



# 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 10, 2021

**Discipline Case Number:** 21-003

**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], 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 “Registrant”) 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 Registrant engaged in unprofessional conduct in their dealings with a corporation (the “Corporation”).

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

Whether the Registrant acted unprofessional in the manner in which they dealt with the Corporation following their request to return data and file information to the Corporation.

## B. AGREED STATEMENT OF FACTS

### (i) Background:

1. The Registrant holds a Bachelor’s Degree from 1998 in mechanical engineering and a Master’s Degree from 2001 in bioengineering.
2. The Registrant has been a practising professional member with APEGA since 2016.
3. The Registrant worked in the field of forensic engineering for a number of years before they accepted a position as an independent contractor to provide forensic engineering services to the Corporation from December 1, 2017 to 2019.



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4. Pursuant to the Independent Contractor Agreement (the "Contract") the Registrant and the Corporation agreed that a portion of the fees generated from work done by the Registrant would be remitted to the Corporation. The amount of fees remitted was dependent on whether the work was generated by the Registrant or by the Corporation.
5. The Contract also included a provision indicated that all files acquired in conjunction with, or related to, the performance of services are the sole property of the Company, and must be returned immediately upon request.
- 6.. In late February 2018, the Corporation provided the Registrant with a hard drive. According to the Corporation, it understood that the Registrant would store all file material relating to the Registrant's role as an independent contractor for the Corporation on the hard drive.
7. In January 2019, the Registrant declined a contract extension proposal from the Corporation and proceeded to carry on business as a forensic engineer through a newly incorporated company.

**(ii) Facts Relating to the Allegation:**

Whether the Registrant acted unprofessionally in the manner in which they dealt with the Corporation following their request to return data and file information to the Corporation.

8. Prior to termination of the Contract, the Corporation requested that the Registrant return the hard drive that had been previously provided by the Corporation. On January 30, 2019, the Registrant agreed to do so.
9. The Corporation followed up on a number of occasions to try to obtain the hard drive, including attending at the Registrant's office, but the Registrant failed to return it until July 8, 2019.
10. Although the Registrant returned the hard drive on July 8, 2019, they wiped it clean before returning it, and did not explain to the Corporation why they had done so.
11. The Corporation believes that the Registrant was obligated, pursuant to the Contract, to store all information on the hard drive pertaining to the work that was performed while they were in a contractual relationship with the Corporation, and to return it to the Corporation at the conclusion of the Contract. However, the Registrant did not believe they were contractually obligated to return material unless the work was generated by the Corporation. Since the work was not generated by the Corporation, the Registrant stated that they did not store any file information relevant to their relationship with the Corporation on the hard drive. They stated that they had wiped it clean because they inadvertently downloaded personal files to the hard drive.



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12. Whether or not the Registrant was required to return the materials is a matter of contractual interpretation. Regardless of the Registrant's contractual obligations, the Registrant was at all material times required to conduct themselves in accordance with APEGA's minimum standards.
13. 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 be held in high regard."
14. The Registrant acknowledges that they failed to provide the Corporation with the hard drive in a timely manner and failed to advise the Corporation why the hard drive had been wiped clean at the time they returned it.

### C. CONDUCT

15. The Registrant freely and voluntarily admits that at all relevant times they were a Professional Member of APEGA and was thus bound by the Act and the *APEGA Code of Ethics*.
16. The Registrant 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,*
- 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.*

17. Further, the conduct described in the Allegation constitutes breaches of Rule #3 of the *Code of Ethics*, which states:

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



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### D. RECOMMENDED ORDERS

18. On the recommendation of the Investigative Committee, and by agreement of the Registrant with that recommendation, and following a discussion and review with the Discipline Committee Case Manager, the Discipline Committee hereby orders that:
  - a) The Registrant will receive a letter of reprimand, a copy of which will be maintained for one year in the Registrant's APEGA registration file and be considered at any future date by APEGA.
  - b) The Registrant shall provide written confirmation to the Director, Enforcement, within thirty days of being notified that the Recommended Order has been approved, that they have reviewed *APEGA's Guidelines for Ethical Practice (v2.2, February 2013)* and *Contract Employees and Independent Contractors (v1.0 September 2007)*, and that they will comply with the requirements therein.
  - c) The Registrant shall successfully complete the National Professional Practice Examination within one year of being notified that the Recommended Order has been approved. If the examination is not successfully completed within one year of being notified that the Recommended Order has been approved the Registrant shall be suspended from the practice of engineering until the successful examination is complete.
  - d) This matter and its outcome will be published by APEGA as deemed appropriate and such publication will not name the Registrant.
  
19. 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 Order, publication without name was recommended in this case. Among the considerations that weighed into the recommendation not to publish the name of the Registrant was that the Registrant's actions did not compromise public safety. The publication of the Registrant's name is not required, in this instance, to protect the public interest.

Signed,

**[PROFESSIONAL MEMBER]**, P. Eng.

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

**Christine Neff**, P.Eng.  
Case Manager, APEGA Discipline Committee

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