**IN THE MATTER OF THE *PROFESSIONAL GOVERNANCE ACT*,
S.B.C. 2018, CHAPTER 47**

and

IN THE MATTER OF DELBERT FERGUSON, P.GEO, P.L.ENG.

ENGINEERS AND GEOSCIENTISTS BC FILE T22-056

DECISION OF THE DISCIPLINE COMMITTEE ON COSTS

Date and Place of Hearing:	By written submissions
Panel of the Discipline Committee:	Ed Bird, P.Eng. (Retired), Chair Colin Smith, P.Eng., PE (Idaho), FCAE Pierre E. Gallant, retired architect AIBC, FRAIC (public member)
Counsel for Engineers and Geoscientists BC:	Donnaree Nygard, Benjamin Risk
Counsel for the Respondent:	Karen L. Weslowski and Lara Jung
Counsel for the Panel:	Jean P. Whittow, KC

A. INTRODUCTION

1. This panel of the Discipline Committee (the "Panel") of the Association of Professional Geoscientists of the Province of British Columbia doing business as Engineers and Geoscientists BC ("EGBC") conducted a six day hearing concerning a citation issued to Delbert Ferguson, P.Geo., P.L.Eng. ("Mr. Ferguson" or "the Respondent") pursuant to section 75 of the *Professional Governance Act* ("*PGA*") (the "Citation").

2. On March 24, 2026 the Panel issued its written determination, dismissing the Citation in its entirety. The Panel found that EGBC failed to prove the allegations in the Citation to the required standard and that the Respondent had not engaged in negligence or unprofessional conduct.

3. Mr. Ferguson has applied for an order that costs be awarded to him, payable by EGBC, in the amount of $140,424.14.

4. For the reasons set out below, the Panel must dismiss Mr. Ferguson's application.

B. LEGISLATION AND BYLAWS

5. Section 81 of the *PGA* provides for the imposition of costs in discipline proceedings:

> **81** (1) A discipline committee or panel, in the context of a discipline hearing under section 75, may require the respondent to pay the costs of one or both of the following:
>
> (a) an investigation;
>
> (b) the hearing under section 75.
>
> (2) Costs assessed under subsection (1)
>
> (a) must not exceed the actual costs incurred by the regulatory body during the course of the investigation and hearing, and
>
> (b) may include the salary costs for employees or officers engaged in the investigation and hearing.
>
> (3) The board may make bylaws governing the assessment of costs under subsection (1), including the following:
>
> (a) the factors to be considered in assessing costs;
>
> (b) the maximum amount of costs that may be assessed within the limits set out in subsection (2);
>
> (c) the time allowed for payment of costs;
>
> (d) the extension of time for payment of costs.
>
> (4) The amount of costs assessed against a respondent under subsection (1) may be recovered as a debt owing to a regulatory body and, when collected, that amount is the property of the regulatory body.

6. Section 10.9 of EGBC's Bylaws provides for the payment of costs by a respondent to EGBC. Section 10.9(1) provides:

> 10.9 (1) If an adverse determination is made against a Respondent after a discipline hearing held pursuant to section 75 of the PGA [Discipline hearings] the Discipline Hearing Panel must require, through an order in writing, that the Respondent pay EGBC's costs, which may be up to the actual costs incurred by EGBC as a result of an investigation and a discipline hearing, provided that those actual costs are within the limits set out in section 81(2)(a) of the PGA [Costs].

7. The balance of s. 10.9 sets out the method for calculating EGBC's recoverable costs.

8. The *PGA* and the EGBC Bylaws do not contain any provision that expressly addresses an award of costs against EGBC.

C. AMOUNT CLAIMED

9. Mr. Ferguson seeks an order for costs of $140,424.14, which is 70% of the total expenses he incurred ($200,605.91) in defending the Citation. Mr. Ferguson submits that these expenses were reasonably incurred in his defence of the Citation.

10. Mr. Ferguson calculates his claim using the methodology approved in past EGBC cases dealing with costs awards against respondents. With his application for costs, Mr. Ferguson provided copies of the invoices from his legal counsel and expert witness. He submits an entitlement to 80% of these costs in accordance with prior cost awards to EGBC, and then discounts his claim a further 10% to forgo any claim for insurance-related expenses.

11. The amount claimed is not disputed by EGBC: EGBC's position is that the Panel has no authority to award costs against EGBC at all.

