# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Engineers and Geoscientists BC v. Hilderman ,* 2023 BCSC 2214

Date: 20231201
Docket: S-222945
Registry: Victoria

Between:

**The Association of Professional Engineers and Geoscientists of the Province of British Columbia**

Plaintiff

And

**David Hilderman**

Defendant

Before: The Honourable Mr. Justice Brongers

## Oral Reasons for Judgment

In Chambers

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|---|---|
| Counsel for the Plaintiff appearing by videoconference: | S. Hern, K.C. |
| The Defendant, appearing on his own behalf by videoconference: | D. Hilderman |
| Place and Date of Trial/Hearing: | Victoria, B.C.<br>November 14 & 17, 2023 |
| Place and Date of Judgment: | Victoria, B.C.<br>December 1, 2023 |

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## Introduction

[1] This is a summary trial application for declaratory and injunctive relief.

[2] The applicant is The Association of Professional Engineers and Geoscientists of the Province of British Columbia (the “Association"). It is represented by counsel.

[3] The respondent is David Hilderman. Mr. Hilderman represents himself.

[4] The Association seeks a declaration that Mr. Hilderman has breached s. 52(3) of the *Professional Governance Act*, S.B.C. 2018, c. 47 (the “*Act*”) because Mr. Hilderman has described himself publicly as an "engineer" when he is not a member of the Association. It also seeks to permanently enjoin Mr. Hilderman from doing so now and in the future. The Association is particularly concerned that Mr. Hilderman's actions create the erroneous impression that he is authorized to practise as a professional engineer in British Columbia.

[5] Mr. Hilderman opposes the granting of the relief sought by the Association. While he is not a professional engineer, he has an engineering degree and works as a hardware engineer in the field of electronic circuit design. Therefore, Mr. Hilderman says he should be permitted to publicly describe himself as an "engineer". Mr. Hilderman also disputes the notion that by doing so he is representing himself to be either a professional engineer or a member of the Association.

[6] Having reviewed the application record and considered the submissions of the parties, I have decided that the declaratory and injunctive relief sought by the Association should be granted. My reasons for doing so are as follows.

## Background

[7] Mr. Hilderman ran to become a Member of Parliament in the September 20, 2021 federal election. He was the People's Party of Canada's candidate in the riding of Saanich-Gulf Islands.

[8] During the campaign, Mr. Hilderman described himself as an "engineer" on his personal website (www.davidhilderman.ca), as follows:

> David Hilderman is an engineer and former COO of TC-Helicon, a Victoria based music equipment manufacturer. He obtained a Bachelor of Applied Sciences from the University of Regina in 1988 and has worked in the electronics industry ever since.

[9] Around that time, an almost identical description of Mr. Hilderman was posted on the website of the People's Party of Canada, as well as another website called "VoteMate".

[10] These online publications and others came to the attention of the Association. An investigation was conducted and the Association became aware that Mr. Hilderman had also been describing himself as an engineer on social media sites, namely Facebook and LinkedIn. The Association further discovered a biographical description of Mr. Hilderman on the website of an organization called the "CO2 Coalition" similar to the one he used during the 2021 election campaign.

[11] Additional research by the Association found online media coverage of that election by the Victoria *Times Colonist*, *Victoria Buzz*, and *The Martlet* (the University of Victoria's student newspaper). This coverage also described Mr. Hilderman as an "engineer" and, in the case of the *Times Colonist*, an "electrical engineer".

[12] On December 7, 2021, the Association sent a letter to Mr. Hilderman. After noting that Mr. Hilderman is not a member of the Association, the letter referenced a number of websites in which Mr. Hilderman is identified as an "engineer". The letter then made two demands of Mr. Hilderman. First, that he revise any websites, social media, or other information sources he controls to remove the title "engineer". Second, that he no longer refer to himself as an "engineer" or use any other name or title implying that he is entitled to engage in the profession of engineering in British Columbia, unless and until he becomes a member of the Association. The letter also asserted indirectly that Mr. Hilderman had contravened the *Act*, and encouraged him to obtain independent legal advice.

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[13] Later that day, Mr. Hilderman responded to the Association with a very brief email. It simply stated: "You guys are hillarious! [*sic*] No worries! I'll stop."

