In the matter of the Chartered Professional Engineers of New Zealand Act 2002

Appeal 09/24

AND

In the matter of an appeal to the Chartered Professional Engineers Council pursuant to Section 35

Between

Mr A

Appellant

And

Mr B

Respondent

Decision of the Chartered Professional Engineers Council
Dated 17 December 2025

Introduction

1. Mr A ("**the Appellant**") has appealed a decision made by a disciplinary committee ("**the Disciplinary Committee**") of the Registration Authority ("the RA"), the Institution of Professional Engineers of New Zealand Incorporated trading as Engineering New Zealand.

2. Mr A was the original complainant ("**the Respondent**"). The Respondent works at Company 1 ("**the Organisation**").

3. The Council convened this Appeal Panel to consider the Application.

4. The RA provided the Panel and the parties with a paginated Bundle of Documents file [BOD pages 001 to 261] The bundle's covering pages [BOD 001 and 002] list the correspondence in chronological order. References to specific pages within this bundle are annotated "[**BOD nnn**]".

5. This decision will use the terms CPEC and Appeal Panel. We will use CPEC when referring generally to CPEC's conduct of appeals. We will use Appeal when referring to the conduct of this Appeal.

Legislation & Caselaw

6. The right of appeal in respect of decisions of the RA is established by s35 of the Chartered Professional Engineers Act 2002 ("**the Act**").

7. Appeals to CPEC are by way of rehearing (s37(2) of the Act).

8. The requirements for the appeal process are contained in the Chartered Professional Engineers of New Zealand (Appeals) Regulations 2002 (the Regulations). The Chartered Professional Engineers of New Zealand Rules (No.2) 2002 ("the Rules"), enacted pursuant to s 40 of the Act, sets out the rules under which the appealed decision is made.

9. Clause 15 of the Regulations provides CPEC with the ability to receive any evidence that the RA would have been entitled to receive on the decision being appealed.

10. CPEC is entitled to confirm, vary or reverse a decision (s37(5) (a)) and may make any decision that could have been made by the decision authority (s37(5) (c)).

11. Relevant extracts from the Act, the Regulations and the Rules are included in the text of this decision.

12. Following *Austin, Nichols & Co Inc. v Stichting Lodestar* [2008] 2 NZLR 141, CPEC is entitled to take a different view from the Disciplinary Committee, but an appellant carries the burden of satisfying CPEC that it should do so.

13. The basis for CPEC overturning an original judgement at a rehearing is outlined by McMullen J in *May v May* (1982) NZFLR 165,170. An appellant must show that in the original decision, the decision maker:

    (a) acted on a wrong principle, or

    (b) failed to take into account some relevant material, or

    (c) took into account some irrelevant material, or

    (d) was plainly wrong.

14. In this Appeal, the Appeal Panel may make any decision that could have been made by the Disciplinary Committee, refer the decision back to the Disciplinary Committee for reconsideration (in whole or part), and may confirm, vary, or reverse the Disciplinary's decision.

15. The issue of deference to the original decision is at issue in this Appeal. The Appeal Panel considers following findings from *Deo v CPEC*[1] are apposite on this point:

> [38] It is also recognised that the Council may have had a particular advantage (such as technical expertise or the opportunity to assess the credibility of witnesses, where such assessment is important). In such a case this court may rightly hesitate to conclude that findings of fact or fact and degree are wrong. This court may take the view that it has no basis for rejecting the reasoning of the Council appealed from and that its decision should stand. But the extent of the consideration that this court, exercising a general power of appeal, gives to the Council's decision is a matter for this court's judgment. This Court is not required to pay explicit attention to the reasons of the Council if it comes to a different reasoned result. On general appeal, this court has the responsibility of arriving at its own assessment of the merits of the case.
>
> Underlining added.

16. The Appeal Panel must make up its own mind, but we acknowledge the Disciplinary Committee has an advantage in assessment when the evidence now being re-heard was taken before that Disciplinary Committee. On the issue of defence, we consider it is useful to quote the relevant passage from *Austin, Nichols & Co Inc.* which is:

[1] *Nimish Deo v The Chartered Professional Engineers Council* [2024] NZDC 22169.

> The appeal court may or may not find the reasoning of the tribunal persuasive in its own terms. The tribunal may have had a particular advantage (such as technical expertise or the opportunity to assess the credibility of witnesses, where such assessment is important). In such a case the appeal court may rightly hesitate to conclude that findings of fact or fact and degree are wrong. It may take the view that it has no basis for rejecting the reasoning of the tribunal appealed from and that its decision should stand. But the extent of the consideration an appeal court exercising a general power of appeal gives to the decision appealed from is a matter for its judgment. An appeal court makes no error in approach simply because it pays little explicit attention to the reasons of the court or tribunal appealed from, if it comes to a different reasoned result. On general appeal, the appeal court has the responsibility of arriving at its own assessment of the merits of the case.[2]

17. The nature of the Appeal is also at issue, whether it is akin to a judicial review. An appeal to CPEC is not a judicial review.[3] It is well established an appeal to CPEC is a rehearing in which the ultimate questions is whether "the appealed decision is wrong".[4]

18. Though an appeal to CPEC is not a judicial review, that does not mean procedural matters, errors or law or issues of natural justice are outside CPEC's jurisdiction. In *IPENZ v Nowak*[5], the District Court disagreed "the Council's jurisdiction to be hobbled in the way argued for by the appellant [the RA]".[6] Where CPEC previously considered this case, we disagree.

19. The District Court further held in *IPENZ v Nowak:*[7]

> …the appropriate approach, supplemented by the principle that for a decision under appeal to be overturned on the basis of an error of law requires that the error materially affected the result, is as sumamrised by the High Court in *Klepacki v IPENZ:*
>
> > An error of law is made out if the decision-maker failed to take into account a relevant matter, took into account an irrelevant matter, failed to apply a statutory provision correctly, or the decision-maker made a finding of fact that is so clearly untenable that the only reasonable conclusion contradicts that finding.
>
> Underlining added.

