

*Case No. 18-004 RDO continued*

28. The Member acknowledges that his conduct contravenes Rule of Conduct #3 and #5 of the *Code of Ethics*:

**3.** *Professional engineers and geoscientists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.*

**5.** *Professional engineers and geoscientists shall uphold the honour, dignity and reputation of their professions and thus the ability of the professions to serve the public interest.*

29. The Member also acknowledges that his conduct contravenes the *Guideline for Ethical Practice (Reviewing the Work of Other Professionals)*:

*4.5.3. Professionals should undertake an assignment to critique the work of another professional engineer or geoscientist that calls into question the professional conduct or technical competence of that individual only with the knowledge of and after communication with that individual, such that the review is fully apprised of all relevant information.*

**E. RECOMMENDED ORDERS**

30. 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 that:

1. The Member write a letter of apology to the Complainant within 30 days after the Discipline Committee Case Manager approves the Recommended Order
2. The Member shall pay a fine in the amount of \$2,500 within 60 days after the Discipline Committee Case Manager approves the Recommended Order
3. If the orders are not completed within the timelines above, the Member's registration will be suspended until completion of such orders
4. This matter and its outcome will be published on APEGA's website and in *The PEG* magazine without names, given that this matter did not put the safety of the public at risk and the risk to the public safety is not reduced by withholding names.

Signed,

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

**ROY SUDIPTO, P.ENG.**

Panel Chair, APEGA Investigative Committee

**FRED RITTER, P.ENG.**

Case Manager, APEGA Discipline Committee

*Date: June 5, 2018*

Date: May 14, 2018

Case No.: 18-003 RDO

## **IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT, AND IN THE MATTER OF THE CONDUCT OF [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 has been conducted with respect to a complaint initiated by [Complainant B], who referred a complaint to the APEGA Director of Investigations on February 2, 2018.

**Case No. 18-003 RDO** *continued***A. THE COMPLAINT**

1. The APEGA Director of 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 *Engineering and Geoscience Professions Act* (the "Act"), by advertising and attempting to sell/transfer his login information for online access to the 100-question National Professional Practice Exam (NPPE) practice test, contrary to the agreement he acknowledged on nppepractice.com.

**B. AGREED STATEMENT OF FACTS**

2. The Member was an engineer-in-training (E.I.T.) or a professional member of APEGA and was bound by the Act and the APEGA *Code of Ethics*.
3. In September 2017, the APEGA Admissions Committee invited the Member to challenge the NPPE. The Member elected to challenge the exam in November 2017.
4. In preparation for the exam, the Member purchased two textbooks: *Canadian Professional Engineering and Geoscience Practice & Ethics, Fifth Edition* (2014) and *Practical Law of Architecture, Engineering and Geoscience, Third Edition* (2015).
5. On October 26, 2017, the Member also purchased access to the 100-question NPPE practice test on nppepractice.com for \$95. This website is administered by service provider Yardstick Assessment Strategies Inc. on behalf of APEGA.
6. The purchase of the practice test allowed the Member three attempts at the test within one year from the date of purchase.
7. On November 13, 2017, the Member logged in to his account on nppepractice.com and successfully challenged the practice test on his first attempt. Before taking the practice test, the Member digitally acknowledged an agreement/warning which stated that the confidential content "*is not to be copied, shared, or discussed with any other person,*" that "*unauthorized sharing or distribution of*

*the content is punishable by law,*" and that "*access to this practice test is not transferable to others.*"

8. On November 28, 2017, the Member successfully challenged the NPPE. On December 19, 2017, the Member received his P.Eng. and became a Professional Member of APEGA.
9. On January 31, 2018, the Member posted an advertisement on Kijiji titled, *NPPE Exam Books + 100 Practice MCQs*. The description of the ad included the following items available for sale for a total of \$250:
  - Textbook: Canadian Professional Engineering and Geoscience Practice & Ethics, Fifth Edition, 2014 (brand new never used)*
  - Textbook: Practical Law of Architecture, Engineering and Geoscience, Third Edition, 2015 (brand new never used)*
  - NPPE Practice MCQ's (from nppepractice.com) online access + downloaded*
  - The Member advised in the ad that the items would normally total a \$362 value.*
10. On February 1, 2018, Complainant B received an automated alert from Kijiji, pointing him to the Member's advertisement. Complainant B determined through a review of the ad, the purchase records, and the APEGA member database the seller was the Member (an active Professional Member of APEGA).
11. Posing as a potential buyer, Complainant B contacted the Member through Kijiji to inquire about the advertisement. The Member did not respond to the inquiry.
12. On February 2, 2018, Complainant B referred a complaint to the APEGA Director of Investigations, alleging that the member violated the unauthorized sharing/transfer terms on nppepractice.com. The complaint did not make allegations with respect to the sale of the text books.
13. On February 2, 2018, the Director of Investigations phoned the number in the advertisement (identical to the Member's number) posing as a potential buyer. After the Member identified himself and confirmed the advertisement remained active, the Director of Investigations notified the Member of the complaint and directed the Member to remove the ad. The Member complied immediately.

**Case No. 18-003 RDO continued**

14. Because of Complainant B's intervention, the Member's attempt to sell his login credentials was never completed.
15. The Member confirmed that he did not copy the test material; rather, he offered for sale his login credentials so that the purchaser could use the two remaining practice test attempts on his personal npepractice.com account. After reviewing the warning/agreement, the Member admitted the agreement clearly states his access was not transferable. The Member advised that he made a mistake and did not intend to violate the terms of the agreement at the time he placed the ad.

**Panel Findings**

16. The Investigative Committee determined that this matter would best be resolved through a Recommended Discipline Order rather than a formal 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 in this investigation, the remorse expressed by the Member, and the Investigative Committee 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.

**C. CONDUCT**

17. The Member freely and voluntarily admits that his conduct, described above, constitutes unprofessional conduct as defined in Section 44(1) of the Act.
18. The Member also acknowledges that the conduct described above contravenes the Rule of Conduct #3 and #4 of the *Code of Ethics*.
  3. *Professional engineers and geoscientists shall conduct themselves with integrity, honesty, fairness and objectivity in their professional activities.*

4. *Professional engineers and geoscientists shall comply with applicable statutes, regulations and bylaws in their professional practices.*

**D. RECOMMENDED ORDERS**

19. 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 and a copy 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 of \$500 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 have regards to the established publication practices of APEGA in prior cases, and such publication will not name the Member.
  4. The Member 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.

Signed,

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

**KEVIN WILLIS**, P.ENG.  
APEGA Investigative Committee

**TIM MORAN**, P.ENG.  
Case Manager, APEGA Discipline Committee

Date: May 14, 2018