

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

- and -

IN THE MATTER OF
SURINDER S. PUAR, P. ENG.

DECISION OF THE DISCIPLINE COMMITTEE ON PANEL JURISDICTION

Discipline Committee Panel:

Paul Adams, P.Eng. (Chair)
David Ricketts, P.Eng.
Neil Cumming, P.Eng.

Independent Counsel for the Panel:

David Martin

Counsel for Association:

David B. Wende

Counsel for the member:

Glenn Urquhart, Q.C. and
Steven W. Lesiuk

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") was formed to hold an inquiry to examine charges against Mr. Surinder S. Puar, P.Eng.

2 Mr. Puar, through his counsel, challenged the jurisdiction of the Panel to hear the case on various grounds.

3 Mr. Urquhart submitted a written submission to the Panel dated August 5, 2008 placing before the Panel various arguments with respect to the jurisdiction of the Panel. Mr. Wende submitted the Association's submission in response to Mr. Urquhart's submission on August 12, 2008. Mr. Urquhart submitted a reply submission on August 15, 2008.

4 An oral hearing took place on August 19, 2008 at Alexander Holburn Beaudin & Lang LLP Barristers & Solicitors. The parties had previously agreed to limit their oral submissions to 30 minutes each. At the end of the submissions, the Panel adjourned the hearing and advised the parties that they would provide a written decision.

5 Amendments were made to the Engineers and Geoscientists Act R.S.B.C. 1996 in 2007. All references to the Act within this determination are based on the Act before it was amended, to reflect the Act as it was effect at all material times in this case.

BACKGROUND

6 The two charges against Mr. Puar which the Panel was directed to adjudicate on were as follows:

"... that contrary to sections 33(1)(b) and 33(1)(c) of the Act, you have contravened paragraphs 1 and 8 of the Code of Ethics and have demonstrated unprofessional conduct in failing to:

(a) hold paramount the safety, health and welfare of the public, the protection of the environment and failing to promote safety in the work place by permitting such obligations to be secondary to the decision of your client to not complete remedial works to an unstable excavation; and

(b) present clearly to your client and the District [REDACTED] the possible consequences upon your professional judgment being disregarded by your client."

7 The Notice of Inquiry particularized the allegations with eight specific actions on the part of Mr. Puar.

8 The Panel's purpose at this stage of the hearing was to make a decision with respect to Mr. Puar's challenge to the jurisdiction of the Panel and to determine if the Panel could hear evidence and make a determination with respect to the above charges. The Panel's review of the arguments and evidence put to it by Mr. Urquhart and Mr. Wende was limited to this jurisdictional challenge.

SUBMISSIONS AND EVIDENCE

9 Mr. Urquhart presented a 51 page submission supported by an extensive "Book of Evidence" and a "Book of Authorities" asking that the Notice of Inquiry be dismissed.

10 In concluding his submission at paragraph 272 Mr. Urquhart makes the assertion that:

"The Association ultra vires actions include the following:

- (a) ***Failure to Comply with s. 29 of the Act*** – *The Association received a complaint from the District in early 2007 and failed to follow the mandatory procedure prescribed by the Act. The T letter was clearly a complaint which was confirmed by subsequent correspondence from the District. It as (sic) not open (and contrary to the Act) for the Association to agree with the District on how to proceed against Mr. Puar.*

The Association's admitted failure to comply with s. 29 of the Act requires the dismissal of the Notice of Inquiry.

- (b) ***Unauthorized Thiele and N investigation*** – *The Association (Messrs. Thiele and N) conducted an unauthorized investigation of Mr. Puar from about April 19, 2007 until May 31, 2007. The Act and our courts (Visser, supra) indicate that this is unlawful.*

The Thiele investigation was performed and is contrary to the Act. This conduct renders proceedings against Mr. Puar defective and unlawful, thus requiring the Notice of Inquiry to be dismissed.

