

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kovacik v. The Association of Engineers  
and Geoscientists of the Province of British  
Columbia,*  
2026 BCSC 217

Date: 20260203  
Docket: S-250120  
Registry: Vancouver

Between:

**Peter Gordon Kovacik**

Petitioner

And:

**The Association of Engineers and Geoscientists of the Province of British  
Columbia, also operating as Engineers and Geoscientists BC**

Respondent

Before: The Honourable Madam Justice V. Jackson

On judicial review from: A decision made June 12, 2024 by the  
Engineers and Geoscientists BC Discipline Committee

## **Oral Reasons for Judgment**

Counsel for the Petitioner: J. Virk

Counsel for the Respondent: A. Westmacott, K.C.  
(February 3, 2026)  
K. Chewka  
(January 29 and 30, 2026)

Place and Date of Hearing: Vancouver, B.C.  
January 29 and 30, 2026

Place and Date of Judgment: Vancouver, B.C.  
February 3, 2026

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[1] These reasons for judgment were delivered orally. They have been edited for publication without changing the substance.

[2] When cranes are used in construction, they are connected to the foundation by anchor stools as a means of providing the stability needed for their safe operation. Anchor stools are single-use items, fabricated for each crane at each job site. The scope of practice of professional engineers includes inspecting the manufacturer of, and welding performed on, anchor stools, to ensure they meet the requirements of the design engineer's specifications and the required applicable regulatory standards and are fit for service.

[3] Following an 11 day *viva voce* hearing (the "Hearing"), and receipt of written submissions, a discipline committee panel (the "Panel") of the Association of Engineers and Geoscientists of British Columbia (the "Association"), on June 12, 2024 issued a decision (the "Decision") concluding that the petitioner, professional engineer and co-founder of Kova Engineering, had demonstrated unprofessional conduct by signing and sealing an inspection report recommending a set of anchor stools for service, when the anchor stools were not serviceable and when the weld repairs on those anchor stools had not been completed.

[4] The Panel concluded that such conduct was contrary to principle one of the Engineers and Geoscientists BC *Code of Ethics* (which required that members and licensees hold paramount the safety, health and welfare of the public, the protection of the environment and promote health and safety within the workplace), and that such conduct was contrary to principle three of the Engineers and Geoscientists BC *Code of Ethics*, (which required that members and licensees provide an opinion on a professional subject only when it is founded upon adequate knowledge and honest conviction).

[5] This is an application for judicial review of the Decision. The judicial review of the Panel's November 7, 2024 decision on penalty was abandoned by the petitioner at the hearing before me.

[6] The petitioner alleges the Panel made various errors, both in relation to the procedural fairness and in the Decision itself.

**Standards of review**

[7] Although the petitioner referred to this proceeding, both in the petition and in oral submissions, as an appeal, it is not an appeal. There is no appeal available from a decision of a discipline committee panel. The proceeding is, and was properly commenced as, a judicial review. The applicable standards of review is a question governed by common law administrative law principles.

[8] Questions of procedural fairness are to be considered from a fairness / correctness standard, with no deference to be paid to the decision maker in determining whether the duty to provide procedural fairness has been met: *Mission Institution v. Khela*, 2014 SCC 24 (CanLII), [2014] 1 SCR 502 at para. 79; *Murray Purcha & Son Ltd. v. Barriere (District)*, 2019 BCCA 4 at paras. 23-28.

[9] The applicable standard of review of the merits of an administrative tribunal's decision is presumptively reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 at para. 170. Neither party argues the legislature intended a standard of review other than reasonableness, or that the rule of law requires that the correctness standard be applied.

[10] The standard of review that applies to questions of the merits of the Decision in this case is reasonableness.

[11] A Decision is unreasonable where, read holistically, the reasons fail to reveal a rational chain of analysis, or reveal an irrational chain of analysis, such that the reasoning does not “add up”, or where the outcome is not justified in relation to the constellation of law and facts that are relevant to the decision, with the legal and factual contexts of the decision operating as constraints on the decision maker in the exercise of its delegated powers: *Vavilov* at paras. 103, 105; *Mason v. Canada*

(*Citizenship and Immigration*), 2023 SCC 21 at para. 62. The standard is not perfection: *Vavilov* at para. 91.

