

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: ALBERTA COURT OF APPEAL AFFIRMS FINDING OF UNPROFESSIONAL CONDUCT AND CONCLUDES SANCTION IMPOSED ON SURVEYOR WAS NOT UNREASONABLE

Administrative law – Judicial review – Decisions reviewed – Council of the Alberta Land Surveyors’ Association – Procedural requirements and fairness – Standard of review – Correctness; Professions – Self-governing professions – Land Surveyors – Disciplinary proceedings – Professional misconduct or conduct unbecoming

Lysons v. Alberta Land Surveyors’ Assn.

Appeal from decision of Council of Alberta Land Surveyors’ Association from finding surveyor engaged in unprofessional conduct for removing a survey monument contrary to the provisions of the Land Surveyor’s Act.

[2017] A.J. No. 10

2017 ABCA 7

Alberta Court of Appeal

January 10, 2017

F.F. Slatter, T.W. Wakeling and S.J. Greckol JJ.A

The appellant, a member of the respondent Alberta Land Surveyors’ Association (the “Association”), removed a survey monument without consulting with the surveyor who placed it or obtaining the consent of the Director of Surveys.

Unauthorized removal of survey monuments is contrary to s. 50(3) of the Surveys Act, R.S.A. 2000, c. S-26. The Discipline Committee of the Association found the appellant engaged in unprofessional conduct for removing the survey monument in breach of the Surveys Act. The Council of the Association agreed with the conclusion of the Discipline Committee and affirmed the finding of unprofessional conduct.

The appellant appealed to the Alberta Court of Appeal. He challenged both the finding of unprofessional conduct and the sanction.

The appellant argued the Council erred by not reviewing the Discipline Committee’s decision for correctness. The Court rejected this argument. The Council was entitled to extend deference to the decision of the Discipline Committee. Governing bodies of professions have expertise in the interpretation of the statutes establishing the profession, related statutes, and the rules or codes of conduct of the profession regarding what amounts to unprofessional conduct. There was nothing unreasonable about the findings of the Discipline Committee and the Council that the appellant’s conduct constituted unprofessional conduct.

The appellant argued the proceedings were unfair because counsel who prosecuted the disciplinary offence before the Discipline Committee was retained by the Association and acts for the Association on a regular basis. The Court rejected this argument. There was no indication on the record that the Discipline Committee or the Council were in any respect unable to apply their independent, professional judgment to the issues before them. Legal counsel who act for the Association may represent their interests before the Discipline Committee or the Council so long as the rules of natural justice are observed. There was no evidence to support a finding of a breach of procedural fairness in the course of the proceedings.

The appellant appealed the sanction imposed on him, which included a written reprimand, a fine of \$2,000, payment of two-thirds of the costs of the investigation hearing (\$27,782.82), publication of the decision, and payment of two-thirds of the costs of the appeal to the Council (\$15,970.48). Deference is extended to sanctions imposed by a professional body and an appellate court will only intervene where the professional body has made an error of principle or has imposed an unreasonable penalty disproportionate to the offence committed. The Court concluded the sanction imposed was not unreasonable or disproportionate to the offence given the nature of the proceedings, and that requiring a professional to pay all or a portion of hearing and investigation costs is a common aspect of professional disciplinary sanctions.

This case was digested by [Joel A. Morris](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact him directly at jmorris@harpergrey.com or review his biography at <http://www.harpergrey.com>.