

In the Court of Appeal of Alberta

Citation: Farooq v. Alberta College of Pharmacists, 2010 ABCA 306

Date: 20101020
Docket: 0903-0335-AC
Registry: Edmonton

In the Matter of the *Pharmaceutical Profession Act of Alberta*
In the Matter of an Investigation Regarding the Conduct of
Mohammad Farooq Registration #6201

Between:

Mohammad Farooq

Appellant (Respondent)

- and -

Alberta College of Pharmacists

Respondent (Applicant)

The Court:

The Honourable Madam Justice Constance Hunt
The Honourable Mr. Justice Clifton O'Brien
The Honourable Mr. Justice R. Paul Belzil

Memorandum of Judgment

Appeal from the Whole of the Decision by the
Investigating Committee and Council of Alberta College of Pharmacists
Dated the 23rd day of November, 2009

Memorandum of Judgment

The Court:

I. Introduction

[1] Mohammad Farooq (Farooq) appeals the decision of the Council of the Alberta College of Pharmacists (College). The Council dismissed his appeal from the findings of an Investigating Committee that he, among other things, displayed a lack of knowledge or lack of skill or judgment in the practice of pharmacy, contrary to section 57 of the *Pharmaceutical Profession Act*, R.S.A. 2000, c. P-12, (*Act*).

[2] The appeal is dismissed.

II. Background

[3] Farooq was trained as a pharmacist in Pakistan and subsequently practiced as a pharmacy manager in Saudi Arabia. In 1998 he immigrated to Canada and sought to be licensed as a pharmacist in Alberta.

[4] He successfully wrote the Pharmacy Examining Board of Canada (PEBC) Qualifying Examination and, in November 2000, received his Certificate of Qualification. This qualified him to enter the College's internship program.

[5] He registered in the internship program in December 2001 and completed the required hours of internship in 2002.

A. Registration Requirements

[6] The practice of pharmacy is now governed by the applicable provisions of the *Health Professions Act*, R.S.A. 2000, c. H-7. At all times relevant to this appeal, however, the *Act* and its *Regulations* applied. Section 2(1) of the *Act* provided that only pharmacists were entitled to engage in the exclusive scope areas of the practice of pharmacy. To be registered as a "pharmacist", an individual needed to meet the requirements of the *Act* and the *Pharmaceutical Profession Regulation*, A.R. 322/94, (*Regulation*).

[7] Under these provisions, an individual applying for registration was required to:

- (a) hold a recognized degree in pharmacy;
- (b) pass the PEBC qualifying examination;
- (c) complete a prescribed period of internship;
- (d) pass a jurisprudence examination; and

- (e) pass an internship examination as prescribed by the Internship Committee (also referred to as the Entry to Practice Committee).

The *Act*, s. 13; and the *Regulation*, ss. 3 and 9.

[8] In 2001, the PEBC decided to institute a test of practical skills (the Objective Structured Clinical Examination (OSCE)) along with its qualifying examination. The College decided to adopt this test as a substitute for its internship examination, rather than require candidates to take two tests evaluating practical skills. Accordingly, the College's internship examination was no longer available when Farooq completed his internship in April 2002.

[9] Pursuant to a transitional policy adopted by the College in 2001, Farooq was given the option either of passing the OSCE as a prerequisite to registration, or of registering and undergoing an on-site assessment within six months of registration. He elected the latter and was registered as a pharmacist in July 2002.

[10] The main goal of an on-site assessment is to observe pharmacists in their practice sites to ensure that their practice is carried out at a competent level. A potential outcome of such an assessment is referral to the Registrar for possible disciplinary action if the assessor considers that the pharmacist shows lack of skill or judgment.

B. The First On-Site Assessment

[11] An assessment was conducted on March 20, 2003 at a pharmacy in Okotoks. The assessment went badly for Farooq. The assessor reported that it was the worst she had seen in her 75 to 80 assessments.

