

## DECISION AND REASONS

In the matter of a hearing under the *Professional Engineers Act* and in the matter of a complaint regarding the conduct of MOHAMAD FAROOQ, P.ENG., a member of the Association of Professional Engineers of Ontario.

This matter came on for hearing before a panel of the Discipline Committee on January 28, 2008 at the Association of Professional Engineers of Ontario (the association) in Toronto. The association was represented by Neil Perrier of Perrier Law Professional Corporation. Mohamad Farooq, PhD, P.Eng., was represented by Kristin A. Eliot. Christopher Wirth and Johanna Braden of Stockwoods LLP served as independent legal counsel (ILC) to the discipline panel.

For the final day of the hearing, on which submissions as to liability and penalty were made, the member and his counsel chose to participate by teleconference.

### THE ALLEGATIONS

The allegations against Mohamad Farooq, PhD, P.Eng., as stated in Appendix A to the Notice of Hearing dated July 31, 2007 (Exhibit 1), were as follows:

It is alleged that Mohamad Farooq, PhD, P.Eng. (Farooq or the member), is guilty of professional misconduct, the particulars of which are as follows:

1. At all material times, Farooq was a member of the Association of Professional Engineers of Ontario (PEO) and was a professor in the department of electrical and computer engineering at University X.
2. At all material times, the complainant, Engineer 1, was a member of PEO and dean of engineering at University X.
3. In June 2001, Student A became a research assistant in the department of electrical and computer engineering at University X. Farooq was Student A's supervisor.
4. In November 2002, Farooq approached Student A in his office at University X and stated that he had a financial problem and needed to borrow money. Farooq persuaded Student A to loan him the sum of \$5,000, which he said he would repay "soon." Farooq drove Student A to the bank where she withdrew the necessary funds to loan to Farooq.
5. In December 2002, Farooq again approached Student A and requested that she loan him money. On this occasion, Farooq told Student A he had loaned money to a friend and was now short of funds himself. Student A loaned Farooq a further sum of \$4,000.
6. At the time of the loans, Farooq told Student A never to reveal the fact that Farooq had asked her for money or that she had loaned him money.
7. Contrary to his assurance that he would repay the loans soon, many months passed without any funds being repaid. During this period, Student A did not ask Farooq for repayment because he was her supervisor at University X.

8. Farooq eventually began repaying the loans in early 2004 and into 2005. No interest was ever paid on the loans.
9. In the fall of 2006, Farooq was under investigation by University X and instructed Student A to deny that she ever loaned money to him.
10. In January 2006, Student B became a graduate student in the department of electrical and computer engineering at University X. Farooq was Student B's supervisor.
11. On March 15, 2006, Farooq approached Student B and asked to borrow money, stating non-specific financial problems. Subsequently, Farooq went to Student B's house and persuaded Student B to loan him \$400 that he had set aside to pay his rent. Farooq also persuaded Student B to withdraw a further \$400 from his bank account. On the same day, Farooq drove Student B to the bank where he withdrew a further \$400 to loan to Farooq.
12. The next day, March 16, 2006, Farooq asked Student B for a further \$2,000, which Student B did not have. Farooq pressured and coerced Student B into lending him a further \$1,000, indicating he would pay the money back "next week."
13. Despite this assurance, Farooq did not repay the loans the following week. Student B did not approach Farooq about the loans because he was his supervisor and out of respect.
14. At the time of the loans, Farooq told Student B never to reveal the fact that Farooq had asked him for money or that Student B had loaned him money.
15. Ultimately, Farooq repaid the loans as follows: \$800 on April 3, 2006; \$500 on May 16, 2006; and \$500 on July 18, 2006. No interest on the loans was ever paid.
16. In January 2006, Student C became a graduate student in the department of electrical and computer engineering at University X. She also worked as a research assistant, initially at a stipend of \$300 per month. Farooq was Student C's supervisor.
17. In early April 2006, Farooq called Student C to his office and asked to borrow \$5,000, claiming he had loaned money to a friend and was now short of funds himself. Student C informed Farooq that she did not have \$5,000 to loan him. Through an aggressive negotiation process, Farooq persuaded Student C to loan him \$1,500, which he stated he would repay in one week. Farooq drove Student C to the bank, where she withdrew \$1,500 to loan to Farooq.
18. Farooq did not repay Student C the next week. He did repay \$500 two weeks later, a further \$500 four weeks later and the final \$500 in May 2006.
19. Also in May 2006, soon after the \$1,500 had been repaid, Farooq again approached Student C to loan him money. Student C informed Farooq that she did not have any money available to lend him. Farooq persisted in his requests for a loan and asked to see her bank statements. Farooq also suggested to Student C that she could obtain money from her parents. Student C did not loan Farooq further funds.
20. Between May and September 2006, Farooq again approached Student C and requested that she lend him money. Student C again informed Farooq that she did not have any money available to lend him. Farooq persisted in his requests for a loan and asked to see her bank statements. Farooq then requested that Student C write him a cheque that he said he would not cash so he could show the cheque to someone else to indicate he had funds. Student C refused to provide Farooq a cheque.
21. Sometime between May and September 2006, Farooq increased Student C's stipend to \$600 per month. Farooq informed Student C that the increased stipend was being paid from his personal funds. During his requests for loans, Farooq attempted to leverage the increased

