



The Association of Professional  
Engineers and Geoscientists of Alberta

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## APEGA APPEAL BOARD DECISION

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**Date of Hearing:** July 19, 2024

**Date of Decision:** August 13, 2024

**Case:** 20-001-FH

**IN THE MATTER OF** the Engineering and Geoscience Professions Act

and

**THE APPEAL** by Mr. Chinedu Ubah, from the decisions of the APEGA Discipline Committee in the matter of conduct of Mr. Ubah.

**HEARING PANEL:**

Christina Clark, P.Eng.	(Panel Chair)
Heather Kennedy, P.Eng.	(Panel Member)
Larry Staples, P.Eng.	(Panel Member)
Nawaz Panhwer, P.Eng.	(Panel Member)
Zobayur Rahman, P.Eng.	(Panel Member)

**INDEPENDENT LEGAL COUNSEL FOR THE APPEAL BOARD:**

Natalie Tymchuk, Emery Jamieson LLP

**APPEARANCES:**

Chinedu Ubah, Appellant

Greg Sim, Field Law LLP, Legal Counsel for the Investigative Committee

**SUMMARY**

The Appeal Board of the Association of Professional Engineers and Geoscientists of Alberta (“APEGA”) has considered this appeal and, pursuant to section 69(3)(b) of the *Engineering and Geoscience Professions Act*, RSA 2000, c E-11 (the “Act”), confirms the Discipline Committee’s (“DC”) findings and sanctions. Accordingly, the appeal is dismissed.

## **BACKGROUND**

- [1] This is an appeal pursuant to section 67 of the Act.
- [2] A charge was brought against the Appellant before the DC, relating to his actions in 2014 to 2018 where he commenced, attempted to commence, or threatened to commence complaints or proceedings with various bodies (including APEGA) in circumstances amounting to abuse of process and/or for improper purposes.
- [3] Throughout 2022 and 2023, the DC held formal hearings on multiple days regarding the Appellant's conduct. The Appellant did not attend the last two scheduled days of hearing. The hearings concluded with both parties providing written closing submissions. The Appellant provided a final reply submission on August 15, 2023.
- [4] On January 22, 2024, the DC issued a decision in which it found the charge had been proven against the Appellant (the "Findings Decision"), and it sought submissions from the parties regarding sanctions.
- [5] On April 29, 2024, the DC issued its decision on sanctions in which it ordered cancellation of the Appellant's registration, costs, and publication of the DC's decisions (the "Sanctions Decision").
- [6] The Appellant appealed both decisions. The IC did not appeal either decision.
- [7] An appeal hearing date of July 19, 2024 was agreed upon by the parties and a hearing was held via video conference by a hearing panel of the Appeal Board.

## **PRELIMINARY ISSUES**

- [8] Prior to the hearing of this appeal, the Appellant raised various preliminary issues. Separate written decisions were issued by the Appeal Board regarding those preliminary issues, which decisions are summarized below for further background.

*Issues Related to the Discipline Committee Record and the Appeal Board Panel*

- [9] Upon receiving access to the DC Record, the Appellant raised various issues, including a request for the deliberation records of the DC and of the IC, and further audio recordings and transcripts from the DC and from the IC beyond the record that had been provided by the DC for this appeal. The Appellant further requested a stay of the proceedings to allow for that production and his review of the requested records to occur.
- [10] The Appeal Board issued a decision on June 27, 2024, declining to direct production of additional information from the DC and declining a stay.
- [11] The Appeal Board's June 27, 2024 decision also declined the Appellant's request for the preliminary issues that he had raised to be heard in-person, but it granted the Appellant's request for the names of the Appeal Board panel members who were hearing these appeal proceedings. Other issues raised by the Appellant relating to the merits of the DC decisions or fairness of the DC process were expressly left open for the Appellant to raise during the appeal hearing if he chose to do so.

*Requests for Adjournment/Extension and New Evidence & Objections Regarding Parties and Appeal Board panel Composition*

- [12] On July 3, 2024 the Appellant submitted a request for the Appeal Board to adjourn the hearing and extend deadlines to allow for him to call new witness evidence during the appeal hearing. These requests were denied by the Appeal Board in a decision issued on July 16, 2024.
- [13] The July 16<sup>th</sup> decision also dismissed the Appellant's objection to the IC's participation and the DC's non-participation in this appeal, and his objection to the panel hearing this appeal.