[12] This assessment had been directed by Council at the request of the Entry to Practice Committee as part of the registration process elected by Farooq. The results were reviewed both by the Practice Review Committee and the Entry to Practice Committee. On May 5, 2003, the Practice Review Committee decided to refer the matter to the Registrar for inquiry under the disciplinary provisions of the *Act* as it was concerned that Farooq's practice might constitute the unskilled practice of pharmacy.

[13] Section 41(1) of the *Act* provided that the Registrar, in such circumstances, should deal with the referral as if it were a complaint. By letter to Farooq dated May 27, 2003, the College advised him that the on-site assessment had disclosed he was below peer mean in seven out of eight areas, and that as a result the Practice Review Committee had referred the matter to the Registrar.

[14] Pursuant to section 49 of the *Act*, the Registrar, in turn, referred the matter to the Infringement Committee (consisting of the President of the College and the Registrar). This committee determines whether a complaint should be summarily dismissed or if it should be referred to an Investigating Committee for a hearing.

C. Preliminary Investigation

[15] The Infringement Committee appointed Jill Moore, the College's Complaints Director, as a preliminary investigator to investigate the deemed complaint.

[16] On May 28, 2003, Moore went to the Okotoks pharmacy to observe Farooq. She did not identify herself. Shortly after, she wrote to Farooq advising of her appointment by the Infringement Committee and indicated that she would contact him to arrange a meeting and observe his practice. She informed Farooq that the information she gathered, along with her investigation report, would be provided to the Infringement Committee.

[17] Moore met him at the pharmacy on June 2, 2003, at which time she observed his practice further and interviewed both Farooq and the pharmacy manager. She noted that Farooq was very eager to improve his practice. She asked him if he thought it would be fair to subject him to a second on-site assessment. He was anxious to have one, and their meeting ended on the basis that the next step in the investigation would be another on-site assessment.

D. The Second On-Site Assessment

[18] On October 30, 2003, an on-site assessment was conducted by a new assessor. Again, Farooq scored below peer mean in seven out of eight areas.

[19] The results of this second assessment were reviewed by a panel of the Practice Review Committee. The panel expressed its concerns to the investigator and recommended a further assessment within six months.

[20] On December 8, 2003, Moore reported to the Infringement Committee, noting the Practice Review panel's recommendation for yet a further assessment and adding that "the passage of time combined with continued mentorship may well provide the tools Mr. Farooq needs to improve to a satisfactory level".

[21] By letter dated December 15, 2003, Farooq was advised that the Infringement Committee would hold his file in abeyance for six months allowing him to improve his skills through continued mentoring. The Committee also suggested that he join the Toastmasters Club to improve his communication skills. The Infringement Committee requested that a further on-site assessment be arranged for June 2004.

E. The Third On-Site Assessment

[22] On June 10, 2004, a further on-site assessment was conducted by yet another assessor. Farooq again performed poorly, although somewhat better than before.

[23] The results of this assessment were reviewed by the Practice Review Committee. It noted in its memorandum to the Registrar on July 19, 2004, that “there has been some improvement in Mr. Farooq’s practice since the last assessment, however, the panel still has grave concerns about [his] practice.”

[24] By letter dated November 9, 2004, Farooq was informed that the Infringement Committee had reviewed the report of the preliminary investigator appointed to investigate his professional conduct “and, specifically, whether your conduct may indicate unskilled practice”. The letter advised that the Infringement Committee required a further measurement of his skill. It requested Farooq to register for the OSCE administered by the PEBC prior to June 30, 2005. Farooq was told that the Infringement Committee would use the results of this evaluation as a measure of his skills.

F. Referral to Investigating Committee

[25] Farooq took the OSCE in the Spring of 2005. He failed. The passing score was 315; he scored 275.4. The Infringement Committee consequently referred the matter to an Investigating Committee.

[26] By letter dated October 3, 2005, the College advised Farooq that the Infringement Committee had completed its review of the ongoing investigation and recommended a hearing to consider his professional conduct. The letter outlined the reasons for the investigation and advised that the College had appointed an Investigating Committee. He was informed that a Notice of Hearing and Notice to Attend setting the date and place of the hearing would be served.