20. This does not mean appeals on a technicality would succeed as a matter of course. The error **must materially affect the result.**

---

[2] *Austin, Nichols & Co Inc.* at [5].
[3] *Deo v CPEC* at [50].
[4] *Deo v CPEC* at [37], applying *Austin Nichols & Co Inc v Stichting Lodestar* [2007] NZSC 103.
[5] *The Institution of Professional Engineers New Zealand Incorporated Trading as Engineering New Zealand v Piotr Nowak* [2021] NZDC 11697.
[6] *IPENZ v Nowak* at [76].
[7] *IPENZ v Nowak* at [78] referring to *WOJCIECH KLEPACKI (VOYTEK KLEPATSKI) v INSTITUTION OF PROFESSIONAL ENGINEERS NEW ZEALAND* [2017] NZHC 3300 at [14].

21. We return to these points at relevant times in this decision.

Background

22. Our background does not include substantial excerpts or quotes from documents in the Bundle.

23. On 17 December 2018, the Respondent emailed the RA with an initial concern [BOD 3 to 6]. The initial concern pertained to two telephone calls in October 2018 between the Respondent and the Appellant.

24. On 16 December 2019, the Respondent, through counsel, provided a response to the concern [BOD 7 to 17].

25. From June 2019 to February 2020, there was initial correspondence between the RA and the Respondent [BOD 18 to 26].

26. From August 2019 to January 2020, there was initial correspondence between the Appellant's counsel and the RA [BOD 27 to 32].

27. On 3 June 2020, an adjudicator partially upheld the complaint against the Appellant [BOD 33 to 38]. The adjudicator decided:[8]

    - In respect of unprofessional behaviour and misleading statements, there are no grounds for dismissing the complaint. Therefore on this count it must be referred to an Investigating Committee.
    - In respect of the certification exam complaint, the complaint can be dismissed on the grounds that the complainant does not have a sufficient personal interest in the subject matter of the complaint to warrant further investigation.

28. On 24 June 2020, the Respondent emailed the RA commenting on the adjudicator's decision [BOD 39 to 40].

29. The complaint proceeded to the Investigating Committee.

30. On 28 October 2020, the RA emailed the Appellant's counsel with queries [BOD 41].

31. On 27 November 2020, the Appellant's counsel provided responses to the RA's queries [BOD 42 to 89].

[8] [BOD 38].

32. On 28 January 2021, the Respondent provided comments on the Appellant's responses [BOD 90 to 92].

33. On 10 August 2021, the Investigating Committee issued a provisional decision [BOD 193 to 105].

34. On 3 September 2021, the Appellant, through counsel, provided a response to the provisional decision [BOD 106 to 109].

35. On 31 August 2021, the Respondent provided a response to the provisional decision [BOD 110 to 114].

36. On 19 October 2021, the Investigating Committee issued its decision 19 October 2021 [BOD 115 to 127]. In conclusion, the decision said:[9]

> 64. As we understand it, there are two aspects to [the Respondent's] complaint.
>
> 65. They are:
>
> a. that [the Appellant's] conduct was unprofessional in his initial failure to disclose his revocation; and
>
> b. that [the Appellant] misrepresented his ability, certification authority, and/or professional status.
>
> 66. Having reviewed the evidence presented, our primary concerns relate to the first aspect of [the Respondent's] complaint.
>
> 67. In our view, [the Appellant's] standard of communication falls short of the professionalism reasonably expected of a Chartered Professional Engineer. Specifically, [the Appellant] failed to clearly communicate his individual or corporate authority to undertake the work. There was no evidence this deficiency in communication led to safety consequences or other adverse outcomes for [the Organisation]. Nonetheless, engineers hold a trusted position, and are expected to demonstrate they are honest and responsive to enquiries seeking verification of their professional ability. We consider this failure is sufficiently grave for the matter to be referred to a disciplinary committee.
>
> 68. The Investigating Committee requests the Disciplinary Committee consider the apology [the Appellant] made to [the Respondent] for failure to disclose his change of status in a letter from [the Appellant's counsel].
>
> 69. The second aspect of [the Respondent's] complaint, relating to misrepresentation, is dismissed under Rule 57(ba) of the CPEng Rules and clause 8(c) of the Engineering New Zealand Disciplinary Regulations, on the basis that the alleged misconduct is insufficiently grave to warrant further investigation.

[9] [BOD 127].

37. On 27 October 2021, the Respondent provided a response to the Investigating Committee's decision 27 October 2021 [BOD 128 to 129].

38. The Appellant appealed the Investigating Committee's decision to CPEC.

39. On 29 June 2022, CPEC dismissed the appeal [BOD 130 to 153]. CPEC held among other things:[10]

> 109. The panel has concluded that none of the grounds under rule 57 of the Rules is applicable, based on its assessment of the evidence.
>
> 110. Therefore, the decision of the panel is to dismiss the appeal by [the Appellant] and uphold the Investigating Committee's decision to refer the complaint to a disciplinary committee.

40. The complaint proceeded to the Disciplinary Committee.

41. On 3 April 2023, the Appellant provided submissions for the hearing [BOD 154 to 170], and a witness statement from the Appellant's spouse [BOD 171 to 172].

42. A hearing was held on 24 May 2023 [BOD 244].

43. On 19 March 2024, the Disciplinary Committee issued a provisional decision [BOD 173 to 189].

44. On 2 May 2024, the Respondent provided submissions on penalty [BOD 190].

45. On 3 May 2024, the Appellant provided submissions on penalty [BOD 191 to 208].

46. On 5 July 2024, the Appellant provided supplementary submissions on costs [BOD 209 to 211].

47. On 17 July 2024, the Disciplinary Committee issued its decision [BOD 241 to 261]. The Disciplinary Committee imposed no penalty, stating:[11]

> 151. We are mindful of our obligation to impose the least restrictive penalty available, and note the conduct is on the lesser end of the spectrum in terms of seriousness compared to some of the disciplinary decisions raised by [the Appellant] in submissions.
>
> 152. In taking all of the above factors into account, and the parties' submissions, we do not consider it necessary to impose a fine, remove or suspend [the Appellant's] membership with Engineering New Zealand, require professional development or formally reprimand him.

[10] [BOD 150].
[11] [BOD 261].

48. On publication, the Disciplinary Committee said:[12]

> 153. However, we do order that our decision is published on Engineering New Zealand's website naming [the Appellant].
>
> 154. We consider this is fair, reasonable and proportionate in the circumstances.

49. The Disciplinary Committee also ordered the Appellant pay 50% of the costs of the inquiry, being $7,407.63 plus GST.[13]

50. The Appellant appealed the Disciplinary Committee's decision.

Evidence and Submissions Received

51. Under clause 15 of the Regulations, CPEC may receive any evidence that the RA would have been entitled to receive on the decision being appealed.

