

**IN THE MATTER OF THE ENGINEERS AND GEOSCIENTISTS ACT
R.S.B.C. 1996, CHAPTER 116, as amended**

and

IN THE MATTER OF HARBINDER SINGH BAL, P.Eng.

NOTICE OF INQUIRY

TO: Harbinder Singh Bal, P.Eng.
8499 111B Street
Delta, BC V4C 7E2

TAKE NOTICE that a Panel of the Discipline Committee of the Association of Professional Engineers and Geoscientists of British Columbia (the "Association"), will meet at 200 – 4010 Regent Street, in the City of Burnaby, in the Province of British Columbia on **Thursday, the 28th day of November, 2013**, at the hour of 9:00 a.m. for the purpose of taking evidence or otherwise causing an inquiry to be made with respect to the allegations herein pursuant to the *Engineers and Geoscientists Act*, R.S.B.C. 1996, chapter 116, as amended (the "Act").

AND TAKE NOTICE that the allegations against you are as follows:

1. That you have contravened the *Code of Ethics* of the Association and that further, you have demonstrated unprofessional conduct contrary to the *Act*, in that, with respect to the engineering services that you provided to the following individuals:

- i.
- ii.
- iii.

your conduct was contrary to the *Code of Ethics* in that you failed to uphold the values of truth, honesty and trustworthiness, and further, failed to act as a faithful agent of your clients and further, failed to conduct yourself with fairness, courtesy and good faith towards your clients, colleagues and others, particulars of which are the following:

- a. you failed to respond to your clients in a timely and appropriate manner; and

- b. you failed to respond to the Association's communications in a timely and appropriate manner;
2. That you have contravened the *Code of Ethics* of the Association and that further, you have demonstrated unprofessional conduct contrary to the *Act*, in that, with respect to the engineering services that you provided to _____ and _____ with respect to a project located at _____ Surrey, British Columbia, your conduct was contrary to the *Code of Ethics* in that you failed to uphold the values of truth, honesty and trustworthiness, and further, failed to act as a faithful agent of your clients and further, failed to conduct yourself with fairness, courtesy and good faith towards your clients, colleagues and others, particulars of which are the following:
 - a. you failed to respond to your clients in a timely and appropriate manner; and
 - b. you failed to respond to the Association's communications in a timely and appropriate manner;
3. That you have contravened the *Code of Ethics* of the Association and that further, you have demonstrated unprofessional conduct contrary to the *Act*, in that, with respect to the engineering services that you provided to _____ for the project located at _____ Surrey, British Columbia, your conduct was contrary to the *Code of Ethics* in that you failed to uphold the values of truth, honesty and trustworthiness, and further, failed to act as a faithful agent of your clients and further, failed to conduct yourself with fairness, courtesy and good faith towards your clients, colleagues and others, particulars of which are the following:
 - a. you failed to respond to your clients in a timely and appropriate manner;
 - b. you failed to issue the Building Code schedule required by your clients when no further work was required by you;
 - c. you used the issuance of the Building Code schedule required by your clients as leverage to have them withdraw the complaint that they submitted to the Association regarding your conduct; and
 - d. you failed to respond to the Association's communications in a timely and appropriate manner; and
4. That you have contravened the provisions of the *Act* and that further, you have demonstrated unprofessional conduct contrary to the *Act*, by your failure to provide the Association's Investigation Committee with the requested information or records in your possession or control, as required by section 30(4) of the *Act*, particulars of which are you failed to respond to the Association's request for information by letter to you dated September 30, 2013, regarding the Association's file numbers T12-004, T13-006 and T13-013.

AND FURTHER TAKE NOTICE that you, Harbinder Singh Bal, P.Eng., have the right, at your own expense, to be represented by legal counsel at the inquiry by the Panel of the

Discipline Committee, and you or your legal counsel shall have the full right to cross-examine all witnesses called and to call evidence in defence and reply in answer to the allegations herein.

AND FURTHER TAKE NOTICE that in the event of your non-attendance at the inquiry, the Panel of the Discipline Committee may, upon proof of service of this Notice of Inquiry upon you, proceed with the taking of evidence or otherwise ascertaining the facts concerning the said allegations, your absence notwithstanding, and may make its findings on the facts and its decision thereon without further notice to you.

DATED at the City of Burnaby, Province of British Columbia, this 5th day of November, 2013.

The Discipline Committee of the Association of Professional Engineers and Geoscientists of the Province of British Columbia.



Per: Paul Adams,
Chairman of the Discipline Committee

**IN THE MATTER of the *ENGINEERS AND GEOSCIENTISTS ACT*
R.S.B.C. 1996, c. 116 (as amended)**

and

HARBINDER SINGH BAL, P.Eng.

DETERMINATION OF THE DISCIPLINE COMMITTEE ON LIABILITY

Discipline Committee Panel:

Paul Adams, P.Eng. (Chair)

Upul Atukorala, P.Eng.

Oliver Bonham, P.Geo.

Counsel for the Panel:

David Martin

Counsel for Association:

Kerry Short

No one appearing on behalf of Mr. Bal

INTRODUCTION

1. A Discipline Committee Panel (the "Panel") of the Association of Professional Engineers and Geoscientists of British Columbia (the "Association"), under the authority of the Engineers and Geoscientists Act, RSBC 1996 c. 116 as amended (the "Act") held an Inquiry to examine the alleged contraventions of the Act and the Code of Ethics by Harbinder Singh Bal, P.Eng.

2. The hearing took place in the offices of Miller Thomson LLP on March 24, 2014 and May 5, 2014. The charges against Mr. Bal in the Notice of Inquiry were as follows:

1. That you have contravened the *Code of Ethics* of the Association and that further, you have demonstrated unprofessional conduct contrary to the *Act*, in that, with respect to the engineering services that you provided to the following individuals:

- i. [REDACTED] with respect to an [REDACTED] service station project;
- ii. [REDACTED] with respect to an unidentified project; and
- iii. [REDACTED] with respect to a project located at [REDACTED] New Westminster, British Columbia,

your conduct was contrary to the *Code of Ethics* in that you failed to uphold the values of truth, honesty and trustworthiness, and further, failed to act as a faithful agent of your clients and further, failed to conduct yourself with fairness, courtesy and good faith towards your clients, colleagues and others, particulars of which are the following:

- a. you failed to respond to your clients in a timely and appropriate manner; and
- b. you failed to respond to the Association's communications in a timely and appropriate manner;

2. That you have contravened the *Code of Ethics* of the Association and that further, you have demonstrated unprofessional conduct contrary to the *Act*, in that, with respect to the engineering services that you provided to [REDACTED] and [REDACTED] [REDACTED] with respect to a project located at [REDACTED] Surrey, British Columbia, your conduct was contrary to the *Code of Ethics* in that you failed to uphold the values of truth, honesty and trustworthiness, and further, failed to act as a faithful agent of your clients and further, failed to conduct yourself with fairness, courtesy and good faith towards your clients, colleagues and others, particulars of which are the following:

- a. you failed to respond to your clients in a timely and appropriate manner; and
- b. you failed to respond to the Association's communications in a timely and appropriate manner;

3. That you have contravened the *Code of Ethics* of the Association and that further, you have demonstrated unprofessional conduct contrary to the *Act*. In that, with respect to the engineering services that you provided to [REDACTED] for the project located at [REDACTED], Surrey, British Columbia, your conduct was contrary to the *Code of Ethics* in that you failed to uphold the values of truth, honesty and trustworthiness, and further, failed to act as a faithful agent of your clients and further, failed to conduct yourself with fairness, courtesy and good faith towards your clients, colleagues and others, particulars of which are the following:

- a. you failed to respond to your clients in a timely and appropriate manner;
- b. you failed to issue the Building Code schedule required by your clients when no further work was required by you;
- c. you used the issuance of the Building Code schedule required by your clients as leverage to have them withdraw the complaint that they submitted to the Association regarding your conduct; and
- d. you failed to respond to the Association's communications in a timely and appropriate manner; and

4. That you have contravened the provisions of the *Act* and that further, you have demonstrated unprofessional conduct contrary to the *Act*, by your failure to provide the Association's Investigation Committee with the requested information or records in your possession or control, as required by section 30(4) of the *Act*, particulars of which are you failed to respond to the Association's request for information by letter to you dated September 30, 2013, regarding the Association's file numbers T12-004, T13-006 and T13-013.

