



APEGA Appeal Board Decision Decision With Respect to Costs of the Appeal

The Appeal Board's purpose is to provide registrants and the public full protection of their statutory right of appeal and right to natural justice, in accordance with the [Engineering and Geoscience Professions Act](#), through review of decisions and actions by the Discipline Committee, Practice Review Board, Investigative Committee or Board of Examiners. For more information, please visit www.apega.ca/enforcement/discipline-decisions.

Date of Hearing: October 20, 2022

APEGA Appeal Case Number: 19-016-FH

IN THE MATTER OF the Engineering and Geoscience Professions Act (EGP Act) and THE APPEAL from the decision of the APEGA Discipline Committee ("DC") in case 19-016-FH, regarding the matter of conduct of Mr. Ameer Bakheet.

Introduction

- [1] On May 20, 2022, the Appeal Board (the "Appeal Board") of the Association of Professional Engineers and Geoscientists of Alberta ("APEGA") heard an appeal on the merits of a decision made by the DC wherein the DC found that the Appellant, Mr. Bakheet, engaged in unprofessional conduct and the DC sanctioned him for his conduct.
- [2] On July 6, 2022, the Appeal Board issued its appeal decision wherein it upheld the DC's decision and dismissed the appeal in its entirety (the "Appeal Decision").
- [3] As the Investigative Committee ("IC") had requested a costs order against Mr. Bakheet for the appeal proceedings pursuant to section 69(4) of the EGP Act, the Appeal Board invited the IC and Mr. Bakheet to provide submissions on costs arising from the appeal proceedings only, as the costs with respect to the hearing were dealt with in the Appeal Decision.
- [4] The IC provided a submission on July 20, 2022. The IC's submission was made available to both Mr. Bakheet and the Appeal Board for their consideration.
- [5] Mr. Bakheet provided a response submission on August 9, 2022, after requesting and receiving an extension to do so.
- [6] On August 10, 2022, the IC confirmed it had no further submissions regarding the costs of the appeal. Both parties were notified that the submissions process was complete and that the Appeal Board would proceed to decide regarding costs.



APEGA Appeal Board Decision Decision With Respect to Costs of the Appeal

- [7] The Appeal Board has considered the IC's request for a costs order and orders that Mr. Bakheet will pay \$10,000.00 in costs, which will be due within one year from the date of this decision, for the reasons specified below.

Relevant Legislative and Regulatory Provisions

- [8] Section 69(4) of the EGP Act provides the Appeal Board the following authority relating to costs of the appeal:

69(4) The Appeal Board may order the investigated person to pay all or part of the costs of the appeal determined in accordance with the bylaws.

- [9] Section 36 of the Bylaws indicate the following:

36 Where the Discipline Committee, Practice Review Board or the Appeal Board orders an investigated person to pay the costs of the hearing, or the costs of the appeal, or both the costs of the hearing and the costs of the appeal, those costs may include all or any of the following costs and expenses:

(a) any honorarium, payment, or professional fees paid to a person retained to participate in the hearing or appeal;

(b) costs of any transcripts of evidence taken in the proceedings;

(c) costs of reproduction of all or any documents including drawings and plans relating to the proceedings;

(d) witness fees;

(e) cost of renting rooms, renting recording equipment, or hiring a reporter to take transcript of the evidence;

(f) fees payable to the solicitor acting on behalf of the Association in the proceedings;

(g) any other expenses incurred that are attributable to the hearing or an appeal resulting from it.



APEGA Appeal Board Decision Decision With Respect to Costs of the Appeal

Position of the Investigative Committee

- [10] The IC takes the position that Mr. Bakheet should be required to pay 50% of the costs of the appeal, to a maximum of \$17,500, and that it would be reasonable to order Mr. Bakheet pay these costs within one year.
- [11] The IC cites various Alberta cases, including *Tan, K.C. and Zuk*,¹ in which the Court of Appeal reviewed costs in the professional regulatory context. In *K.C.*, the Court noted that relevant factors when considering whether to award costs include the parties' success or failure at the hearing, the conduct of the parties, the seriousness of the charges, and the reasonableness of the amounts.² More recently in *Tan*, the Court stated that this remained an appropriate approach to costs.³ In *Zuk*, the Court further noted that:
- a. Costs orders must be sensitive to a member's financial circumstances;
 - b. Costs orders delivering a "crushing financial blow" must be scrutinized carefully; and
 - c. A tribunal should consider whether a large costs award may deny "an investigated person a fair chance to dispute allegations of professional misconduct".⁴
- [12] In *Tan*, the Court emphasized that the test is not whether a costs order delivers a "crushing blow" or is "exorbitant" but rather "whether considering all the circumstances they are reasonable and proportionate". Further, full indemnity for a regulator's costs is seldom appropriate as a regulator must accept some of the costs of its disciplinary proceedings as a proper consequence of its mandate.⁵
- [13] Regarding the applicable factors for the Appeal Board to consider in this case, the IC argues that:
- a) Mr. Bahkeet was completely unsuccessful in his appeal, and such a result is not a mitigating factor with respect to costs.
 - b) There was no misconduct in this appeal, making this a neutral factor.