- (c) ***Invalidity of the Investigation Committee Investigation*** – *The Association, through the Investigation Committee, conducted an invalid investigation of Mr. Puar for the following reasons:*

- (i) ***The Association and the Investigation Committee failed to comply with the requirements of s. 30(3)*** – *The N Report did not provide a reasonable basis for the Investigation Committee to exercise its discretion to order an investigation under s. 30(3) and further Messrs. Thiele and N did not present a fair, balanced and full report to the Investigation Committee*

- (ii) ***Lack of Independence and Impartiality of the Investigation Committee Investigation*** – *The Investigation Committee is required to function as an independent and impartial body. This did not happen in the case.*

- (1) *Collaboration of Thiele and N [REDACTED] in the Investigation Committee Investigation.* The Association documents disclose that Messrs Thiele and N [REDACTED] had an ongoing collaboration regarding Mr. N [REDACTED] investigation of Mr. Puar.
- (2) *The Appointment of N [REDACTED] as a Subcommittee was Inappropriate – The Association sought and obtained the appointment of [REDACTED] N [REDACTED] as a subcommittee of the Investigation Committee to investigate Puar when N [REDACTED] had already conducted an investigation on behalf of the Association, thereby corrupting the independence of the Investigation Committee and further tainting the process moving forward.*
- (iii) *Delivering Unauthorized Inquiries – The Association and/or Mr. N [REDACTED], as a subcommittee of the Investigation Committee, sought answers to inquiries dated June 25, 2007 and September 24, 2007, from Mr. Puar when there was no authority under the Act to do so.*

The above conduct related to the Investigation Committee Investigation is conduct renders proceedings against Mr. Puar defective and unlawful, thus, requiring the Notice of Inquiry to be dismissed. Each of the above infractions by the Association provides a basis for (sic).

These actions violated the legal requirement that the Investigation Committee conduct its functions under the Act separate and independent from the Association.

- (d) *The Investigation Committee's Breach of the Act – Delivery of Reasons to the Disciplinary Panel – The Investigation Committee did not comply with s. 32(1) of the Act in that the Investigation Committee is required to cause its recommendation for an Inquiry without reasons, to be delivered to the disciplinary committee and it failed to do so.*
- (e) *Improperly Proceeding against Mr. Puar by the Notice of Inquiry – The Association is improperly proceeding against Mr. Puar when it knows, or reasonably ought to know, that the allegations in the Notice of Inquiry are incorrect.”*

11 Mr. Urquhart concluded his submission in paragraph 276 as follows:

“Mr. Puar respectfully submits that the Association's actions require the Notice of Inquiry be dismissed. The many breaches by the Association render the prosecution of Mr. Puar to be without jurisdiction.”

12 Mr. Wende presented a 16 page submission in response to Mr. Puar's submission. Mr. Wende did not provide any additional evidence or authorities, but relied on those previously submitted by Mr. Urquhart.

13 Mr. Wende reviewed the case law as it applies to the arguments presented by Mr. Puar and provided the Association's view of the allegations and assertions made by Mr. Puar.

14 Mr. Wende concluded his submissions in paragraphs 70 and 71 as follows:

“70 It is respectfully submitted that the Association has properly proceeded to bring this matter before the Discipline Committee in accordance with both the Act and case law.

71 It is respectfully submitted that this application should be dismissed, and regardless of the outcome of this Inquiry, Mr. Puar must, at the conclusion of this matter, be required to bear the costs of this application in all of the challenges leading to the jurisdiction in accordance with Section 35 of the Act.”

15 In reply to the Association’s submission Mr. Urquhart, acting for Mr. Puar, provided the Panel with a 29 page reply submission and additional evidence in the form of an Affidavit of Stephanie Moore.

16 In his reply Mr. Urquhart addressed the arguments put forward by the Association and emphasized some of the key points he made in his original submission.