G. Hearing and Decision

[27] An initial Notice of Hearing was issued on January 13, 2006. Adjournments occurred and particulars of the allegations were ultimately provided. The hearings did not commence until June 11, 2007. Between then and June 23, 2007, the Investigating Committee heard from the College’s 14 witnesses and Farooq. Arguments about jurisdiction were made and a decision on jurisdiction issued on September 27, 2007. Proceedings in the Court of Queen’s Bench followed, resulting in a hiatus in the hearing.

[28] The Investigating Committee heard from Farooq’s witnesses on June 18 and 19, 2008, and rendered its decision on conduct on October 14, 2008. The Committee determined that Farooq’s conduct contravened section 57 of the *Act* in that he:

- (a) displayed a lack of knowledge of or lack of skill or judgment in the practice of pharmacy contrary to s. 57 (a)(vi) of the *Act*;
- (b) did not comply with Standards of Practice 1.1.(a), 2.1(a), 4.1, 4.5(c) and 4.6, contrary to s. 57 (a)(iii) of the *Act*;
- (c) acted in a manner contrary to the best interests of the public contrary to s. 57(a)(i) of the *Act*; and

- (d) acted in a manner that harms or tends to harm the standing of the profession, contrary to s. 57(a)(v) of the *Act*.

[29] In its subsequent decision on penalty, dated April 21, 2009, the Investigating Committee made the following orders:

1. Mohammad Farooq must complete and pass the OSCE within a 15 month period starting from April 30, 2009. If Mr. Farooq fails to pass the OSCE during that period of that time his practice permit and registration will be suspended. The cost of the OSCE will be paid 50% by ACP and 50% by Mohammad Farooq.
2. If Mohammad Farooq's registration and permit are suspended pursuant to the order in paragraph 1, his registration and practice permit will be cancelled unless he undertakes and passes the OSCE within 12 months from the date his registration and practice permit were suspended. If this is the case, Mr. Farooq will bear the entire cost of this exam.
3. In the 15 months period provided in the order in paragraph 1, Mr. Farooq's entitlement to engage in the practice of pharmacy shall be subject to the following conditions
 - (a) Mr. Farooq shall not function as a licensee at any pharmacy licensed by [the College];
 - (b) Mr. Farooq shall not engage in the sole practice of pharmacy other than in his current employment at CFB Wainwright;
 - (c) If Mr. Farooq seeks to practice or is practising as a pharmacist at any location in the province of Alberta other than at CFB Wainwright, he shall only do so under the supervision of a registered clinical pharmacist who is aware of these orders and who confirms to the satisfaction of the Complaints Director that the registered clinical pharmacist agrees to supervise Mr. Faoorq's practice of pharmacy and to report any concerns that arise to the Complaints Director.
 - (d) Mr. Farooq shall provide a copy of the Decision of the Investigating Committee Regarding Conduct, dated October 5, 2008, and this Decision of the

Investigating Committee regarding penalty, to his current employer and to the Medical Officer at CFB Wainwright. Mr. Farooq will provide written confirmation from his employer within 30 days to [the College] confirming that they have received the Decisions and that they will continue to support Mr. Farooq in his practice at CFB Wainwright.

4. Mr. Farooq pays a total of \$40,000.00 over 5 years as his portion of the costs associated with this hearing. This is repayable under a schedule set by the Registrar of [the College].
5. That this decision not be published in [the College's] news or posted on the [College's] website.

H. Appeal to Council of the College

[30] Farooq appealed the decisions of the Investigating Committee to the Council of the College, raising essentially the same issues as those he raised before this Court. The Council dismissed the appeal on November 23, 2009. In its July 22, 2010 decision on costs, Council reduced the costs from \$40,000 to \$20,000 (including the costs of the appeal), ordering Farooq to pay over a four-year period by equal monthly payments.