- stipend as evidence that she should have funds available to lend him.
22. On a number of occasions between April and September 2006, Farooq instructed Student C she should not reveal that he had asked to be loaned money or that she had loaned him money.
  23. In or about October 2006, Farooq told Student C he was being investigated by University X and she should deny that he had asked to be loaned money or that she loaned him money.
  24. In August 2006, Student D became a graduate student in the department of electrical and computer engineering at University X. Farooq was Student D's supervisor.
  25. On or about September 8, 2006, Farooq informed Student D that he would pay his tuition fees at University X through research funds. On September 8, 2006, Farooq approached Student D and claimed he had a friend in financial trouble and asked Student D to loan him money. Student D felt indebted to Farooq concerning the tuition fees and, on that basis, loaned him the sum of \$4,000. Farooq told Student D he would repay the loan "as soon as possible."
  26. On September 22, 2006, Farooq approached Student D requesting more money. Farooq pressured and persuaded Student D to lend him a further \$1,000. As a result of the loans, Student D had to borrow money from his cousin so he could pay rent and other living expenses.
  27. In mid-October, Farooq asked Student D to lend him more money. Upon being informed that Student D had no further funds to lend, Farooq proposed a scheme wherein Student D would issue a cheque to Farooq and Farooq would issue a cheque to Student D. Student D declined to participate in the scheme as he was aware that it was unlawful to write a cheque when he did not have the funds to cover it.
  28. In October 2006, Farooq instructed Student D not to reveal he had loaned him money. Farooq informed Student D that a complaint had been filed against him. When subsequently approached by the department head, Student D told the truth about the \$5,000 in loans. The department head ordered Farooq to repay the \$5,000 in full, which he did on October 26, 2006.
  29. All of the loans provided to Farooq from the students set out above were unsecured and without promissory notes. The details above were initially reported to PEO by Engineer 1.
  30. At a discipline hearing at University X on October 3, 2006, Farooq was suspended without pay for a period of 10 days in relation to his conduct regarding Student B. At that time, Farooq misrepresented to University X that he had not borrowed money from other subordinates and that there were no other instances where he had counselled subordinates to lie about such loans.
  31. University X subsequently discovered that Farooq had borrowed money from Student A and Student C. Upon this discovery, Farooq was ordered off the campus of University X and ordered not to communicate with any of his subordinates.
  32. At a discipline hearing on October 20, 2006, Farooq was again ordered not to communicate with anyone who could be viewed as being subordinate to him. Shortly thereafter, Farooq approached Student D and counselled that he should not reveal the fact that he had loaned Farooq money.
  33. It is alleged that Mohamad Farooq, PhD, P.Eng.:
    - (a) harassed several of his students and research assistants for the purpose of obtaining unsecured loans on several occasions;
    - (b) failed to repay the loans within the original time frames promised;
    - (c) made misrepresentations to the students and research assistants regarding the time frame for the repayment of the loans;

- (d) provided false and misleading representations to University X during the course of an investigation regarding the existence of other loans from students;
- (e) counselled subordinates to provide false or misleading statements to University X during the course of their investigation;
- (f) defied University X's administration orders by contacting Student C and Student D during University X's investigation; and
- (g) acted in a disgraceful, dishonourable and/or unprofessional manner.

34. It is alleged that Mohamad Farooq, PhD, P.Eng., is guilty of professional misconduct as defined in the *Professional Engineers Act*.

35. "Professional misconduct" is defined in section 28(2)(b) as:  
"The member or holder has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations."

36. The sections of Regulation 941 made under the said act and relevant to this misconduct are:

- (a) **SECTION 72(2)(J)**: conduct or an act relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable or unprofessional;
- (b) **SECTION 72(2)(N)**: harassment defined at section 72(1): In this section "harassment" means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known as unwelcome and that might reasonably be regarded as interfering in a professional engineering relationship.

#### STATEMENT OF AGREED FACTS

The Statement of Agreed Facts (SAF), filed as Exhibit 2 by counsel for the association, provided as follows.