17 At the hearing on August 19, 2008 both parties limited their verbal submission to 30 minutes. In addition, Mr. Urquhart made a short reply submission following Mr. Wende’s verbal submission. There was no new evidence put forward at the hearing although the Association provided additional case law, specifically: Arthur Gwyn Nicholson, Appellant; and Haldimand-Norfolk Regional Commissioners of Police, Respondent; and Attorney-General for the Province of Ontario, Intervenor; February 22, 1978 ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO.

18 Both Mr. Urquhart and Mr. Wende led the Panel through the key arguments and assertions provided in their written submissions.

19 During the hearing, Mr. Martin, on behalf of the Panel, noted that some documents referred to in the submissions were not provided and asked that the Panel be provided with those documents. Mr. Urquhart provided copies of the following documents at the end of the hearing:

July 25, 2007 letter from the Association to Mr. Puar
August 16 2007 letter from Mr. Puar to the Association
September 24, 2007 letter from the Association to Mr. Puar
October 4, 2007 letter from Mr. Puar to the Association

20 During its further review of the submissions the Panel noted one additional document referred to in the submission which had not been provided in evidence and on August 25, 2008 requested a copy of that document. In response, Mr. Urquhart provided the Panel, by e-mail, a copy of the letter from Mr. Puar to the Association dated June 25, 2007.

21 On August 25, 2008 Mr. Wende provided, in a letter to the Panel, an additional submission with respect to the June 25, 2007 letter which states, in part, that *“It is clear from the letter of June 25, 2007 from Mr. Puar to Mr. Thiele that Mr. Puar understood the very issues that were the subject of concern to the Association.”*

22 Later on August 25, 2008 Mr. Urquhart provided a letter to the Panel responding to Mr. Wende submission. This letter states, in part:

“Mr. Puar’s June 25, 2007 memo to Geoff Thiele was in response to Mr. Thiele’s letter of June 6, 2007 requesting Mr. Puar’s file (Thiele Affidavit, paras. 22-23, Exhibit “E”). There is no notice contained in Mr. Thiele’s letter indicating what is being investigated or what the Association’s concerns are with respect to Mr. Puar. This was admitted by Mr. Wende.

Mr. Puar’s letter was simply a project synopsis of the facts. He provided this project synopsis on his own initiative. This is identified at the top of the document. Further, there is nothing in the letter that in any way indicates that Mr. Puar was aware of the Association’s concerns. How could he be? He was never notified prior delivery of the Notice of Inquiry.”

DETERMINATION

23 The Panel had carefully reviewed the written submissions, evidence and case law prior to the oral hearing in order to fully understand the arguments being put forward by the parties. Following the hearing the Panel met to review the evidence; the arguments put forward during the hearing and provided in the written submissions; and to make its determination.

24 To aid in its review of the large body of evidence and the arguments that had been put to the Panel, the Panel developed a series of questions to address each of the challenges put forward by Mr. Puar and then made a determination with respect to each of the questions. Those questions are set out and answered below.

25 Was Mr. T [redacted] letter to the Association dated April 17, 2007 a complaint as defined by the Act? The Panel concluded that the letter [Book of Evidence Tab 2, Sub-tab E] was not a complaint under the Act for the following reasons:

- (a) The letter itself does not use the word “complaint”.
- (b) Mr. Thiele’s Affidavit [Book of Evidence Tab 3] and his notes of the April 18, 2007 meeting with Mr. T [redacted] [Book of Evidence Tab 3, Exhibit “B”] indicate that there was discussion between Mr. T [redacted] and Mr. Thiele as to whether Mr. T [redacted] was making a formal complaint or simply bringing information to the Association for their consideration. The Panel accepts that Mr. T [redacted] did not wish to make a formal complaint, but would do so “if it appears warranted”. The Panel is of the view that in order for the Association to fulfill its mandate it is important for members of the public to be at liberty to report information to the Association without standing as a formal complainant, and that the Association then have discretion to determine whether further action is warranted.