[14] Two weeks later, however, Mr. Hilderman sent a formal letter to the Association. After stating that he had now received independent legal advice, Mr. Hilderman effectively indicated his disagreement with the Association's position. Mr. Hilderman wrote:

> I am not a "professional engineer," "professional engineering licensee," or "engineer in training," and have never represented myself as such; nor have I used any such title in the context of marketing engineering services. I do, however, have a background in the field of engineering, and was recently a candidate in a political campaign where my educational background was a matter of public interest. The mere mention of my educational background in the context of a political campaign is not contrary to the *Professional Governance Act*.

[15] This letter prompted a further exchange of correspondence between the Association and Mr. Hilderman. It culminated with a letter from the Association dated April 13, 2022, insisting that Mr. Hilderman comply with its two demands made earlier within 14 days, failing which formal legal action would be taken. Mr. Hilderman did not respond.

[16] On September 13, 2022, the Association filed a notice of civil claim against Mr. Hilderman. It indicates that the Association is seeking a declaration that Mr. Hilderman breached s. 52(3) of the *Act* and a permanent injunction in relation to Mr. Hilderman's use of the title "engineer".

[17] Mr. Hilderman filed his response to civil claim opposing the relief sought on October 1, 2022.

[18] This summary trial application was filed on June 7, 2023. It is supported by an affidavit made by the Association official who investigated Mr. Hilderman's publications. Mr. Hilderman filed his own affidavit in response. I heard the application on November 14 and 17, 2023.

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## Analysis

[19] This proceeding raises three questions:

1) Is this matter suitable for summary trial?

2) If so, did Mr. Hilderman breach s. 52(3) of the *Act*?

3) If so, should a permanent injunction be issued?

[20] I will address these questions in turn.

### Question 1 - Is this matter suitable for summary trial?

[21] While Mr. Hilderman opposes the Association's claim, he has not taken issue with the Association's position that the claim is suitable for adjudication by means of a summary trial. I agree.

[22] The relevant underlying facts are clearly set out in: (1) the parties' affidavits; and (2) the eight factual assertions in the Association's notice of civil claim that are admitted by Mr. Hilderman. They are uncontroversial and not in dispute. I therefore can find the facts necessary to decide the issues and am of the view that it would not be unjust to do so. Accordingly, I can grant judgment in this matter pursuant to Rule 9-7 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009.

[23] In sum, the answer to the first question is: yes, this matter is suitable for summary trial.

### Question 2 - Did Mr. Hilderman breach s. 52(3) of the *Act*?

[24] The applicable legal framework for this matter is set out in the *Act* and the *Engineers and Geoscientists Regulation*, B.C. Reg 14/2021 (the "*Regulation*"). It can be described as follows.

[25] As a regulatory body subject to the *Act*, the Association has a duty to serve and protect the public interest with respect to the profession it regulates (*Act,* s. 22).

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In the case of the Association, that profession is the practice of professional engineering (*Regulation,* esp. ss. 2, 3, and 5).

[26] Registrants of the Association are given the exclusive right to use certain reserved titles, namely: (a) "professional engineer"; (b) "professional engineering licensee"; and (c) "engineer in training" (*Act,* s. 51; and *Regulation,* s. 4).

[27] Section 52(3) of the *Act* effectively prohibits non-registrants from using reserved titles or other names that express or imply either membership in the regulatory body, or authority to practice the profession regulated by that body. The legislation is worded broadly, as follows:

> 52(3) A person other than a registrant of a regulatory body must not use a reserved title or other name, title, description or abbreviation of a name or title, or an equivalent of a reserved title or other name or title in another language, in any manner that expresses or implies that the person is a registrant or associated with the regulatory body or is authorized to practice in a profession that is subject to a reserved title.

[28] The Association is not arguing that Mr. Hilderman has used any of the three reserved titles prescribed by s. 4 of the *Regulation*. Rather, it says that his online self-identification as an "engineer" implies that he is a registrant of the Association or is authorized to practise as a professional engineer. In support of its position, the Association relies on three jurisprudential authorities:

1) *Association of Professional Engineers and Geoscientists of British Columbia v. Kaiser*, 2002 BCSC 1831;

2) *Association of Professional Engineers, Geologists and Geophysicists of Alberta v. Broere Electric Ltd*., 2007 ABQB 61; and

3) *Association of Professional Engineers v. Martin and Bucklaschuk*, 1983 CanLII 3738 (MB QB).