*Conflict of Interest*

- [14] At the outset of the appeal hearing, the Appellant raised an issue as to conflict of interest, stating that he had not received further information about the Appeal Board panel, including how long the panel members had worked as engineers and where they had worked.

- [15] The panel considered the Appellant's objection to proceeding on this basis and determined that the appeal would proceed. The panel's reasons, provided orally, were that the Appellant had provided no specifics as to his concern regarding a conflict of interest on the basis of any individual panel member, the panel was not required to provide further background information, and the panel had confirmed that it was not aware of any conflict of interest.
- [16] The Appeal Board panel hearing this appeal also confirmed to the Appellant, both during and prior to the hearing, that it was properly constituted and that its members were properly appointed.

### **ISSUES ON APPEAL**

- [17] The Appellant has raised several issues in this appeal which are broadly categorized as follows:
- [a] Whether the charges were properly referred from the Investigative Committee ("IC") to the DC such that the DC had jurisdiction to hear the matter;
  - [b] Whether the proceedings before the DC were fair; and
  - [c] Whether the sanctions ordered by the DC should be overturned.

### **STANDARD OF REVIEW**

- [18] The Appellant takes the position that the Appeal Board has the power to reconsider the DC decisions entirely and that it should review the decisions on the standard of correctness. In support of this position, the Appellant points to provisions in the Act which authorize the Appeal Board to receive evidence, draw inferences of fact, and make determinations and findings. The Appellant suggests that the DC exceeded its jurisdiction by making an error of law outside of its expertise based on a perverse or capricious finding of fact.

- [19] However, as stated by the Alberta Court of Appeal in *Yee v. Chartered Professional Accountants of Alberta*, the findings of fact of a disciplinary hearing body such as the DC should be afforded significant deference, and the DC's decisions as a whole should be reviewed on the basis of whether they are reasonable. This applies even in a statutory framework where a disciplinary appeal body such as the Appeal Board has the power to receive evidence and make findings.
- [20] Accordingly, in this appeal, the Appeal Board must determine whether the DC's decisions:
- [a] are justified, transparent and intelligible,
  - [b] fall within a range of possible and acceptable outcomes that are legally and factually defensible; and
  - [c] demonstrate an apparent line of analysis as to how the facts and the law were applied.<sup>1</sup>
- [21] For issues of procedural fairness, the Appeal Board must determine whether the proceedings before the DC met the level of fairness required by law.<sup>2</sup>
- [22] In this appeal, the Appellant has raised many of the arguments he made before the DC. While the Appellant has made it clear that he disagrees with the outcome of both the IC process and the DC proceedings, the purpose of this appeal is not to rehear the hearing that occurred before the DC. Instead, as noted above, the Appeal Board is tasked with reviewing the record before the DC, to determine whether the DC decisions were reasonable, and whether its proceedings were fair.

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<sup>1</sup> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 85-87

<sup>2</sup> *Essa v APEGA*, 2021 ABCA 116 at para 21.

## **ANALYSIS**

- [23] The Appellant provided various documents to the Appeal Board, which he referred to as authorities, shortly before the appeal hearing started and during the hearing. The Appeal Board notes that it has reviewed the authorities cited and that it considered them to the extent that they were referred to both in the Appellant's submissions over the course of these appeal proceedings and overall in regard to this appeal. In general, the Appeal Board does not find that the case law and other documents provided establish any basis to disturb the outcome set out in the DC decisions.
- [24] Many of the issues raised by the Appellant in this appeal appear to arise from a general misunderstanding as to how the investigation and disciplinary processes function under the Act, and from speculation by the Appellant as to what may have occurred. The Appellant has also referred to various passages from the transcripts of the DC hearing, arguing that those passages establish evidence in support of his grounds of appeal. However, the Appeal Board overall did not find such arguments to be compelling and in many instances found no evidence to substantiate the Appellant's allegations regarding the IC or DC proceedings.
- [25] The Appeal Board's analysis of the issues raised by the Appellant in this appeal are further reviewed below.

