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, 2014to examine the alleged contraventions of the Actand 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:
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> 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.
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> 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.
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> 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."
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> (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's 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.

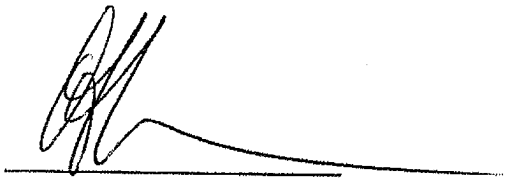
[33] It is clear that some members of the Association do not recognize the importance of responding fully and in a timely manner to all requests for information and records from the Investigation Committee. The Panel recommends that the Association, in addition to the normal publication of this decision, 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.



Oliver Bonham, P.Geo.

Dated this 8th day of August, 2014.

Discipline Committee Panel:

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Chair

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