



The Association of Professional
Engineers and Geoscientists of Alberta

APEGA
APPEAL BOARD
DECISION WITH RESPECT TO
APPEAL COSTS AND PUBLICATION

June 5, 2024

Case: 20-003-FH

IN THE MATTER OF the Engineering and Geoscience Professions Act

and

THE APPEAL from the decision of the APEGA Discipline Committee (“DC”) in case 20-003-FH, regarding the matter of conduct of Mr. Eric Chrysanthous.

- [1] On October 27, 2023, the Appeal Board of the Association of Professional Engineers and Geoscientists of Alberta (the “Appeal Board” of “APEGA”) heard an appeal on the merits of decisions made by the DC wherein the DC found that the Appellant, Mr. Chrysanthous, had engaged in unprofessional conduct and the DC sanctioned him for his conduct.
- [2] On December 18, 2023, the Appeal Board issued a decision wherein it confirmed DC’s decisions in their entirety and dismissed the appeal (the “Appeal Decision”).
- [3] The Appeal Board invited the Investigative Committee (“IC”) and Mr. Chrysanthous to provide submissions on costs arising from the appeal proceedings and on publication of the Appeal Decision.
- [4] The IC provided submissions on January 3 and 26, 2024. The IC’s submissions were made available to both Mr. Chrysanthous and the Appeal Board for their consideration.

- [5] Mr. Chrysanthous requested details as to the costs of the appeal. Details were provided to him and he was notified of deadlines by which any submissions he wished to make as to costs or publication were required. Mr. Chrysanthous provided no submissions or further response to this notification. Following those deadlines, both parties were notified that the Appeal Board would proceed to decide regarding costs and publication.
- [6] The Appeal Board orders that Mr. Chrysanthous will pay \$47,927.00 in costs within 12 months from the date of this decision.
- [7] The Appeal Board directs publication of a report regarding the disciplinary investigation into Mr. Chrysanthous' conduct and its outcome, identifying Mr. Chrysanthous by name.

COSTS

Relevant Legislative and Regulatory Provisions on Costs

- [8] Section 69(4) of the 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.

Position of the Investigative Committee on Costs

[10] The IC takes the position that Mr. Chrysanthous should be required to pay 100% of the costs of the appeal, the IC legal cost portion of which works out to be \$23,000.00¹, within 12 months. In the alternative, the IC requests that Mr. Chrysanthous be ordered to pay 50% of the appeal costs, in line with the DC costs order.

[11] The IC relies upon its submission to the DC regarding costs of the DC hearing and refers particularly to the Court of Appeal's decision in *Jinnah*.²

[12] In *Jinnah*, the Court cited its commentary from a previous decision that "The disciplinary process must necessarily involve costs, and any self-regulating professional organization must accept those costs as an inevitable consequence of self-regulation. It is acceptable for the profession to attempt to recover some of those costs back from disciplined members, but the burden of the costs of regulation are to some extent inevitable."³

[13] The Court held that a member of a regulated profession should not be ordered to pay significant costs of the disciplinary proceedings unless a "compelling reason" exists.⁴ The Court gave examples of such a reason arising where a member engaged in conduct as follows:⁵

- a) serious unprofessional conduct;
- b) unprofessional conduct occurring on two or more occasions;

¹ As noted above, the total costs for this appeal are \$47,927.00, which includes costs of: the IC's legal counsel, the Appeal Board's legal counsel, and the court reporter and transcript of proceedings. This total does not include APEGA staff costs or the value of time volunteered by Appeal Board panel members for these appeal proceedings.

² *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 ("*Jinnah*").

³ *Jinnah*, at para 135, citing *College of Physicians & Surgeons Alberta v. Ali*, 2017 ABCA 442, at para 110.

⁴ *Jinnah*, at para 138.

⁵ *Jinnah*, at paras 140-144.

- c) failing unjustifiably to cooperate with the investigators, forcing the regulator to expend more resources than necessary; and
- d) engaging in hearing misconduct, such as unnecessarily prolonging the hearing or otherwise resulting in increased unjustified costs.