I. Appeal to this Court

[31] Section 76 of the *Act*, still applicable, permits an investigated person to appeal any finding or order made by the Council in disciplinary proceedings to the Court of Appeal. The court's powers on appeal are set out in section 80:

- (a) make any finding or order that, in its opinion, ought to have been made,
- (b) quash, vary or confirm the decision of the Council or any part of it, or
- (c) refer the matter back to the Council for further consideration in accordance with any direction of the Court.

III. Grounds of Appeal

[32] Farooq submits that the Council erred:

- (a) in finding that the Investigating Committee acted within its jurisdiction when investigating his conduct;
- (b) in finding that his conduct constituted "unskilled practice"; and
- (c) in imposing inappropriate penalties.

IV. Standards of Review

[33] This appeal arises from a statutory right of appeal. The standard of review analysis established in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 applies.

[34] A standard of correctness applies to true questions of jurisdiction or *vires*, which are defined as questions requiring the tribunal to explicitly determine whether its statutory grant of power gives it authority to decide a particular matter: *Dunsmuir*, para. 59. Likewise, general questions of law that are “both of central importance to the legal system as a whole and outside of the adjudicator’s specialized area of expertise will be governed by correctness”: *Dunsmuir*, paras. 55 and 60.

[35] The reasonableness standard applies generally to other issues, including questions of law engaging the tribunal’s interpretation of its own statute: *Dunsmuir*, para. 54.

[36] The duty of fairness is assessed according to the factors set out by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193.

V. Analysis

A. Jurisdictional Arguments

[37] Farooq submits the Council erred by failing to find the College lacked jurisdiction under the *Act* with respect to the following matters:

- (i) the College imposed licensing conditions that were *ultra vires* its authority under the *Act*;
- (ii) the Infringement Committee did not have authority to direct that Farooq undergo second and third on-site assessments or submit to an OSCE examination; and
- (iii) the investigation by the Infringement Committee improperly intermingled the practice review process with the discipline process under Part 7 of the *Act*.

[38] We will deal with each of these submissions in turn.

1. No jurisdiction to impose licensing conditions

[39] The thrust of this argument is that the College lacked jurisdiction to subject Farooq to an on-site assessment as part of his licensing qualification following his registration. Farooq submits that by imposing this requirement the College turned his registration into a “conditional license” when the *Act* does not contemplate such status.

[40] Implicit in this submission is the premise that upon his registration Farooq “was a fully qualified pharmacist”. He was not. Prior to registration, he had not passed the internship examination, which was a pre-condition to registration under section 13 of the *Act* and section 3(4) and (5) of the *Regulation*. It will be recalled that shortly before his registration, the College had replaced the internship examination with the OSCE. However, to accommodate a group of 13 individuals who were in the internship program when the OSCE was mandated, the College decided to give them a choice – either participate in the OSCE examination or be registered and subjected to an on-site assessment within six months. If there was any lack of jurisdiction in this regard, it was Farooq’s registration before he met the legislative requirements.

[41] Although the College submits that it waived the requirement for successful completion of an internship examination, it provided neither analysis nor authority in support of its jurisdiction to do so. It is questionable that the College had any right to waive this requirement. However, neither the College nor Farooq wished to pursue an argument possibly leading to the conclusion that Farooq’s registration was invalid for want of jurisdiction. The College pointed out that it had never sought to revoke Farooq’s registration and intimated that it would be unfair to do so at this time. We accept the parties’ position on this issue.

[42] But Farooq cannot have it both ways. If he concedes that the College had jurisdiction to register him as a pharmacist, he was also subject to overview, investigation, and the disciplinary powers governing all members. The College has broad powers to regulate and investigate its members’ conduct. See for example section 27(1) of the *Regulation*, which provides: “The Practice Review Committee must conduct a review of the practice of a member on being requested to do so by an Investigating Committee or by the Council.”

[43] The first on-site assessment was directed by Council and accepted by Farooq for purposes of his registration. As a member, he was subject to an on-site assessment directed by Council. There is no suggestion that the assessment was for an ulterior or improper purpose. Rather, its purpose was to test his skills as a pharmacist regulated by the *Act*. Accordingly, Farooq’s first jurisdictional arguments fails.