12. The Panel has not reviewed the invoices in detail but has no basis to doubt that extensive costs were incurred due to the duration and complexity of this hearing.

D. POSITIONS OF THE PARTIES ON A RESPONDENT'S ENTITLEMENT TO COSTS

13. Mr. Ferguson submits that the absence of a provision in the *PGA* or EGBC Bylaws does not constitute a prohibition on an award of costs.

14. Mr. Ferguson argues that the neither the *PGA* nor the EGBC Bylaws expressly prohibit costs and should not be interpreted as impliedly doing so. He relies upon *Parry Sound (District) Welfare Administration Board v OPSEU, Local 324*, 2003 SCC 42 ("*Parry Sound*"), where the Supreme Court of Canada stated:

> 39…. a Legislature is not presumed to depart from the general system of the law without expressing its intentions to do so with irresistible clearness, failing which the law remains undisturbed. … [and] in the absence of a clear provision to the contrary, the legislator should not be assumed to have intended to alter the pre-existing ordinary rules of common law.

15. Mr. Ferguson also relies upon *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 ("*Rizzo Shoes*"), where the Supreme Court of Canada stated:

> 27....It is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences. According to Côté, *supra*, an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment (at pp. 378-80). Sullivan echoes these comments noting that a label of absurdity can be attached to interpretations which defeat the purpose of a statute or render some aspect of it pointless or futile (Sullivan, *Construction of Statutes*, *supra*, at p. 88).

16. Mr. Ferguson also refers to the Bylaws of the Architectural Institute of British Columbia ("AIBC"), another regulatory body governed by the *PGA.* AIBC's Bylaws provide that costs may be awarded by a hearing panel against the AIBC in favour of a respondent, if no charges are proven. (See Schedule S to the AIBC Bylaws). Mr. Ferguson submits that this supports his position that the *PGA* permits costs to be awarded, and that it would be unfair to treat the silence in EGBC Bylaws as insulating or immunizing EGBC from an adverse costs award.

17. Mr. Ferguson submits that a narrow interpretation of the *PGA* and EGBC Bylaws is inconsistent with s. 8.1 of the *Interpretation Act* which provides that every enactment is to be given a fair, large and liberal construction as best ensures the attainment of its objects.

18. Mr. Ferguson also argues that a professional regulator must expect to shoulder hearing costs where they are unsuccessful in a discipline hearing. He relies upon *College of Physicians and Surgeons of Alberta v. Ali,* 2017 ABCA 442 ("*Ali*"); *Dr. Ignacio Tan III v. Alberta Veterinary Medical Association,* 2022 ABCA 221 ("*Tan*") and *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 336 ("*Jinnah*"); three cases where the Alberta Court of Appeal stated that a professional regulatory body must accept some of the burden of the costs associated with conducting discipline proceedings.

19. Mr. Ferguson argues that cases which state that, as a general principle, costs are not awarded against administrative tribunals should not be followed (citing *Samarakoone v. Law Society of BC*, 2025 BCSC 492, 2026 BCCA 224; *Lang v. British Columbia (Superintendent of Motor Vehicles)*, 2005 BCCA 244). The Panel notes that this principle is not relied upon by EGBC, and that both cases cited by Mr. Ferguson concern costs in court proceedings, not discipline hearings.

20. Mr. Ferguson argues that the ordinary principle of costs is that "costs follow the event"; which he defines as "the losing party pays all or a portion of the winning party's legal costs". Mr. Ferguson argues that *Shpak v. Institute of Chartered Accountants (British Columbia)*, 2003 BCCA 149 ("*Shpak*") and *Roberts v. College of Dental Surgeons (British Columbia),* 1999 BCAA 103 ("*Roberts*") support his argument that the costs regime in the Supreme Court Rules presumptively applies.

21. It is Mr. Ferguson's position that the purpose of a costs award is not punitive, but to "recognize success, promote fairness and ensure that parties are not unfairly burdened by the expense of defending themselves against unsuccessful proceedings".

22. Mr. Ferguson submits that fairness dictates that he should be awarded costs. He submits that insulating EGBC from costs is contrary to the public policy underlying the usual logic of costs and the application of the normal principle that costs follow the event.