1. At all material times, Farooq was a member of the Association of Professional Engineers of Ontario and was a professor in the department of electrical and computer engineering at University X.

Farooq was also a member of University X's faculty union, and the terms of his employment were governed by a collective agreement.

2. At all material times, the complainant, Engineer 1, was a member of PEO and dean of engineering at University X. Engineer 1 was a member of the management team of University X, and also governed by the terms of the collective agreement in terms of his dealings with Farooq.
3. In June 2001, Student A became a research assistant in the department of electrical and computer engineering at University X. Farooq was Student A's supervisor.
4. In November 2002, Farooq approached Student A in his office at University X and stated that he had a financial problem and needed to borrow money. Student A agreed to lend Farooq the sum of \$5,000, which he said he would repay "soon." Farooq drove Student A to the bank where she withdrew the sum of \$5,000 as a loan to Farooq.
5. In December 2002, Farooq again approached Student A and requested that she loan him more money. On this occasion, Farooq told Student A he had loaned money to a friend and was now short of funds himself. At Farooq's request, Student A loaned him a further sum of \$4,000.
6. At the time of the loans, Farooq told Student A never to reveal the fact that Farooq had asked her for money or that Student A had loaned him money.
7. Farooq started to repay the loans to Student A in early 2004. The loans were fully repaid in 2005. No interest was paid to Student A by Farooq in respect to the loans.
8. In the fall of 2006, while Farooq was under investigation by University X, he instructed Student A to deny that she ever loaned money to him.
9. In January 2006, Student B became a graduate student in the department of electrical and

- computer engineering at University X. Farooq was Student B's supervisor.
10. On March 15, 2006, Farooq approached Student B and asked to borrow money stating non-specific financial problems. Subsequently, Farooq went to Student B's house and asked Student B to loan him \$400, which he agreed to do. Farooq also asked Student B to drive to the bank to withdraw a further \$400 from his bank account. On the same day, Farooq drove Student B to the bank where he withdrew a further \$400 as a loan for Farooq.
  11. The next day, March 16, 2006, Farooq asked Student B for a further \$2,000. Farooq received another loan from Student B in the amount of \$1,000, which Farooq said he would repay in one week.
  12. At the time of the loans, Farooq told Student B never to reveal the fact that Farooq had asked him for money or that Student B had loaned him money.
  13. Ultimately, Farooq repaid the loans as follows: \$800 on April 3, 2006; \$500 on May 16, 2006; and \$500 on July 18, 2006. No interest was ever paid by Farooq in respect to the loans.
  14. In January 2006, Student C became a graduate student in the department of electrical and computer engineering at University X. She also worked as a research assistant, initially at a stipend of \$300 per month. Farooq was Student C's supervisor.
  15. In early April 2006, Farooq told Student C, while she was in his office, he had loaned money to a friend and was now short of funds himself. Student C agreed to loan Farooq \$1,500, which he stated he would repay in one week. Farooq drove Student C to the bank where she withdrew \$1,500 to loan to Farooq.
  16. Farooq did not repay Student C the next week. He did repay \$500 two weeks later, a further \$500 four weeks later, and the final \$500 in May 2006.
  17. Also in May 2006, soon after the \$1,500 had been repaid, Farooq again approached Student C to loan him money. Student C informed Farooq that she did not have any money available to lend him. Student C did not loan Farooq further funds.
  18. Between May and September 2006, Farooq again approached Student C and requested that she lend him money. Student C again informed Farooq that she did not have any money available to lend him. Student C refused to provide Farooq a cheque.
  19. On a number of occasions between April and September 2006, Farooq instructed Student C she should not reveal that he had asked to be loaned money or that she loaned him money.
  20. In or about October 2006, Farooq told Student C he was being investigated by University X and she should deny that he had asked to be loaned money or that she loaned him money.
  21. In August 2006, Student D became a graduate student in the department of electrical and computer engineering at University X. Farooq was Student D's supervisor.
  22. On or about September 8, 2006, Farooq informed Student D he would pay his tuition fees at University X through research funds. On September 8, 2006, Farooq approached Student D and claimed he had a friend in financial trouble and asked Student D to loan him money. Student D felt indebted to Farooq concerning the tuition fees and, on that basis, loaned him the sum of \$4,000. Farooq told Student D he would repay the loan "as soon as possible."
  23. On September 22, 2006, Farooq approached Student D requesting more money. Student D agreed to lend Farooq a further \$1,000.
  24. In October 2006, Farooq instructed Student D not to reveal he had loaned him money. Farooq instructed Student D that a complaint had been filed against him. When subse-

quently approached by the department head, Student D told the truth about the \$5,000 in loans. The department head ordered Farooq to repay the \$5,000 in full, which he did on October 26, 2006.

