



The Association of Professional
Engineers and Geoscientists of Alberta

APEGA
APPEAL BOARD
DECISION WITH RESPECT TO
APPEAL COSTS AND PUBLICATION

November 6, 2024

Case: 20-001-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 20-001-FH, regarding the matter of conduct of Mr. Chinedu Ubah.

OVERVIEW

- [1] On July 19, 2024, 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. Ubah, had engaged in unprofessional conduct and the DC sanctioned him for his conduct.
- [2] On August 13, 2024, 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. Ubah to provide submissions on costs arising from the appeal proceedings and on publication of the Appeal Decision.
- [4] The IC provided submissions on August 26, 2024. The IC’s submissions were made available to both Mr. Ubah and the Appeal Board for their consideration.

- [5] Mr. Ubah 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. Ubah provided submissions on September 11, 2024. Both parties were then notified that those submissions would also be made available to the Appeal Board which would be proceeding to decide regarding the issues of costs and publication.
- [6] The Appeal Board has considered the parties submissions and has decided as follows:
- a) The Appeal Board orders that Mr. Ubah will pay \$60,702.90 in costs within 24 months from the date of this decision.
 - b) The Appeal Board directs publication of a report regarding the disciplinary investigation into Mr. Ubah conduct and its outcome, identifying Mr. Ubah by name.
- [7] The reasons for this decision are set out below.

COSTS

Relevant Legislative and Regulatory Provisions on Costs

- [8] Section 69(4) of the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11 (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 *Engineering and Geoscience Professions Act 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. Ubah should be required to pay 100% of the costs of the appeal within 24 months.¹ In the alternative, the IC requests that Mr. Ubah be ordered to pay at least 75% 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 decisions in *Tan* and *Jinnah*.²

[12] In *Tan*, the Court referred to the following factors that disciplinary bodies should consider in awarding costs:

- a) the parties' success or failure at the hearing,
- b) the conduct of the parties,
- c) the seriousness of the charges, and
- d) the reasonableness of the amounts.³

¹ As noted above, the total costs for this appeal are \$60,702.90, 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 *Dr. Ignacio Tan III v Alberta Veterinary Medical Association*, 2022 ABCA 221 ("Tan"); *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 ("Jinnah").

³ *Tan*, at para 46, citing *KC v College of Physical Therapists of Alberta*, 1999 ABCA 253.

[13] In *Jinnah*, the Court noted that the costs of disciplinary processes are an inevitable consequence of self-regulation. However, the Court held that a member of a regulated profession may be ordered to pay significant costs of the disciplinary proceedings where a “compelling reason” exists, for example:⁴

- a) serious unprofessional conduct;
- b) unprofessional conduct occurring on two or more occasions;
- c) failing 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 argues that:

- a) Mr. Ubah was found to have engaged in serious unprofessional conduct;
- b) Mr. Ubah was found to have engaged in unprofessional conduct on multiple occasions; and
- c) Mr. Ubah’s appeal arguments were frivolous and forced APEGA to expend more resources than necessary.

[15] The IC also notes that Mr. Ubah’s numerous grounds of appeal and preliminary requests were all dismissed or denied by the Appeal Board in their entirety.

Position of the Appellant on Costs

[16] Mr. Ubah did not provide any substantive submissions regarding whether costs should be awarded against him, or the amount of such costs. Instead, Mr. Ubah’s submission mainly contains argument on:

- a) his allegation that this Appeal Board panel is improperly constituted,

⁴ *Jinnah*, at paras 140-144.

- b) the contents of the record that has been provided to Mr. Ubah since the Appeal Board issued its decision in this appeal, and
- c) the Appeal Board proceeding with determining the issues of costs and publication via a written submission process.

Appeal Board Analysis and Decision on Costs

[17] The Appeal Board addresses the procedural matters raised in Mr. Ubah's submission as follows:

- a) This Appeal Board panel has previously decided that it is properly constituted to hear this appeal and is not revisiting its decision with respect to its consideration of the costs and publication issues in this appeal;
- b) Pursuant to the applicable requirements under the Act, Mr. Ubah has been provided a certified copy of the Appeal Board's record including the transcript of the July 19, 2024 appeal hearing, as well as details of the costs of the appeal proceedings, prior to his deadline to provide his submissions on the issues of costs and publication; and
- c) Mr. Ubah has demonstrated that he is capable of providing written submissions and he has provided no reasons why the determination of the costs and publication issues in this appeal should instead proceed via an oral hearing.

[18] Turning to the substantive issue of costs in this appeal, the Appeal Board notes that it has the ability to assess the full costs of an appeal against an investigated person such as Mr. Ubah, pursuant to section 69(4) of the Act and section 36 of the Bylaws . While the Appeal Board acknowledges the Court of Appeal's comments 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.

[19] 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 (\$60,702.90, to be paid within 24 months of this decision) is appropriate in this appeal for the following reasons:

- a) Mr. Ubah engaged in serious unprofessional conduct as noted by the IC and refused to acknowledge the gravity of the matter even in the course of his appeal;
- b) The unprofessional conduct occurred on multiple occasions over an extended period of time;
- c) Mr. Ubah was entirely unsuccessful in his appeal, including on his new evidence application and on the multiple procedural objections and requests that he raised. The Appeal Board notes that these procedural matters complicated and protracted the proceedings unnecessarily;
- d) Mr. Ubah attempted unsuccessfully to reargue various procedural matters after they had already been decided in this appeal;
- e) The profession has had to bear a significant part of the costs of these proceedings already. The costs being assessed against Mr. Ubah do not include the panel's time (which is unpaid) or the APEGA staff costs associated with the appeal proceedings;
- f) Mr. Ubah did not raise any objection to the payment of appeal costs or to the full amount; and
- g) There is no evidence before the Appeal Board upon which it could conclude that Mr. Ubah is unable to pay the full costs.

[20] The Appeal Board also directs that Mr. Ubah 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

[21] 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.

[22] Section 46 of the *Engineering and Geoscience Professions General Regulation*, Alta Reg 150/1999, states:

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

Position of the Investigative Committee on Publication

[23] The IC argues that the Appeal Board's decision in this appeal should be published in a manner that names Mr. Ubah. The IC notes 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 cancelled; and
- d) There is no valid reason against publication in this case and publication has already been directed in relation to the decisions of the DC.

Appeal Board Analysis and Decision on Publication

[24] Mr. Ubah has not raised any objection to the publication direction requested by the IC in this appeal.

[25] The Appeal Board agrees with the reasons cited by the IC in favour of publication. There is no reason not to publish the decision in this appeal, in a manner that names Mr. Ubah. It is important for the public to see that the public interest is being looked after and be aware of when a professional's authorization to practice has been cancelled.

[26] The decision may also provide useful information to the profession regarding conduct, including conduct that should be avoided in the course of disciplinary proceedings.

[27] Accordingly, the Appeal Board directs the publication of its decision in this appeal in a manner that names Mr. Ubah.

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Dated this 6th day of November, 2024
APEGA Appeal Board

Christina Clark

Signed with ConsignO Cloud (2024/11/07)
Verify with verifio.com or Adobe Reader.



Per:

Christina Clark, P.Eng.
Appeal Board Panel Chair

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