23. EGBC submits that the Panel has no authority to make an award of costs to the respondent.

24. EGBC submits that EGBC is a statutory body and a disciplinary panel may only make orders that fall within its legislative authority. In the absence of express statutory language, administrative decision makers lack jurisdiction to act (*Dunsmuir v. New Brunswick*, 2008 SCC 9 ("*Dunsmuir*"); *Dr. Jha v. College of Physicians and Surgeons of Ontario*, 2022 ONSC 769; *Persaud v. Society of Management Accountants of Ontario*, 1997 Canlii 17789 (ON SCDC) ("*Persaud*")). EGBC submits that, as the *PGA* and EGBC Bylaws make no provision for a costs award against EGBC, the Panel lacks jurisdiction to make such an order.

25. Further, EGBC relies upon a principle of statutory interpretation "*expressio unius est exclusio alterius*", which means "to express one thing is to exclude another". EGBC refers to *Kosicki v. Toronto (City)*, 2025 SCC 28, where the Court relied in part on this principle to conclude that a type of land that was not included in a list contained in a statute was intentionally excluded. EGBC argues that, as section 81 of the *PGA* provides for costs against a respondent but says nothing about costs against the regulator, it must be inferred that the legislature made a deliberate decision to limit costs awards accordingly.

26. EGBC refers to other British Columbia statutes concerning various professional regulatory bodies which permit a costs award against the regulator where discipline proceedings are dismissed (such as the *Chartered Professional Accountants Act*, SBC 2015 c. 1, s. 54 and the *Health Professions and Occupations Act*, SBC 2022, c. 43 (the "*HPOA*"), s. 272(3) and others). EGBC submits these statutes show that the legislature has, recently, chosen to include a provision for costs against the regulator, and it chose not to do so in the *PGA*.

27. EGBC relies upon *Stoian v. College of Psychologists of British Columbia*, 1999CanLii 5990 (BCSC) ("*Stoian*"). A professional charge issued by the College to Dr. Stoian was withdrawn before the hearing date. The Court held that no costs were payable because the legislation allowed for costs to a registrant only after a hearing.

28. In response to Mr. Ferguson's reliance on *Parry Sound*, EGBC submits that the principle applies to legislation that changes the common law. EGBC notes that Mr. Ferguson has not pointed to common law that an administrative tribunal may award costs in the absence of legislative authority.

29. EGBC distinguishes *Shpak* on the basis that, unlike the *PGA*, the legislation underlying that case provided for costs, but omitted any method of calculating same.

30. EGBC submits that the three Alberta Court of Appeal cases concerned the quantum of costs which may be claimed by the regulator against a registrant. None were concerned with the availability of costs against the regulatory body.

31. EGBC expresses reservations about the validity of the AIBC Bylaws and submits they do not apply in these proceedings.

32. EGBC submits there are good policy reasons for “asymmetric costs regimes”; primarily because proceedings are conducted by regulatory bodies like EGBC to fulfil their public interest mandate, and not “in furtherance of their own self interest”.

33. In reply, Mr. Ferguson repeats his submission that the absence of a provision in the *PGA* permitting an award of costs in favour of a successful respondent should not be interpreted as a prohibition.

E. ANALYSIS

34. In summary, Mr. Ferguson argues that there is a presumption in law that costs follow the event; that is, as Mr. Ferguson puts it, “the losing party pays all or a portion of the winning party’s legal costs”. Further, he argues that the absence of an explicit provision in the *PGA* or EGBC Bylaws is not a prohibition upon a claim by the respondent, and a right to costs should be implied. Conversely, EGBC argues that, as the Panel is a statutory body, in the absence of express language in the enabling legislation, the Panel has no authority to make such an award. Further, EGBC relies on a principle of statutory interpretation, *expressio unius est exclusio alterius,* for the proposition that, having expressly allowed for a costs award only to EGBC, the *PGA* prohibits an award of costs to a respondent.

35. The award of costs to the successful party appears to be the general approach taken in litigation before the courts. However, professional discipline proceedings are not litigation before the courts concerning a dispute between two parties. Rather, discipline proceedings are conducted by a regulatory body, created by statute, to fulfill a public interest mandate. Discipline proceedings are brought by EGBC to fulfill its responsibility, as set out in the *PGA*, to protect the public interest in the exercise of the engineering profession.

