

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

and

JAMAL ASFAR, P.Eng.

DETERMINATION OF THE DISCIPLINE COMMITTEE ON LIABILITY

Discipline Committee Panel:

Paul Adams, P.Eng.(Chair)
John Rapson, P.Eng.
Neil Cumming, P.Eng.

Counsel for Association:

Robert Hunter

No one appearing on behalf of Mr. Asfar

INTRODUCTION

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* by Jamal Asfar.

Mr. Asfar is a member of the Association. He did not appear at the Inquiry and no one appeared on his behalf.

The hearing took place in the Association's Boardroom on August 30, 2006. The charge against Mr. Asfar was as follows:

“That contrary to the Act, you have demonstrated unprofessional conduct in your failure to provide the Investigation Committee with the information or records in your control, as required by section 30(4) of the Act, as requested by the Association’s letters to you dated April 28, 2006 and May 16, 2006.”

The Panel heard the evidence on liability and on the conclusion of the Association’s case took a recess to consider liability. The Panel advised Mr. Hunter that it found Mr. Asfar guilty of the charge with written reasons to follow. The following are the Panel’s written reasons for its determination on liability.

BURDEN AND STANDARD OF PROOF

Mr. Hunter opened the hearing by informing the Panel of the rules of evidence, the burden of proof upon the Association and the standard of proof that the Panel must apply in reaching its decision. Mr. Hunter made clear that the burden of proof always rests upon the Association, and that the onus falls upon the Association to demonstrate that the charges had been proven to the appropriate standard of proof.

The panel accepted that the standard of proof required is that stated by Madame Justice McLachlan in *Dr. William Jory v. The College of Physicians and Surgeons of British Columbia* (unreported December 13, 1985) which reads in part:

“The standard of proof in cases such as this is high. It is not the criminal standard of proof beyond a reasonable doubt. But it is something more than a bare balance of probabilities. The authorities establish that the case against a professional person on a disciplinary hearing must be proved by a fair and reasonable preponderance of credible evidence... The evidence must be sufficiently cogent to make it safe to uphold the findings with all the consequences for the professional person’s career and status in the community.”

READING OF THE CHARGE

Mr. Hunter provided in evidence an Affidavit of Service (Exhibit #1) as proof that Mr. Asfar received the Notice of Inquiry and advised that in accordance with section 32(5) of the Act the inquiry may proceed the Mr. Asfar’s absence.

Mr. Hunter read out the charge as presented in the Notice of Inquiry dated the 24th day of July, 2006 (Exhibit #4). Mr. Hunter advised that Mr. Asfar was deemed to have entered a “Not Guilty” plea to the charges.

EVIDENCE

Mr. Hunter entered into evidence the following :

- Exhibit #1 – Affidavit of Service
- Exhibit #2 – Engineers and Geoscientists Act
- Exhibit #3 – Bylaws of the Association
- Exhibit #4 – Notice of Inquiry

- Exhibit #5 – Decision of the Supreme Court of BC – Inglis v. I.C.B.C. et al.
- Exhibit #6 – July 8, 2005 letter from the Association to Jamal Asfar, P.Eng.
- Exhibit #7 – April 24, 2006 letter from the Association to Jamal Asfar, P.Eng.
- Exhibit #8 – transcript of voice message from Jamal Asfar, P.Eng. to Geoff Thiele, BA LLB.
- Exhibit #9 – May 16, 2006 letter from the Association to Jamal Asfar, P.Eng.
- Exhibit #10 – May 23, 2006 letter from the Association to Jamal Asfar, P.Eng.
- Exhibit #11 – contact record of telephone call from Jamal Asfar, P.Eng. to G. Pichler, P.Eng.
- Exhibit #12 – partial transcript telephone call from Jamal Asfar, P.Eng. to G. Pichler, P.Eng.

Mr. Hunter called Geoff Thiele, Associate Director, Regulatory Compliance, of the Association and Ms. Gillian Pichler, P.Eng. Director, Registration, of the Association as witnesses.

BACKGROUND FACTS

In 2004 the Association received an enforcement complaint regarding a traffic accident reconstruction report completed by Mr. Asfar, who at the time was not registered as a member of the Association as his membership had lapsed in July 2001. The Association determined that that traffic accident reconstruction must be completed by a registered Professional Engineer and advised Mr. Asfar that he should renew his membership. Mr. Asfar was reinstated on November 30, 2004.