### PLEA BY MEMBER

Farooq denied the allegations of professional misconduct contained in the Notice of Hearing. He confirmed his acceptance of the SAF.

### MOTION TO DISMISS

At the outset of the hearing, counsel for the member requested dismissal of the matter. The matter related to events that transpired at the university, where relations between faculty and management were governed by a collective agreement. A confidential resolution had been reached between the member (represented by a member of the university faculty association) and management.

The complaint to the association, on which this proceeding is founded, was filed by a member of the university management team and was based on information covered by confidentiality provisions of the collective agreement, pursuant to federal legislation. The member's counsel contended that the panel did not have a right to consider confidential documents protected under federal legislation, which is superior to the *Professional Engineers Act*, enacted as provincial legislation.

Association counsel advised that the complainant was not a party to the proceedings before this panel. The association was not wrong in receiving the complaint and did not breach the confidentiality agreement in investigating and processing the complaint. He referenced an excerpt from Justice Sopinka's textbook on evidence, which states that even illegally obtained evidence is admissible in proceedings like this one.

ILC advised that the panel should consider the evidence provided on the motion. There was no collective agreement or other factual record before the panel to support that the documents or matters in question were protected under federal legislation.

The panel ruled that it would proceed with the hearing. The member's objection gave no substantive reason to dismiss the matter without a hearing. This hearing is the result of a referral from the Complaints Committee following

investigation by the association. The matter should proceed as there are allegations of abuse of authority over vulnerable people and there is public interest in how such conduct is viewed by the profession.

### THE EVIDENCE

Farooq had been employed at the university since 1980. He was licensed as a professional engineer in 1980 and was a professor in the department of electrical and computer engineering at the university at an annual salary of approximately \$122,000 prior to his retirement. There was no previous record of discipline at the university or by the association. An audit of the records of the grant programs he had administered yielded no improprieties.

As to the substance of the allegations, the panel heard evidence from each of the students referenced in the allegations, which corroborated the information in the SAF. Each student had received his or her undergraduate education in a foreign country. Each was a mature adult with responsibilities, but limited means of support. Each was working under the supervision of the member.

The panel heard that the member had assisted each student in the initial stages of his or her attendance at the university. This assistance included loans and help in personal affairs that was beyond that required in a conventional student-teacher relationship. The member then turned to these students for loans when he needed money.

The loans caused difficulties for the students. Each experienced stress that contributed to changes and deterioration of their relationships with others, particularly the member.

There was also evidence about the university's discovery of the loans. The evidence was that Farooq, as a member of faculty, was responsible to the head of the engineering department. The head was responsible to the dean of engineering, who reported to the principal. The principal had authority to discipline, but this authority was limited to a suspension of 10 days. More severe discipline would entail approval of higher authority.

The sequence of relevant events in 2006 was as follows:

July 26: The department head reported to the dean that Student B (a student who was also a wit-

ness) had complained that Farooq had pressured him for a loan.

October 3: There is a labour/management meeting at which Farooq admitted borrowing money from Student B. He stated that no other students were involved. He was told not to have contact with the student until there was a hearing.

October 18: The department head and Student C (a student who was also a witness) reported to the dean that Farooq had also borrowed money from Student C.

October 20: There is a labour/management meeting at which Farooq admitted to obtaining loans from other students.

October 23: Farooq submitted his resignation effective April 30, 2007, and this was accepted by the principal.

October 26: The principal disciplined Farooq by suspending him without pay for 10 days as he had failed to obey a lawful order and lied with respect to other loans.

There was no formal discipline by the university for what the principal described as “having the poor judgment to importune for loans certain individuals over whom he had authority.” On October 27, 2006, the dean (Engineer 1) filed a complaint with the association.

Engineer 1 testified in his role as complainant. Counsel for the member objected to Engineer 1 testifying as the evidence he could provide was covered by the confidentiality provisions of a labour/management agreement, and through which a full settlement of the employment issues had been realized. Counsel argued that the question is important to the faculty association that represented Farooq through the university disciplinary process.

After hearing from counsel for the association and ILC, the panel denied the member’s objection. The evidence was relevant to the proceeding. There was no evidence that the association had breached any confidentiality agreements or acted improperly. There was no evidence from the member of a compelling reason to exclude the evidence. The onus on the member to satisfy the panel that it should not hear Engineer 1’s testimony was not satisfied.