3. The Panel convened on March 24, 2014 and determined that there was not sufficient evidence to prove that Mr. Bal had been notified of the change in date for the Inquiry and, therefore, adjourned the hearing until May 5, 2014.

4. On May 5, 2014, the Panel heard the evidence on liability and on the conclusion of the Association's case directed Counsel for the Association to provide a written submission with respect to certain matters related to the notice of Inquiry. The Panel received the submission from Mr. Short on May 20, 2014 and subsequently met on May 26, 2014 to consider the submission from the Association and the evidence presented at the hearing.

NOTICE TO THE MEMBER

5. The Panel convened on March 24, 2014 at 9:30 AM and since the member was not present, immediately adjourned for 30 minutes to give Mr. Bal time to appear. After 30 minutes, Mr. Bal was still not present so the Panel ordered that the hearing should proceed.

6. Mr. Short provided the Panel members each with a binder of documents that he intended to enter into evidence. Mr. Short pointed to the Affidavit of Service under Tab C in the binder, which proved that Mr. Bal was properly served with the original Notice of Inquiry on November 14, 2013. The Panel noted that the original Notice of Inquiry served

on Mr. Bal set out November 28, 2013 as the date that the hearing into the matter would proceed and asked for evidence that Mr. Bal had been properly notified that the hearing was delayed and that it would proceed today, March 24, 2014.

7. Mr. Short provided nine pages of documents that were entered into evidence as Exhibit #1.

8. An unidentified person sent an email to Mr. Short on March 4, 2014 at 5:57 AM from the email address geocivic2010@engineer.com, which Mr. Short said, was Mr. Bal's email address. The email from the unidentified person states:

"I am writing on behalf of Mr. Harbinder Bal. He yells [tells] me that he has a meeting this morning. Last night he fell ferom [from] ythe [the] rear deck steps and took his back out. He is not mobile. He gas [has] got a docyors [doctors] appoinyment [appointment] this morning. He said he will correspond after the appointment."

9. Mr. Short responded at 7:43 AM as follows:

"I am sorry to hear about Mr. Bal's accident. I hope he recovers quickly.

A notice advising Mr. Bal that the hearing is adjourned to March 24 was sent out to him last week. I will have it resent to him in the event he did not receive it.

The hearing will commence at 10:00 AM on March 24, 2014 at the offices of Miller Thompson LLP (1000-840 Howe Street, Vancouver)."

10. At 9:06 the same day, March 4, Mr. Short sent a second email to Mr. Bal's email address enclosing his February 28, 2014 letter and the amended notice of Inquiry.

11. After careful consideration of the evidence, the Panel was not satisfied that Mr. Bal had been properly served with the amended Notice of Inquiry setting out the new date for the hearing for the following reasons:

1. The amended Notice of Inquiry was not served on Mr. Bal in accordance with the requirements of Section 32 (2) of the Act, which requires that "...written notice of an inquiry to be personally served on the person who is the subject of the inquiry or, failing personal service, by leaving the notice at, or by mailing by registered mail to, the person's last address on file with the Association."
2. Mr. Short did not receive acknowledgement that his letter and the amended Notice of Inquiry was received by Mr. Bal.
3. The email address used by Mr. Bal was also monitored by others as demonstrated by the email to Mr. Short on March 4.

4. The emails suggest that by March 4, Mr. Bal had not received the February 28, letter from Mr. Short.
12. The Panel ruled that if the Association contacts Mr. Bal by telephone and receives his acknowledgement that he received the amended Notice of Inquiry sent to him by email on March 4, 2014, the hearing could proceed.
13. Mr. Short was unable to contact Mr. Bal by telephone. At Mr. Short's request, the Panel adjourned the hearing until 9:30 AM on May 5, 2014, on a pre-emptory basis.
14. On May 5, 2014, the Inquiry re-convened at 9:30 AM. Mr. Bal was not present.
15. Mr. Short entered into evidence as Exhibit #2 an Affidavit of Personal Service and letter to Mr. Bal dated March 25, 2014. The affidavit confirmed that Mr. Short's March 25 letter was accepted by Mr. Bal at 8:20 PM on April 15, 2014.
16. The Panel accepted that Mr. Bal had been properly served and was aware that the hearing would continue today.

NOTICE OF INQUIRY

17. After the Panel was satisfied that Mr. Bal had received notice that the inquiry was to proceed on May 5, Mr. Short provided the Panel with an opening statement and explained that the Association is proceeding with charge 1(b), 2(b), 3(a) through (d) and 4 as set out in the Notice of Inquiry dated November 5, 2013.
18. Mr. Short provided an opening statement and presented evidence through two witnesses, Mr. [REDACTED] and Mr. Thiele. After testimony from the witnesses, Mr. Short provided a final submission to the Panel.
19. During his opening, Counsel for the Association said that the Association would not proceed with some of the charges contained in the Notice of Inquiry dated November 5, 2013; namely charge 1(a) and 2(a). Given that, some of the wording in the preamble to those charges may not have been applicable to the remaining charge and, therefore, the charge would have to be amended the Panel asked for a written submission from Mr. Short on whether a further Notice of Inquiry would have to be served on Mr. Bal. Mr. Short was also asked to address whether by the use of "and" after a number of charges, the charges should be read as conjunctive.
20. On May 20, 2014, Mr. Short provided a written submission on these matters.
21. In paragraph 5 and 6 of his May 20, 2014 submission, Mr. Short argues that it is proper to reduce the number of charges if the evidence to be presented does not support all the charges:

5. The Association says that as a hearing progresses, the evidence presented may not reasonably support a finding of misconduct on all of the charges originally alleged. In such circumstances, it is right and proper for the Discipline Committee to make findings on a reduced number of charges based upon the evidence presented.
 6. It is not necessary, and in fact would be improper, to require the Association to reissue a Notice of Inquiry that includes only the charges that it wishes the Discipline Committee to consider upon the conclusion of the presentation of evidence.
22. And in paragraph 15 Mr. Short says that if new facts are heard that indicate new charges are appropriate, there must be disclosure and notice:
15. Issues arise when, in the course of hearing evidence, new facts are heard that indicate a different incident of professional misconduct occurred, apart from the matter before the discipline committee. Fairness dictates that there must be disclosure and notice, and surprise evidence at a hearing can violate these principles.
23. Finally in paragraph 19, Mr. Short contends that:
19. None of the evidence presented is properly considered a surprise that would require a delay or new hearing.
24. In paragraph 23 and 24 Mr. Short addresses the conjunctive wording in the charges:
23. The Panel raised an additional question regarding the presence of the word "and" at the end of charges 1(a), 2(a) and 3(c) and (d). In our submission the "and" may be disregarded with respect to 1(a) and 2(a) since those are not being proceeded with. As noted above, charges in administrative proceedings are not to be held to the same technical rigidity as in criminal proceedings.
 24. Nothing about the presence of these words has mislead Bal about what matters would be the subject of this hearing. With respect to the "ands" in charge 3, our submission is two fold: Firstly, if (a) through (d) are to be read conjunctively, then all of those matters have been proven on the evidence. Secondly, the charges do not require the rigidity of criminal matters and therefore the "ands" can be ignored as if they were not there.
25. Mr. Short, in his submission, provided the following amended wording for the charges:
1. That you have demonstrated unprofessional conduct contrary to the Act, in that, with respect to the engineering services that you provided to the following individuals:
 - i. [REDACTED] with respect to an [REDACTED] service station project;
 - ii. [REDACTED] with respect to an unidentified project; and
 - iii. [REDACTED] with respect to a project located at [REDACTED] New Westminster, British Columbia,
 - a. you failed to respond to the Association's communications in a timely and appropriate manner;