[29] On the other hand, Mr. Hilderman denies using the term "engineer" to imply or attempt to lead people to believe that he is a professional engineer or associated with the Association. He says that he has been accurately describing his educational

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background in the context of his political activities, and should not be prevented from doing so. In support of his position, he relies on two jurisprudential authorities:

1) *Association of Professional Engineers in the Province of British Columbia v. Inter-Provincial Power Engineering Association*, [1977] B.C.J. No. 104 (S.C.); aff'd [1978] B.C.J. No. 379 (C.A.); and

2) *Association of Professional Engineers v. Merhej*, 2001 ABQB 1062; aff'd 2003 ABCA 360.

[30] I have considered all of the authorities that the parties have cited. The most helpful is the decision of this Court in *Kaiser*. It is also binding upon me in accordance with the doctrine of horizontal *stare decisis*: *R. v. Sullivan*, 2022 SCC 19. That doctrine provides that when an issue has been decided by a judge at the same level of court, it should be followed, except in three narrow circumstances:

1) the rationale of an earlier decision has been undermined by subsequent appellate decisions;

2) the earlier decision was reached *per incuriam* (i.e., through carelessness or by inadvertence); or

3) the earlier decision was not fully considered (e.g., when made in exigent circumstances).

[31] None of these circumstances apply here.

[32] The defendant in *Kaiser* held an applied science degree but was not a member of the Association. At issue was whether she should be enjoined from using the terms "engineer" and "engineering" in connection with her holding out of her availability to carry out work within the area of her training. In order to decide the matter, Justice Slade had to interpret the *Act*'s predecessor legislation generally, and its equivalent of s. 52(3)(c) of the Act in particular (i.e., s. 22(1)(c) of the since-repealed *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116).

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[33] After noting that the legislation does not expressly prohibit the use of the terms "engineer" or "engineering" by non-registrants, Justice Slade nevertheless enjoined Ms. Kaiser from using them. He effectively concluded that her particular use of these terms gave rise to the implication that she had the right to practise professional engineering given her academic qualifications as the holder of an applied science degree.

[34] Justice Slade wrote the following at paragraphs 29 and 30 of *Kaiser*:

> [29] If the defendant is permitted to use the term "engineer" or "engineering" in connection with her name, it would plainly, having regard for her actual academic qualifications in electrical engineering, imply the right to practice in a discipline specified within the definition of "practice of professional engineering", namely, electrical engineering. She has no such right.
>
> [30] In view of the clear implication of the existence of this right that would result from her use of the term "engineer" or "engineering", in conjunction with a reference to her degree in applied science (electrical engineering), I conclude that, based on the evidence of her behaviours before me, she comes within the prohibition in s. 22(1)(c)(iii), and that she may, in the circumstances present, be enjoined from the use of the terms "engineer" or "engineering".

[35] I find that the same can be said of Mr. Hilderman in the case at bar. Mr. Hilderman has publicly described himself as an "engineer" while noting that he holds a "Bachelor of Applied Sciences from the University of Regina", that he "has worked in the electronics industry", uses his "engineering experience", and is doing "contract engineering work". These behaviours cumulatively come within the prohibition in s. 52(3) of the *Act*.

[36] Furthermore, the fact that Mr. Hilderman may have made these representations for political purposes rather than for economic gain is not, in my view, a meaningful distinction. I agree with the Association that as part of its statutory responsibility to regulate the engineering profession in the public interest, the Association is entitled to take lawful steps to address instances where those who participate in public political discourse imply having a professional accreditation that they do not actually possess.

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[37] In addition, I do not accept Mr. Hilderman's assertion that the Association is attempting to restrain him from accurately describing his educational background in the context of a political campaign which impacts freedom of expression and would be contrary to *Charter* values. There is no suggestion that Mr. Hilderman was wrong to indicate that he obtained a Bachelor of Applied Sciences degree. Rather, it is his self-description as an "engineer" working in the electronics industry in conjunction with the mention of his engineering degree that contravenes s. 52(3) of the Act.

[38] Parenthetically, I also note that no *Charter* challenge has been brought to the legislation. Furthermore, the concept of *Charter* values has no application in this case where there is no genuine ambiguity in the *Act* that may give rise to an issue of statutory interpretation: *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 62.

[39] Finally, I do not intend to discuss in any detail the authorities from outside the province that were brought to my attention. In addition to not being binding upon me, the facts of these cases are not as analogous to those in the case at bar as the facts in *Kaiser*.

[40] While the *Inter-Provincial Power Engineering Association* decisions of this Court and our Court of Appeal are binding authorities, the issue there was also considerably different from the one raised here. The conclusion reached was that the Association (i.e., the same plaintiff as in the case at bar) cannot enjoin an organization of power engineers from calling itself the “Inter-Provincial Power Engineering Association”. However, power engineers operate machinery and boilers that provide power and other utility services. They are separately regulated from professional engineers under different legislation. This precedent is of no assistance to Mr. Hilderman's position.