### *Referral of Charge to the DC*

- [26] There was one charge before the DC as follows:

On or about 2014 to 2018, Mr. Ubah, P.Eng. commenced, attempted to commence or threatened to commence complaints or proceedings with one or more of the following bodies, in circumstances amounting to an abuse of process, or for improper purposes, or both:

- [a] The Association of Professional Engineers and Geoscientists of Alberta;
- [b] The Office of the Information and Privacy Commissioner of Alberta ("OPIC");
- [c] The Alberta Courts;

AND IT IS FURTHER ALLEGED that the above-referenced conduct constitutes unprofessional conduct as set out in one or more of sections 44(1)(a), (b) or (c) of the Engineering and Geoscience Professions Act, APEGA's Guidelines for Ethical Practice v2.2, and Rules of Conduct 3, 4 and 5 of APEGA's Code of Ethics.

- [27] During the appeal hearing and in the Appellant's submissions to the Appeal Board regarding the preliminary issues he raised, the Appellant has challenged the legitimacy of the referral of this charge to the DC, based on his view that they the IC did not actually or properly make the referral. The Appellant advanced similar arguments before the DC.

Investigation Panel Appointment and IC Awareness of Referral

- [28] In his appeal arguments, the Appellant has reviewed the structure of the investigative process under the Act, noting that there must be a complaint, then an investigation, then a recommendation made to the IC, and then the IC can make a referral to the DC. Section 47 of the Act sets out how the IC is to appoint an investigation panel. The Appellant argues that the selection of the investigation panel was improperly influenced by APEGA staff. He further asserts that the IC could not have decided to refer the charge to the DC when the investigation panel was not properly appointed.
- [29] The Appellant challenges that the IC was even aware of the charge, stating that no one admitted to having made the referral and no member of the IC who could have referred the matter appeared at the DC hearing.
- [30] In response, counsel for the IC notes that the evidence before the DC established that the referral occurred pursuant to the Act. The IC chair was appointed as head of the investigation panel, the IC reviewed the investigation panel report, and the IC decided to refer the matter to the DC.
- [31] The DC findings decision dealt with the Appellant's concerns regarding the IC referral to the DC hearing and the preparation of the charge. Counsel for the IC argues there is no evidence that that the DC made unreasonable findings of fact about what occurred in this case with respect to the IC's referral.

- [32] The Appeal Board notes that the DC found no error in how the charge was referred to it. The Appellant has not pointed to an error in this appeal. A presumption of regularity applies to the IC's process. Staff or legal counsel involvement in that process does not on its own render that process improper. There is no evidence that either the manner of appointment of the investigative panel or the referral of the charge to the DC was contrary to the provisions of the Act. Accordingly, the Appeal Board declines to disturb the DC's findings in this regard.

#### CNRL Influence on Referral

- [33] The DC Findings Decision provides details regarding the involvement of Canadian Natural Resources Limited ("CNRL") in this matter and an application that APEGA brought before the Court of King's Bench to restrict the Appellant's ability to submit further complaints to APEGA.
- [34] The Appellant alleges that the IC referral to the DC was improperly influenced by CNRL. This was also argued before the DC.
- [35] The Appellant asserts in this appeal that CNRL provided direction to APEGA staff on how the investigation could be handled and that APEGA's request for Court restrictions occurred on the suggestion of CNRL. The Appellant refers to APEGA staff witness evidence before the DC in which staff referred to discussions staff had with CNRL representatives.
- [36] The Appellant has not demonstrated that the DC failed to consider substantive evidence of any sort of improper dialogue between APEGA and CNRL. The fact that APEGA staff may have discussed APEGA complaint matters and Court matters with CNRL does not establish that the IC was improperly influenced. The Appeal Board upholds the DC's findings on this point.

#### Unfair Treatment of the Appellant's Complaints

- [37] The Findings Decision includes particulars of the Appellant's various complaints that were investigated by the IC, as well as the termination of those investigations. Before the DC, the Appellant alleged procedural errors in those investigations and that his complaints were made for proper purposes.