The panel received two documents relevant to Farooq, signed by the principal of the university. The first was a letter of suspension for 10 working days

for reasons communicated at a meeting held on October 26, 2006. The second was an edited letter (the first four points) dated March 15, 2008, which had been produced to set in context the events in the fall of 2006 to prevent misconceptions from arising about the last period of Farooq’s service.

Engineer 1 indicated the engineering professors at the university need to be licensed professional engineers in order for the university to maintain its accreditation. The licence is particularly important for the third and fourth year of undergraduate programs and for graduate studies and research. While the licence is not a mandated requirement, those not licensed are encouraged to become licensed. It is a consideration in performance reviews, and unsatisfactory performance evaluations could result in discipline. He conceded in cross-examination that he was not aware of any professor having been disciplined for failing to have a P.Eng. designation.

Engineer 1 testified that the relationship between a professor and a graduate student or research assistant is one of mentorship as well as employment. Graduate students and research assistants depend on professors for their financial welfare during their time at the university, as well as recommendations to fulfill their career aspirations.

The member called Professor A, an economics professor at the university since 1974. He was president of the faculty association and attended the meetings regarding Farooq on Farooq’s behalf since the grievance officer was not available. He affirmed that Farooq was not disciplined by the university for borrowing money; there were no grounds for discipline based on university policy or the collective agreement. The union did not grieve the 10-day suspension for insubordination. The October 26, 2006 letter of discipline would remain on the university file for two years. Farooq would continue with no assigned duties until his retirement on April 30, 2007.

Professor A expressed concern that the October 26 letter of discipline had been given to the association by Engineer 1. Professor A said this was a “protected B” document with a required procedure for release under the labour/management agreement, and that its release could be detrimental to the grievance process at the university. Professor A accepted in cross-examination the university’s decision to suspend Farooq was in the public domain as soon as it was

conveyed to the engineering department so they could reassign his work.

Farooq testified on his own behalf. He said he had assisted each of the students in their orientation to the university and considered each to be like members of his family. He had paid back all of the loans, with the exception of one, prior to the investigation by the university. He had loaned to and borrowed from colleagues previously. He had no recollection of being told of any university policy with respect to loans from students.

Farooq indicated he had responsibilities to support his immediate family in Canada, as well as his extended family abroad. His mother had been seriously sick and required support prior to her death in the fall of 2007. He was on a one-year sabbatical starting in June 2005, during which his regular income was reduced by 20 per cent and an anticipated research project did not materialize. He retired of his own volition; however, he needs to continue to earn money to support his family. His area of expertise is defence, where a P.Eng. is a requirement.

Farooq testified that he was remorseful for what had happened. He considered the students to be part of his family. There was no deceit intended and his actions were without malice. He had not considered it as abusing power; however, he accepts he made a mistake and has taken punishment from his previous employer. He thought that, after his resignation from the university, the matter was resolved and concluded.

### SUBMISSIONS OF THE PARTIES

In closing argument, association counsel highlighted the operative words of sections 72(2)(j) and 72(2)(n) applicable to the allegation of misconduct. The member had maintained and used his licence as a professional engineer to his advantage in his teaching, his research and application for research grants from outside agencies while at the university. The resident assistants and graduate students were involved in engineering matters that required the supervision of a professional engineer. The SAF and testimony of the students satisfy the allegations cited in paragraphs 33(a), (b), (c) and (e) of the Notice of Hearing and support the allegation (g) of acting in a disgraceful, dishonourable and/or unprofessional manner. The evidence he had counselled students to lie was not challenged. The

testimony of the students demonstrated reluctance in loaning money and the frustration and hardship experienced as a result of tardy repayment. The testimony of the other witnesses and discipline administered by the university support allegations 33(d) and (f) of the Notice of Hearing.

Counsel for the member argued that the professor/student relationship was pedagogical and did not fall within the “practice of professional engineering” as defined in the act. Teaching and supervising and what Farooq admitted to in the SAF is not related to the practice of professional engineering, thus is outside the jurisdiction of this panel. Indeed, the definition of professional misconduct under Regulation 941, section 72(2)(g) specifically states that “professional misconduct means a breach of the act or regulations, other than an action that is solely a breach of the code of ethics.” Counsel for the member argued that the panel did not have statutory authority to make a finding of professional misconduct, as the onus of proving that the member’s conduct related to professional engineering had not been satisfied by the association.

Counsel for the member further submitted that it would, in fact, be an abuse of process to make a finding of professional misconduct, given the manner in which the matter had been brought to the association. The complaint was motivated out of malice. A P.Eng. licence is not a requirement for teaching at the university under the collective agreement. The matter was resolved and closed with the discipline imposed by the university.

