

THE DANGERS OF SOCIAL NETWORKING

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For the first time ever a complaint about the conduct of a Chartered Professional Engineer has been appealed to the District Court. The case was brought about by defamatory comments on LinkedIn.

On 30 July 2013 the Chartered Professional Engineers Council released a decision on the appeal of a Registration Authority Disciplinary Committee (DC) determination made on 8 February 2013. The DC found that Gregory Shaw MIPENZ had breached Rule 45 of the Chartered Professional Engineers Rules (No 2) 2002 (The Rules), which states: "A Chartered Professional Engineer must act with honesty, objectivity and integrity in the course of his or her engineering activities".

The DC had originally ordered that Mr Shaw be censured, pay a fine of \$3,000 and contribute to costs of \$7,000. Also, the DC determined that Mr Shaw be named in an article published about the case in Engineering Dimension.

The appeal related to an original complaint to the Registration Authority (RA) that Mr Shaw made defamatory statements about the complainant and his company on LinkedIn in May 2012. Mr Shaw didn't appeal the conclusion reached by the DC that he had breached Rule 45. His grounds for appeal related to the process and the penalties imposed.

In summary, his grounds for appeal were, among other things, that the Chairman of the Investigating Committee (IC) didn't refer the dispute to an alternate dispute resolution process and that IPENZ failed to minimise the costs associated with the process.

The relief sought by Mr Shaw was that the fine be reduced or dropped; costs be reduced or dropped; that the Competency Assessment Board not be notified; and that no article be published in Engineering Dimension. Under Rule 58(d), the Chairman of the IC may "explore the possibility of the complaint being referred to conciliation or mediation" although there is no obligation to do so. Mr Shaw could've appealed against this prior to the DC's formation, but no relief was sought. The Appeals Panel noted it isn't possible to re-litigate this point after the matter has passed to the DC.

The RA appointed the DC in accordance with the requirements of Rule 85. As Mr Shaw works in China, the timing and location of the hearing was adjusted to align with Mr Shaw's next visit to New Zealand. The Appeals Panel consider the costs associated with conducting the disciplinary hearing are in line with past practice and are reasonable.

In the range of possible negative outcomes that can result from a Chartered Professional Engineer's failings, the Panel found Mr Shaw's actions to be at the lower end. No evidence was provided of any reputational or financial loss. Accordingly, the Panel found the fine imposed was out of proportion to the gravity of the breach. The Council was particularly conscious that a maximum fine of \$5,000 can be imposed under the Act.

In circumstances such as this, the Council considers the real penalty to Mr Shaw to be a reputational one and having to meet the costs of the disciplinary process. Accordingly, the Council considered that Mr Shaw

shouldn't be fined but should be censured in accordance with section 22(1)(d) of the Act. The Panel also found the imposition of the associated costs to be appropriate.

The Panel determined the engineering profession shouldn't pay for costs associated with disciplining an individual found to have broken the Rules and censured. The Panel considered that while there's a case for Mr Shaw to pay all costs associated with the process, it found the imposition of a proportion of these costs being \$7,000 is appropriate.

The Appeals Panel found Mr Shaw breached Rule 45 because he failed to show objectivity in his comments. The DC's orders were amended as follows:

- a) Mr Shaw should be censured for breaching Rule 45
- b) Mr Shaw shouldn't be fined for this breach
- c) Mr Shaw should be ordered to pay costs of \$7,000
- d) An article outlining this issue should be published
- e) in Engineering Dimension naming Mr Shaw
- f) The CAB should not be informed of this decision.

Mr Shaw appealed this decision to the District Court on the basis that the costs imposed were excessive. That appeal was finally dismissed on 7 May 2014.