[12] The legislative and factual context of this Decision includes that engineering is a regulated profession. A primary legislative purpose underlying the regulation of a profession is the protection of the public interest, and the regulator’s role in overseeing the competence and honesty of their members is crucial to the fulfilment of that objective: *Pharmascience Inc. v. Binet*, 2006 SCC 48 (CanLII), [2006] 2 SCR 513 at para. 36.

### **The hearing was not procedurally unfair**

#### **The petitioner had notice of the charges against him**

[13] The petitioner argues he did not have adequate notice of the case he had to meet because there was a lack of detail in the Citation. I disagree. The petitioner was entitled to, and the Citation provided, notice, with reasonable certainty, of what conduct was alleged to constitute unprofessional conduct: *Bartel v. Manitoba (Securities Commission)*, 2003 MBCA 30 at paras. 32, 33, 35-38; *Katsoulakos v. Association of Professional Engineers of Ontario*, 2014 ONSC 5440 (Div Ct) at para. 23; *Donegan v. Assn. of Professional Engineers*, 2001 BCSC 1448 at para. 35. The Citation did not contain only a bald assertion of unprofessional conduct. It expressly and clearly identified the particulars of the conduct that was alleged as constituting unprofessional conduct – namely signing and sealing an inspection report and recommending the anchor stools for service when they were not serviceable and when weld repairs had not been completed. There was no suggestion by the petitioner that the disclosure provided to him did not enable him to respond to the Citation put forward.

#### **The Panel was entitled to determine what evidence it would accept**

[14] The petitioner argues the Panel should not have relied on inadmissible hearsay evidence. In respect of this argument, the petitioner referred to Ryan Stewart’s evidence.

[15] Like the petitioner, Mr. Stewart is a professional engineer. He had been asked by Darrell Fornwald, the owner of PC Crane Services, to inspect two sets of newly manufactured anchor stools (the “Anchor Stools”). He personally inspected the Anchor Stools, determined that there were a number of deficiencies with the welds, and identified for the owner the required repairs to render the Anchor Stools serviceable. Mr. Stewart declined to certify the Anchor Stools as serviceable.

[16] On August 22, 2017, which was about a week after the petitioner had signed and sealed the Anchor Stools as being serviceable, Mr. Stewart attended at PC Crane Services again for an unrelated inspection, and was “flabbergasted” to see the same Anchor Stools there and apparently ready for use. Mr. Stewart testified that the owner of the Anchor Stools told him that Kova Engineering had approved the Anchor Stools after Mr. Stewart had declined to do so. Mr. Stewart testified he showed the owner defects he observed on the Anchor Stools. Mr. Stewart testified that the owner confirmed to him the Anchor Stools were the same ones he had failed earlier. It is reliance on the latter part of that testimony which the petitioner now argues was improper.

[17] However, in administrative proceedings hearsay is not *per se* objectionable: *Cambie Hotel (Nanaimo) Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2006 BCCA 119 at para. 32.

[18] The petitioner also argues the photos taken by Mr. Stewart should not have been admitted into evidence because there was a question about when they were taken and no metadata was provided. However, the Panel accepted Mr. Stewart’s evidence of when the photos were taken. Even in the criminal law context, where the rules of evidence are typically stringently applied, photographs have been admitted based on testimony alone without their associated metadata: *R. v. H.H.*, 2024 ONCJ 400 at para. 45 (3rd bullet). The Panel found the Anchor Stools in the photos were the same ones the petitioner had sealed as being serviceable. At the hearing, the petitioner testified he could not say whether or not photos depicted the Anchor

Stools he had approved for service, but he also acknowledged the Anchor Stools in those photos were not serviceable.

**The Panel did not reverse the onus of proof**

[19] Related to Mr. Stewart's evidence about what the owner of PC Crane Services had told him about the Anchor Stools being the same ones he had failed, the petitioner argues the Panel reversed the burden of proof, and submits that is reflected in the Decision where the Panel notes that it was open to the petitioner to call the owner of PC Cranes Services as a witness at the hearing to address this point, and that he did not do so. This does not reflect a reversal of the burden of proof. Rather, the Panel's comment reflects its appreciation of the distinction between the legal burden of proof, and evidential and tactical burdens, as explained by Justice Huddart at paras. 5-7 of *Northland Properties Corporation v. British Columbia*, 2010 BCCA 177:

[5] Another critical distinction it will be helpful to review is that between the "onus", "persuasive burden", "ultimate burden", or "legal burden of proof" in a case, and other "evidential" and "tactical" burdens. The legal burden lies on the party whose responsibility it is to prove a fact or an issue to the required standard of proof. If the party who bears the legal burden fails to prove its case, or if the evidence weighs equally between the two sides, then that party loses. There can be multiple legal burdens of proof in a single action: see Sopinka, Lederman & Bryant, *The Law of Evidence in Canada* (Butterworths: Vancouver, 1992) at 53-65.