Counsel for the member argued that all of the students were mature adults. All the loans were repaid and there were no reprisals if students refused to loan money. Farooq had expressed remorse. He had retired voluntarily and in good standing, with the exception of the circumstances surrounding this issue.

ILC advised that the association bears the onus of proving the allegations. The standard of proof, as per *Bernstein v. The College of Physicians and Surgeons of Ontario (1977)*, 15 O.R. (2d) 477, is a balance of probabilities with the qualification that the proof must be clear and convincing and based upon cogent evidence accepted by the panel. The more serious the allegation to be proved, the more cogent must be the evidence.

With respect to the allegation of misconduct under section 72(2)(j), the conduct must be relevant to the practice of professional engineering as that term is defined. The legislation is to be interpreted narrowly and, if there are two reasonable interpretations of the statute, the panel is to adopt the interpretation favouring the member. If the panel is satisfied that the conduct in question relates to the practice of professional engineering, the panel should determine whether members of the profession would regard the conduct as disgraceful (the most serious, and connoting a serious moral failure), dishonourable (usually involving an element of deceit or dishonesty) or unprofessional, or any combination of the three.

The three elements that need to be considered in determining whether the conduct constituted harassment are: there must be a course of conduct that is more than a single incident; the member must have known or reasonably ought to have known that his conduct was unwelcome; and that the conduct must be interfering with a professional engineering relationship.

ILC advised the panel needed to weigh the evidence that had been admitted. The panel could accept all, some or none of what a particular witness stated. ILC listed the factors that could be considered by this panel in determining the credibility of witnesses, including how the evidence fit with other evidence accepted by the panel.

As to the argument the proceeding was an abuse of process, ILC advised that an abuse of process occurs when the prosecution of the matter involves conduct that would shock and dismay the public. This was not a case of “double jeopardy,” where the member was unfairly being punished twice for the same conduct. The goals and purpose of the university disciplinary process were very different from the goals and purpose of this panel, and the fact that the member had undergone a review of his conduct at the university did not oust the jurisdiction of this panel. Finally, ILC advised that the motivation of a complaint could be relevant to the credibility or reliability of a complainant’s evidence in certain cases. However, the mere fact that a complainant may be motivated by ill will is not a basis for dismissing a proceeding as an abuse of process.

## DECISION OF THE PANEL

Having considered all the evidence and the submissions of counsel, the panel found that Farooq had committed professional misconduct as alleged in the Notice of Hearing.

In particular, the panel found that Farooq committed acts relevant to the practice of professional engineering that, having regard to all the circumstances, would reasonably be regarded by the engineering profession as disgraceful, dishonourable and unprofessional, contrary to section 72(2)(j) of Regulation 941.

Furthermore, the panel found that Farooq committed harassment, contrary to section 72(2)(n) of Regulation 941.

The panel considered Farooq’s request to dismiss the allegations because of abuse of process. That request was denied.

## REASONS FOR THE DECISION

The panel found the testimony of the four students was very credible and fared well under cross-examination. The testimony from the students confirmed the allegations in the Notice of Hearing and the evidence contained in the SAF.

The panel found Engineer 1’s testimony to be very compelling and professional. As dean of the engineering faculty, he had responsibility to protect the students as well as the reputation of the faculty at the university. He provided a good oversight of how the discipline issue was handled by university management.

The panel also found Professor A, a witness on behalf of the defence, to be credible and professional. Although he was representing the member as an officer of the faculty association during the university disciplinary process, he made it clear he did not condone the member’s actions in terms of soliciting loans from students.

Farooq was an engineering professor and the students were students of engineering. The school and the individuals being taught benefited by instruction from a licensed professional. The relationship between Farooq and the students involved his direction and supervision. These factors, among others, make his conduct relevant to the practice of engineering as that term is defined in the *Professional Engineers Act*.

The conduct would reasonably be regarded by members of the engineering profession as disgraceful, dishonourable and unprofessional. Farooq was an unacceptable role model for aspiring professional engineers. The gross misuse of authority and power over vulnerable people is a disgrace to the profession. The conduct involved deceit and dishonesty. It was clearly unprofessional. The allegations (b) through (f) of clause 33 in the Notice of Hearing were substantiated by the evidence, including the SAF, and support a finding of disgraceful, dishonourable and unprofessional conduct.

Farooq's repeated requests for money were unwanted, and Farooq knew, or should have known, they were unwanted and his requests were inappropriate. By making the requests and by approaching the students and telling them to deny they had loaned him money, Farooq engaged in harassment and compromised the professional engineering relationship.