52. The evidence and submission we considered regarding our decision included:

(a) Notice of Appeal dated 10 August 2024.

(b) The paginated Bundle of Documents [BOD 1 to 261], provided by the RA on 9 October 2024.

(c) The transcript of the Disciplinary Committee hearing.

(d) Appellants Submissions dated 12 February 2025 ("**Appellant's Submissions"**).

(e) Respondent's submission dated 12 June 2025 ("**Respondent's Submissions"**).

(f) RA Submissions dated 12 June 2025 ("**RA's Submissions"**).

(g) Appellant Submissions in strict reply dated 24 June 2025 ("**Appellant's Reply"**).

Grounds of Appeal and Outcome Sought

53. The Appellant's Notice of Appeal cited the following grounds of appeal:

> (a) A significant amount of relevant information was disallowed by ENZ from being included in the process.
>
> (b) The ENZDC did not place sufficient weight on [the Appellant's] evidence that the Revocation, which occurred in 2012, was so far out of [the Appellant's] mind or that he

[12] [BOD 261].
[13] [BOD 261].

had considered the matter resolved, by the time the First Call occurred on 10 October 2018, due to the passage of time and the vague nature of [the Respondent's] questions.

(c) The passage of time between [the Appellant] providing documents to [the Respondent] in July 2018 and the First Call on 10 October 2018 was approximately 3 months, rather than a few weeks as stated in the Decision. As such, the ENZDC erred in finding that [the Appellant] ought to have understood [the Respondent's] questions during the First Call or the purpose of the call.

(d) The ENZDC did not place sufficient weight on [the Appellant's] evidence that when [the Respondent's] question was clearer and more specific in the Second Call, [the Appellant] swiftly confirmed the Revocation suggesting his honesty, objectivity and integrity in relation to clause 5(a)(i) of ENZ's Code of Conduct.

(e) The matter is trivial or insufficiently grave to warrant the Complaint being upheld by the ENZDC, in circumstances where disclosure of the Revocation was made swiftly once the question from [the Respondent] was clearer and more specific during the Second Call.

(f) [The Respondent] did not provide specifics as to that which was said during the phone calls, but instead paraphrases the nature of the conversation. The ENZDC erred by considering that the precise wording of the questions from [the Respondent] did not detract from the credibility of his evidence, particularly when the matter involves communication.

(g) There appears to be an inconsistency in the Decision as to the purpose of [the Respondent's] phone calls to [the Appellant]. Specifically, it was first stated that Mr B telephoned [the Appellant] regarding [the Appellant's] suitability to certify hi-rail vehicles, and then later categorised as a concern as to [the Appellant's] relationship with Company 2 ("**the Agency").**

(h) The ENZDC did not consider the relevance of a previous decision by the Chartered Professional Engineers Council (the Council), in relation to [the Appellant's] status as a HVSC.

(i) The ENZDC did not place sufficient weight on [the Appellant's] evidence that Company 3 ("**the Company**") has continued to engage him in a range of work following the Complaint.

(j) The ENZDC did not place sufficient weight on evidence that HVSC status was not a requirement for the work for which Mr B was to assess [the Appellant's] suitability, nor did the Revocation reflect on [the Appellant's] abilities and competence.

(k) The Complaint does not relate to safety issues, nor was any work undertaken by [the Appellant's] which was found to be substandard or involved safety issues that would put his competence or abilities into question.

(l) There is no public interest in the Complaint such that [the Appellant's] name should be published. On balance, if the Decision is to be published, [the Appellant's] name does not have to appear on it.

(m) A costs order of 50% is substantial given the delays in the matter. Although the ENZDC recognised [the Appellant's] entitlement to file an appeal with the Council previously, attributing delays in the matter to [the Appellant] because of the appeal was not appropriate.

54. In addressing the outcome sought, the Appellant is seeking:

> (a) the Decision is reversed, including the orders made by the ENZDC to publish the Decision and name [the Appellant] in the Decision.
>
> (b) the costs order that [the Appellant] pay 50% of costs amounting to $7,407.63 (plus GST) is reversed.
>
> (c) he is granted name suppression.

Discussion – Consideration of grounds of appeal

55. We preface our consideration of the grounds of appeal as follows. The complaint, the subsequent investigation and the decision all concern two phone calls between the Respondent and the Appellant in October 2018. No other complaints or concerns have been raised about the Appellant.

56. At different stages, the parties' submissions grouped grounds of appeal. Our decision also groups the grounds of appeal and adopts the summary title for each ground from the Appellant's Submissions.

57. For each ground of appeal, we summarize the submissions before our discussion on the ground of appeal. Finally, for convenience we record the following definitions:

(a) **First Call** refers to the telephone call from the Respondent to the Appellant on 10 October 2018.

(b) **Second Call** refers to the telephone call from the Respondent to the Appellant on 25 October 2018.

(c) **Revocation** refers to the revocation of the Appellant's HVSC status in 2012.

(d) From here onward in this decision, **Decision** in capitalized form refers to the Decision of the Disciplinary Committee.

Ground 1: Significant information disallowed by ENZ

Appellant's submission

58. The submissions on ground 1 are at paragraphs 29 to 34 of the Appellant's Submission. The submissions say that relevant documents were disallowed by the RA during the investigation process. The relevant documents include a letter from [Withheld] dated 14 April 2011 and subsequent letters from other engineers supporting the Appellant. The submission says the

relevant documents were related to a previous complaint about the Appellant's heavy vehicle certification process. The Appellant underwent a formal interview with the RA due to the 14 April 2011 letter, and two reviews found no faults in the Appellant's process, technical capabilities, or ethics. The Appellant argues that disallowing these documents undermined the fairness of the RA's process, potentially influencing the Respondent's understanding of the revocation and raising concerns about natural justice.

Respondent's Submission

59. The Respondent made no submission on ground 1.

RA's submission

60. The submissions on ground 1 are at paragraphs 31 to 35 of the RA's Submission. The RA clarifies that the Appellant did not provide these documents to the Disciplinary Committee for consideration, and thus, they could not be considered. The RA says of the documents cited by the Appellant were related to a separate complaint he raised in December 2019 about two other engineers, which the RA dismissed as irrelevant and protected by absolute privilege. The RA emphasized that the Appellant was responsible for submitting relevant material to the Disciplinary Committee if he wanted it considered, and the Disciplinary Committee did not disallow any documents.

