

# In the Court of Appeal of Alberta

**Citation: Dr Ignacio Tan III v Alberta Veterinary Medical Association, 2024 ABCA 94**

**Date:** 20240319  
**Docket:** 2203-0170AC  
**Registry:** Edmonton

**Between:**

**Dr. Ignacio Tan III**

Appellant

- and -

**Alberta Veterinary Medical Association**

Respondent

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**The Court:**

**The Honourable Justice Jo'Anne Strekaf  
The Honourable Justice Kevin Feehan  
The Honourable Justice April Grosse**

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## **Memorandum of Judgment**

Appeal from the Decision by  
The Committee of Council of the Alberta Veterinary Medical Association  
Dated the 29th day of July, 2022

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## Memorandum of Judgment

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### The Court:

### INTRODUCTION

[1] The appellant challenges the result of disciplinary proceedings under the *Veterinary Profession Act*, RSA 2000, c V-2 (the Act). Following investigation of a client complaint, the Alberta Veterinary Medical Association (the Association) referred nineteen allegations of unprofessional conduct for a hearing. A Hearing Tribunal found the appellant guilty of four of the nineteen allegations and imposed a sanction. The appellant exercised a right of internal appeal to the Association's Committee of Council, which upheld the findings of the Hearing Tribunal on the merits and on sanction, and also directed the appellant to pay 50% of the costs of the appeal. The appellant now appeals to this Court pursuant to section 45.1 of the Act.

### STANDARDS OF REVIEW

[2] This Court recently reviewed the standards of review applicable to the various proceedings contemplated by the Act: *Sahi v Alberta Veterinary Medical Association*, 2023 ABCA 368 at paras 22-28. In this case:

- (a) The Committee of Council applied a reasonableness standard in its review of the Hearing Tribunal's decision, relying on *Yee v Chartered Professional Accountants of Alberta*, 2020 ABCA 98. The appellant does not challenge the Committee of Council's choice of standard of review in this appeal.
- (b) The standards of review set out in *Housen v Nikolaisen*, 2002 SCC 33, apply to this Court's review of the Committee of Council's decision. Conclusions on questions of law are reviewed for correctness; findings of fact and findings on questions of mixed fact and law are reviewed for palpable and overriding error unless there is an extricable error of law.
- (c) Sanctions and costs in professional disciplinary matters are reviewed for reasonableness.

### ANALYSIS

[3] The findings of the Hearing Tribunal and the Committee of Council on each allegation on which the appellant was found guilty are set out below, along with our discussion of the issues raised on appeal in respect of that allegation. Statements of fact are as found by the Hearing Tribunal.

***Allegation 10: On December 24, 2019, the appellant breached the Orders of the Hearing Tribunal that restricted him supervising any veterinarian by delegating monitoring of the anesthesia during the cystotomy on Diesel to Dr. PD, a Supervised Limited Practice Registered Veterinarian.***

[4] On December 23, 2019, the complainants attended the appellant's clinic with their dog Diesel, who was having difficulty urinating. The appellant performed an unblocking procedure. On the morning of December 24, 2019, the complainants re-attended at the clinic because Diesel's bladder was blocked again. The appellant performed a cystotomy procedure, which required anesthesia.

[5] During the cystotomy, Dr. PD was present. He monitored and recorded the anesthesia, including making at least one adjustment to the anesthesia level at the request of the appellant.

[6] At all material times, Dr. PD held the status of a supervised limited practice registered veterinarian, which meant that he was unable to perform any aspect of the practice of veterinary medicine while unsupervised. As at December 24, 2019, the appellant was subject to orders of a previous hearing tribunal that precluded him from supervising any veterinarian. The Hearing Tribunal found that making adjustments to the anesthesia involved the practice of veterinary medicine, which meant that Dr PD required supervision in that regard. Therefore, the appellant was necessarily involved in supervising Dr PD in the practice of veterinary medicine when he was prohibited from doing so by order and this constituted unprofessional conduct.

[7] The appellant argues that the Committee of Council erred in not overturning the findings of the Hearing Tribunal on one or more of three related bases.

[8] According to the appellant, the Hearing Tribunal made a legal error in its interpretation of the concept of "supervision" and in so doing, deprived him of his procedural right to know the allegation against him. The appellant says that he understood "supervision" to be a formal supervisory relationship, not one event treated as amounting to supervision. He did not have a formal supervisory relationship with Dr PD; in fact, Dr PD had a formal supervisor at another clinic.

