

Date: January 16, 2019

Case No.: 18-012-RDO

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## IN THE MATTER OF THE ENGINEERING AND GEOSCIENCE PROFESSIONS ACT, AND IN THE MATTER OF THE CONDUCT OF [PROFESSIONAL MEMBER], 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], P.Eng. ("the Member").

The investigation was conducted with respect to a complaint initiated by [Complainant], P.Eng., APEGA Deputy Registrar and Chief Regulatory Officer of APEGA, dated January 16, 2018 (the "Complaint").

### A. BACKGROUND

The Complainant alleged that the member engaged in unprofessional conduct and violated the *Engineering and Geoscience Professions Act* ("the Act") and *Code of Ethics* ("the Code") by contravening the *Criminal Code of Canada*, Section 163.1(4) possessing child pornography and

Section 163.1 (4.1) accessing child pornography.

### B. THE COMPLAINT

The Investigative Committee conducted an investigation with respect to the following allegations outlined in the Complaint:

1. Whether the Professional Member had been arrested and charged with accessing and possession of child pornography after his employer, an engineering firm, discovered materials on his work computer which were believed to be child pornography.
2. Whether the Professional Member was sentenced to two years imprisonment and three years of probation for contravening Sections 163.1 (4) and

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163.1 (4.1), *Criminal Code of Canada*, possessing child pornography and accessing child pornography.

**C. AGREED STATEMENT OF FACTS**

1. The Member was a professional member of APEGA in good standing, from December 12, 1992, until April 26, 2018, when he voluntarily resigned his APEGA professional membership.
2. The Member does not intend to pursue a further career in engineering or geoscience.
3. At all relevant times, the Member was bound by the Act and the Code.
4. The Member has cooperated fully with all aspects of the APEGA investigation.

**Facts Relating to Allegation #1: –whether the Professional Member had been arrested and charged with accessing and possession of child pornography.**

5. An IT flagging system at the Professional Member's employer revealed a suspicious search history that flagged approximately 10,000 unpermitted website access attempts, mostly to pornographic sites.
6. After receiving information from the Professional Member's employer's IT department, an investigator with the Calgary Police Service executed a search warrant on four computer hard drives, one Scandisk 16GB USB, 45 CD/DVD discs, two floppy discs, one Maxell 100 MB zip disc drive, one Dell Dimension 5150 Computer tower, and one Dell Latitude E6440, all of which were in the office of the Professional Member at his place of employment.
7. A forensic analysis of the seized computer hardware revealed 1.6 million stored pornographic images, including 11,066 child pornography images.
8. After completion of the forensic analysis of the computer hardware, the Professional Member was arrested and charged with 163.1(4) and 163.1 (4.1), *Criminal Code of Canada*, possession of child pornography and accessing child pornography.

**Facts Relating to Allegation #2—whether the Professional Member had been convicted and incarcerated for accessing and possession of child pornography**

9. The Professional Member pled guilty to the possession of child pornography and accessing of child pornography charges and received a prison term of two years plus a day and three years probation.
10. The Professional Member is currently on parole.
11. The Professional Member has been under the care of a forensic psychiatrist who has diagnosed that he has a collection compulsion and that the pornographic images were collected pursuant to this compulsion due to work and personal stressors.
12. The forensic psychiatrist did not diagnose the Professional Member as a pedophile.
13. No evidence exists to indicate that the Professional Member ever was or is now a threat to children or the public in general.

**D. CONDUCT**

14. The member freely and voluntarily admits that his conduct constitutes unprofessional conduct and that the complaints set out above are admitted and proven. The Professional Member has therefore engaged in unprofessional conduct that contravenes the *Code of Ethics* of the profession, Rule of Conduct #5, as established under the General Regulation, and harms or tends to harm the standing of the profession generally, which is contrary to Section 44(1)(b) and (c) of the Act.

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:*

*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;*

*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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Rule # 5 of the Code states:

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

**E. RECOMMENDED ORDERS**

15. The Investigative Committee defers to the wisdom of the courts in this matter and has determined that there is no need to further address the conduct of the Professional Member with additional punitive sanctions.
16. The Investigative Committee, in its legislated role as the body responsible for the investigation of complaints against APEGA members, must, however, act in the public interest and regulate the professions of engineering and geoscience.
17. On the recommendations of the Investigative Committee, and by agreement of the Professional Member with that recommendation, following a discussion and review with the Discipline Committee Case Manager, the following recommended orders are issued pursuant to Section 52 of the Act:
  1. The Professional Member shall be ineligible to reinstate his APEGA membership for a period of five years from the date this order is approved by a Discipline Committee case manager and shall not apply or attempt in any way to reinstate his APEGA membership until the five-year period has elapsed.
  2. APEGA, at its sole discretion, will share the information contained in this order with sister Canadian engineering and geoscience regulators.
  3. The Member shall be issued a letter of reprimand.
  4. This matter and its outcome will be published by APEGA in any form or media deemed appropriate. Such publication will not name the Member.

18. Although the Investigative Committee and the Member understand and acknowledge that APEGA's usual policy is to publish recommended discipline orders in a manner that identifies members or former members by name, the parties understand that the decision to publish with or without names is discretionary. The parties submit that publication without name is appropriate given the specific facts in this case, including the following:

1. The Professional Member was a member of APEGA, in good standing, since December 10, 1992, and had no prior findings of unprofessional conduct or unskilled practice; and
2. There is no evidence that the conduct of the Professional Member put members of the public at risk or is likely, in the future, to put members of the public at risk. Publication with name, therefore, is not required to protect the public interest.

Signed,

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

**ROY SUDIPTO, P.ENG.**

Panel Chair, APEGA Investigative Committee

**MARC SABOURIN, P.ENG.**

Case Manager, APEGA Discipline Committee

*Date: January 16, 2019*