Appellant's Reply submission

61. The Appellant provided no reply submission on ground 1.

Appeal Panel discussion in relation to the first ground of appeal

62. The first ground of appeal fails.

63. We accept the RA's unchallenged submission the Appellant did not put the allegedly relevant documents before the Disciplinary Committee.

Grounds 2 and 3: insufficient consideration of evidence and passage of time

Appellant's submission

64. The submissions on grounds 2 and 3 are at paragraphs 35 to 37 of the Appellant's Submission. The submission is that the Disciplinary Committee did not give sufficient weight to the Appellant's evidence regarding the passage of time and the vague nature of the Respondent's questions during the First Call. The Appellant submits that the Revocation was

so far out of his mind that he did not immediately recognize its relevance during the call. The Appellant further emphasizes that when the Respondent's questions became clearer and more specific during the Second Call, he promptly confirmed the Revocation, demonstrating his honesty and integrity. The Appellant also submits that he did not consider the Revocation an issue, as it did not affect his competence as a Chartered Professional Engineer.

Respondent's Submission

65. On ground 2, the Respondent says:

> Two quite different possibilities are suggested. It is hard to imagine a revocation being overlooked by a professional engineer when asked about issues with [the Agency] when those issues were sufficient to warrant revocation.

66. On ground 3, the Respondent says:

> The purpose of the first call was readily apparent. [The Appellant] clearly understood the context for the call as he referred specifically to the [the Company] job concerned. [The Appellant] answered the questions put to him without any indication of misunderstanding and without any request for clarification.

RA's submission

67. The submissions on grounds 2 and 3 are at paragraphs 36 to 40 of the RA's Submissions. The RA submits the Disciplinary Committee preferred the Respondent's evidence over the Appellant's evidence, citing inconsistencies in the Appellant's account and implausibility in his explanations. The RA submits the Disciplinary Committee concluded that the Appellant failed to meet the professional standards expected of a Chartered Professional Engineer, though it did not find him dishonest. The submission is mainly the Disciplinary Committee's decision was based on evidence and the Appellant's disagreement does not prove the decision was wrong.

Appellant's Reply submission

68. The reply submissions on grounds 2 and 3 are at paragraphs 14 to 16 of the Appellant's Reply. The Appellant submits the finding he failed to meet standards of objectivity and integrity during the First Call was flawed.

69. The Appellant contends that the vague nature of the questions posed to him made it unreasonable to expect him to recall the Revocation, which occurred six years earlier. Once the questions became clear during the Second Call, he disclosed the information. He asserts

that the Disciplinary Committee improperly applied hindsight and imposed an unrealistic standard, failing to consider whether his subsequent disclosure remedied the issue.

70. The Appellant argues the Decision sets an overly restrictive precedent, expecting engineers to never misunderstand questions during phone calls, which is unreasonable given the circumstances.

Appeal Panel discussion in relation to the second and third grounds of appeal

71. The second and third grounds of appeal fail.

72. The Disciplinary Committee made findings of fact regarding the First Call and the Second Call. The Disciplinary Committee, as do we from Bundle, had the resources within the written submissions to consider.

73. The Disciplinary Committee had the additional benefit of hearing evidence in person. We considered the hearing transcript. The hearing transcript and the Disciplinary Committee Report are consistent with each other.

74. The hearing transcript shows:

(a) All parties to the hearing were afforded the opportunity to put questions to each other.

(b) While the Appellant's counsel put questions to witnesses through the Chair, they were not hindered in the questions they put to witnesses. By this we mean, while the Appellant's counsel did not cross-examine witnesses directly, we consider they were able to effectively put the Appellant's case and points to the witnesses.

(c) Questions from the Disciplinary Committee were considered and reflected the events of the First Call and the Second Call occurred in 2018.

(d) The Appellant and the Respondent, as witnesses, were afforded the opportunity to put their respective positions.

75. Accordingly, the Decision records that the Appellant's counsel put questions to the Respondent.[14] The Decision also records the Disciplinary Committee put questions to both the Appellant and the Respondent.

[14] Paragraph 64 records that the Appellant's counsel [BOD 250].

76. From our observations above, we conclude the Disciplinary Committee conducted a fulsome examination of the two key witnesses, the Appellant and the Respondent.

77. We consider the Disciplinary Committee is best placed to consider the credibility of the witnesses.

78. The crux of the Decision and the appeal is the phone calls discussed at paragraphs 104 to 115 of the Disciplinary Committee Report [BOD 255 to 256]. These phone calls are also addressed at length in the hearing transcript.

79. At the risk of repetition, we consider the hearing transcript shows the Disciplinary Committee's inquiry considered the passage of time and the competing views on the First Call and the Second Call. This is apparent from the questions from the Disciplinary Committee.

80. The Disciplinary Committee did consider the passage of time. It did not accept the Appellant's version of events. In the Decision, the Disciplinary Committee made findings of fact accordingly, specifically:

> [114] We have been told there was a misunderstanding about [the Respondent's] enquiries and that [the Appellant] responded as he interpreted the questions. We find that [the Appellant] did not treat [the Respondent's] First Call with the seriousness it deserved. As stated above we do not find [the Appellant's] explanations plausible. We consider that a reasonable chartered professional engineer in the same circumstances would have understood the questions [the Respondent] was asking and answered fully. If there was a misunderstanding, or difficulty in hearing or concentrating on the call due to driving at the time, a reasonable chartered professional engineer would have arranged to continue the conversation at a different time or followed up with [the Respondent].[15]

81. We summarise the finding of fact as follows:

    (a) A CPEng in the same circumstances as the Appellant would have understood the questions the Respondent was asking in the First Call.

82. The Appellant has not established the decision was wrong.

83. Before continuing, we note the Appellant's submissions on several of the following grounds re-argue grounds 2 and 3 from different angles, in summary that:

[15] [BOD 256]

(a) that the questions in the First Call were unclear,

(b) the purpose was unclear, or

(c) the issue of Revocation was irrelevant.

84. We record that, in considering grounds 2 and 3, we have considered submissions on the finding of fact made by the Disciplinary Committee, and the Appellant has not established the finding of fact was wrong. We address subsequent grounds of appeal having recorded this.