[6] The evidential burden is not synonymous with legal burden. An evidential burden means that a party has an obligation to adduce sufficient evidence to put a matter in issue; it is not the same as having the obligation to prove a fact: see Sopinka at 53-65. Care should be taken to use the term only where appropriate.

[7] A tactical burden is not a legal burden in the true sense, but a question of common sense. It arises when the party bearing a legal burden has adduced evidence, and that evidence is the only evidence unless the other side acts positively to introduce some of its own. The legal burden does not shift, because the responding party is not legally compelled to prove or disprove anything. In certain circumstances, a responding party may not even need to adduce evidence, but in the majority of cases, uncontested and uncontradicted evidence creates a situation in which a trier of fact may draw an inference. Although a finding of fact is not automatic, it is incumbent on the responding party to provide some evidentiary basis on which that inference may be rebutted – hence, the tactical burden: see *R. v. Johnson* (1993), 1996 CanLII 3376 (ON CA), 12 O.R. (3d) 340 (Ont. C.A.) at 348-49; *R. v. Darrach*, 2000 SCC 46 CanLII, [2000] 2 S.C.R. 443 (S.C.C.).

**The Hearing and the Decision aligned with the Citation**

[20] With respect to the petitioner’s argument that the Panel considered fact and allegations that were not alleged in the Citation, again I disagree. This is not a situation like the one before the Court in *Nguyen v. Chartered Professional Accountants of British Columbia*, 2018 BCCA 299, relied on by the petitioner, where the tribunal found the member guilty based on an allegation that had not formed the basis of the complaint: at para. 34. A review of the Decision in this case demonstrates that, contrary to the petitioner’s argument, the Panel did not expand the scope of their inquiry. The Panel’s reasons aligned with the allegations set out in the Citation: e.g. paras. 34-37 and paras. 236-238 (with respect to count 1 in the Citation), paras. 249-250 (with respect to count 3 in the Citation), and paras. 260-261 (with respect to count 4 in the Citation). There is no disconnect between the Citation and the Decision.

[21] The petitioner also argues that he was denied procedural fairness because the Panel made a determination that was contrary to facts, he submits, had been conceded by the Association via its legal counsel’s opening statement, namely that the hearing was about the petitioner’s adherence to process and standards as opposed to whether there were there cracks in the Anchor Stools. Insofar as this was argued as a matter of procedural fairness, it must be remembered that it is the Citation that governs the proceeding, not the submissions of counsel. The Citation was never amended, nor did the petitioner suggest at the hearing before me that any such amendment was sought at the hearing based on the opening statement of the Association’s counsel. Whether the petitioner had signed and sealed an inspection report recommending the Anchor Stools for service “when the Anchor Stools were not serviceable” was at all times a matter that remained one for the Panel to determine.

[22] Insofar as this was argued as a substantive issue, I conclude the concession the petitioner alleges was not made. An admission or concession of a fact must be deliberately made and unambiguous: *Farbeh v. The College of Pharmacists of British Columbia*, 2011 BCSC 1676 at paras. 47-48. There was no deliberate and

unambiguous concession by the Association that the Anchor Stools were serviceable. Indeed, each side seems to have called evidence on that very issue at the hearing, including Dr. Matthew Smith for the Association and Ryan Tinkley and Paul Walchuk for the petitioner. Properly understood, the opening statement of Association counsel conveyed to the Panel that the Association's position was that it did not have to prove the Anchor Stools actually failed. However, the question of the Anchor Stools serviceability, as set out in the Citation was at all times a live issue before the Panel for its determination.

**The petitioner has not established the Decision was unreasonable**

[23] The burden is on the petitioner, as the party challenging the decision, to show that it is unreasonable: *Vavilov* at para. 100.