- [38] In this appeal, the Appellant has expanded on these points, arguing that the IC improperly took one position on the complaint against the Appellant after having taken a different position regarding the Appellant's complaints. The Appellant notes that the IC's reasons for terminating its investigation into his complaint were that his complaint involved a breach of contract, which was a legal issue that does not involve the practice of engineering, even though it related to an engineering contract. The Appellant contrasts this to the IC having referred the charge against him to the DC, accusing him of not paying a costs order, which was also a legal issue stemming from a court matter. The Appellant also asserts that he had the right to threaten a lawsuit if there was a dispute about a legal matter.
- [39] In response, the IC notes that section 49(2) of the Act expressly authorizes the IC to investigate any other thing which the IC can include in charges laid before the DC. IC counsel referred the Appeal Board to the concerns that were raised in the complaint the IC had received regarding the appellant. The concerns were not only about the Appellant not paying a costs judgment. They also related to the Appellant threatening to initiate complaints and actions in a manner that was intimidating and an abuse of process.
- [40] The IC's decisions to terminate its investigations into the Appellant's complaints are final, and therefore not open for further debate either before the DC or in this appeal. For the complaint against the Appellant, and the eventual charge laid after that complaint, the Appeal Board can conclude that the DC thoroughly considered whether the Appellant's conduct fell under the scope of conduct that could be regulated under the Act.
- [41] The DC reviewed the Appellant's conduct relating to the charge as a whole and provided a detailed review of the evidence before it regarding the Appellant's conduct and why it found:
- [a] The Appellant had commenced, attempted to commence, or threatened to commence complaints or proceedings with APEGA, the OIPC, and the Alberta courts;
  - [b] That conduct was for improper purposes or amounted to an abuse of process;
  - [c] There was a sufficient nexus between his conduct and his then role as a professional;

[d] His conduct harmed or tended to harm the standing of the profession generally and breached Rules of Conduct 3 and 5 of the Code of Ethics, thereby constituting unprofessional conduct as defined in section 44(1) of the Act.

[42] The Appellant has not identified any unreasonable finding of fact or application of the law to those facts by the DC. The Appeal Board sees no reason to depart from the DC's conclusions regarding the Appellant's conduct.

#### *Procedural Fairness*

[43] The Appellant has raised various procedural fairness issues in this appeal.

#### Bias, Corruption, Bad Faith, Fraud

[44] The Appellant broadly alleged bias, corruption, bad faith and fraud on the part of the IC and the DC, and that the DC was insufficiently independent from the IC, but the basis for these allegations is unclear. The Appeal Board can identify no evidence of bias, corruption, bad faith, or fraud on the part of either the IC or the DC.

#### DC Legal Counsel

[45] The Appellant claims that the DC improperly relied on the opinion of its legal counsel. The Appellant notes that there is no legislated provision for the DC to have legal counsel. The Appellant takes issue with the DC's legal counsel having raised hearing objections and with the DC having made decisions based on its legal counsel's opinion.

[46] The Appeal Board has examined the interjections of the DC's legal counsel on the record that were cited by the Appellant and otherwise reviewed by the Appeal Board. The legislation does not prohibit the DC from having legal counsel, it is a common practice for a disciplinary tribunal to have legal counsel and consider legal advice during proceedings, and the Appeal Board saw nothing objectionable regarding the involvement of the DC's legal counsel in the proceedings. There is no evidence that the involvement of legal counsel resulted in a procedurally unfair hearing.