2. That you have demonstrated unprofessional conduct contrary to the *Act*, in that, with respect to the engineering services that you provided to [REDACTED] and [REDACTED] with respect to a project located at [REDACTED] Surrey, British Columbia,;
- a. you failed to respond to the Association's communications in a timely and appropriate manner;
3. That you have contravened the *Code of Ethics* of the Association and that further, you have demonstrated unprofessional conduct contrary to the *Act*, in that, with respect to the engineering services that you provided to [REDACTED] for the project located at [REDACTED] Avenue, Surrey, British Columbia, your conduct was contrary to the *Code of Ethics* in that you failed to uphold the values of truth, honesty and trustworthiness, and further, failed to act as a faithful agent of your clients and further, failed to conduct yourself with fairness, courtesy and good faith towards your clients, colleagues and others, particulars of which are the following:
- a. you failed to respond to your clients in a timely and appropriate manner;
- b. you failed to issue the Building Code schedule required by your clients when no further work was required by you;
- c. you used the issuance of the Building Code schedule required by your clients as leverage to have them withdraw the complaint that they submitted to the Association regarding your conduct;
- d. you failed to respond to the Association's communications in a timely and appropriate manner.
4. That you have contravened the provisions of the *Act* and that further, you have demonstrated unprofessional conduct contrary to the *Act*, by your failure to provide the Association's Investigation Committee with the requested information or records in your possession or control, as required by section 30(4) of the *Act*, particulars of which are you failed to respond to the Association's request for information by letter to you dated September 30, 2013, regarding the Association's file numbers T12-004, T13-006 and T13-013.
26. The Panel is persuaded that the amended charges merely reflect what the Association set out to prove and does not have to be served on Mr. Bal, because the effect of the amendment is to reduce, rather than enlarge upon the charges.
27. With respect to the use of the "and" in the charges, the Panel accepts that the charges are not to be read as conjunctive and that the technical requirements of charge drafting is not the same as in a criminal matter. The Panel also accepts that Mr. Bal clearly knows what charges he faces.

28. For these reasons the Panel grants the amendment as requested, without the need to serve it on Mr. Bal.

BURDEN OF PROOF

29. Following the presentation of evidence, Mr. Short provided a written submission and advised the Panel with respect to the burden of proof upon the Association and the standard of proof that the Panel must apply in reaching its decision in the matters before it.
30. The appropriate standard of proof is on a balance of probabilities, as determined by the Supreme Court of Canada in *F.H. v. McDougall*, 2008 SCC 53 (where the Court concluded that there is only one civil standard of proof at common law, that being proof on a balance of probabilities).

EVIDENCE

31. Mr. Short provided the Panel members with a binder of documents that was marked as Exhibit #3. This binder contained:
- A. Notice of Inquiry
 - B. Amended Notice of Inquiry;
 - C. Affidavit of Service
 - D. 28 documents
32. Mr. Short called [REDACTED] a retired millwright, as his first witness to address Charge 3 in the Notice of Inquiry.
33. Mr. [REDACTED] testified that he constructed his own home at [REDACTED] Surrey, BC and hired Mr. Bal to complete the structural engineering work and provide the letters of assurance required by the City in accordance with the building code.
34. On Friday October 12, 2012, Mr. [REDACTED] scheduled the building inspector for the final inspection on his house. On arrival at site, the building inspector asked for the letter of assurance, Schedule C-B, signed by the structural engineer. Mr. [REDACTED] did not have the Schedule available so the final building inspection could not take place.
35. Mr. [REDACTED] telephoned Mr. Bal and explained that he needed the Schedule C-B and Mr. Bal said that Mr. [REDACTED] could collect the signed letter of assurance from his home that evening. Based on this assurance, Mr. [REDACTED] re-scheduled the final building inspection for Monday, October 15, 2012.
36. When Mr. [REDACTED] arrived at Mr. Bal's home to collect the letter of assurance there was nobody at home. Mr. [REDACTED] tried several times on Friday and over the weekend to contact Mr. Bal by telephoning his cell phone, but the phone was not answered and Mr.

Bal did not call him.

37. Mr. [REDACTED] cancelled the inspection and was required to pay a \$50 cancellation fee.
38. On Monday, October 15, 2012, having not heard from Mr. Bal, Mr. [REDACTED] contacted the Association and lodged a complaint against Mr. Bal.
39. On Tuesday, October 16, 2012, Mr. Bal phoned Mr. [REDACTED] and told Mr. [REDACTED] that he should not have made a complaint against him. Mr. [REDACTED] testified that Mr. Bal said that if he (Mr. [REDACTED]) withdraws the complaint, Mr. Bal would issue the letter of assurance.
40. Mr. [REDACTED] called the Association and said that he would like to withdraw the complaint.
41. On October 17, 2012, Mr. Bal issued the letter of assurance, Schedule C-B, and Mr. Rattan rescheduled the building inspection for October 19.
42. In response to a question from the Panel, Mr. [REDACTED] testified that all other inspections and letters of assurance from Mr. Bal were completed on time and without any delays.
43. In response to a question from the Panel, Mr. [REDACTED] testified that Mr. Bal told him on October 16, 2012 that he was not home on the previous Friday due to a family problem.
44. Mr. Short then called Mr. Geoff Thiele, who was the Association's Director, Legislation, Ethics and Compliance during the period when the complaints against Mr. Bal were received and investigated.
45. Mr. Thiele testified that they had received a number of complaints against Mr. Bal related to Mr. Bal's clients having difficulty contacting Mr. Bal. Initially, the Association did not process the complaints through the formal complaint procedure, preferring to look for a solution directly with Mr. Bal through an informal process. Eventually the continuing complaints led Mr. Thiele to begin the complaint process and he appointed a designated reviewer.
46. Mr. Short led Mr. Thiele through all 28 documents in part D of Exhibit #3 as follows:

Tab	Date	Document	Content
1.	March 29, 2010	E-mail from Geoff Thiele to Mr. Bal re: complaint	Complaint from [REDACTED] who was unable to contact Bal by phone, fax, email or in person. Thiele urges Bal to contact his client, but does not ask for a reply to the Association.
2.	April 21-27, 2010	E-mail string between Geoff Thiele and Mr. Bal re: complaint	Complaint from [REDACTED] that he has been unable to contact Bal. Thiele urges Bal to contact his client, but does not ask for a reply to the Association. Bal writes to Thiele saying his fees have not been paid and Thiele responds saying that he should still not ignore his clients. Bal writes back to say that sometimes his clients require him to circumvent his principles and ethics.
3.	April 26, 2010	E-mail from Mr. Bal to Geoff Thiele re: complaint	Bal replies again to the original note from Thiele in Tab 2 asking "what project???"
4.	May 4, 2010	E-mail from Geoff Thiele to Mr. Bal re: complaint	Complaint from [REDACTED] regarding Bal's failure to respond to communications. [REDACTED] is trying to get Bal to provide Schedule C-B. Thiele reminds Bal that this is the third complaint and that although the Association will not be taking action at this time, it reserves the right to look into it in the future. [REDACTED] writes to Thiele saying Bal phoned and said he had not been paid, but when [REDACTED] said he had proof that he had paid him the papers (presumably Schedule C-B) were released.
5.	June 1 & 14, 2011	E-mails from Geoff Thiele to Mr. Bal re: complaint	On June 1, Thiele writes to Bal regarding a complaint from [REDACTED] that Bal failed to respond to communications and to meet contractual and professional obligations. Thiele reminds Bal that this is the fourth complaint and that not responding to his clients is unacceptable. Thiele advises Bal that he will now be referring the matter to the Investigation Committee. Thiele does not ask Mr. Bal for a reply. On June 14, Thiele writes again to Bal saying that he has still not contacted [REDACTED] and urging him to do so. Bal responds saying that he is in hospital and that his father has passed away and promises to contact [REDACTED] when he gets out of the hospital.