**The Panel applied the correct standard of proof**

[24] Relying on *Nguyen v. Chartered Professional Accountants of British Columbia*, 2018 BCSC 620 at paras. 58-59, the petitioner argues the Decision was unreasonable because the Panel applied the wrong standard of proof. He argues that in professional discipline matters, a tribunal is obliged to apply a standard of proof that is more than a bare balance of probabilities. He argues the Association was obliged to prove the Citation to that elevated balance of probabilities standard. He argues the Panel failed to apply that standard.

[25] I disagree that any elevated civil standard of proof applied. In civil cases there is only one standard of proof, and that is proof on a balance of probabilities, which requires the trier of fact to scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred: *F.H. v. McDougall*, 2008 SCC 53 at paras. 45-46, 49. In the legal basis of his petition - at para. 66 (d) - the petitioner states that the Panel applied the balance of probabilities standard. The Decision reflects that the Panel was aware of and applied the correct balance of probabilities standard of proof.

**The Panel did not fail to resolve a conflict in the evidence**

[26] The Panel acknowledged there was a conflict in the evidence between Mr. Stewart's testimony that he took the photos of the Anchor Stools on Aug 17 and 31, 2017, and the testimony of Mr. Tinkley and Mr. Walchuk. Mr. Tinkley and Mr. Walchuk, neither of whom are professional engineers, had provided the petitioner with a description of the weld quality and the assurance of their suitability for service, over a Facetime call on August 14, 2017 and via a subsequent report. It was their information on which the petitioner had relied when he certified the Anchor Stools for service. The petitioner argues that the Panel should not have relied on the evidence of Mr. Stewart because he was a disgruntled ex-employee of Kova Engineering.

[27] However, the Panel undertook a thorough analysis of Mr. Stewart's credibility and rejected the petitioner's allegations that Mr. Stewart was a disgruntled employee who had seized an opportunity to humiliate or destroy the petitioner by being untruthful. In doing so the Panel referred to its factual findings that Mr. Stewart had initially been reluctant to even name Kova Engineering and that he only made his complaint to the Association after the Association advised him he had a duty to report. There was ample evidence before the Panel to support its conclusion. The Panel also noted that the petitioner had not suggested to Mr. Stewart during cross-examination that he was being untruthful because of his past association with Kova Engineering. Where there is conflicting evidence on a material point, an administrative decision maker can resolve the conflict by providing reasons why they accept one version, or why they reject the other version, but there is no obligation to do both, although that option is open to them: *Clark v. British Columbia (Superintendent of Motor Vehicles)*, 2015 BCCA 487 at para. 28 citing *R. v. R.E.M.*, 2008 SCC 51 at para. 66, and *F.H. v. McDougall*, 2008 SCC 53 at para. 86.

**The Panel's chain of analysis is clear from the Decision and is rational**

[28] The petitioner has not established that the Decision was unreasonable. The reasons reveal a clear and rational chain of analysis, and the outcome was justified in law and fact. The Decision is based on factual findings that, as counsel for the

Association carefully pointed out in her submissions, were based on evidence before the Panel, and in my view factual inferences that were available to them based on that evidence.

[29] Although at the hearing before me counsel for the petitioner argued there was no evidence before the Panel to support its factual finding that the petitioner had been aware, when he signed off on the Anchor Stools, that another professional engineer (Mr. Stewart) had previously inspected and rejected them, that is not accurate. The petitioner acknowledged that awareness during his testimony at the hearing.

[30] The petitioner also argues the Panel's finding places a high and new standard of conduct on professional engineers which is not based on industry practice. However, industry practice does not determine the standards of a profession. Both the former, and the current, legislative regulatory regimes governing professional engineers, confirm that is the regulatory body that is responsible for establishing, monitoring and enforcing standards of practice: *Engineers and Geoscientists Act*, RSBC 1996, c 116, s. 4.1(2); *Professional Governance Act*, BSC 2018, c 47, s. 22(2)(e). The Panel was entitled to rely on its expertise in assessing the evidence and determining whether the conduct alleged, which it concluded had been proved to the requisite civil standard, constituted a marked departure from the standard to be expected of a competent professional engineer and breached the Engineers and Geoscientists BC *Code of Ethics*. Their Decision that it did was eminently reasonable.

### **Conclusion**

[31] For all these reasons, the petition is dismissed.

[32] The Association does not seek its costs and no costs are ordered.

“V. Jackson J.”