In May 2005, Mr. Justice Blair found, in his decision of *Inglis v. I.C.B.C.* (Exhibit #5), that Mr. Asfar was not qualified to give evidence on traffic accident reconstruction and refused to admit Mr. Asfar's report into evidence. On July 8, 2005 (Exhibit #6) Mr. Geoff Thiele wrote to Mr. Asfar advising him that to avoid future breaches of the Association's Code of Ethics he should no longer provide reports and expert evidence in areas for which he is not qualified or where he lacks the appropriate training and experience. In a telephone call on April 4, 2006 to Ms. Gillian Pichler, Mr. Asfar implied that he was continuing to write reports on traffic accident reconstruction. Mr. Thiele then referred the matter to the Investigation Committee who opened an investigation as provided for in section 30(3) of the Act and instructed staff to write to Mr. Asfar demanding a list of all the expert reports he has done in the past three years, and the particulars of his training and experience in the subject area of each report.

Mr. Thiele testified that he wrote to Mr. Asfar on April 28, 2006, May 16, 2006 and May 23, 2006 requesting the information required by the Investigation Committee and reminding Mr. Asfar that he is obligated by section 30(4) of the Act to provide information that is required by the Investigation Committee. No response was received to his letters so the Investigation Committee recommended that an inquiry be held in this matter for the reasons set out in the Notice of Inquiry.

ISSUES

The only issues are:

1. was Mr. Asfar served with the Notice of Inquiry within the meaning of section 32(5) of the *Act*?
2. has Mr. Asfar breached section 30(4) of the *Act*?

DECISION OF THE PANEL

The Panel finds Mr. Asfar guilty of the charge.

REASONS FOR JUDGMENT

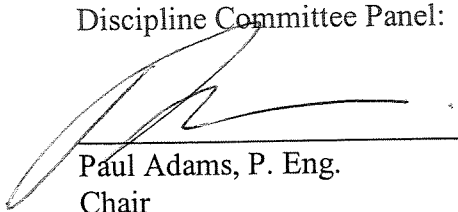
After due consideration of the evidence the Panel unanimously concluded:

1. Mr. Asfar was properly served with the Notice of Inquiry within the meaning of the *Act*; and
2. that, in the absence of any response from Mr. Asfar, he has breached section 30(4) of the *Act*, as alleged in the Notice of Inquiry.

Therefore, the Panel finds that Mr. Asfar has demonstrated unprofessional conduct by his failure to provide an acceptable response to the Investigation Committee's request for information.

Dated this 5th day of September, 2006.

Discipline Committee Panel:



Paul Adams, P. Eng.
Chair

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

and

JAMAL ASFAR, P.Eng.

ORDER OF THE DISCIPLINE COMMITTEE ON PENALTY

Discipline Committee Panel:

Paul Adams, P.Eng.(Chair)
John Rapson, P.Eng.
Neil Cumming, P.Eng.

Counsel for Association:

Robert Hunter

No one appearing on behalf of Mr. Asfar

INTRODUCTION

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 hear submissions on penalty and costs with respect to Jamal Asfar, P.Eng.

The penalty hearing took place in the Association's Boardroom on August 30, 2006 following a determination earlier that same day that the allegations against Mr. Asfar in the Notice of Inquiry had been proven to the requisite standard. The Panel gave its oral determination on liability on August 30, 2006 with written reasons to follow. Written reasons for the Panel's liability determination are being issued concurrently with this Order.

The charge proven against Mr. Asfar was as follows:

“That contrary to the Act, you have demonstrated unprofessional conduct in your failure to provide the Investigation Committee with the information or records in your control, as required by section 30(4) of the Act, as requested by the Association’s letters to you dated April 28, 2006 and May 16, 2006.”

PENALTY

The Discipline Panel reconvened following adjournment of the liability hearing and determination, and considered the Association’s submissions on penalty. In reaching its decision on penalty the Panel was guided by the belief that any penalty imposed on the member should reflect the following principles:

- the need for the protection of the public;
- the need to deter other members of the Association from similar actions;
- the need to deter Mr. Asfar from repeating the offence; and
- the need for rehabilitation of Mr. Asfar.