Tab	Date	Document	Content
6.	March 20, 2012	Letter from Geoff Thiele to Mr. Bal seeking Mr. Bal's comments on designated reviewer report (without enclosures)	The report from the designated reviewer (not provided in evidence) is related to complaints from [REDACTED] and [REDACTED]. A response is required by 4 PM on April 10, 2012 and Bal is warned that failure to respond is a breach of the Act and may result in disciplinary action.
7.	April 13, 2012	Letter from Geoff Thiele to Mr. Bal following up on March 20 letter	Thiele states that the Association has not received a response to the March 20 letter and reminds Bal that failure to respond is a breach of the Act.
8.	April 16, 2012	E-mail string including Mr. Bal's response	Bal responds by email saying that he will respond to the original letter by April 24, 2012.
9.	April 19, 2012	E-mail from Beverly Mitovic to Mr. Bal, copied to Geoff Thiele, granting extension of deadline for Mr. Bal's response	Mitovic writes to Bal saying the committee has extended the deadline to April 24, but if a response is not provided by that date the matter will be put on the agenda of the Investigation for their meeting April 26.
10.	April 24, 2012	Email from Mr. Bal attaching letter dated April 22, 2012	Bal responds to the Association's March 20 letter. Bal explains that he has not worked out of the Surrey office since January 2010 and did not know the letter was there until Ms. Mitovic emailed the follow-up letter on April 16. Bal met the April 24 deadline for a reply. Bal explains that he has had personal and family problems and has only been working part time since May 2010.
11.	July 11, 2012	Letter from Geoff Thiele to Mr. Bal requiring submission of a plan to address complaint issues	Thiele writes saying the sub-committee requests that Bal provide a plan as to how he is going to address the issues raised in the original complaints regarding Bal's failure to respond to clients. Thiele does not provide a deadline for a response from Bal.
12.	July 28, 2012	Letter from Mr. Bal to Geoff Thiele responding to July 11 th letter	Bal writes in response to the July 11 letter from Thiele, but does not provide a plan as requested. Bal provides an update on the status and his communications with the clients for the four projects for which complaints have been received.

Tab	Date	Document	Content
13.	August 9, 2012	Letter from Beverly Mitovic to Mr. Bal requiring submission of a plan to address complaint issues and evidence that the plan has been put into action	Thiele writes saying again that the sub-committee requests that Bal provide a plan as to how he is going to address the issues raised in the original complaints regarding Bal's failure to respond to clients and the underlying causes and proof that the plan has been put into action. Thiele asks for a response within 3 weeks of the letter (by August 30).
14.	September 12, 2012	Complaint letter from [REDACTED] re: Mr. Bal (without enclosures)	[REDACTED] counsel for [REDACTED] and [REDACTED] and writes on their behalf. Bal was unresponsive to emails in July and August and agreed in a telephone conversation to transfer engineering responsibility to another engineer, but Bal was unresponsive in [REDACTED] attempts to contact him to transfer the engineering responsibility.
15.	September 17, 2012	E-mail from Beverly Mitovic to Mr. Bal following up on August 9 th letter and telephone discussion	Mitovic writes regarding Thiele's August 9 letter and requests a response from Bal for the sub-committee and points out that failure to do so is a breach of the Act and may result in disciplinary action. Mitovic points out that the next sub-committee meeting is September 27.
16.	September 27, 2012	Email from Mr. Bal to Beverly Mitovic attaching September 23, 2012 letter	Mr. Bal forwards his letter responding to Thiele's August 9 letter to Mitovic. Bal's letter is dated September 23. Bal says the problems usually resulted from the clients failure to pay for services and provides a 4 point plan, that he says in in place: <ul style="list-style-type: none"> • He will insist on a retainer prior to work. • He will require clients to sign a document detailing the scope of work and fees and those fees must be paid before final documents will be released. • He will not work beyond 4 PM or on weekends, unless public safety is at risk. • He has enrolled in Yoga and meditation classes, is waiting for a January 2013 anger management class and is considering counseling and family discussion. It is noted that this response is almost 1 month overdue and was sent after a reminder from the Association.

Tab	Date	Document	Content
17.	October 1, 2012	Letter from Geoff Thiele to Mr. Bal requiring written response to [REDACTED] complaint	Thiele writes regarding the [REDACTED] complaint and requests a full written response to the complaint and all allegations noted in the [REDACTED] September 12 letter. A response is required from Bal within 3 weeks (by October 22).
18.	October 16, 2012	E-mail from Geoff Thiele to Mr. Bal re: complaint from [REDACTED]	Thiele writes regarding a complaint from who claims "...you repeatedly promised and failed to deliver the Schedule and are now not answering your phone or door." Thiele asks that Bal contact his client and resolve the issue. Thiele advises Bal that this new matter will be referred to the Investigations Committee, but he does not ask for a response to the email.
19.	October 16, 2012	E-mail from Geoff Thiele to Mr. Bal re: issuance of [REDACTED] schedule in exchange for withdrawal of complaint	Thiele writes regarding a second telephone call from [REDACTED] who claims that Bal told him that he would issue the Schedule C-B if he withdrew his complaint. Thiele points out that using the issuance of Schedule C-B as leverage or a bargaining chip in response to a complaint is unprofessional. Thiele also points out that there is no mechanism to withdraw a complaint once it has been made and the Association is obligated by law to investigate. Thiele does not ask for a response to the email. In testimony, Thiele said that the Association's standard of practice is that the Schedule should be issued even if there is a disagreement over payment.
20.	October 24, 2012	Letter from Geoff Thiele to Mr. Bal following up on October 1 st letter	Thiele writes to say they have not received a response to the October 1 letter and advises Bal that the Association will give him 1 week to respond before processing the complaint based on the complainant's submission. A reply is required by October 31.

Tab	Date	Document	Content
21.	November 1, 2012	Letter from Geoff Thiele to Mr. Bal requiring written response to [REDACTED]'s complaint	<p>Thiele writes regarding the [REDACTED] complaint and says that Bal's conduct raises the following issues:</p> <ol style="list-style-type: none"> 1. "Your failure to communicate with your client in a timely manner; 2. Your failure to issue a Schedule C-B when no further work was required by you and your fees had been paid in full; and 3. Your use of the issuance of the Schedule as leverage to have the complaint withdrawn against you." <p>Thiele requests a written response to the issues set out in the letter (and listed above) within 3 weeks (by November 22).</p>
22.	November 28, 2012	Letter from Geoff Thiele to Mr. Bal following up on November 1 st letter	<p>Thiele writes to say they have not received a response to the November 1 letter and advises Bal that the Association will give him 1 week to respond before processing the complaint based on the complainant's submission.</p> <p>A reply is required by December 5.</p>
23.	May 24, 2013	Email from Mr. Bal to Geoff Thiele attaching Mr. Bal's September 23, 2012 and May 22, 2013 letters, and Mr. [REDACTED] September 5, 2012 letter	<p>Bal writes by email in response to "Your letter of May 1st 2013" (note that the letter was not provided in evidence to the Panel).</p> <p>The email from Bal references 4 files, but only 3 were provided in evidence to the Panel.</p> <p>May 22 letter from Bal</p> <p>Explains that the problems with [REDACTED] are due to [REDACTED]'s failure to pay for Bal's services (he claims that [REDACTED] owes him in excess of \$16,000).</p> <p>With respect to [REDACTED] Bal denies that he "...repeatedly promised and failed to deliver..." the Schedule C-B and he denies that he used the issuance of the Schedule C-B as leverage.</p> <p>September 5, 2012 letter from Malik</p> <p>This letter to Bal outlines the process for transferring engineering responsibility to the new engineer (referred to in [REDACTED] letter to the Association in Tab 14).</p> <p>September 23, 2012 letter from Bal</p> <p>This is the letter under Tab 16.</p>