- (c) Mr. Puar provided evidence [Book of Evidence Tab 2, Sub-tab FF] that in a June 2008 telephone conversation between Mr. T and Mr. Lesiuk, Mr. T could not recall having said that he would make a complaint, "if it appears warranted". The Panel noted that Mr. T did not refute the evidence in Mr. Thiele's Affidavit or his notes, but stated only that he did not recall. The Panel gave greater weight to the direct evidence provided in Mr. Thiele's Affidavit and in his notes than to the evidence provided by Mr. Lesiuk and accepts Mr. Thiele's evidence over Mr. Lesiuk's.
- (d) The concluding sentence of Mr. Lesiuk's June 9, 2008 memorandum [Book of Evidence Tab 2, Sub-tab FF] states: "*Based on my discussion with Mr. T he didn't really understand what a complaint was and that he wanted a review of what Mr. Puar did.*" Mr. Thiele's Affidavit also provides evidence in paragraph 9 that "*It is not unusual for the Association to be asked to "review" a matter, especially by a regulatory body...*" The Panel considers this to be further evidence that it was Mr. T's intent to bring information to the Association in order for it to conduct further review, and subsequently take action if it was deemed warranted.
- (e) Mr. O in an e-mail to Mr. Thiele dated May 8, 2007 [Book of Evidence Tab 2, Sub-tab I] states "*I was not aware of the complaint*". In responding to Mr. O, Mr. Thiele did not advise Mr. O that there was not a complaint. The Panel accepts Mr. Thiele's explanation provided in his Affidavit at paragraph 14. These statements do not turn Mr. T's request for a "review" into a complaint under the Act.
- (f) In any event, the matter put forward in the Notice of Inquiry was not the issue raised by Mr. T in his letter of April 17, 2007. After the Association reviewed the allegations contained in Mr. T's letter they did not find grounds for a concern related to those allegations, however, in the course of their review they did identify other areas of concern and it was those areas which ultimately led to the Notice of Inquiry.

26 Did the Association fail to comply with section 29 of the Act by failing to follow the mandatory procedure prescribed in the Act? The Panel concluded that since Mr. T's letter was not a complaint the Association did not fail to comply with the Act, since section 29 was not invoked.

27 Does the Association have the authority to review the actions of a member as Messrs Thiele and N did in this case? At issue here is the review, which Mr. Urquhart refers to as an investigation, that Mr. Thiele asked Mr. N to conduct following his meeting with Mr. T on April 18, 2007 and before the Investigation Committee launched its investigation under section 30(3) of the Act on May 31, 2007. For clarity, in this determination the Panel refers to the review which took place from April 18 to May 31 as the "Review" and the subsequent investigation that followed the May 31, 2007 Investigation Committee decision as the "Investigation". The Panel concluded that the Association did have the authority to review the actions of Mr. Puar for the following reasons:

- (a) There is no prohibition in the Act or in case law.

- (b) Conducting an investigation or review of this nature is reasonable in order for the Association to carry out its function and fulfill its mandate, as provided for in the Act. The Investigation Committee has the authority to begin an investigation by section 30(3) of the Act, "...on receipt of a report under section 29 or whenever it considers appropriate...". In order to carry out this mandate it is reasonable that the Association conduct a review and, if warranted, bring the results of that review to the Investigation Committee for their consideration.
- (c) Mr. Wende in his submission at paragraph 11 quotes Madam Justice Saunders in the Reddy decision as follows:

"[10] Mr. Reddy's submission is premised on the undisputed proposition in Hollenberg v. B.C. Optometric Association (1967), 61 D.L.R. (2d) 195 (B.C.A.A.):

...where a statute confers jurisdiction upon a body of limited authority and statutory origin to regulate and discipline a class of persons, the conditions and qualifications annexed by the statute to the exercise of that jurisdiction must be complied with strictly ...

However, this doctrine must be reasonable applied and it is, in the end, an issue of statutory construction."