The panel accepted the evidence that an engineering licence is not a prerequisite for teaching; however, licensed professional engineers are required in order for the university to retain its accreditation as an engineering school. The panel was not influenced by the fact the university had not pursued discipline on the basis of the loans. The evidence of the dean, Professor A and the March 15, 2008 letter from the principal, confirmed Farooq's action in soliciting loans from students was not condoned.

The member's expression of remorse lacked credibility and the panel did not believe his assertion that the matter should be finalized with his retirement. He had been at the university since 1980, thus his arguments about language and culture were not compelling. While there may have been ill feelings amongst the parties involved at the university, there was no evidence of coercion or malice. The October 26, 2007 letter of suspension was in the public domain and was required to be in order for teaching responsibilities to be reassigned. There was no evidence to show the panel's jurisdiction was superseded by other legislation or agreement.

This proceeding was not an abuse of process by the association. The motives and conduct of the complainant, Engineer 1, were not relevant

issues in this hearing. The association has done nothing wrong in acting on the information it received from the complainant. There has been no miscarriage of justice or other breach of fairness that would warrant a stay or dismissal of this proceeding.

#### **PENALTY**

Association counsel submitted the guiding principles in determining penalty should be:

- (a) protection of the public interest;
- (b) maintaining public confidence in the profession's ability to self-regulate;
- (c) general deterrence;
- (d) specific deterrence; and
- (e) rehabilitation.

Association counsel asserted a finding of disgraceful conduct represented the most serious moral failure. The penalty should be commensurate with the seriousness of the offence. The fact that the deceit and counselling to deceive had extended over a period of four years merited a significant penalty. Revocation, the maximum provided in the act, is not outside the appropriate range for this case. If the penalty was not revocation, it should include:

- a lengthy suspension of not less than one year;
- a requirement to write and pass the professional practice exam within the specified suspension period, failing which the member's licence would be revoked;
- a reprimand to be recorded on the registry; and
- publication in detail, including the name of the member, but with no reference to the names of others or the institution involved.

Counsel for the member argued revocation was too harsh and not warranted. The member has been licensed since 1980 and this is the first offence. The member's relationship with students is over, thus it is not behaviour that will be repeated. The public interest had been addressed through the resolution reached at the university and there were no broader concerns. A reprimand would be appropriate and, at most, the penalty might include a short suspension.

ILC indicated the purpose of penalty is not to punish the member, but to attain the ideals

## DISCIPLINE HEARING SCHEDULE

listed by association counsel. Sometimes, these ideals may be in conflict with one another and no one single principle governs. Rather, the panel should consider all the aggravating and mitigating factors in making the appropriate determination.

ILC also advised, if the panel were considering revocation or suspension, there are some jurisdictional issues. Section 28(4) of the *Professional Engineers Act* limits suspensions to 24 months, but a suspension must be for a stated time period. Moreover, publication is mandated for revocation or suspension; however, the panel has discretion with respect to whether the publication shall be with or without reasons.

### PENALTY DECISION

Having considered the evidence and the submissions of counsel, the panel ordered:

1. Farooq's licence shall be suspended for a period of 24 months;
2. Farooq shall write and pass the professional practice exam within 24 months, failing which his licence will be revoked; and
3. The order of this panel shall be published, with reasons, in the official publication of the association with Farooq's name, but without the names of any other individuals or the institution involved in the matter.

### REASONS FOR PENALTY

The panel accepted that the offence was serious, meriting a significant penalty. The panel considered revocation; however, this was a first offence and there is little likelihood the member will have a similar position of authority over vulnerable people in the future. The requirement to write and pass the professional practice exam would demonstrate a commitment by the member to rehabilitation.

The member had participated throughout the hearing and a reprimand could add little to enlighten him on the consequences of his actions or measures to remediate. The fact of the suspension would remain on the registry through most of his working career.

Publication would demonstrate the profession's ability to regulate itself and act as a general deterrent should other professional engineers encounter similar circumstances. The names of the innocent victims were not essential. The witnesses representing the institution were forthright, but respectful, in appearing before the panel. The offence was the member's and should not reflect poorly on the institution or the students involved.

The written Decision and Reasons were signed by David Robinson, P.Eng., on October 21, 2008, as the chair on behalf of the other members of the discipline panel: Santosh Gupta, P.Eng., Phil Maka, P.Eng., Virendra Sahni, P.Eng., and Henry Tang, P.Eng.

This schedule is subject to change without public notice. For further information contact PEO at 416-224-1100; toll free 800-339-3716.

Any person wishing to attend a hearing should contact the tribunal office at extension 1083.

All hearings commence at 9:30 a.m.

Note: These are allegations only. It is PEO's burden to prove these allegations during the discipline hearing. No adverse inference regarding the status, qualifications or character of the licence or Certificate of Authorization holder should be made based on the allegations listed herein.