Ground 4 and 5: Swift clarification by Mr A indicative of honesty, objectivity and integrity, and matter insufficiently grave

Appellant's submission

85. The submissions on grounds 4 and 5 are at paragraphs 38 to 40 of the Appellant's Submissions. The Appellant submits the swift disclosure of the Revocation during the Second Call demonstrates his honesty, objectivity, and integrity. He contends that his conduct was not deliberate or misleading, unlike previous disciplinary cases involving intentional dishonesty. The Appellant highlights that the Disciplinary Committee itself acknowledged he did not act dishonestly. The Appellant argues that holding him to the same standard as cases involving deliberate misconduct is inconsistent and unfair. He concludes that his inadvertent failure to disclose the Revocation during the First Call, followed by swift clarification in the Second Call, does not amount to conduct falling seriously short of professional standards.

Respondent's Submission

86. On ground 4 the Respondent says:

> [The Appellant] confirmed the Revocation only when explicitly asked if he had been revoked, to which he said yes, but that he didn't see that as an issue at all.
>
> This fact has been misrepresented at a number of points in the complaints process e.g. [the Appellant] first claimed that he "…sought to clarify the status of his relationship with [the Agency] in the second call". At no point did [the Appellant] seek to clarify his status.

87. The Respondent provided no submission on ground 5.

RA's submission

88. The submissions on grounds 4 and 5 are at paragraphs 41 to 45 of the RA's Submission. The RA observes the Appellant provided no specific facts or evidence to support his claims. The

RA submits the Disciplinary Committee assessed the Appellant's conduct against the objective standards of the code of ethics, which requires integrity and objectivity. The RA submits that disciplinary decisions are fact-specific and consistency is important, but outcomes depend on the unique circumstances of each case.

89. The RA concludes the Appellant has failed to demonstrate that the Disciplinary Committee's decision was wrong.

Appellant's Reply submission

90. The reply submissions on grounds 4 and 5 are at paragraph 17 of the Appellant's Reply. The Appellant submits the Decision was disproportionate compared to previous disciplinary matters. In contrast to previous decisions, the submission is the Appellant was not found to have acted dishonestly, voluntarily provided a correction, and caused no impact on public safety or client trust.

91. The submission is the Decision violates the principle of proportionality outlined in Complaints Resolution and Disciplinary Regulations.

Appeal Panel discussion in relation to the fourth and fifth grounds of appeal

92. The fourth and fifth grounds of appeal fail.

93. As we observed above, in these grounds of appeal the Appellant approaches the finding of fact from a different angle. The Disciplinary Committee found the discrepancies between Appellant's answers on the First Call and the Second Call were not due to inadvertence. We have the same impression from considering the material before use. It appears to us that only when faced with the Respondent's assertions in the Second Call, that the Appellant was forthcoming on the Revocation.

Grounds 6 and 10: No specificity as to conversation and precise wording of question, and HVSC status not required for assessment

Appellant's submission

94. The submissions on grounds 6 and 10 are at paragraphs 41 to 43 of the Appellant's Submissions. The Appellant submits neither he nor the Respondent could recall the precise wording of the phone calls due to the passage of time, and the contemporaneous notes taken by the Respondent lacked specific details of the questions asked. The Appellant argues that the vague phrasing of the Respondent's question about "any issues with [the Agency]"

during the First Call made it unreasonable to expect him to immediately recognize the relevance of the Revocation. The Appellant further submits that the Revocation was irrelevant to the work being assessed, as HVSC status was not required for the hi-rail vehicle certification.

Respondent's Submission

95. The Respondent provided no submission on ground 6.

96. On ground 10, the Respondent says:

> Revocation is a significant event that obviously reflects on [the Appellant's] abilities and competence. Focus on the HVSC of certifiers is a diversion from the facts of the complaint.

RA's submission

97. The submissions on grounds 6 and 10 are at paragraphs 46 to 48 of the RA's Submissions. The RA submits the Disciplinary Committee relied on evidence, including contemporaneous notes, witness statements, and verbal accounts, and found the Respondent's evidence consistent and reliable. The thrust of the RA's submission is the Disciplinary Committee had ample evidence to reach its conclusion, observing the Appellant's disagreement with the outcome does not mean the decision was incorrect.

Appellant's Reply submission

98. The Appellant provided no reply submission on grounds 6 and 10.

Appeal Panel discussion in relation to the sixth and tenth grounds of appeal

99. These grounds of appeal fail.

100. Again, the Appellant attacks the finding of fact from a different angle. The Disciplinary Committee took in written submissions and heard evidence in person. The Appellant's counsel questioned the Respondent. We've received no material or information casting doubt on the Disciplinary Committee's finding that the Appellant understood the question in the First Call.

Ground 7: Inconsistency as to purpose of phone call

Appellant's submission

101. The submissions on ground 7 are at paragraphs 44 to 47 of the Appellant's Submissions. The submission addresses an alleged inconsistency in the Decision regarding the purpose of the Respondent's phone calls. The Appellant submits initially, the calls were described as assessing the Appellant's suitability to certify hi-rail vehicles but later categorized as concerns about his relationship with the Agency. The Appellant argues that his relationship with the Agency was irrelevant to his competency or suitability for the work, and the Disciplinary Committee erred by focusing on contemporaneous notes from the Respondent, which lacked precise details of the questions asked.

Respondent's Submission

102. On ground 7 the Respondent says:

> The purpose and nature of the phone calls were apparent from the outset.

RA's submission

103. The submissions on ground 7 are at paragraphs 49 to 55 of the RA's Submission. The RA submits it found no inconsistency in the excerpts cited by the Appellant. The RA explains the Respondent, responsible for assessing engineers for certifying hi-rail vehicles, made inquiries to determine the Appellant's suitability. The RA says the Respondent became concerned about the Appellant's lack of openness regarding his relationship with the Agency. The RA says in conclusion that the purpose of the calls and the nature of the Respondent's concerns are consistently stated throughout the Decision.

Appellant's Reply submission

104. The reply submissions are at paragraphs 18 to 19 of the Appellant's Reply. The Appellant submits the Disciplinary Committee's rationale for the Respondent's phone calls was inconsistent. The Appellant says the rationale shifted between assessing the Appellant's suitability, exploring conduct concerns, and verifying rumours. The submission says:

> These differing rationales shift the basis of the Complaint and cloud the assessment of [the Appellant's] responses.

