE) 2003 Questions.
2. Rule of Conduct #4
Failing to comply with the provisions of the *Copyright Act* by selling electronic copies of two copyrighted textbooks (*Practical Law of Architecture, Engineering and Geoscience Second Edition* and *Canadian Professional Engineering and Geoscience Practice and Ethics, Fifth Edition*) and electronic copies of the copyrighted APEGA National Professional Practice Examination (NPPE) 2003 Questions.
3. Rule of Conduct #5
Failing to uphold or enhance the honour, dignity and

reputation of his profession by selling electronic copies of two copyrighted textbooks (*Practical Law of Architecture, Engineering and Geoscience Second Edition* and *Canadian Professional Engineering and Geoscience Practice and Ethics, Fifth Edition*) and an electronic copy of the copyrighted APEGA National Professional Practice Examination (NPPE) 2003 Questions.

E. RECOMMENDED ORDERS

On the recommendation of the Investigative Committee, and by agreement of Mr. Zaher Shukr, P.Eng., with that recommendation, 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. Mr. Zaher Shukr, P.Eng., 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. Mr. Zaher Shukr, P.Eng., will be assessed, and will pay, a fine of \$1,000, pursuant to Section 64(1)(b) of the Act, within three (3) months from the date this Order is approved by the Discipline Committee.
3. 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 name Mr. Zaher Shukr, P.Eng.
4. Mr. Zaher Shukr, P.Eng., will achieve a passing grade on the National Professional Practice Exam (NPPE) within one (1) year from the date this Order is approved by the Discipline Committee.
5. Mr. Zaher Shukr, P.Eng., will deliver a Letter of Apology to the APEGA Director of Examinations, and provide the Discipline Committee with a copy of said letter and proof of delivery within three (3) months from the date this Order is approved by the Discipline Committee.

I, Mr. Zaher Shukr, P.Eng., acknowledge that before signing this Recommended Discipline Order, I consulted

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with legal counsel regarding my rights or that I am aware of my right to consult legal counsel and that I hereby expressly waive my right to do so. I confirm that I agree to the facts and admissions as set out above in this Recommended Discipline Order, and that I agree with the Orders that are jointly proposed.

IN WITNESS WHEREOF the undersigned agrees with the Agreed Statement of Facts and Acknowledgment

of Unprofessional Conduct in its entirety.

MR. ZAHER SHUKR, P.ENG.

KEVIN WILLIS, P.ENG.

Panel Chair, APEGA Investigative Committee

APEGA Discipline Committee

Approved this 3rd day of May 2017

By Case Manager Ken Liu, P.Eng.