36. As a statutory body, EGBC’s authority – and, more particularly, that of an EGBC discipline hearing panel – is confined to that set out in the *PGA* and EGBC Bylaws. As stated in *Dunsmuir*:

> [29] Administrative powers are exercised by decision makers according to statutory regimes that are themselves confined. A decision maker may not exercise authority not specifically assigned to him or her. By acting in the absence of legal authority, the decision maker transgresses the principle of the rule of law…

37. This principle was applied to the matter of costs in *Persaud*. The Court set aside an order imposing costs upon a registrant following discipline proceedings brought under the *Society of Management Accountants of Ontario Act, 1981*, S.O. 1981, c. 100. That Act provided that the Society could make bylaws to regulate the conduct of the members, but made no mention of costs. The Court held that “[t]he Society is a creature of statute and may exercise only those powers conferred upon it by the *Act.* No power to impose costs is conferred by the *Act*” (para. 29).

38. Mr. Ferguson has provided no authorities holding that the principle that costs follow the event applies to discipline proceedings before a regulatory body. He has provided no case where a discipline hearing panel of any regulatory body awarded costs to a registrant in the absence of express authority in the statute. Mr. Ferguson has not demonstrated there is a common law presumption about costs in a discipline hearing.

39. The authorities referred to by Mr. Ferguson do not sustain his position:

40. *Parry Sound* states that legislation must use "irresistible clearness" to depart from existing law. As set out above, Mr. Ferguson has not established that there is a common law presumption about costs in a discipline hearing. *Rizzo Shoes* guards against an interpretation of legislation that leads to "absurd consequences". The Panel cannot find that the absence of a provision allowing such a claim in the *PGA* meets the definition of "absurd".

41. The AIBC Bylaws do not apply to EGBC. EGBC has not adopted a similar bylaw.

42. *Shpak* and *Roberts* are both relied upon by Mr. Ferguson to argue that costs follow the event unless the statute expressly states otherwise. Both cases concern costs awards against a respondent in discipline proceedings. In both cases, the statute provided for the imposition of costs against the respondent, without specifying what "costs" entailed. Therefore, the issue before the Court was not the entitlement to make an award of costs, but the mechanism for their calculation. The dispute concerned the types of expenses that were recoverable, and whether the amount awarded could be increased due to the respondent's behaviour during the proceedings ("special costs"). In *Shpak*, interpreting *Roberts*, the Court of Appeal held that where the provisions for costs in the relevant statute and properly passed bylaws or rules do not provide otherwise, the costs provisions of the Supreme Court Rules apply (para 56). The Supreme Court Rules (now called the Supreme Court Civil Rules) govern court proceedings. They include a section setting out a methodology for the calculation of recoverable costs and, as submitted by Mr. Ferguson, provide that costs follow the event unless otherwise ordered. However, *Shpak* and *Roberts* do not establish a general rule that costs follow the event. They do not assist the Panel given that the *PGA* does not provide for an award of costs to a respondent.

43. The three Alberta cases cited by Mr. Ferguson (*Ali, Tan* and *Jinnah*) concerned the limits of a regulator's claim against a registrant. They do not address the availability of costs awards against a regulatory body.

44. The *Stoian* case best analyzes the relevant principles and their application. *Stoian* concerned a discipline case under the *Psychologists Act*. The *Psychologists Act* provided that a panel could direct that costs be paid to the College or to "the person affected" (i.e. the registrant) *at a discipline hearing*. A professional charge (a "Bill of Complaint") issued to Dr. Stoian was withdrawn before the hearing date. The College declined to pay Dr. Stoian's legal costs, and he applied to the BC Supreme Court, which rejected his claim.

45. In analyzing the costs claim in *Stoian*, the Court first refers to authorities which state that the power to award costs must be found in the governing legislation and there is no “inherent jurisdiction” to award costs (paras. 16-20).