[14] The IC noted the Court's following comments regarding the serious unprofessional conduct at issue in the *Jinnah* case: "a dentist guilty of breaches of this magnitude must have known that such behavior is completely unacceptable and constitutes unprofessional conduct. It is not unfair or unprincipled to require a dentist who knowingly commits serious unprofessional conduct to pay a substantial portion or all the costs the regulator incurs in prosecuting a complaint."⁶ (emphasis added)

[15] IC argues that:

- a) The proven serious conduct in this matter included repeated threats of violence, failure to comply with requests from the British Columbia regulator, and active attempts to mislead the IC;
- b) Mr. Chrysanthous must have known that his behaviour was unacceptable and would constitute unprofessional conduct; and
- c) In the appeal proceedings, Mr. Chrysanthous raised 16 grounds of appeal, an application for new evidence to be admitted, and multiple procedural requests, all of which were dismissed.

Appeal Board Analysis and Decision on Costs

[16] 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. Chrysanthous. While the Appeal Board acknowledges that, to some extent, self-regulating professions must bear some responsibility in absorbing costs relating to discipline proceedings, that does not preclude the possibility that full costs may be appropriate in certain circumstances.

[17] In reviewing the submissions from the IC and considering the costs principles discussed by the Court of Appeal, the Appeal Board finds that a costs award for the full amount (\$47,927.00, to be paid within 12 months of this decision) is appropriate in this appeal for the following reasons:

⁶ *Jinnah*, at para 141.

- a) Mr. Chrysanthous engaged in serious conduct as noted by the IC and refused to acknowledge the gravity of the matter even in the course of his appeal;
- b) He failed to cooperate with his regulator in British Columbia and misled the IC;
- c) The misconduct at issue in these proceedings occurred on multiple occasions over an extended period of time;
- d) Mr. Chrysanthous was entirely unsuccessful in his appeal, including on his new evidence application and on the multiple procedural objections he raised. The Appeal Board notes that these procedural matters lengthened the proceedings;
- e) Mr. Chrysanthous did not raise any objection to the payment of appeal costs or to the full amount; and
- f) There is no evidence before the Appeal Board upon which it could conclude that Mr. Chrysanthous is unable to pay the full costs.

[18] The Appeal Board also directs that Mr. Chrysanthous will not be eligible to apply for reinstatement as an APEGA member until he has paid the costs ordered in this decision.

PUBLICATION

Relevant Legislative and Regulatory Provisions on Publication

[19] Section 77 of the Act provides the following authority relating to publication:

After a finding or order is made by the Discipline Committee, the Council, the Appeal Board, the Court or the Court of Appeal under this Part, the name of the investigated person may be published in accordance with the regulations.

[20] Section 46 of the *Engineering and Geoscience Professions General Regulation*⁷ states:

The Discipline Committee or the Appeal Board may direct that reports of disciplinary investigations be published.

⁷ Alta Reg 150/1999.

Position of the Investigative Committee on Publication

[21] The IC argues that publication of disciplinary outcomes:

- a) Demonstrates that APEGA is fulfilling its public protection mandate;
- b) Serves the goal of transparency and promotes public confidence in APEGA's ability to achieve its mandate;
- c) Is particularly important for alerting the public in cases where a professional's authorization to practice has been canceled; and
- d) There is no valid reason against publication in this case and publication has already been directed in relation to the decisions of both the British Columbia regulator and by the DC.

Appeal Board Analysis and Decision on Publication

[22] Again, Mr. Chrysanthous has not raised any objection to the publication direction requested by the IC in this appeal.

[23] The Appeal Board agrees with the reasons cited by the IC in favour of publication. It is important for the public to see that the public interest is being looked after.

[24] The Appeal Board further notes that this matter is instructive for professionals in considering public commentary, including how it may be problematic and could result in disciplinary action. It should also be observed that, while mistakes can be made which constitute serious misconduct, there are steps at various points in the disciplinary process where a member's conduct in accordance with the Rules of Conduct regarding integrity, honesty, fairness and objectivity may help de-escalate issues.

Dated this 5th day of June, 2024

APEGA Appeal Board

Per: **Heather Kennedy**
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Heather Kennedy, P.Eng.
Appeal Board Panel Chair