Tab	Date	Document	Content
24.	July 18, 2013	Letter from Geoff Thiele to Mr. Bal requiring appearance before the subcommittee	Thiele writes regarding the Investigation Committee appointment of a sub-committee to review the complaints and requires Bal to attend an interview pursuant to Section 30(4) of the Act. Thiele sets the first 2 weeks of August for the interview and reminds Bal that failure to appear is a breach of the Act and subject to disciplinary action.
			Thiele asks Bal for confirmation of his availability for a meeting in the first half of August.
25.	August 13 – September 5, 2013	E-mail string between Kayla Vantriet and Mr. Bal re: Mr. Bal's meeting with the subcommittee	On August 13, Vantriet writes to Bal, refers to their telephone call "last week" and sets September 12, 2013 for the meeting with the sub-committee. On August 29, Vantriet asks Bal to confirm his availability for the September 12 meeting. On September 5, Vantriet refers to her unsuccessful attempts to contact Bal by telephone and again asks him to confirm his availability for the September 12 meeting.
26.	September 9, 2013	Letter from Geoff Thiele to Mr. Bal confirming meeting with the subcommittee	Thiele writes further to his letter of July 18 and Vantriet's attempts to contact him (Tab 25). Thiele confirms that the meeting with the sub-committee is scheduled for September 12, 2013 at 9:00 AM. Thiele says that failure to attend the meeting is a breach of Section 30(4) of the Act and may result in charges.
27.	September 19, 2013	Email from Mr. Bal to Kayla Vantriet re: meeting with the subcommittee	Bal responds to Vantriet's emails (Tab 25) and says there has been a death in the family and he is out of the country attending [the] funeral and religious services.

Tab	Date	Document	Content
28.	September 30, 2013	Letter from Geoff Thiele to Mr. Bal requiring information from Mr. Bal	<p>Thiele writes regarding the outstanding complaints and Bal's failure to appear before the sub-committee.</p> <p>Thiele asks for information to support the various assertions made by Bal:</p> <ul style="list-style-type: none"> • Documentation supporting his hospital stay in June 2011 (Tab 5). • Documentation regarding his stay in Osoyoos in August 2013 where Bal claims there was no internet service. • Documentation regarding the family death and his trip out of the country (Tab 27). <p>Thiele advises Bal that the three complaint files will be on the agenda of the Investigation Committee meeting scheduled for October 31, 2013 and that failure to provide the information requested in the letter by 4:00 PM on October 15, 2013 will be referred to the Committee for consideration of breach of Section 30(4) of the Act.</p>

ANALYSIS

47. The Panel first considered the amended Charge 1, that is:

1. That you have demonstrated unprofessional conduct contrary to the *Act*, in that, with respect to the engineering services that you provided to the following individuals:

- i. [REDACTED] with respect to an [REDACTED] service station project;
- ii. [REDACTED] with respect to an unidentified project; and
- iii. [REDACTED] with respect to a project located at [REDACTED] New Westminster, British Columbia,

- a. you failed to respond to the Association's communications in a timely and appropriate manner;

48. The Association wrote to Mr. Bal on March 20, 2012 regarding the complaints from [REDACTED] and [REDACTED] and requested a response by April 10, 2012 (Paragraph 46, Tab 6, above). This deadline was later extended to April 24, 2012 (Paragraph 46, Tab 9, above). Mr. Bal met the extended deadline and responded on April 24, 2012.

49. The Association wrote to Mr. Bal on July 11 asking for a plan to address the issues raised by the four complaints (Paragraph 46, Tab 11, above). Mr. Bal responded on July 28, but did not provide the plan as requested (Paragraph 46, Tab 12, above).

50. The Association wrote to Mr. Bal on August 9 asking again for a plan to address the issues raised by the four complaints and requested a response by August 30 (Paragraph 46, Tab 13, above). Mr. Bal responded to the Association on September 27 with a letter dated September 23, however, Mr. Thiele testified that the plan provided by Mr. Bal did not adequately address the issues raised by the complaints (Paragraph 46, Tab 16, above).
51. The Panel accepts the evidence presented by the Association and finds that Mr. Bal's failure to respond to the Association in a timely and appropriate manner, as required by Section 30(4) of the Act, is unprofessional conduct.
52. The Panel considered the amended Charge 2, that is:
2. That you have demonstrated unprofessional conduct contrary to the *Act*, in that, with respect to the engineering services that you provided to [REDACTED] [REDACTED] with respect to a project located at [REDACTED] Surrey, British Columbia,:
- a. you failed to respond to the Association's communications in a timely and appropriate manner;
53. The Association wrote to Mr. Bal on October 1, 2012 requesting Bal's response to the allegations made by the [REDACTED] (Paragraph 46, Tab 17, above). Despite a reminder from the Association on October 16, 2012 (Paragraph 46, Tab 18, above), Mr. Bal did not respond to the Association.
54. The Panel accepts the evidence presented by the Association and finds that Mr. Bal's failure to respond to the Association in a timely and appropriate manner, as required by Section 30(4) of the Act, is unprofessional conduct.
55. The Panel considered the amended Charge 3, that is:

3. That you have contravened the *Code of Ethics* of the Association and that further, you have demonstrated unprofessional conduct contrary to the *Act*, in that, with respect to the engineering services that you provided to [REDACTED] for the project located at [REDACTED] Surrey, British Columbia, your conduct was contrary to the *Code of Ethics* in that you failed to uphold the values of truth, honesty and trustworthiness, and further, failed to act as a faithful agent of your clients and further, failed to conduct yourself with fairness, courtesy and good faith towards your clients, colleagues and others, particulars of which are the following:
- a. you failed to respond to your clients in a timely and appropriate manner;
 - b. you failed to issue the Building Code schedule required by your clients when no further work was required by you;
 - c. you used the issuance of the Building Code schedule required by your clients as leverage to have them withdraw the complaint that they submitted to the Association regarding your conduct;
 - d. you failed to respond to the Association's communications in a timely and appropriate manner.
56. [REDACTED] testified that Mr. Bal failed to provide the Schedule C-B on October 12, 2012, as he had promised, and that Mr. Bal could not be contacted at his home or by telephone until after [REDACTED] had made a complaint to the Association. The Panel accepts [REDACTED] testimony that Mr. Bal knew that [REDACTED] required the Schedule C-B for a building inspection on October 15 and that Mr. Bal had promised to provide the letter on October 12.
57. With respect to Charge 3a, the Panel finds that Mr. Bal's subsequent failure to provide the letter and failure to communicate with [REDACTED] is a contravention of the Code of Ethics.
58. The Panel's opinion is that good engineering practice would be for Mr. Bal to have issued the Schedule C-B after he had completed all the required inspections and the work was complete, in advance of the final building inspection, and without being specifically asked by his client. However, [REDACTED] who was acting as the general contractor, is responsible for planning the work and requesting the Schedule C-B in a timely manner.
59. [REDACTED] asked Mr. Bal to issue the Schedule C-B on Friday and there was no evidence of an earlier request. Therefore, with respect to Charge 3b, the Panel has determined that there is insufficient evidence to find that Mr. Bal violated the Code of Ethics by failing to issue the Schedule C-B on Friday evening.
60. [REDACTED] testified that on October 16, 2012 Mr. Bal telephoned [REDACTED] and told him that he would issue the Schedule C-B letter if [REDACTED] withdrew his complaint to the Association. With respect to Charge 3c, Panel accepts [REDACTED] testimony and finds that using the issuance of the Schedule C-B to have the complaint withdrawn is an egregious action of unprofessional conduct and contrary to the Code of

Ethics of the Association.