The Panel carefully considered all of the evidence and submissions and Orders pursuant to section 33(2) of the *Act* and unanimously ordered that:

- 1) Mr. Asfar’s membership in the Association shall immediately be suspended and he shall remain suspended until he provides a complete response, acceptable to the Investigation Committee, to the Investigation Committee’s requests for information and documents, as presented in the Association’s letters of April 28, 2006 and May 16, 2006.
- 2) Mr. Asfar must immediately return his stamp(s) and/or seal(s) to the Association’s office as required by section 12(b) of the Bylaws. If Mr. Asfar fails to return the stamp and seal within 10 days (including weekends and holidays), from the date of this decision, his suspension will be extended by one day for each day beyond the 10 day period.

COSTS

The Panel has the authority under Section 35(1) of the Act to direct that the member pay the Association's costs, or any part of the costs, for the investigation and inquiry, and the Panel may determine the amount of the costs to be paid.


After considering the submissions on costs from Mr. Hunter, the Panel orders that Mr. Asfar pay the costs incurred by the Association in preparing for and conducting this investigation and inquiry hearing, that amount being \$4,500.00. The Panel believes that the inquiry hearing was made necessary solely due to Mr. Asfar’s failure to respond to the requests of the Investigation Committee and could have been avoided.

PUBLICATION

The Panel is concerned that some members may not recognize the importance of responding fully and in timely manner to all requests for information and records from the Investigation Committee and recommends that the Association, in addition to the normal publication of this decision, publish an article in Innovation reminding members of their obligation and the consequence of their failure to meet those obligations.

Dated this 5th day of September, 2006.

Discipline Committee Panel:



Paul Adams, P. Eng.
Chair

IN THE MATTER OF
THE ASSOCIATION OF PROFESSIONAL ENGINEERS AND
GEOSCIENTISTS OF THE PROVINCE OF BRITISH COLUMBIA

- and -

JAMAL JARJIS (JAY) ASFAR (#12209)
PROPOSED ORDER TO REVOKE MEMBERSHIP FOR FAILURE TO PAY COSTS
AND RETURN SEAL TO ASSOCIATION

A Discipline Committee Panel (the Panel") of the Association of Professional Engineers and Geoscientists of the Province of British Columbia held an inquiry on August 30, 2006, into Mr. Asfar's contravention of subsection 30(4) of the *Engineers and Geoscientists Act* (the "Act"). Mr. Asfar did not attend the hearing. After considering the evidence presented the Panel held Mr. Asfar liable of the charge with written reasons to follow.

After finding Mr. Asfar liable, the Panel proceeded to hear submissions from legal counsel for the Association relating to penalty and costs. The Panel's written reasons on liability and order on penalty and costs were issued on September 5, 2006. The Panel ordered that Mr. Asfar's membership in the Association was suspended effective immediately and his membership was to remain suspended until he provided the information requested by the Investigation Committee. Mr. Asfar was also ordered to turn in his seal to the Association within 10 days, in accordance with the Bylaws.

Mr. Asfar was directed to pay the costs of the Association in preparing for and conducting the investigation and inquiry in the amount of \$4,500.00.

Copies of the decision on liability and the order on penalty and costs were mailed to Mr. Asfar and were published on the Association's website. Notices were published in the Association's magazine and electronic newsletter, and in the newspaper. The Association wrote to Mr. Asfar in September 2006 requesting his seal. The Association wrote to Mr. Asfar again on January 25, 2007 requesting his seal and payment of costs. To date, no response has been received by Mr. Asfar.

The Panel unanimously agrees that the conditions that Mr. Asfar turn in his seal and pay the Association's costs have not been met. Pursuant to its powers under subsections 34(1) and 35(5) of the Act, Mr. Asfar's membership in the Association is revoked. The Panel also recommends that Council not consider any application for reinstatement for a minimum of two (2) years and then only after Mr. Asfar has met all the conditions described in the original order.

Discipline Committee Panel:



Paul Adams, P. Eng.
Chair

Date: 2007/02/21

Members:

Neil Cumming, P. Eng.
John Rapson, P. Eng.

IN THE MATTER OF
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GEOSCIENTISTS OF THE PROVINCE OF BRITISH COLUMBIA

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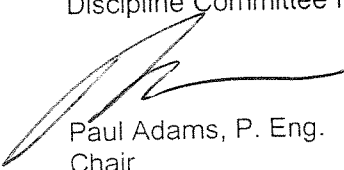
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Discipline Committee Panel:


Paul Adams, P. Eng.
Chair

Date:

June 27, 2007

Members:
Neil Cumming, P. Eng.
John Rapson, P. Eng.