105. Additionally, the Appellant raises concerns about potential bias, as the Respondent, also served as the Organisation's decision-maker and relied on discredited rumours. These

factors suggest the complaint was not neutral or evidence-based and should have been given limited weight.

Appeal Panel discussion in relation to the seventh ground of appeal

106. This ground of appeal fails.

107. The Disciplinary Committee found the Appellant understood the question in the First Call. The Decision is based on a then CPEng not answering a question with transparency and integrity.

108. We don't accept the Appellant's position that the rationales "clouded" the assessment of the Appellant's responses in the Calls. Further, we do not see point of the Appellant's submission that there may be perceived or actual bias on the Respondent's part when making the complaint.

109. Bringing these two points together; whatever the genesis of the complaint, it has been extensively investigated, subject to inquisitorial hearing and found to be a valid complaint.

Ground 8 and 9: Previous decision of Council regarding HVSC status and further engagement by the Company

Appellant's submission

110. The submissions on grounds 8 and 9 are at paragraphs 48 to 51 of the Appellant's Submission. The Appellant submits that the 2012 revocation of his HVSC status was irrelevant to his competency as a Chartered Professional Engineer. The Appellant cites a previous Council decision from 2012, which found that his actions as a HVSC did not harm the reputation of Chartered Professional Engineers. Additionally, the Appellant submits that the Company involved in the work being assessed, continued to engage him for various projects, indicating that the revocation did not impact his professional capabilities. The Appellant questions whether the Disciplinary Committee properly considered this evidence or gave it sufficient weight in its Decision.

Respondent's Submission

111. The Respondent provides no submission on ground 8.

112. On ground 9, the Respondent says:

> Continued engagement by [the Company] is irrelevant to the facts of the complaint. Further, previous [Company] statements have been shown to be incorrect.

RA's submission

113. The submissions on grounds 8 and 9 are at paragraphs 56 to 58 of the RA's Submission. The RA starts from the point that the complaint against the Appellant focused on his conduct during phone calls with the Respondent, specifically his lack of disclosure and integrity regarding his relationship with the Agency. The RA submits the Disciplinary Committee was tasked with assessing whether the Appellant's behavior breached the code of ethical conduct, not his competence or ability to certify hi-rail vehicles. The RA says the Disciplinary Committee concluded that the Appellant failed to act with the required objectivity and integrity expected of a Chartered Professional Engineer.

Appellant's Reply submission

114. The reply submissions on grounds 8 and 9 are at paragraph 20 of the Appellant's Reply. The submission says the RA argues that the Appellant's continued engagement by the Company is irrelevant, with which the Appellant disagrees.[16] Continued professional work without complaint or incident reinforces his fitness and supports a finding that the conduct complained of lacked material impact. The Appellant says the Disciplinary Committee failed to recognize that the Revocation was not essential for the work for which the Appellant was being assessed, and which therefore had limited relevance to the suitability enquiry.

Appeal Panel discussion in relation to the eighth and ninth grounds of appeal

115. These grounds of appeal fail.

116. The Decision considered the Appellant's conduct in the First Call and the Second Call. We observed earlier in this decision the complaint did not concern any other conduct by the Appellant. We consider the Appellant's submission tries to move the focus away from their conduct in the First Call and the Second Call.

117. We consider the Appellant is seeking to introduce irrelevant matters into the inquiry as to whether they acted with integrity during the First Call and Second Call.

118. Similarly, the Appellant misses the point in their submission that their subsequent professional performance shows the complained conduct lacked material impact. Their

[16] We observe the Respondent made this point in submission, not the RA.

conduct in the First Call and the Second Call was the subject of the complaint, not their subsequent professional performance.

Grounds 11 and 12: Lack of safety issues and public interest and name suppression

Appellant's submission

119. The submissions on grounds 11 and 12 are at paragraphs 52 to 64 of the Appellant's Submissions. The submission argues the Respondent's conduct was minor, did not involve safety issues, and does not justify publishing his name in the Decision. The submission highlights his nearly five decades of unblemished membership with Engineering New Zealand and ongoing work as an expert witness, which could be jeopardized by naming him. The submission says the Disciplinary Committee wrongly applied the criminal standard of "extreme hardship" for name suppression instead of the civil standard.

120. The Appellant compared other disciplinary cases where name suppression was granted for less severe breaches, emphasizing the Appellant's conduct was on the lower end of the scale, involved no safety risks, and showed no pattern of misconduct. The Appellant suggests publishing a redacted version of the Decision to balance open justice with his privacy.

Respondent's Submission

121. On ground 11, the Respondent says:

> Certification of compliance is clearly a safety issue; hence the suitability of the certifier is also. [The Organization's] responsibilities in accepting a certifier and their certifications are threefold.

122. The Respondent provided no submissions on ground 12.

RA's submission

123. The submissions on grounds 11 and 12 are at paragraphs 59 to 67 of the RA's Submissions. The RA starts by noting the Disciplinary Committee's decision to name the Appellant emphasized the principle of open justice in professional disciplinary matters. The RA submits that naming a practitioner is not a penalty but serves a protective purpose. The RA says the Appellant's submission for name suppression lacked sufficient evidence to displace the presumption of disclosure.

124. The RA relied on *Y v Attorney General*[17], specifically paragraph 32 of that Judgment which pertained to professional disciplinary matters.

125. The RA submits that unlike other cases where mitigating factors justified name suppression, the Appellant does not acknowledge any shortcomings or take responsibility for his conduct. The RA says the Disciplinary Committee's conclusion that naming the Appellant is the correct course of action, particularly given his role as an expert witness, where transparency is crucial for public and judicial trust.

Appellant's Reply submission

126. The reply submissions are at paragraphs 22 to 24 of the Appellant's Reply.

127. The Appellant submits he does not dispute the importance of transparency in professional regulation but submits that this case does not justify publication. The conduct at issue was an isolated, non-deliberate communication issue arising in a preliminary inquiry context, not a failure of technical competence or a safety-related breach.

128. The Appellant says he has continued to work without incident, including in expert witness roles. The potential reputational damage resulting from publication, especially when no dishonesty was found, significantly outweighs any minimal public interest. The disciplinary finding should not preclude ongoing professional engagement where integrity and competence remain unimpaired.

129. The Appellant says the RA submits the Appellant has never acknowledged shortcomings or taken a level of responsibility in relation to his conduct. The Appellant disputes this and submits that he did make an offer to apologise, and further, apologised to the Respondent during the Disciplinary Committee hearing.