61. The Association wrote to Mr. Bal on November 1, 2012 asking that he respond to [REDACTED] complaint by November 22, 2012 (Paragraph 46, Tab 21, above). Having received no response from Mr. Bal, the Association wrote again on November 28, 2012 requesting a response to [REDACTED] complaint by December 5, 2012 (Paragraph 46, Tab 22, above). With respect to Charge 3d, Panel accepts the evidence presented by the Association and finds that Mr. Bal's failure to respond to the Association in a timely and appropriate manner, as required by Section 30(4) of the Act, is unprofessional conduct.
62. The Panel considered Charge 4, that is:
4. That you have contravened the provisions of the Act and that further, you have demonstrated unprofessional conduct contrary to the Act, by your failure to provide the Association's Investigation Committee with the requested information or records in your possession or control, as required by section 30(4) of the Act, particulars of which are you failed to respond to the Association's request for information by letter to you dated September 30, 2013, regarding the Association's file numbers T12-004, T13-006 and T13-013.
63. The Association wrote to Mr. Bal on September 30, 2012 and requested that Mr. Bal provide documentation supporting his explanations for not responding to his clients and the Association in June 2011, August 2013 and September 2013 (Paragraph 46, Tab 16, above). The Association's letter of September 30, 2013 clearly lays out the consequences if Mr. Bal fails to respond by the deadline referred to in the letter. Mr. Bal did not respond to this letter.
64. The Panel accepts the evidence presented by the Association and finds that Mr. Bal's failure to respond to the Association in a timely and appropriate manner, as required by Section 30(4) of the Act, is unprofessional conduct.
65. The Panel also heard evidence from Mr. Thiele regarding the Association's attempt to have Mr. Bal appear before a sub-committee of the Investigation Committee pursuant to Section 30(4) of the Act (Paragraph 46, Tab 24, above). After a telephone discussion between Mr. Bal and Ms. Vantriet, the interview with the sub-committee was scheduled for September 12, 2013 (Paragraph 46, Tab 25 and 26, above). The Association made numerous unsuccessful attempts to get Mr. Bal to confirm his attendance at the sub-committee meeting. The sub-committee meeting was held on September 12, 2013, but Mr. Bal did not appear.
66. Although not the subject of a charge, the Panel finds that that Mr. Bal's failure to respond to the Association in a timely and appropriate manner regarding his appearance before the sub-committee, supports the Panel's determination for Charges 1, 2 and 3a as it is another example of his unresponsiveness.

DECISION OF THE PANEL

67. After due consideration of the evidence the Panel unanimously concluded:
1. Mr. Bal was properly served with the Notice of Inquiry within the meaning of the Act;
 2. that the amended charges provided by the Association did not have to be served on Mr. Bal as the effect of the amendment was to reduce rather than enlarge on the charges;
 3. that the use of the word "and" in the Notice of Inquiry does not require the charges to be read as conjunctive, and
 4. that, in the absence of any response from Mr. Bal, he has contravened the Code of Ethics of the Association and breached section 30(4) of the Act, as alleged in the Notice of Inquiry and amended Charges 1a, 2a, 3a, 3c, 3d and 4.
68. Therefore, the Panel finds that Mr. Bal has demonstrated unprofessional conduct by his failure to respond to the Association in a timely and appropriate manner as required by Section 30(4) of the Act, and that Mr. Bal has contravened the Code of Ethics by his lack of timely communication with his client, [REDACTED] and by using issuance of the Schedule C-B as a threat to have [REDACTED] withdraw his complaint to the Association.
69. The Panel found that there was insufficient evidence to find the Mr. Bal violated the Code of Ethics by failing to provide the Schedule C-B on Friday October 12, 2013.

Dated this th10 day of June, 2014.

Discipline Committee Panel:

Paul T.B. Adams, P. Eng.
Chair


A handwritten signature in black ink, appearing to read 'Upul Atukorala', written over a horizontal line.

Upul Atukorala, P.Eng.

Oliver Bonham, P.Geo.

Dated this 10th day of June, 2014.

Discipline Committee Panel:

A handwritten signature in black ink, appearing to read 'Paul T.B. Adams', written over a horizontal line.

Paul T.B. Adams, P. Eng.
Chair

Upul Atukorala, P.Eng.


Oliver Bonham, P.Geo.

Dated this 17 day of June, 2014.

Discipline Committee Panel:

Paul T.B. Adams, P. Eng.
Chair

Upul Atukorala, P.Eng.



Oliver Bonham, P.Geo.

**IN THE MATTER of the *ENGINEERS AND GEOSCIENTISTS ACT*
R.S.B.C. 1996, c. 116 (as amended)**

and

HARBINDER SINGH BAL, P.Eng.

DETERMINATION OF THE DISCIPLINE COMMITTEE ON PENALTY AND COST

Discipline Committee Panel:

Paul Adams, P.Eng. (Chair)

Upul Atukorala, P.Eng.

Oliver Bonham, P.Geo.

Counsel for the Panel:

David Martin

Counsel for Association:

Kerry Short

There were no submissions on behalf of Mr. Bal

INTRODUCTION

- [1] A Discipline Committee Panel (the "Panel") of the Association of Professional Engineers and Geoscientists of British Columbia (the "Association"), under the authority of the Engineers and Geoscientists Act, RSBC 1996 c. 116 as amended (the "Act"), held an Inquiry on March 24, 2014 and May 5, 2014 to examine the alleged contraventions of the Act and the Code of Ethics by Harbinder Singh Bal, P.Eng.
- [2] The Panel issued a written determination on June 10, 2014. In paragraph 67, 68 and 69 the Panel rendered its decision as follows:

67. After due consideration of the evidence the Panel unanimously concluded:
1. Mr. Bal was properly served with the Notice of Inquiry within the meaning of the Act;
 2. that the amended charges provided by the Association did not have to be served on Mr. Bal as the effect of the amendment was to reduce rather than enlarge on the charges;
 3. that the use of the word "and" in the Notice of Inquiry does not require the charges to be read as conjunctive, and
 4. that, in the absence of any response from Mr. Bal, he has contravened the Code of Ethics of the Association and breached section 30(4) of the Act, as alleged in the Notice of Inquiry and amended Charges 1a, 2a, 3a, 3c, 3d and 4.
68. Therefore, the Panel finds that Mr. Bal has demonstrated unprofessional conduct by his failure to respond to the Association in a timely and appropriate manner as required by Section 30(4) of the Act, and that Mr. Bal has contravened the Code of Ethics by his lack of timely communication with his client, Mr. [REDACTED] and by using issuance of the Schedule C-B as a threat to have Mr. [REDACTED] withdraw his complaint to the Association.
69. The Panel found that there was insufficient evidence to find the Mr. Bal violated the Code of Ethics by failing to provide the Schedule C-B on Friday October 12, 2013.