### FEBRUARY 2-3, 2009

CHUNG-WAI CHAN, P.ENG., and M.V. SHORE ASSOCIATES (1993) LTD.

It is alleged that Chung-Wai Chan, P.Eng., is incompetent as defined in section 28(3)(a) of the *Professional Engineers Act* and that Chung-Wai Chan, P.Eng., and M.V. Shore Associates (1993) Ltd. are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

### FEBRUARY 18-19, 2009

RAOUF H.M. BALBAA, P.ENG., and HITE ENGINEERING COMPANY INC.

It is alleged that Raouf H.M. Balbaa, P.Eng., is incompetent and/or guilty of breaching the Code of Ethics as defined in the *Professional Engineers Act* and that Raouf H.M. Balbaa and HITE Engineering Company Inc. are guilty of professional misconduct as defined in the *Professional Engineers Act*.

### MARCH 23-24, 2009

WILLIAM G. HUNT, P.ENG., and HUNT ENGINEERING GROUP INC.

It is alleged that William G. Hunt, P.Eng., is incompetent as defined in section 28(3)(a) of the *Professional Engineers Act* and that William G. Hunt, P.Eng., and Hunt Engineering Group Inc. are guilty of professional misconduct as defined in section 28(2)(b) of the *Professional Engineers Act*.

# ENFORCEMENT EXPLAINED

This column aims to educate members about some of the issues PEO faces in protecting the public against unlicensed individuals who engage in the practice of professional engineering, and in enforcing the title protection provisions of the *Professional Engineers Act*.

By Steven Haddock

**Q.** I am registered in the EIT program. Can I use the job title “Junior Engineer–EIT”?

**A.** No. Many provinces, particularly west of Ontario, allow this use of “engineer” in a job title. “Junior engineer” is allowed in some circumstances in Quebec for EITs who meet certain qualifications. However, both uses are still prohibited in Ontario.

Subsection 40(2)(a.1) of the *Professional Engineers Act* prohibits anyone except a licence holder from using a job title containing the word “engineer” where it will lead to the belief that person is licensed. The purpose behind that section—and all of subsection 40(2)—is to allow the public to easily differentiate a professional engineer from someone who is not licensed. But this restriction is not absolute and many skilled trades are allowed to use “engineer” in a manner approved by other Ontario legislation.

The legislature agreed to this change in 2003 because there was evidence the public was confused by the use of the term “engineer” by unlicensed individuals, believing them to be licensed. Our experience has since borne out this concern, as we have prosecuted a “civil engineer,” a “qualified engineer” and a “consulting engineer” under the provisions of this section.

Allowing EITs to use the term “engineer” undercuts the association’s efforts to restrict the use of the title to P.Engs and defeats the purpose of using “engineer” as an identification of a licensed individual. A policy of allowing EITs to call themselves engineers would essentially put the public in the position of guessing whether an engineer is a licensed professional engineer or an EIT.

Using EIT in an attempt to “unring the bell” is just as problematic. Although P.Eng. is a well understood abbreviation, EIT is less well understood by the public and doesn’t carry the same legal protections against misuse. In addition, there is very little in our own act restricting the use of EIT or similar titles (unlike “professional engineer,” EIT is not mentioned in the title protection provisions of the act).

PEO’s preferred title for applicants is “engineering intern,” which shows both professional affiliation and that although the person in question is seeking a licence, he or she hasn’t obtained one yet. We also allow “engineer-in-training” or even “engineer trainee.” These titles make it clear that an individual is not licensed, but is working towards professional licensure. Moreover, EITs may use any title that an unlicensed individual can use. The word “engineering” can, for the most part, be used freely, except for “engineering consultant” and “engineering specialist.” Terms such as “designer,” “analyst” and “advisor,” which suggest engineering functions, are also allowed, even when combined with engineering.

## 2008 ENFORCEMENT TOTALS

<b>TOTAL INQUIRIES</b>	<b>711</b>
Major enforcement files opened	51
Job advertisers contacted	12
Existing business names reviewed	277
New corporate names reviewed	37
Enforcement matters reported	98
<i>Daily Commercial News</i> inquiries	25
Internet inquiries	12
Out-of-province engineers	
Repeat offenders	4
Alberta	97
Newfoundland and Labrador	11
Nova Scotia	6
Saskatchewan	6
Self-employed engineers contacted	75

Please report any person or company you suspect is violating the act. Call the PEO enforcement hotline at 416-224-9528, ext. 1444 or 800-339-3716, ext. 1444. Or email your questions or concerns to [enforcement@peo.on.ca](mailto:enforcement@peo.on.ca).