[9] Relatedly, the appellant argues that the Hearing Tribunal erred in finding that Dr PD took any steps that required supervision. He claims that because of the time-sensitive nature of the cystotomy procedure, the Association's Practice Inspection and Practice Standards permitted him to proceed without the presence of a registered veterinarian or technologist as anesthetist. He could have proceeded without any assistance or with lay assistance, and he saw Dr PD as a lay assistant. He should not be any worse off for having chosen an assistant who happened to be a limited practice veterinarian.

[10] The appellant notes that even if he is wrong in terms of the situation warranting proceeding without a dedicated licensed anesthetist, the nineteen allegations against him did not include a failure in this regard. He cannot be found guilty of an allegation that was never made.

[11] The Committee of Council rejected the appellant's argument regarding the meaning of "supervision". Citing the definition of "supervision" set out in an Association policy, the Committee held that "[t]he supervision of an act of veterinary medicine is a question of fact and occurs regardless of whether any formal arrangement was or was not made in advance." We find no reviewable error in this conclusion. There is nothing in the wording of the allegation or otherwise in the context or record to support the appellant's narrow interpretation.

[12] We also agree with the Committee of Council's conclusion that there was evidence to support the findings of the Hearing Tribunal that Dr PD was monitoring the anesthesia, that his role required supervision by an unrestricted veterinarian and that the appellant could not so supervise because of the restrictions on his practice arising out of previous disciplinary proceedings. There was no basis for the Committee of Council to interfere with those findings, nor is there a basis for this Court to interfere with the decision of the Committee of Council.

[13] We are satisfied that neither the Hearing Tribunal nor the Committee of Council found the appellant guilty of an allegation not alleged, i.e., proceeding with the cystotomy without an anesthetist. Any discussion of that issue was in response to the appellant's position that since he could have proceeded without any assistance, Dr PD was not engaging in the practice of veterinary medicine. The Committee of Council did not make a reviewable error in rejecting that argument.

***Allegation 12: The appellant failed to ensure that proper discharge instructions were provided to the clients upon discharge of Diesel on December 24, 2019 and Allegation 13: The appellant inappropriately delegated post-operative communication including discharge instructions to unregistered practice staff or Dr PD, a Supervised Limited Practice Registered Veterinarian.***

[14] Allegations 12 and 13 have been addressed together throughout these proceedings.

[15] The appellant left the clinic prior to Diesel's discharge due to a prior holiday family commitment. No other licensed veterinarian or registered veterinary technician was present. The appellant's evidence was that prior to leaving, he prepared detailed written discharge instructions and left them with a customer service representative to provide to the complainants. He also asked the representative to let the complainants know that he was available by phone if they had questions. According to the complainants, the document they received was a blank form.

[16] The Hearing Tribunal found that having decided to proceed with the cystotomy on the morning of December 24, a pre-existing commitment did not excuse the appellant from his

responsibility to provide proper post-surgical treatment for Diesel. Even accepting the appellant's evidence that he prepared written instructions, he did not ensure that they were provided to the complainants. Leaving the written instructions with an unregistered staff member amounted to unprofessional conduct. It was unprofessional for the appellant both to fail to ensure that proper discharge instructions were provided and for him to delegate post-surgery communications to unregistered staff members.

[17] The appellant argues that the Hearing Tribunal made the following errors and that the Committee of Council in turn erred in not allowing his appeal on these grounds:

- (a) The Hearing Tribunal held the appellant to a standard of perfection with respect to providing discharge instructions.
- (b) There could only be "delegation" if the appellant removed himself entirely from the post-discharge communications, which was not the case.
- (c) The analysis of allegations 12 and 13 was conflated so as to result in a double conviction based on one single unprofessional act.

[18] Taking these arguments in turn, both the Hearing Tribunal and the Committee of Council gave explanations for their conclusions that the appellant's conduct did not meet the professional standards in the circumstances. The Hearing Tribunal noted in particular that the surgery had been very recently performed. This was a matter squarely within the Hearing Tribunal's expertise and we are not satisfied that the Tribunal set a standard of perfection.