- [3] Counsel for the Panel, Mr. Martin, by letter dated June 17, 2014 transmitted the Panel's determination to Mr. Short and Mr. Bal and requested written submission on penalty and costs from Mr. Short by June 30 and a reply submission from Mr. Bal by July 11, 2014.
- [4] On June 23, 2014 Mr. Martin wrote to Mr. Short and Mr. Bal extending the deadline for Mr. Short's submission to July 11, 2014 and for Mr. Bal's reply to July 18, 2014.
- [5] Mr. Martin's letters to Mr. Bal dated June 17, 2014 and June 23, 2014 were sent to Mr. Bal by registered mail.
- [6] Mr. Short provided a written submission on penalty and costs on July 11, 2014. No reply submission was received from Mr. Bal.

SUBMISSION ON PENALTY

- [7] In his submission, Mr. Short referred the Panel to the relevant section of the Act and relevant case law for professional discipline cases. Mr. Short paid particular attention to the Law Society of B.C. v. Ogilvie which sets out a non-exhaustive list of factors that may be considered by a hearing panel in determining an appropriate penalty.
- [8] Section 33 (2) of the Act, provides that if the Panel finds that a member has demonstrated unprofessional conduct, then the Panel may, by order, do one or more of the following:
- (a) Reprimand the member, licensee or certificate holder;
 - (b) Impose conditions on the membership, licence or certificate of authorization of the member, licensee or certificate holder;
 - (c) Suspend or cancel the membership, licence or certificate of authorization of the member, licensee or certificate holder;
 - (d) Impose a fine, payable to the association, of not more than \$25,000 on the member, licensee or certificate holder.
- [9] On reaching its decision on penalty, the Panel was guided by the following principles:
- (a) the need to protect the public;
 - (b) the need to generally deter conduct of this nature by other members of the Association;
 - (c) the need to specifically deter Mr. Bal from conduct of this nature; and
 - (d) the need to rehabilitate Mr. Bal.
- [10] In Law Society of B.C. v. Ogilvie, a discipline panel of the Law Society set out a non-exhaustive list of factors that may be considered by a hearing panel in determining an appropriate penalty. The decision of the Law Society is not a decision of the Court, however, the Panel agrees with Mr. Short that the principles are applicable to application of penalty in this case and it provides a useful guide. The Panel generally agrees with Mr. Short's submission with respect to the principles listed in Ogilvie and in particular:
- i. *The Nature and Gravity of the Conduct Proven*
- [11] The most important obligation of the Association under the Act is to protect the public. If a member, who is the subject of complaint, does not cooperate with an investigation by providing the Association with information, records and documents or by meeting with a sub-committee of the Investigation Committee, the ability of the Association to adequately protect the public is impaired.

[12] The Panel found in its earlier determination that Mr. Bal's attempt to use the issuance of the Schedule C-B as leverage against his client was an egregious act of unprofessional conduct.

[13] Therefore, the Panel agrees that Mr. Bal has fallen well below the standards of professionalism expected of him, violating both the Act and Code of Ethics.

v. *The Advantage Gained, or to be Gained by the Respondent*

[14] Mr. Bal's attempt to use the issuance of the Schedule C-B as leverage against his client to have the complaint withdrawn was an attempt to reduce the complaints already received by the Association and reduce the likelihood of charges under the Act. The Panel agrees that Mr. Bal sought advantage by his actions; this elevates the seriousness of the violations Mr. Bal has committed.

vii. *Whether the Respondent has Acknowledged the Misconduct and Taken Steps to Disclose and Redress the Wrong and the Presence or Absence of Other Mitigating Circumstances*

[15] Mr. Bal did not attend the hearing, nor did he provide any written submission, therefore, the Panel is unable to determine if Mr. Bal has made any attempt to correct his behavior.

[16] In making its decision, the Panel was guided by other aggravating factors and agrees with Mr. Short that these factors should only be considered once in making its decision on penalty.

- (a) Guilt was only determined after an inquiry;
- (b) The number of instances (five) of unprofessional conduct in violation of the Act;
- (c) The number of instances (two) of unethical conduct in violation of the Code of Ethics; and
- (d) Mr. Bal's attempt to leverage the provision of the Schedule C-B into a withdrawal of the complaint against him.

[17] Mr. Bal's failure to attend the sub-committee meeting of September 12, 2013 was not a charge considered in the Inquiry (and therefore was not considered in arriving at the penalty), but is an example of Mr. Bal's failure to respond to the Association in a timely and appropriate manner.

viii. *The Possibility of Remediating or Rehabilitating the Respondent*

[18] The Panel agrees with Mr. Short that rehabilitation of Mr. Bal may be possible and in its determination on penalty it considered the implication of Mr. Bal's rehabilitation and the implication if Mr. Bal is not rehabilitated.

SUBMISSION ON COSTS

[19] Sections 35 (1) and (3) of the Act state:

- “(1) If the discipline committee makes a determination under section 33 (1), the discipline committee may direct that reasonable costs of and incidental to the investigation under section 30 and the inquiry under section 32, including reasonable fees payable to solicitors, counsel and witnesses, or any part of the costs, be paid by the person, and the costs may be determined by the committee.”
- (3) If the discipline committee directs that costs be paid and determines the amount under subsection (1) or (2), the amount may be assessed by the registrar or district registrar of the Supreme Court, in the judicial district in which the inquiry under section 32 takes place, as special costs under the Supreme Court Civil Rules, as nearly as they are applicable.

[20] Mr. Short submits that costs under section 30 (1) is a two step process. First, the Panel must determine if it should exercise its discretion and award costs to the Association and second, it must determine the appropriate level of costs.

[21] Mr. Short cites *Currie v. Thomas*, 1985 BC Court of, 19 D.L.R. (4th) 594 (B.C.C.A.) and states that “Discretion must be exercised in a judicial manner and not arbitrarily or capriciously”. He goes on to state that “A successful party usually has a reasonable expectation of obtaining an order for costs unless there are valid circumstances, connected with the case, to depart from the normal rule.”

[22] For these reasons, the Panel determined that it is appropriate to award costs to the Association.

[23] Mr. Short submits that section 35 (3) of the Act states that costs “may be assessed by the Registrar of the Supreme Court as “special costs” under the Supreme Court Rules.” Mr. Short goes on to state that “Special costs refer to costs that are proper or reasonably necessary to conduct the proceeding.”

[24] Mr. Short cites various legal precedents, which suggest that reasonable cost awards are in the range of 70% to 90% of actual costs. Mr. Short asks the Panel to direct that Mr. Bal pay 80% of the Association’s actual costs (which was \$26,165.15), which Mr. Short calculated to be \$20,932.12.

DETERMINATION ON PENALTY AND COST

[25] The Association in its submission at paragraph 40, made the following suggestion for penalty:

- (a) Mr. Bal's membership in the Association is suspended for 60 days commencing on a date to be determined by the Panel.
- (b) Mr. Bal will return his seal to the Association by a date to be determined by the Panel, failing which an additional day will be added to the suspension in paragraph (a) for every day the return of Mr. Bal's seal is late.
- (c) Following the completion of his suspension, Mr. Bal will have the following conditions imposed on his membership in the Association:
 - i. Mr. Bal will not practice professional engineering except under the direct supervision of another engineer who is a member of the Association, approved in writing in advance by the Registrar of the Association (the "Supervisor"). The supervision by the Supervisor shall give particular attention to Mr. Bal's timely completion of engineering work and his prompt communications with his clients. Mr. Bal must submit the names of professional engineers to the Registrar to be considered for appointment as a Supervisor prior to the completion of his suspension. If a Supervisor is not appointed prior to the completion of his suspension, Mr. Bal's membership in the profession shall remain suspended until such time that a Supervisor is appointed. The Supervision of Mr. Bal by the Supervisor will continue for one year from the date that the Supervisor is approved in writing by the Registrar of the Association. The Supervisor shall provide reports every 90 days to the Registrar about Mr. Bal's work under supervision (the "Reports"). At the conclusion of the twelve month period, the Supervisor shall report to the Discipline committee by providing a written opinion as to whether Mr. Bal requires continuing supervision and for how long (the "Final Report"). Mr. Bal shall provide to the Supervisor regular updates to his engineering project list during the supervision period; The costs of the supervision, including the cost of the Reports and the Final Report, are to be borne by Mr. Bal.
- (d) Mr. Bal must successfully complete the Law and Ethics Program and pass the Professional Practice Examination offered by the Association on or before December 31, 2014.
- (e) Mr. Bal shall pay a fine to the Association of \$10,000, payable within 6 months of the Panel's decision on penalty and costs.
- (f) Mr. Bal shall pay within 6 months of the date of the Panel's decision on penalty and costs the Association's legal, investigation and inquiry costs as determined by the Panel.
- (g) If any of the conditions in this Order are not met, Mr. Bal's suspension will remain in effect until such time as all of these conditions have been met by Mr. Bal.