The Panel concluded that it was reasonable and necessary for the Association to be able to conduct a review and to gather information which would enable the Investigation Committee to have sufficient information on which to decide whether a formal investigation was warranted.

- (d) Mr. Urquhart relies on the Visser decision [Book of Authorities, Tab 7] and in particular paragraph 38 which states:

"... Thus, the investigative function is represented by the Investigation Committee, which has the exclusive power to conduct an investigation and, if appropriate, initiate a hearing; the adjudicative function is represented by the discipline committee, which has the exclusive power to conduct a hearing and, if appropriate, determine sanctions; and the prosecutorial function is performed by counsel retained by the Association."

The Investigation Committee under the Visser decision has the exclusive right to conduct an investigation under section 30(3) of the Act; however, this does not prevent the Association from reviewing the actions of a member in order to bring a matter to the attention of the Investigation Committee and to provide the Investigation Committee with sufficient information on which to decide whether a formal investigation should be conducted.

28 Did Messrs Thiele and N [redacted] collaborate in an inappropriate manner during the Review and/or during the Investigation? Mr. Puar's submissions argue that the Association inappropriately influenced the Review and the Investigation. The Panel concluded that the assistance and direction provided by Mr. Thiele and other Association staff throughout the Review and the Investigation was provided for under the Act and was appropriate.

- (a) In the 1996 Netupsky decision [Book of Authorities, Tab 8] Mr. Justice Curtis in paragraph 16 refers to the investigating body's obligations and states, in part, that *"Moreover it need not do everything itself. It can employ secretaries and assistants to do all the preliminary work and leave much to them. But, in the end, the investigating body itself must come to its own decision and make its own report."* There was no evidence presented that the collection of materials during the Review and Investigation and the preparation of documents for the Investigation Committee went beyond what was contemplated by the Netupsky decision or that the Investigation Committee did not come to its own decision.
- (b) Mr. Thiele discussed the Review and Investigation with Mr. N [redacted] but there is no evidence to suggest that Mr. Thiele influenced the conclusions that Mr. N [redacted] reached or his recommendations to the Investigation Committee. In fact, Mr. Thiele's notes of an October 22, 2007 telephone conversation with Mr. N [redacted] [Book of Evidence Tab 2, Sub-tab S] advise Mr. N [redacted] to defer to the Investigation Committee. This note reads: *"... Rx put a balanced rpt w pros + cons + chronology + let the ctee decide where it should go..."*.
- (c) Mr. Thiele's Affidavit [Book of Evidence Tab 3] at paragraph 16 provides the direction that Mr. N [redacted] gave to Mr. Thiele as follows:

"16 On or about May 24, 2007, I spoke to Mr. N [redacted] in advance of the next meeting of the Investigation Committee scheduled for May 31, 2007. In that telephone conversation, Mr. N [redacted] advised me that there were "definitely some questions need(ed) to be answered" and requested that I prepare a report to the Investigation Committee with the recommendation that an investigation be commenced with respect to Mr. Puar, that Mr. N [redacted] be appointed as a subcommittee of one, and that Mr. Puar be requested to provide to the Association his entire file in respect to the Property."

- (d) Mr. Urquhart relies on the Visser decision [Book of Authorities, Tab 7] and in particular paragraph 38 which states:

"... Thus, the investigative function is represented by the Investigation Committee, which has the exclusive power to conduct an investigation and, if appropriate, initiate a hearing; the adjudicative function is represented by the discipline committee, which has the exclusive power to conduct a hearing and, if appropriate, determine sanctions; and the prosecutorial function is performed by counsel retained by the Association."

There was no evidence presented to suggest that there was any violation of the separation of the investigative, adjudicative and prosecutorial functions as required by the Visser decision.

- (e) Finally, as a result of the Review it was determined that the allegations contained in the T letter of April 17, 2007 were not supported and consequently those allegations were not taken to the Investigation Committee. In this case the Review worked to the member's benefit in determining that the T allegations were unfounded.