46. The Court then turned to the interpretation of the *Psychologists Act*:

> [21] The legislature has been clear in its use of words in s.21(1) [of the *Psychologists Act*] when setting out when costs may be awarded. By using the words "At a hearing of the Board under s.17 ...", it is clearly the case that it was not contemplated that the cost of defending a subsequently withdrawn a Bill of Complaint would be included. This omission is obviously unfair to a member of the respondent. It is an unfortunate omission from the legislation that the member cannot look to the respondent for the cost of defending against a Bill of Complaint that is ultimately withdrawn. As is stated by Huddart J.A. in the portion of her judgment in *Laye* which is quoted above, there should be a fine balance between the rights of the member and the obligations of a professional body which is best met by the possibility of costs being available at all stages both for and against the professional body. However, the use of the words "At a hearing" makes it clear that the legislature intended that costs could be awarded to a member by the Board or by a hearing panel only once a hearing of a Bill of Complaint had commenced.
>
> [22] While it is an obvious anomaly that a member might be in a position to potentially receive his or her costs of defending a Bill of Complaint if the Board or a panel met for even a few minutes even though such costs could not be recovered if, several minutes before the Board or a panel was scheduled to meet, the Bill of Complaint was withdrawn, the legislation is nevertheless clear and unambiguous. The legislature could have adopted words such as were included in the Rules of the College of Dental Surgeons where Article 16.22 of the Rules provides that a panel could require the College to pay to a member "... the costs of the investigation or hearing or both ... ". Unfortunately, such a provision has not been included in the *Psychologists Act*. In the absence of such a provision, the petitioner is unfortunately not in a position to look to the respondent for his costs.

47. The Court also held that a power to award costs could not be implied under the *Psychologists Act*:

> [26] An exception to the general rule that a court will not read words into a statute appears to be cases where it is necessary to read various words into a statute by necessary implication in order to avoid a statutory interpretation that would render absurd or would wholly frustrate the purpose of a statute. In *Ewachniuk v. The Law Society of British Columbia* [1998] B.C.J. (Q.L.) No. 2910 (B.C.C.A.), Finch J.A. set out the grounds which had to be present before words could be read into a statute by necessary implication:

> [48] In *Bell Canada [v. C.R.T.C.*[1989] 1 S.C.R. 1722] it was said that the courts should avoid "sterilizing" powers expressly granted by an overly technical interpretation of the statute. In *Alberta Government Telephones [v. C.R.T.C.*[1989] 2 S.C.R. 225] it was said that the meaning of the statutory language could be read broadly to avoid a statutory interpretation that would "wholly frustrate" the purpose of the statute, or would render it "absurd". And in *Oldman River Society [v. Canada (Minister of Transport)* [1992] 1 S.C.R.3] the Court said that the test of necessary implication would be met where one was "irresistibly drawn to that conclusion through logical inference". The common themes of these three judgments are that courts should be slow to infer a legislative intention which has not been expressed, but that they may do so where the expressed statutory purpose would be defeated by failure to draw the inference.

[27] In dealing with s.21 of the *Psychologists Act*, I cannot come to the conclusion that the section would be wholly frustrated or absurd if the interpretation suggested by the petitioner was not adopted.

48. In the present case, the *PGA* is not entirely silent on costs, nor does it provide general bylaw-making authority concerning costs to a board. Section 81(1) provides that "in the context of a discipline hearing", a panel "may *require the respondent* to pay the costs of [an investigation or hearing]" (italics added). Further, section 81(3) permits the board to make Bylaws governing the assessment of costs *under section 81(1).* Therefore, while the *PGA* allows for the payment of costs by a respondent to EGBC, there are no provisions in the *PGA* allowing for the payment of costs by EGBC to a respondent.

49. Other BC legislation concerning professional regulatory bodies allows for costs to a registrant. Under the *Veterinarians Act* SBC 2010, c. 15, costs may be awarded to a respondent "if the discipline committee dismisses a matter" (s. 63(1)). Under the *HPOA*, costs may be awarded to a respondent on a more limited basis – only if the college's conduct was "improper, frivolous, vexatious or abusive" (s. 272(3)). Had the legislature intended to allow for costs to be paid to a respondent in proceedings under the *PGA*, these types of costs provisions could have been used.

50. The wording of section 81 and the absence of language like that in other professional regulatory statutes supports the view that the *PGA* excludes such a payment.

51. The Panel cannot find that a right to costs can be implied by necessary implication. The recovery of costs by a registrant, while perhaps desirable, is not essential to EGBC's mandate.

52. The Respondent has been put to significant expense in defending the Citation and was entirely successful. The Panel appreciates that it seems unfair to a respondent that they should bear their own costs after successfully defending themselves against a citation, and endorses the comments of the Court in *Stoian*. However, for the reasons set out above, the Panel finds it has no jurisdiction to award costs to the Respondent. The application is dismissed.

DATED THIS 8th DAY OF JULY, 2026

<original signed by>___________________________________
Ed Bird, P.Eng. (Retired), Chair

<original signed by>___________________________________
Colin Smith, P.Eng., PE (Idaho), FCAE

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Pierre E. Gallant, retired architect AIBC, FRAIC (public member)