- [26] Although the panel recognized that penalties in other cases depend on the facts of those cases, there are aspects of those cases that can be applied here. In making its decision on penalty, the Panel was guided by previous decisions on issues related to the failure of a member to respond to the Association and on cases where the specific factors are applicable in this case. In particular, the judgments made in the following cases where the charges were related to the failure of a member to provide information and records to the Association, as required by the Act are applicable.
- (a) APEGBC v. Paullus K.F. Yeung, P.Eng.
 - (b) In the Matter of the Engineers and Geoscientists Act. RSBC 1996, c. 116 (as amended) and James Camsoon Hum, P.Eng.
 - (c) In the Matter of the Engineers and Geoscientists Act. RSBC 1996, c. 116 (as amended) and James Lorrence Melnechenko.
 - (d) In the Matter of the Engineers and Geoscientists Act. RSBC 1996, c. 116 (as amended) and James Asfar, P.Eng.
 - (e) In the Matter of the Engineers and Geoscientists Act. RSBC 1996, c. 116 (as amended) and Ken Dextras, P.Eng.
- [27] Mr. Short suggested that Mr. Bal membership be suspended for 60 days. The Panel agrees a suspension for this length of time is consistent with other cases, particularly with the Melnechenko and Dextras cases referred to above ([26](c) and [26](e)).
- [28] Mr. Short suggested that Mr. Bal pay a fine of \$10,000. Given the other components of the penalty order, the Panel has determined that a fine of \$5,000 is appropriate and consistent with other cases, particularly with the Melnechenko and Dextras cases referred to above ([26](c) and [26](e)).
- [29] Mr. Short suggested that Mr. Bal's engineering come under the "direct supervision" of another engineer. There was no evidence presented during the Inquiry or in Mr. Short's submissions that the technical components of Mr. Bal's engineering is not sound. The Panel determined that it is appropriate that Mr. Bal be mentored to ensure that his actions as an engineer and his communications with his clients and with the Association are professional and comply with the Code of Ethics but that "direct supervision" is not appropriate.
- [30] Mr. Short has suggested that Mr. Bal pay 80% of the Association's legal, investigation and inquiry costs. In determining the appropriate level of costs the Panel took into consideration that:
- (a) The Inquiry was adjourned on the first day, March 24, 2014, because the Panel was not satisfied that the Association properly notified Mr. Bal of the time and date of the hearing;
 - (b) The Association did not proceed with some of the charges listed in the original Notice of Inquiry; and

- (c) The Panel found there was not sufficient evidence to prove that Mr. Bal was guilty of one of the amended charges.

Therefore, the Panel reduced the proportion of the costs sought by the Association from 80% to 50% and orders that Mr. Bal pay costs of \$13,082.58, which is 50% of the costs quoted by Mr. Short in the last paragraph of his submission on penalty and costs.

[31] After careful consideration of the submission made by Mr. Short, the relevant case law and the principles laid out in paragraph [9] the Panel makes the following order on penalty.

- (a) Mr. Bal's membership in the Association is suspended for 60 days commencing September 1, 2014.
- (b) Mr. Bal will return his seal to the Association by August 31, 2014, failing which an additional day will be added to the suspension in paragraph (a) for every day the return of Mr. Bal's seal is late.
- (c) Following the completion of his suspension, Mr. Bal will not practice professional engineering except under the mentorship supervision ("Supervision") of another engineer who is a member of the Association, approved in writing in advance by the Registrar of the Association (the "Supervisor"). The mentorship supervision by the Supervisor shall, for clarity, give particular attention to Mr. Bal's timely completion of engineering work, his prompt communications with his clients, his adherence to the Code of Ethics, including replying appropriately to the Association on complaint matters when requested, and that his practice is being conducted in a professional manner. Mr. Bal must submit the names of professional engineers to the Registrar to be considered for appointment as a Supervisor prior to the completion of his suspension. If a Supervisor is not appointed prior to the completion of his suspension, Mr. Bal's membership in the Association shall remain suspended until such time that a Supervisor is appointed. The Supervision of Mr. Bal by the Supervisor will continue for one year from the date that the Supervisor is approved in writing by the Registrar of the Association. The Supervisor shall provide reports every 90 days to the Registrar about Mr. Bal's work under Supervision (the "Reports"). At the conclusion of the twelve month period, the Supervisor shall report to the Discipline Committee by providing a written opinion as to whether Mr. Bal requires continuing Supervision and for how long (the "Final Report"). If the Supervisor recommends continuation of Supervision, it will continue for the period recommended by the Supervisor. Mr. Bal shall provide to the Supervisor regular updates to his engineering project list during the Supervision period. The costs of the Supervision, including the cost of the Reports and the Final Report, are to be borne by Mr. Bal.
- (d) Mr. Bal must successfully complete the Law and Ethics Program and pass the Professional Practice Examination offered by the Association on or before March 31, 2015.

- (e) Mr. Bal shall pay a fine to the Association of \$5,000, payable within 6 months or the Panel's decision on penalty and costs.
- (f) Mr. Bal shall pay to the Association \$13,082.58 for the Association's legal, investigation and inquiry costs within 6 months of the panel's determination on penalty and costs.
- (g) If any of the conditions of this Order are not met, Mr. Bal's membership in the Association will be suspended, or continue to be suspended if his suspension under (a) is not complete, until such time as all of these conditions have been met by Mr. Bal.

PUBLICATION

- [32] The Panel recognizes that there have been frequent discipline cases where members have been sanctioned for failing to provide information and records in a timely and appropriate manner, as required by section 30 (4) of the Act.
- [33] It is clear that some members of the Association do not recognize the importance of responding fully and in a timely manner to all requests for information and records from the Investigation Committee. The Panel recommends that the Association, in addition to the normal publication of this decision, publish awareness articles in its publications and through other media reminding members of their obligation under the Act and the consequence of their failure to meet those obligations.

Dated this 8 day of August, 2014.

Discipline Committee Panel:

Paul T.B. Adams, P. Eng.
Chair

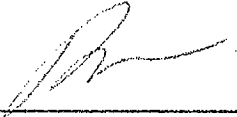
Upul Atukorala, P.Eng.

A handwritten signature in black ink, appearing to be 'O. Bonham', written over a horizontal line.

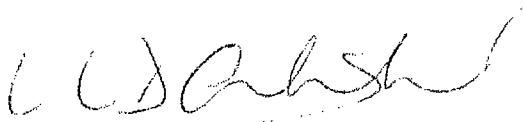
Oliver Bonham, P.Geo.

Dated this 8th day of August, 2014.

Discipline Committee Panel:



Paul T.B. Adams, P. Eng.
Chair



Upul Atukorala, P.Eng.

Oliver Bonham, P.Geo.