¹ *Dr. Ignacio Tan III v Alberta Veterinary Medical Association*, 2022 ABCA 221 ("*Tan*"), *K.C. v. College of Physical Therapists of Alberta*, 1999 ABCA 253 ("*K.C.*"); *Zuk v Alberta Dental Association and College*, 2018 ABCA 270 ("*Zuk*")

² *K.C.*, at para 94.

³ *Tan*, at para 46.

⁴ *Zuk*, at para 194.

⁵ *Tan*, at paras 42-43, 46.



APEGA Appeal Board Decision Decision With Respect to Costs of the Appeal

- c) Although the tall walls designed by Mr. Bakheet do not appear to be at imminent risk of failure, the findings against him are serious in that they reflect a lack of understanding of his professional responsibilities.
- d) The IC has provided the Appeal Board with a breakdown of the costs incurred in this appeal, which amount to approximately \$35,000. The IC submits that it would be reasonable for the Appeal Board to order Mr. Bakheet to pay 50% of the appeal costs, in line with the result in Tan.

- [14] Regarding Mr. Bakheet's financial circumstances, the IC notes that this factor was considered by the Discipline Committee in its assessment of costs for the disciplinary hearing. The DC applied the principles arising from the *Zuk* and *K.C.* decisions and considered the reasonableness of the amount of costs, from the perspective of a professional engineer who wishes to engage in the practice of engineering.
- [15] The IC acknowledges the costs of the one-day hearing before the Appeal Board to be significantly less than the previous hearing before the DC where Mr. Bakheet was assessed an amount of \$10,000 which is approximately 12.5% of the costs.
- [16] While the IC maintains that it would be appropriate for Mr. Bakheet to pay 50% of the costs of the appeal hearing, the IC submits that, if the Appeal Board decides that the appeal costs award should be reduced due to Mr. Bakheet's financial circumstances, a minimum costs order of \$10,000 should be considered.
- [17] Further, the IC states that Mr. Bakheet should be given a period of one year to pay any costs order with an opportunity to make a request in writing to the Director of Enforcement in advance of deadlines for an extension if necessary.

Position of Ameer Bakheet

- [18] Mr. Bakheet's submission mainly consists of arguments related to the merits of the decision and not the costs, with the exception of a brief portion related to his challenging financial situation. Mr. Bakheet states that he is working overseas, with additional expenses while earning less income. Mr. Bakheet also notes he has a tax debt outstanding.

Appeal Board Analysis

- [19] The Appeal Board understands that Mr. Bakheet had a right to appeal the DC's decision and the sanctions that were ordered against him. The Appeal Board also understands that Mr. Bakheet may be facing financial challenges based on the information he provided in his submission.



APEGA Appeal Board Decision Decision With Respect to Costs of the Appeal

- [20] Section 69(4) of the Act and Section 36 of the Bylaws gives the Appeal Board the ability to assess the full costs of an appeal against an investigated person such as Mr. Bakheet. The Appeal Board also acknowledges, as was stated in *Tan*, that it will usually be appropriate for self-regulating professions to bear some responsibility in absorbing a portion of the costs relating to discipline proceedings.
- [21] In reviewing the submissions from the IC and Mr. Bakheet, the Appeal Board finds that a costs award of 50% is not appropriate for this appeal. While Mr. Bakheet's submission did not provide a specific amount that he would propose in the alternative, in the view of the Appeal Board, an order of 50% could be a 'crushing blow' in light of Mr. Bakheet's financial circumstances and thus requires careful scrutiny as to whether it is proportionate and reasonable.
- [22] The Appeal Board recognizes that Mr. Bakheet was entirely unsuccessful in his appeal and most of his arguments in his costs submission were not material to the issue of costs. With that said, Mr. Bakheet, who represented himself in this appeal, was generally cooperative in the process and participated in a timely manner. Also, as legislated in section 67 of the EGP Act, Mr. Bakheet had a right to an appeal.
- [23] The Appeal Board considered the financial challenges described by Mr. Bakheet and, while there were few specific details provided, the Appeal Board is aware that Mr. Bakheet is indeed working overseas. Additionally, Mr. Bakheet indicated he has a tax-debt owing and the Appeal Board is sympathetic to these factors.
- [24] Given Mr. Bakheet's financial circumstances, the Appeal Board considers the alternative costs amount of \$10,000 proposed by the IC, which is approximately 29% of the costs of the appeal hearing, to be reasonable and proportionate. This is a greater proportion than the 12.5% proportion that was awarded by the DC, in recognition that Mr. Bakheet was wholly unsuccessful in this appeal.
- [25] The Appeal Board further notes that the conduct in question was not particularly egregious and that it had limited impact on the general public. In terms of 'seriousness', Mr. Bakheet's offences were on the lower end of the spectrum which is supportive of a costs award below 50%.



APEGA Appeal Board Decision Decision With Respect to Costs of the Appeal

Decision

[26] For the reasons set out above, and pursuant to section 69(4) of the EGP Act, the Appeal Board orders that:

- a. Mr. Bakheet will pay \$10,000.00 in costs;
- b. This assessment will be due on or before October 20, 2023.
- c. Mr. Bakheet may make a written request for an extension to the deadline for payment to the Director of Enforcement in advance of the deadline, including reasons supporting his request for an extension.

Dated at the City of Edmonton in the Province of Alberta this 20th day of October 2022.

APEGA APPEAL BOARD

Per:

Heather Kennedy, P.Eng.
Appeal Board Panel Chair