[19] Similarly, we are not persuaded that there was any reviewable error in the use of the word "delegate" or in the findings of fact in that regard. Regardless of whether the appellant prepared the written discharge instructions, the evidence supports the conclusion that he left the customer representative to both provide the written discharge instructions and to otherwise communicate with the clients. Even the offer to be available by phone was made to the staff member and not to the clients. The finding that there was delegation did not involve an erroneous legal characterization, nor was it otherwise unreasonable. The Committee of Council's handling of that finding does not reveal any error that warrants intervention by this Court.

[20] With respect to the double conviction argument, we understand the appellant's concern. Given that the Hearing Tribunal did not make a finding of fact as to whether the appellant actually prepared written discharge instructions, the focus of the analysis for both allegations 12 and 13 turned on his reliance on the unregistered staff member. However, we read the decisions of the Hearing Tribunal and the Committee of Council as properly distinguishing between the appellant's failure to ensure that whatever discharge instructions he prepared were actually provided to the clients and his failure to engage in personal post-operative communication with the clients to

ensure they understood the instructions. While related, we are satisfied that there was no improper doubling. It is noteworthy that this argument does not appear to have been raised below.

***Allegation 14: In the appellant's communications with the clients on December 27, 2019, he offered to reimburse the clients for their bill in the amount of approximately \$405.00 at Guardian VC and thereafter refused to follow through with that refund.***

[21] After the cystotomy on December 24, 2019, the complainants had further concerns about Diesel and sought treatment at another clinic, Guardian. On December 27, 2019, they complained to the appellant. In the course of a discussion that became heated, the appellant offered to reimburse the complainants for the costs they had incurred. Thereafter, he did not follow through on that reimbursement, though his clinic did pay a larger bill subsequently incurred at Guardian. The Hearing Tribunal found that resiling on the promise to reimburse the clients for the first Guardian bill had a serious negative impact on the integrity of the profession and amounted to unprofessional conduct.

[22] The appellant argues that it is unreasonable to find a binding legal or ethical promise in statements made during a heated discussion. Further, he asserts that in effect, his commitment to pay for subsequent treatment, which he kept, overtook the initial promise and was more favourable to the complainants. This cannot impact the integrity of the profession.

[23] The Committee of Council found that the evidence supported the Hearing Tribunal's findings and that it was reasonable for the Hearing Tribunal to conclude that the appellant's failure to carry out all of the promised reimbursements harmed the integrity of the profession.

[24] We appreciate that the appellant may feel that the finding of guilt on this allegation is unfair, given that he ultimately paid a higher amount than originally promised. However, we agree with the Committee of Council that the findings of the Hearing Tribunal were both supported by the evidence and reasonable. Accordingly, there is no basis for this Court to intervene.

### ***Sanctions***

[25] The Hearing Tribunal imposed the following sanctions, which were upheld by the Committee of Council: reprimand, one month suspension, fine of \$5000 and publication on a "with names" basis. The appellant requests that the entire sanction be overturned, but he takes particular issue with the suspension.

[26] In dealing with sanction, both the Hearing Tribunal and the Committee of Council considered the factors in *Jaswal v Medical Board (Nfld)*, 1996 CanLII 11630 (NLSC). The parties agree that the approach outlined in *Jaswal* applies. However, the appellant argues that the Hearing

Tribunal incorrectly applied the “test” set out in *Jaswal* and that the Committee of Council erred in not intervening on that basis.

[27] For the most part, the appellant’s argument on sanction amounts to asking this Court to weigh the circumstances differently. That is not our role, nor was it the role of the Committee of Council. The points raised by the appellant were considered by the Hearing Tribunal and there was no basis for the Committee of Council to intervene on a reasonableness review.

[28] The appellant specifically argues that the Hearing Tribunal erred in finding that the number of times the offences occurred was neutral, where it should have been mitigating. We disagree. While multiple occurrences of misconduct may be aggravating, it is not necessarily “mitigating” that there was only one series of events before the Hearing Tribunal. Further, it was within the Hearing Tribunal’s purview to note that there were four different findings of unprofessional conduct over the course of two days with one patient. This was the point seized upon by the Committee of Council in its reasons. Nothing in the Hearing Tribunal’s finding on this factor amounted to an error on which the Committee of Council ought to have intervened.

