



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: December 22, 2020

Discipline Case Number: 20-002

**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 investigated the conduct of a Professional Member (the “Member”) with respect to an allegation of unprofessional conduct pursuant to Section 44(1) of the *Engineering and Geoscience Professions Act* (the “Act”).

A. THE COMPLAINT

This investigation related to an allegation that the Member engaged in unprofessional conduct with respect to placing himself into a conflict of interest and thereby acted unfairly towards his employer.

The Investigative Committee investigated the following allegation (the “Allegation”) outlined in the Complaint:

Whether the Member placed himself into a conflict of interest by soliciting work for himself from a company other than his employer and thereby failed to act fairly towards his employer.

B. AGREED STATEMENT OF FACTS

(i) Background:

1. The Member graduated in 2003 from NAIT with a diploma in instrumentation technology.



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2. The Member worked for a permit holder pursuant to the Act (the "Permit Holder"), from 2005 to January 2019.
3. The Member became registered as a professional licensee with APEGA in June 2018.
4. Since 2011, the Member worked for a client of the Permit Holder (the "Client") at their off-site facility commissioning and post-commissioning capital projects and providing maintenance support.
5. In September 2018, the Member incorporated his own company to offer engineering/automation services similar to those offered by the Permit Holder. At no point did the Member notify the Permit Holder of the incorporation of his company.
6. In January 2019, the Member accepted two work proposals offered through the Client. Rather than responding to and accepting the work proposals as a representative / employee of the Permit Holder, the Member responded as a private contractor, hired by a direct competitor to the Permit Holder.
7. The Client only became aware that the Member was working as a private contractor on behalf of his own company when the Member accepted the work proposal. At this point the Member disclosed to the Client that he was now representing himself as a private contractor. The Member also disclosed to the Client that he would be completing the work while on contract to the Permit Holder's direct competitor.
8. At no point did the Member notify the Permit Holder that he had accepted the Client's work proposals as a private contractor.
9. The Client notified the Permit Holder of the Member's actions.
10. The Permit Holder subsequently terminated the Member's employment.

(ii) Facts Relating to the Allegation:

Whether the Member placed himself into a conflict of interest by soliciting work for himself from a company other than his employer and thereby failed to act fairly towards his employer.

11. At the time of the incidents in question the Member was in negotiations with the Permit Holder to modify his employment relationship or status.



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12. In January 2019, the Member accepted two work proposals offered by the Client, not as an employee of the Permit Holder, but rather as a private contractor representing a competitor of the Permit Holder.
13. At no point did the member notify the Permit Holder of his actions.
14. The Client reported the Member's actions to the Permit Holder.
15. Due to the Member's intimate knowledge of the project in question, the Client allowed the Member to continue with the work proposals, and thereby caused a negative financial impact to the Permit Holder.
16. The Member was in a conflict of interest by accepting work proposals from the Client, while posing as a private contractor and representing a competitor of the Permit Holder.
17. The APEGA Guideline for Ethical Practice, v2.2, February 2013, states in part that "Professionals should faithfully discharge their responsibilities to clients/employers, always acting with fairness and justice to all. A client's or employer's interests should always be held in high regard."
18. The Member's Employee Handbook stated in part that employees shall not "engage in any business that is in competition with [the Permit Holder]."
19. The Member acknowledges that his actions were not fair to the Permit Holder and that his conduct constitutes unprofessional conduct.

C. CONDUCT

20. The Member freely and voluntarily admits that at all relevant times he was a Professional Member of APEGA and was thus bound by the Act and the *APEGA Code of Ethics*.
21. The Member acknowledges that the conduct described above constitutes unprofessional conduct as defined in Section 44(1) of the Act:

Section 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,*



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- c) *harms or tends to harm the standing of the profession 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 carrying out of any duty or obligation undertaken in the practice of the profession,*

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

22. Further, the conduct described in the Allegation constitutes breaches of Rule #3, #4 and #5 of the Code of Ethics, which state:

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

D. RECOMMENDED ORDERS

23. 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:

- a) The Member will receive a letter of reprimand, a copy of which will be maintained permanently in the Member's APEGA registration file and be considered at any future date by APEGA.
- b) The Member shall provide written confirmation to the Director, Enforcement, within thirty days of being notified that the Recommended Order has been approved, that he has reviewed APEGA's Guidelines for Ethical Practice (v2.2, February 2013), Concepts of Professionalism (September 2004) and Contract Employees and Independent Contractors (v1.0 September 2007), and that he will comply with the requirements therein.



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- c) The Member has passed the National Professional Practice Exam in 2017. In order to reinforce the Member's understanding of professionalism, law and ethics, the Member shall successfully complete one of the specified University-level courses in professional ethics (the "Course") within one (1) year from the date that this Order is approved by the Discipline Committee Case Manager.
 - d) If there are extenuating circumstances, the Member may apply to the Director, Enforcement for an extension prior to the deadline. Any extension will be granted within the sole discretion of the Director, Enforcement. If the Course is not successfully completed within one year, the Member shall be suspended from the practice of engineering until the above course has been successfully completed.
 - e) This matter and its outcome will be published by APEGA as deemed appropriate and such publication will not name the Member.
24. Although there is a presumption that recommended discipline orders should be published in a manner that identifies the name of the permit holder or member who is the subject of the recommended discipline order, publication without name was recommended in this case. Among the considerations that weighed into the recommendation not to publish the name of the Member were:
- a) The Member's actions did not compromise public safety; and
 - b) The Permit Holder's relationship with the Client did not appear to have been adversely impacted by the Member's actions.
25. If the Member fails to provide proof that he has completed the requirements in paragraph 23(b) and (c) above within the timelines specified, the Member shall be suspended from the practice of engineering until he provides to the Director, Enforcement proof of successful completion

Signed,

[PROFESSIONAL MEMBER], P. Eng.

WAYNE BAIRD, P. Eng.
Panel Chair, APEGA Investigative Committee

Brent Liang, P.Eng.
Case Manager, APEGA Discipline Committee
Date: December 22, 2020