Appeal Panel discussion in relation to the eleventh and twelfth grounds of appeal

130. This ground of appeal succeeds.

131. We start with the RA's power to publish orders at section 22 (5) of the Act, which says in full:

> In addition to notifying the order in the register, the Registration Authority—
>
> (a) must notify the Registrar of Licensed Building Practitioners appointed under the Building Act 2004 of the order and the reasons for it; and
>
> (b) may publicly notify the order in any other way that it thinks fit.

[17] *Y v The Attorney-General* [2016] NZCA 474.

Underlining added.

132. Under section 22 (5) of the Act, publicly notifying an order is not mandatory. As a comparison, section 239B(1) of the Lawyers and Conveyancers Act 2006 mandates publication, saying:

> Every final written decision of the Disciplinary Tribunal must be published on an Internet site as soon as practicable, unless there is good reason not to publish it.[18]
>
> Underlining added.

133. We raise this point as the Disciplinary Committee started from a presumption of publication that must be displaced.[19] We received no submission whether this presumption is correct. Based on section 22(5) of the Act, it appears arguable a presumption of publication is not correct.

134. We also note the use of the term "name suppression" appears incorrect in relation to a discretionary power to publish. "Name suppression" is a court order with possible sanctions for breach. It has no comparable power in the Act. "Name suppression" is not one thing, as the Court of Appeal held:

> Suppression is not all or nothing. Different considerations may apply depending on what is sought to be suppressed. Interim, rather than permanent, suppression is more likely to be granted at an interlocutory stage of a proceeding — at trial, the court will be better placed to assess any need for permanent suppression.[20]

135. **We want to be clear we have not formed a final view on the presumption of publication, leaving it to be decided when argued fully.** After our observation on the presumption of publication, we move on.

136. The submissions proceed based on a starting point of a presumption of publication, and *Y v Attorney General* setting out the relevant principles. We assess the submissions on these bases.

137. We observe this is a complaint where the Disciplinary Committee made an adverse finding but imposed no penalty under section 22(1) of the Act.

138. Superficially, the RA is correct that naming a practitioner when publishing a decision is not a penalty. Against the RA's submission, publication is provided for in section 22 of the Act,

[18] See also section 96C Private Security Personnel and Private Investigators Act 2010 which has similar wording.
[19] Paragraphs 148 and 149 [BOD 260].
[20] *Y v The Attorney-General* [2016] NZCA 474 at [34].

disciplinary penalties. It is difficult to see how naming a Chartered Professional Engineer in a decision is not a sanction, even if not a penalty under section 22(1) of the Act.

139. The Appellant is no longer a CPEng. Therefore, removing or suspending the Appellant's registration were not penalty options for the Disciplinary Committee. There were other penalty options such as a fine or censure. The Disciplinary Committee did not consider it necessary to impose a fine or censure the Appellant, saying:[21]

> 151. We are mindful of our obligation to impose the least restrictive penalty available, and note the conduct is on the lesser end of the spectrum in terms of seriousness compared to some of the disciplinary decisions raised by [the Appellant] in submissions.
> 152. In taking all of the above factors into account, and the parties' submissions, we do not consider it necessary to impose a fine, remove or suspend [the Appellant's] membership with Engineering New Zealand, require professional development or formally reprimand him.

140. However, the Disciplinary Committee decided naming the Appellant was "fair, reasonable and proportionate in the circumstances" [BOD 261]. This is the point where we disagree with the Disciplinary Committee. We consider naming the Appellant is disproportionate. Our reasons for this follow.

141. We consider *Y v Attorney General* as it applies to this Appeal. The RA fairly identifies the Court of Appeal's principle "a professional person facing a disciplinary charge is likely to find it difficult to advance anything that displaces the presumption in favour of disclosure"[22]. The Court of Appeal's principle referred to its previous Judgment in *Hart*[23]. The full text of the referred paragraph from *Hart* places the Court of Appeal's principle in greater context. That full text is:

> Given the lack of any obvious merit in the judicial review proceedings, we were concerned about the prospect of lengthy delays in hearing the disciplinary proceedings if an adjournment were sought by reason of the High Court proceedings. A long delay would not be in the public interest, particularly if Mr X's name were suppressed. The public interest and open justice principles generally favour the publication of the names of practitioners facing disciplinary charges so that existing and prospective clients of the practitioner may make informed choices about who is to represent them. That principle is well established in the disciplinary context and has been recently confirmed in *Rowley*. The Act itself is designed to promote public confidence in lawyers by an open approach to disciplinary matters.[24]

[21] [BOD 261].
[22] *Y v Attorney General* at [32].
[23] *Hart v Standards Committee (No 1) of the New Zealand Law Society* [2011] NZCA 676.
[24] *Hart* at [18].

142. The Act to which paragraph [18] from *Hart* refers is the Lawyers and Conveyancers Act 2006 which mandates publication. There is also the fact that in *Hart* the allegations at issue were very serious, including fraud.

143. We do not consider the Court of Appeal's principle on professional persons to be the only principle in *Y v Attorney General* which is relevant in this Appeal. Other relevant principles from *Y v Attorney General* include:

(a) There is no onus or burden on an applicant for suppression, in the sense an onus rests on a plaintiff in a civil claim, the question is simply whether the circumstances justify an exception to the fundamental principle.[25]

(b) Nor [did the Court of Appeal] consider it correct to set any particular threshold for name suppression.[26]

(c) The correct approach requires the court to "strike a balance between open justice considerations and the interests of the party who seeks suppression".[27]

(d) Apparent from all of this [the Court of Appeal's consideration] is that it is neither possible nor desirable to attempt a definitive list of possible reasons for granting suppression. What can be said is that the more central is the information sought to be suppressed to an understanding of the nature of the proceeding and to what it is that the court must decide, the stronger is the presumption favouring disclosure. A court is unlikely to deliver a judgment so shorn of detail that the public cannot readily understand what the court has decided, and why.[28]

144. The Disciplinary Committee's considerations for open publication are at paragraph 148 of the Decision [BOD 260], which we summarise as follows:

(a) There is a presumption of publication.

(b) Naming will be inappropriate only where the engineer's privacy outweighs the public interest.

[25] *Y v Attorney General* at [29].
[26] *Y v Attorney General* at [30].
[27] *Y v Attorney General* at [31].
[28] *Y v Attorney General* at [34].