29 Did the N Review and report to the May 31, 2007 Investigation Committee meeting provide a reasonable basis for the Investigation Committee to launch an investigation? The Panel concluded that there was a reasonable basis for the Investigation Committee to launch an investigation for the following reason:

30 The report [Book of Evidence Tab 2, Sub-tab M] suggested that, based on the information in the Association's possession there were "...questions that need to be answered about Mr. Puar's conduct in this matter." The Review was based on limited information, but was sufficiently thorough to rule out the allegations put forward in the letter from Mr. T dated April 17, 2007 and to suggest that there was an area of concern in the actions that Mr. Puar took with respect to the project. The Panel accepts that if a limited review of information raises questions that need to be answered concerning a member's conduct, an investigation by the Investigation Committee is an appropriate method of proceeding.

31 Did the Investigation Committee have the authority to launch an investigation under section 30(3) of the Act? The Panel concluded that it did have the necessary authority. Section 30(3) of the Act reads as follows:

"(3) The Investigation Committee or a subcommittee composed of one or more of its members appointed by the Investigation Committee may, on receipt of a report under section 29 or whenever it considers it appropriate, investigate a member, licensee or certificate holder regarding any matter about which an inquiry may be held under section 32."

32 This section of the Act provides the Investigation Committee with wide discretion, confirmed by the Finch decision [Book of Authorities, Tab 4], to initiate an investigation "whenever it considers appropriate".

33 Was the appointment of Mr. N as a subcommittee of the Investigation Committee inappropriate? Mr. Urquhart contends that Mr. N's appointment was not appropriate and that Mr. N was biased, because Mr. N had conducted the Review. The Panel concluded that it was reasonable to appoint Mr. N to conduct the investigation since he was the only geotechnical engineer sitting on the Investigation Committee. While Mr. N participated in the initial review, there was no evidence that this involvement resulted in any bias.

34 Was Mr. Puar provided adequate notice of the investigation and the concern of the Association so he could adequately respond to it? The Panel concluded that the letter to Mr. Puar from the Association dated June 6, 2007 [Book of Evidence, Tab 3, Exhibit "E"] and the subsequent correspondence detailed in paragraph 19 provided the appropriate notice to Mr. Puar and requested information from him to allow the investigation to proceed.

35 It is clear from the evidence that the Association had become aware that a wall and/or slope had failed, thereby creating a potential hazard to workers in the excavation. It is clear from the June 6, 2007 letter that the Association was concerned about the geotechnical engineering services provided by Mr. Puar at the site at [REDACTED] and from Mr. Puar's correspondence of June 25, 2007 that he understood the concern related to the stability of the "north excavation cut slope". The Panel concluded that adequate notice of the investigation was given and that Mr. Puar was given adequate opportunity to present information to the Investigation Committee both in his correspondence of June 25, 2007 and subsequently when the Association requested additional information.

36 Were the letters and questions put to Mr. Puar during the Investigation authorized under the Act? This relates to three letters to Mr. Puar from the Association asking for information with respect to the project under investigation. These letters were:

June 6, 2007 [Book of Evidence, Tab 3, Exhibit "E"],
July 25, 2007 [Additional documents provided at the hearing by Mr. Urquhart], and
September 24, 2007 [Book of Evidence, Tab 3, Exhibit "F"].

37 The Panel concluded that section 30(4) of the Act provides the Investigation Committee with the power to request information and records from a member under investigation. Section 30(4) of the Act reads as follows:

"(4) A member, licensee or certificate holder that is being investigated under subsection (3) must provide the committee or subcommittee conducting the investigation with any information or records in the possession or control of the member, licensee or certificate holder that the committee or subcommittee may require."

38 Did the Investigation Committee have reasonable and probable grounds to refer the matter to the Discipline Committee? Mr. Urquhart made a substantial argument that there was no merit to the charges and that the Notice of Inquiry should be dismissed. The Panel is of the view that this can only be determined after hearing the evidence and therefore, the Panel concluded that this was not a proper issue to be dealt with at this stage of the hearing and therefore the Notice of Inquiry should not be dismissed.