[29] The appellant also takes issue with the Hearing Tribunal’s finding that he had expressed no remorse in relation to his role in the interactions with the complainants, and that this was a “mildly aggravating” factor for sanction. The appellant argues that he gave all his evidence during the “liability” phase of the Hearing Tribunal proceedings, and he could not be expected to express remorse while contesting the allegations on the merits. It is important that professionals not be penalized for defending themselves, directly or indirectly. However, the Hearing Tribunal found this factor to be only “mildly aggravating” and expressly recognized the importance of not punishing the appellant. It would have been possible for the appellant to express remorse for the interactions with the complainants without admitting unprofessional conduct, because the facts about the interactions with the complainants were largely uncontested, with the dispute turning on whether those facts amounted to unprofessional conduct. In the circumstance, the Committee of Council did not make a reviewable error when it found the sanctions as a whole to be reasonable.

[30] In the context of the appellant’s arguments, it is noteworthy that other factors that the Hearing Tribunal took into account as “mitigating” were not necessarily “mitigating”. For example, the fact that there was no evidence of actual harm to the patient could be characterized as an absence of an aggravating factor as opposed to a “mildly mitigating” factor, which was how the Hearing Tribunal looked at it.

### ***Costs***

[31] The Hearing Tribunal ordered that the appellant pay 20% of the costs of the investigation and hearing before it. For its part, the Committee of Council ordered the appellant to pay \$13,500 for the appeal, being approximately 50% of the appeal costs.

[32] The appellant argues that he should not be liable for any investigation or hearing costs because the allegations against him were not particularly serious, and he was found not guilty of most allegations. There was no hearing misconduct. With specific respect to the costs of the appeal before the Committee of Council, the appellant argues that the appeal was a reasonable course of action and that given the regulatory context, the parties should not be seen as winners and losers. The risk of an award of full costs or nearly full costs makes the entire internal appeal process under the Act functionally inaccessible to members.

[33] The appellant also asserts that separate and apart from the percentage of costs awarded, there should be some control on the quantum of expenses that the Association, Hearing Tribunal and Committee of Council are permitted to pass to the member, including legal costs. He acknowledges that the legislation permits the inclusion of counsel costs in a costs award but argues that there should be some review for reasonableness, as would be available in court.

[34] Neither the Hearing Tribunal nor the Committee of Council had the benefit of the decision in *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336, where this Court confirmed that professional regulatory bodies should not automatically order costs against a member, even where allegations are sustained. The decision-maker must consider both whether a costs award is appropriate and if so, the quantum. Costs are not supposed to be punitive or a sanction: *Jinnah* at paras 124 and 127.

[35] We agree with the appellant that even where it is appropriate to order costs against a member, the Hearing Tribunal and the Committee of Council must consider the appropriate quantum in all respects, including which expenses the member should be partially responsible for, whether the expenses incurred were for reasonable steps in reasonable amounts, what portion is chargeable to the member and whether the end result is reasonable: *Alsaadi v Alberta College of Pharmacy*, 2021 ABCA 313, as cited in *Jinnah* at para 130. Also, professional bodies are cautioned against being over-inclusive in the list of allegations against a member, only proving a small number of them, and then claiming for costs purposes that legal and other fees were high because the matter was complex. Even reducing the percentage payable by the member in these circumstances may result in the member paying more costs than they should.

[36] In this case, given the appellant's disciplinary history, the seriousness attributed to the breach of the prior supervision restriction order by the Hearing Tribunal, the findings of guilt on four of nineteen allegations at the Hearing Tribunal, the appellant's lack of success before the Committee of Council, and the fact that the Committee of Council considered the reasonableness of the legal fees incurred for counsel for the Complaints Director and counsel for the Committee of Council, we are not convinced that the costs ordered by the Hearing Tribunal or the Committee of Council were unreasonable so as to warrant intervention.



**CONCLUSION**

[37] For the foregoing reasons, the appeal is dismissed.

Appeal heard on October 31, 2023

Memorandum filed at Edmonton, Alberta  
this 19th day of March, 2024



*Spillone*  
Authorized to sign for:                      Strekaf J.A.

*Spillone*  
Authorized to sign for:                      Feehan J.A.

*Spillone*  
Grosse J.A.

**Appearances:**

D. Girard  
for the Appellant

K.A. Smith, KC (no appearance)

N. Tran  
for the Respondent