(c) Transparency about outcomes of disciplinary processes includes publishing names of engineers found in breach of their duties.

(d) Naming engineers assists to assure the public of the robustness of the process.

(e) Naming engineers sets the standard for the profession.

(f) Naming engineers acts to deter other engineers from engaging in similar conduct.

145. The Disciplinary Committee considering naming an engineer acts as a deterrent reinforces our view that naming an engineer is a sanction.

146. Regarding the Disciplinary Committee's considerations, we add a further consideration; naming an engineer avoids the risk of other engineers being under a cloud of suspicion as being the subject of the decision.

147. Distilling all the considerations for publishing a name, we consider the main considerations for publishing a name are:

(a) Transparency from informing the public of an adverse finding against an engineer.

(b) Acting as a deterrent from other engineers engaging in similar conduct.

(c) Avoiding other engineers being under a cloud of suspicion.

148. We do not consider publishing a name is required to set standards for engineers. A disciplinary committee's findings do that whether a name is published or not. In a similar vein, we don't consider publishing a name is required to demonstrate that a robust disciplinary process has been followed.

149. The Appellant is no longer CPEng. Accordingly, we consider there is low public interest in naming the Appellant where the Disciplinary Committee's adverse finding was "on the lesser end of the spectrum in terms of seriousness".

150. We want to be clear we are not saying merely because an engineer is a former CPEng that it counts against publishing their name. In this instance, we are saying that the Appellant is a former CPEng combined with the nature of the Disciplinary Committee's adverse finding leads to a low public interest in publishing their name.

151. We briefly address the issue of the Appellant's work as an expert witness. It occurs to us where the Decision may be relevant to potential expert witness work, the Appellant would

have an ethical obligation to disclose the fact of the Decision to a prospective client or their legal advisors. They could make an informed decision to engage the Appellant or not.

152. In this Appeal, we consider the fact of the adverse finding will be a significant deterrent to other engineers from engaging in similar conduct. Publishing the Appellant's name may enhance the deterrent, but we consider the lesson for engineers is the adverse finding from not acting with integrity. The Disciplinary Committee has set the bar for engineers. Publishing the Appellant's name does not alter that.

153. Finally, not naming the Appellant creates a risk of a cloud of suspicion falling on other engineers. We consider the potential consequences of this are low considering the Appellant is a former CPEng, and the nature of the Disciplinary Committee's adverse finding.

154. In conclusion, we consider publishing the Appellant's name in the Decision is not proportionate because:

(a) The public interest is low considering the Disciplinary Committee's adverse finding was "on the lesser end of the spectrum in terms of seriousness", and the Appellant is no longer CPEng.

(b) Even with the Appellant's name redacted[29] the Decision would record a robust and transparent disciplinary process.

(c) Even with the Appellant's name redacted, the Decision would set the standards for engineers to follow regarding acting with integrity, and hence a deterrent to acting otherwise.

Ground 13: Costs order in light of delay

Appellant's submission

155. The submissions on ground 13 are at paragraphs 65 to 72 of the Appellant's Submission. The Appellant submits there were delays in the RA handling the complaint against the Appellant, arguing that the process was not conducted within a reasonable timeframe.

156. The Appellant submits the timeline shows significant gaps, including an 18-month delay before the Adjudicator's decision and a 16-month delay before the Investigating Committee's final decision.

[29] Or otherwise anonymized.

157. The Appellant says these delays, spanning years after the events in question, hindered the investigation and contradicted regulatory expectations for responsive enforcement. The Appellant contends that attributing delays to his appeal rights and illness-related adjournments was inappropriate. He argues that the prolonged process makes the 50% costs order against him unfair and disproportionate.

Respondent's Submission

158. The Respondent provided no submissions on ground 13.

RA's submission

159. The submissions on ground 13 are at paragraphs 68 to 69 of the RA's Submissions. The RA submits the order on costs is orthodox as a 50% order is the standard starting point.

Appellant's Reply submission

160. The reply submission is at paragraph 25 of the Appellant's Reply. The thrust of the reply submission is the standard position should not apply automatically.

Appeal Panel discussion in relation to the thirteenth ground of appeal

161. This ground of appeal fails.

162. The Decision ordered the Appellant pay 50% of the costs of the inquiry; $7,407.63 plus GST. At paragraph 157, the Decision said:

> …we see no mitigating or aggravating factors that provide reason to depart from the usual starting point of 50% for costs.

163. To start, we agree with the Appellant there were gaps between stages in the disciplinary process being completed. Overall, the disciplinary process was lengthy.

164. Despite this, the Appellant has not demonstrated that the length of the disciplinary process contributed to the costs being higher than they would otherwise be. We go so far as to say the Appellant did not attempt to demonstrate the costs were higher due to the length of the disciplinary process.

165. The way the Discipline Committee deals with the costs of inquiry (such as its 50% standard starting point) was not argued before us. Therefore, we make no comment on that. We do observe the Disciplinary Committee having a standard starting point gives parties consistency.

166. The Appellant has not demonstrated the Decision on costs was wrong.

Findings

167. Except for ground of appeal 12, all grounds of appeal fail.

168. Ground of appeal 12 succeeds. We order when the Decision is published it does not name or otherwise identify the Appellant.

169. We note that because we differed from the Disciplinary Committee on ground of appeal 12 there is no criticism of the Disciplinary Committee. It is apparent from the balance of our decision that we found no fault nor reason to otherwise disturb the Decision.

Costs

170. CPEC is empowered to award costs on determining an appeal.[30]

171. For the following reasons, in this Appeal we decided we will not award costs.

172. Both the Appellant and the Respondent have had a measure of success.

173. We acknowledge 12 grounds of appeal failed and one succeeded. However, we do not approach the measures of success on a mathematical basis.

174. Based on the adverse finding, the Decision made three orders [BOD 261]. We overturned the order to publish the Decision naming the Appellant. We consider open publication was a significant issue in this Appeal.

175. Having succeeded on the ground of appeal pertaining to open publication, we consider the Appellant has had a reasonable measure of success.

176. Therefore, we decide costs lie where they fall.

[30] Section 37(5)(d) of the Act.

Right of appeal

177. In accordance with s35 of the Act either party may appeal this decision to the District Court within 28 days.

Dated 17 December 2025

Signed by the Appeal Panel

Mark Holland	Elena Trout	Simonne Eldridge
Panel Principal		