39 Mr. Urquhart's submissions strongly argue that the charges in the Notice of Inquiry are without merit and that there are errors of fact in the Notice of Inquiry. If the case is without merit it will necessarily fail when the substantive facts are presented at the Inquiry, however, the purpose of this hearing is only to determine if the Panel has jurisdiction to proceed or if it has lost its jurisdiction due to some action or inaction by the Association.

40 Did the Investigation Committee violate section 32(1) of the Act by providing reasons for its inquiry recommendation? Section 32(1) of the Act reads, in part, "... *the investigation committee must cause its recommendation for an inquiry, without reasons, to be delivered to the discipline committee.*" Mr. Urquhart relies on the minutes of the Investigation Committee dated January 31, 2008 [Book of Evidence, Tab 2, Sub-tab W] which reads:

"The committee confirms that the charges, as stated in the revised Notice of Inquiry will substantially agree with the Committee's reasons for recommending further action in this case and directs that the revised Notice of Inquiry be delivered to the Disciplinary Committee as its recommendation that an Inquiry be held in this case."

41 The Panel concluded that the Investigation Committee did not provide its reasons to the Discipline Committee. There was no evidence submitted that the confidential minutes of the Investigation Committee were provided to the Discipline Committee, except when they were presented by Mr. Urquhart to this Panel. Even if these minutes were given to the Discipline Committee the minutes contained no information with respect to the Investigation Committee's reasons beyond the Investigation Committee recommendations contained in the Notice of Inquiry. The Investigation Committee actions and the Notice of Inquiry are consistent with the guidance provided by Madam Justice Saunders in the Reddy decision [Book of Authorities, Tab 2].

42 Were Mr. Puar's rights violated by the Association? Mr. Urquhart has suggested that Mr. Puar's rights were violated because he received improper notice of the investigation and was not afforded an opportunity to defend himself. The Panel found, in paragraph 34, that Mr. Puar was notified of the investigation and asked to provide information and records, which he did, and was provided with an adequate opportunity to respond. The purpose of the Inquiry is for Mr. Puar to defend himself, with the assistance of counsel, against the charges contained in the Notice of Inquiry. Therefore, the Panel has determined that Mr. Puar's rights were not violated.

FINDING AND ORDERS

43 The Panel has concluded that its jurisdiction to proceed in this case has not been compromised and orders that the Inquiry proceed.

44 With respect to costs, Mr. Wende submits in paragraph 71 that "...regardless of the outcome of this Inquiry, Mr. Puar must, at the conclusion of this matter, be required to bear the costs of this application...". Section 35(1) of the Act reads as follows:

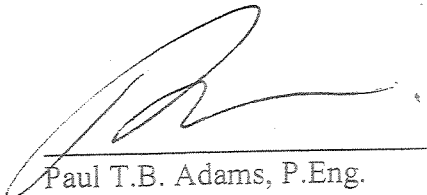
"35 (1) If the discipline committee makes a determination under section 33 (1), the discipline committee may direct that reasonable costs of and incidental to the investigation under section 30 and the inquiry under section 32, including reasonable fees payable to solicitors, counsel and witnesses, or any part of the costs, be paid by the person, and the costs may be determined by the committee."

45 At this stage the Inquiry has not been concluded and the Panel has not made a determination under section 33(1) of the Act. The Panel concluded that it does not have the authority to order costs at this time and that it would consider the question of costs at the conclusion of the Inquiry.

46 The Panel will hold a pre-hearing conference by telephone on September 18, 2008 at 4:30 PM to establish suitable dates to proceed with the substantive matter to be placed before this Panel.

Dated this 10th day of September, 2008.

Discipline Committee Panel:



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

Neil Cumming, P.Eng.
Member

Dave Ricketts, P.Eng.
Member

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