



APEGA Appeal Board 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: May 6, 2021

APEGA Appeal Case Number: 17-008-FH

**IN THE MATTER OF the Engineering and Geoscience Professions Act and
THE APPEAL from the decision of the APEGA Discipline Committee in case 17-008-FH,
regarding the matter of conduct of Mr. Richard Balliant and Bal-Comp Engineering Ltd.**

Introduction

- [1] This is a decision of the Appeal Board of the Association of Professional Engineers and Geoscientists of Alberta (the "Appeal Board") ("APEGA") with respect to costs arising out of proceedings before the Appeal Board resulting in a decision dated and issued February 1, 2021.
- [2] This portion of the Appeal Board disposition of this case deals with costs of the Appeal Board proceedings only, as the costs with respect to the Discipline Committee hearing were dealt with in the earlier Appeal Board decision dated and issued February 1, 2021.
- [3] The Appeal Board has considered the Investigative Committee's request for a costs order and, pursuant to section 69(4) of the EGP Act, orders that Mr. Balliant will pay a portion of the costs of this appeal as specified in this decision.
- [4] The Appeal Board invited the parties to provide costs submissions in writing. The Investigative Committee provided a submission on February 16, 2021. The Investigative Committee's submission was made available to both Mr. Balliant and the Appeal Board for their consideration.
- [5] Mr. Balliant provided a response submission on March 11, 2021, after requesting and receiving an extension to do so. Mr. Balliant's submission does not specifically address his position regarding costs or the submission from the Investigative Committee. Rather, it focused on the merits of the case and argument that was already presented during the hearing. Mr. Balliant was informed that the Appeal Board had already made its decision regarding the appeal and the only remaining item left to decide was the assessment of appeal costs.



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- [6] On March 17, 2021, the Investigative Committee 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 make a decision regarding costs.

Relevant Legislative and Regulatory Provisions

- [7] Section 69(4) of the EGP Act provides the Appeal Board the following power 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.

- [8] 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.



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Position of the Investigative Committee

- [9] The Investigative Committee takes the position that Mr. Balliant should be required to pay 50% of the costs of the appeal, to a maximum of \$18,000, and that a payment plan be considered by the Appeal Board. The Investigative Committee also suggests that Mr. Balliant be allowed to apply in writing to the Director of Enforcement, should he require an extension or variation of the payment schedule.
- [10] The Investigative Committee relies upon the relevant factors cited in the Jaswal case as guidance for the Appeal Board in its consideration of costs, namely:
- a. The degree of success, if any, of the member in appealing any or all of the findings;
 - b. The necessity for incurring various expenses associated with the appeal hearing;
 - c. Whether the appellant could reasonably have anticipated the result based on what they knew prior to the appeal hearing; and
 - d. The financial circumstances of the member and the degree to which the member's financial position has already been affected by other aspects of any penalty that has been imposed.¹
- [11] The Investigative Committee also cites two Alberta cases, *K.C. and Zuk*², 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 conduct of the parties, the seriousness of the charges, and the reasonableness of the amounts.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

Jaswal v Newfoundland (Medical Board), 1996 CanLII 11630 ("Jaswal") at para 50.

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")

K.C., at para 94.



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- [12] The Investigative Committee submits that the first three factors considered from the Jaswal case do not justify a reduction in the costs payable by Mr. Balliant, as the concerns with Mr. Balliant's conduct were serious, Mr. Balliant was not successful on his appeal, and the time involved with the appeal was both necessary and appropriate.
- [13] Regarding Mr. Balliant's financial circumstances, the Investigative Committee notes that this factor was considered by the Discipline Committee in its assessment of costs for the disciplinary hearing. The Discipline Committee applied the principles arising from the Zuk and KC 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.
- [14] The Investigative Committee has provided the Appeal Board with a breakdown of the costs incurred in this appeal, which amount to approximately \$36,000. The Investigate Committee submits that it would be appropriate for the Appeal Board to order Mr. Balliant to pay 50% of the appeal costs in order to address his financial circumstances. In addition, the Investigative Committee submits that it would be appropriate to order any costs payable in four equal, annual installments or in monthly installments over a period of 48 months.
- [15] The Investigative Committee closes by summarizing all costs assessed to Mr. Balliant to date, including sanctions and costs from previous APEGA proceedings, and how the costs from this appeal would fit into the payment schedule. The assessment of 50% of the costs of this appeal would result in a total of four annual payments of \$4,500 starting from 2021 and ending in 2024 for a total assessment of \$18,000. The Investigative Committee argues that this is a reasonable assessment and that it would not be 'a crushing blow' to Mr. Balliant, particularly if a flexible payment schedule is allowed.