[41] In sum, the answer to the second question is yes: Mr. Hilderman did breach s. 52(3) of the *Act*.

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**Question 3 - Should a permanent injunction be granted?**

[42] Section 107 of the *Act* provides this Court with statutory authority to issue injunctions to restrain a person from contravening the *Act* and the *Regulation*, upon application by the Association. It is worded as follows:

> 107 (1) The superintendent, the board of a regulatory body or any other person may apply to the Supreme Court for an interim or permanent injunction to restrain a person from contravening a provision of this Act, the regulations or the bylaws.
>
> (2) The court may grant an injunction sought under subsection (1) if satisfied there is reason to believe that there has been or will be a contravention of this Act, the regulations or the bylaws.
>
> (3) A contravention may be restrained under subsection (1) whether or not a penalty or other remedy has been provided under this Act.
>
> (4) The court may grant an interim injunction until the outcome of an action commenced under subsection (1).

[43] In *Prince George (City) v. Rahn Bros. Logging Ltd*., 2003 BCCA 31 at para. 54, our Court of Appeal set out the principles to be applied when exercising discretion to issue injunctive relief pursuant to a statute. It said that when there is a clear breach of legislation that provides for injunctive relief to address that breach, the injunction should be granted unless there are exceptional circumstances.

[44] That is the situation here. I have found that Mr. Hilderman has clearly breached s. 52(3) of the *Act*. No exceptional circumstances were brought to my attention, and I can see no basis for refusing to issue a permanent injunction in accordance with s. 107 of the *Act*.

[45] In sum, the answer to the third question is: yes, a permanent injunction should be granted.

[46] With respect to the terms of the injunction, the Association has framed the order it is seeking as follows:

> A permanent injunction prohibiting and enjoining the defendant from using the title "engineer", or other, name, title, description or abbreviation of a name or title, or equivalent of a reserved title or other name or title in another language, in any manner that expresses or implies that the defendant is a registrant of The Association of Professional Engineers and Geoscientists of

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> the Province of British Columbia operating as Engineers and Geoscientists BC ("EGBC") or is associated with EGBC or is authorized to practice the profession of engineering in British Columbia;

[47] This wording essentially tracks that of the governing legislation, particularly s. 52(3) of the *Act*. In my view, such wording is appropriate for the permanent injunction I will issue in this case.

## Disposition

[48] For all of these reasons, the following declaration and orders are issued:

1) The application is allowed.

2) It is hereby declared that Mr. Hilderman has breached s. 52(3) of the *Professional Governance Act*, S.B.C. 2018, c. 47.

3) Mr. Hilderman is permanently prohibited and enjoined from using the title "engineer", or other name, title, description, or abbreviation of a name or title, or equivalent of a reserved title or other name or title in another language, in any manner that expresses or implies that Mr. Hilderman is a registrant of The Association of Professional Engineers and Geoscientists of the Province of British Columbia or is associated with this Association, or is authorized to practise the profession of engineering in British Columbia.

(SUBMISSIONS ON COSTS)

[49] THE COURT: Thank you both. So I will provide my reasons for costs at this point.

[50] The Association asks for its costs of this proceeding. Mr. Hilderman says that each party should bear its own costs. As the Association has been wholly successful in this matter, it is presumptively entitled to an award of costs. Mr. Hilderman submits that the court should depart from this principle. This is because he is self-represented and has acted in good faith. He also says that his involvement in this

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matter arose in the context of a public federal election campaign, in which he was seeking to serve the public interest, not undermine it.

[51] There can be no suggestion that Mr. Hilderman was not acting in good faith throughout this litigation. Furthermore, his participation in the political process and willingness to serve in a public capacity is commendable. However, I am not satisfied that this provides a valid basis for denying the Association a costs award in spite of the outcome of this proceeding. This is particularly the case since Mr. Hilderman was given an opportunity to reconsider his position at the end of the first day of the hearing, after counsel for the Association completed his oral submissions and the matter was adjourned for three days. Mr. Hilderman nevertheless firmly maintained his opposition to the Association's claim. While this is his right, he cannot then reasonably expect to avoid costs consequences in the event his position is not accepted by the Court, as occurred here.

[52] The Association will therefore be awarded its costs of this application and the underlying action in accordance with Scale B.

“Brongers J.”

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