IC Record

- [47] The Appellant argues that the DC erred in law by proceeding with the disciplinary hearing while allowing the IC to claim deliberative secrecy with respect to the IC's record. This argument is related to the Appellant's grounds of appeal concerning the DC's determination that the IC referral was properly before it. The Appellant noted that:
- [a] He never received such notice of an investigation, and he only received the charge.
  - [b] The IC chair was called as witness at the DC hearing, but no evidence was received from the IC.
  - [c] The DC had previously set a precedent that, unless a referral is properly made, that referral is void.
  - [d] In the investigation into the Appellant's conduct, a staff investigator had reviewed the IC investigation into the Appellant's complaints, which led to the conclusion that they were an abuse of process. The IC had thus reevaluated the Appellant's complaints and he was not provided with all the IC records. For the DC decision to be reasonable, the whole investigation record needed to be considered, including transcripts from the investigation.
- [48] The Appellant's arguments in this regard have already been somewhat addressed by the Appeal Board in its June 27, 2024 preliminary issues decision. The Appeal Board remains of the view there is no evidence that the IC failed to produce any relevant or producible records during the disciplinary proceedings, or that there are any grounds upon which deliberative secrecy would not apply to the IC's deliberations. The Appellant's further submissions on this point during the appeal hearing provide no basis for the Appeal Board to alter its view in this regard, or to find that the DC proceeded in an unfair manner by not requiring the production of IC deliberation records.

Adjournment

- [49] The DC's hearing occurred over multiple dates spread out over the course of several months. Some of the Appellant's requested adjournments were not granted and the DC eventually proceed with the hearing in the absence of the Appellant. The DC's decision provides details of its process in this matter and refers to various separate procedural decisions that it issued.
- [50] While the Appellant generally takes issue with the DC's various decisions to proceed with the hearing, the Appellant has not identified any unfairness or error in the DC having done so. Regarding the Appellant's request that the DC hearing be stayed pending his application for judicial review of a procedural decision, the DC accurately pointed out that the two processes could proceed in parallel, such that the Appellant could continue to call witnesses in the DC hearing while the judicial review proceeded.
- [51] The Appellant also takes issue with the DC's refusal to allow his further witnesses. The Appeal Board has already somewhat touched on this point in its July 16, 2024 preliminary issues decision as the Appellant again requested that most of the same witnesses be called to provide evidence in this appeal. The Appeal Board again remains of the view the Appellant has not established that most of these witnesses would have any relevant evidence to provide in these proceedings. The Appeal Board also sees no error in the DC's similar determination in this regard.
- [52] The DC hearing concluded before the Appellant had completed the examination of the witnesses that the DC had permitted him to call. The Appellant argues that the DC erred in concluding the hearing and that this was a breach of his right to be heard. However, the Appellant chose not to attend and further present his witnesses' evidence before the DC.
- [53] The Appeal Board sees no procedural unfairness in the DC having moved on with the conclusion of the hearing once the Appellant refused to continue to participate. In any event, the Appellant had the opportunity to present arguments to the DC in defence to the charges, both in writing following the conclusion of the hearing and in-person while the Appellant was earlier still participating in the in-person hearing. The DC decisions are detailed and indicate that the DC carefully considered the Appellant's arguments throughout the proceedings. The Appellant has not demonstrated that the DC failed to provide him with a fair opportunity to be heard.

Deliberation

- [54] The Appellant argues that there is no evidence the DC deliberated. He also raised this as a preliminary issue in this appeal. During the appeal hearing, he continued to stress that the Appeal Board cannot intervene, by considering the reasonableness or transparency of the DC decision, because it does not have a transcript of the DC's deliberation and thus does not have the whole record before it.
- [55] Again, the Appellant has not provided any evidence that would justify a departure from the application of deliberative secrecy principles from the DC's deliberations. The DC is not required to provide notes, recordings or other records of its deliberation. The DC decisions speak for themselves. The Appeal Board's role is to review the decisions and the record before the DC to determine whether the reasons provided by the DC are justified, intelligible and transparent in light of the relevant facts and law. The Appeal Board is satisfied that the DC's reasons meet this standard.

Transcripts

- [56] When the DC requested the parties' submissions regarding sanctions, the Appellant requested transcripts of the earlier DC hearing proceedings. It appears that the DC provided some, but not all, of the transcripts of its proceedings to the Appellant and to the IC. The Appellant takes issue with the DC having then decided on sanctions without providing him the opportunity to review and comment on the full transcripts.
- [57] However, it remained open to the Appellant to make argument in response to IC on the sanctions it had proposed. The IC's arguments were based largely on the DC Findings Decision that the Appellant already had in hand to refer to. The opportunity to provide sanctions arguments was not an opportunity for the Appellant to re-argue the DC hearing in reference to the transcript.
- [58] It is not clear to the Appeal Board what aspects of the hearing transcripts that the Appellant feels would have impacted the DC's Sanctions Decision. The Appeal Board does not find that the lack of transcripts was procedurally unfair to the Appellant. Even if the Appeal Board had found that this was unfair, the Appellant has now had the opportunity to review the transcripts and make arguments in this appeal regarding the sanctions in reference to the transcript contents.