Position of Richard Balliant

- [16] As noted above, Mr. Balliant did not provide any submissions regarding the costs of this appeal.

Appeal Board Analysis

- [17] The Appeal Board understands that Mr. Balliant had a right to appeal the Discipline



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Committee's decision and the sanctions that were ordered against him. The Appeal Board also understands that Mr. Balliant may be facing financial challenges based on the information he provided during the appeal hearing in regard to the sanctions ordered by the Discipline Committee and in other disciplinary proceedings. However, as Mr. Balliant did not provide submissions regarding the costs of the appeal or particulars regarding his financial circumstances, this leaves the Appeal Board unable to assess these financial challenges.

- [18] 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. Balliant. The Appeal Board also acknowledges that there is a basis to consider that self-regulating professions may in certain cases appropriately bear some responsibility to absorb a portion of the costs relating to discipline proceedings.
- [19] In reviewing the Investigative Committee's submission, and in the absence of any arguments in response from Mr. Balliant, including any specifics as to how the proposed additional appeal costs would impact him, the Appeal Board finds that the Investigative Committee's proposal is fully justified by its arguments with respect to the factors that the Appeal Board should consider in determining costs.
- [20] In particular, the Appeal Board accepts the submission of the Investigative Committee that the first three factors in *Jaswal* do not support a reduction of the costs payable by Mr. Balliant. Although Mr. Balliant may have felt that his grounds of appeal were meritorious, he was completely unsuccessful in the appeal and advanced no basis, grounded in the record, that supported his belief that the Discipline Committee decision should be overturned. As Mr. Balliant appealed the Discipline Committee decision, it was also necessary for the Investigative Committee to respond and for the appeal hearing to proceed. The length of the appeal hearing was appropriate given the nature of the appeal.
- [21] In closing, the Appeal Board finds that the following matters warrant the proposed costs order:
- a. Mr. Balliant's difficult financial circumstances, as indicated in the Discipline Committee decision, justify a reduction in the costs payable by Mr. Balliant for this appeal;
 - b. The proposed costs of \$18,000 are a reasonable amount to pay for Mr. Balliant in his current circumstances; and
 - c. The four-year payment plan proposed by the Investigative Committee,



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with the opportunity for Mr. Balliant to request an extension or variation from the Director of Enforcement, will not result in a crushing blow to Mr. Balliant.

[22] As noted above, Mr. Balliant did not provide submissions regarding the costs of the appeal or particulars regarding his financial circumstances to the Appeal Board. Recognizing Mr. Balliant may require variation to the payment schedule, but also appreciating there needs to be finality with respect to this appeal, the Appeal Board is including a five (5) year window within which Mr. Balliant may apply in writing, with reasons, to the Director of Enforcement for a variation of the payment schedule for costs ordered in connection with this appeal. During this five-year window, the Director of Enforcement will have the discretion to vary the payment schedule as deemed appropriate, without making any changes to the total costs amount assessed by the Appeal Board. Regardless of any variations made to the payment schedule, the total costs assessed in this decision must be paid by May 6, 2026.

[23] The breakdown of costs provided to the Appeal Board that have been incurred in this appeal are as follows:

Appeals

Honorariums to Appeal Board Members	\$0.00
Independent Counsel to the Appeal Board	\$16,939.69
Court Reporter	\$1,788.41
Other Expenses	\$0.00

Investigations

Legal Costs	\$16,012.01
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Total to date: \$34,740.11

Total anticipated: \$36,000.00⁵

The Appeal Board finds that \$36,000 is a reasonable estimate of the anticipated total costs of this appeal.

\$36,000 total includes an allowance for additional costs, which are yet to be determined, that the IC anticipates will be incurred in connection with the costs portion of this appeal.



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Decision

- [24] For the reasons set out above, and pursuant to section 69(4) of the EGP Act, the Appeal Board orders that:
- a. Mr. Balliant will pay \$18,000.00 in costs, which is 50% of the anticipated total costs of this appeal;
 - b. This assessment will be payable in four equal installments of \$4,500.00 due on or before September 30 in each of 2021, 2022, 2023, and 2024; and
 - c. Within five years of the date of this decision, Mr. Balliant may apply in writing with supporting reasons to the Director of Enforcement, should he require a variation of the payment schedule outlined in term (b) of this Order. Any variation must ensure that the full costs order is paid by May 6, 2026.

Dated at the City of Edmonton in the Province of Alberta this 6th day of May 2021.

APEGA APPEAL BOARD

Per:
Ken Hawrelko, P.Eng.
Chair, Appeal Board Panel