Hearing Conduct

- [59] The Appellant states that it was unfair for the DC to consider his hearing conduct in their determination of sanctions. He argues that this amounts to an additional charge against him without notice.
- [60] It is well-established that a disciplinary body such as the DC may consider investigation and hearing conduct when determining sanctions. The IC's submission provided notice to the Appellant of the basis for the sanctions that the IC was seeking, including the Appellant's conduct throughout the course of the disciplinary process. The Appellant had an opportunity to respond, and he did submit written arguments in response to the IC's. The Appeal Board considers this to have been a fair sanctions submission process where the Appellant had the right to be heard and he exercised that right.

Two Decisions

- [61] The Appellant asserts that the DC can only issue one decision after a hearing, and that the DC had no authority to issue the Sanctions Decision after it had issued the Findings Decision. The Appellant also argues that the DC asked the IC to recommend an order to be made, which amounted to the DC referring the matter back to the IC after the matter had already been referred to DC, which the DC cannot do.
- [62] The issuance of separate findings and sanctions decisions is the DC's usual practice. The DC also has the practice of seeking submissions from the parties as to what sanctions should be ordered. Again, the Appellant appears to misunderstand how the disciplinary process typically works in practice. He has not established that the DC's practice is contrary to the applicable legislation or that it was procedurally unfair in this matter. The Appeal Board finds that the DC appropriately sought submissions from the parties on sanctions and, as noted above, the parties were provided a fair opportunity to be heard.

*Sanctions*

[63] As the DC found that the charge was proven, the DC sought submissions from both parties regarding sanctions. After considering the parties' written submissions, the DC ordered:

[a] That the Appellant's registration be cancelled;

[b] That he pay costs of \$379,059.84, 75% of the DC hearing costs, within 24 months;

[c] That the order remains in effect until the Appeal Board or Court of Appeal renders a decision; and

[d] That the DC's decision be published in a manner which identifies the Appellant.

[64] The Appellant argues that the sanctions ordered are oppressive and illegal. His arguments in this regard are varied, including the following:

[a] The Sanctions Decision does not respond to the issue regarding his conduct as it does not prevent him from making complaints to the OIPC, to APEGA or to the courts, since he does not need to be a registered APEGA member to do that; and

[b] His conduct was something that he did as a private citizen

[65] The Appellant raised these issues before the DC and they were thoroughly addressed in the Sanctions Decision. The Appellant has not pointed to any evidence or other aspect of the Sanctions Decision which would render that decision unreasonable. The Appeal Board fully upholds the sanctions ordered by the DC.

**CONCLUSION**

- [66] For the reasons noted above, the Appeal Board upholds both the Conduct and Sanctions Decisions of the DC.
- [67] The Appeal Board has not yet ordered costs with respect to this appeal or publication of this decision and reserves the jurisdiction to do so. The IC has stated it is seeking costs of this appeal. Accordingly, the Appeal Board directs that the IC provide its submissions on costs and publication by August 27, 2024. The Appellant will then have an opportunity to respond to the IC's submissions before the Appeal Board issues its further decision regarding costs and publication.

Dated this 13<sup>th</sup> day of August, 2024

On behalf of the Hearing Panel of the APEGA Appeal Board

**Christina Clark**  
Signed with ConsignO Cloud (2024/08/09)  
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Christina Clark, P.Eng.  
Chair, Appeal Board Panel

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Mr. Jay Nagendran, P.Eng., Registrar and CEO  
Mr. John Corriveau, P.Eng., Deputy Registrar and CRO  
Mr. Andy Smith, P.Eng., Deputy Chief Regulatory Officer  
Mr. Garth Jespersen, Director of Investigations  
Ms. Natalie Tymchuk, Appeal Board Legal Counsel  
hearings@apega.ca