2. No jurisdiction to require the second and third on-site assessments or the OSCE that followed

[44] The gist of this argument is that the *Act* does not allow an investigator to subject a member to an on-site assessment as part of an investigation and thereby create evidence that may be used for disciplinary purposes. Further, and in any event, it is suggested that the preliminary investigation was completed upon conclusion of the second on-site assessment, and that no further action should have been taken at this point because there was insufficient evidence of unskilled practice to refer the matter to an investigating committee.

[45] Sections 50 and 51 of the *Act* govern the conduct of a preliminary investigation. The relevant parts provide:

50(2) A person conducting a preliminary investigation may require the investigated person or any other member or proprietor

- (a) to produce to the person any records in the possession of or under the control of the investigated person or other member or proprietor, and
- (b) to attend at the preliminary investigation.

...

(4) A person conducting a preliminary investigation may investigate any other matter related to the professional or proprietary conduct of the investigated person or the skill in practice of the member that arises in the course of the investigation.

(5) A person conducting a preliminary investigation shall, on concluding the preliminary investigation, report the person's findings to the Infringement Committee.

(6) If a member or proprietor does not co operate with a person conducting a preliminary investigation, the person conducting the preliminary investigation may make a complaint in writing to the Infringement Committee, and the failure or refusal to co operate may be held by the Investigating Committee to be professional or proprietary misconduct.

51(1) At the conclusion of a preliminary investigation, the Infringement Committee

- (a) shall direct that no further action be taken if it is of the opinion that
 - (i) the complaint is frivolous or vexatious, or
 - (ii) there is insufficient evidence of unskilled practice of pharmacy, professional misconduct or proprietary misconduct,

...

[46] The Practice Review Committee's referral of Farooq's conduct to the Registrar was deemed by section 41(1)(d) of the *Act* to be a complaint, and thereby invoked the disciplinary powers of the College. The primary purpose of the complaints process is public protection.

[47] Farooq argues that during the investigative stage, a preliminary investigator may only:

- (i) require the investigated person or other member to produce records; and
 - (ii) require the investigated person to attend at the preliminary investigation.
- Section 50(2) of the *Act*.

[48] The *Act*, however, neither sets out specific directions about how to conduct a preliminary investigation, nor provides time frames for completion. In our view, a restrictive interpretation would be inappropriate. The Supreme Court of Canada has stressed the need for a flexible interpretation of the supervising powers of self-regulated professions in order to enable them to discharge their public protection duty: *Pharmascience Inc. v. Binet*, 2006 SCC 48, [2006] 2 S.C.R. 513 at paras. 36–38. The Court stated at para. 37:

In this context, it should be expected that individuals with not only the power, but also the duty, to inquire into a professional's conduct will have sufficiently effective means at their disposal to gather all information relevant to determining whether a complaint should be lodged.

[49] Similarly, in *Gore v. College of Physicians and Surgeons of Ontario*, 2009 ONCA 546, 310 D.L.R. (4th) 354, the court confirmed that the legislative language (which entitled the Ontario College of Physicians and Surgeons to “inquire into and examine the practice of the member to be investigated”) was broad enough to encompass the observation of members as they performed the various tasks that make up their practice. In the court's view, “it would take clear words to deprive the investigator of powers necessary to carry out this important public interest”. While the statutory language in *Gore* was somewhat broader than here, the principle of interpretation applies. Here, the preliminary investigator had the power to investigate, and the member was obliged to attend and to cooperate. It was not beyond the jurisdiction of the investigator to request Farooq to submit to further on-site assessments or take the OSCE.

[50] While the preliminary investigation took place over a lengthy period, the Infringement Committee was not obliged to complete it after the second on-site assessment nor at any particular time. At no time during the investigation was the Infringement Committee of the opinion either that the complaint was frivolous or vexatious, or that there was insufficient evidence of unskilled practice: s. 51(1)(a). On the contrary, there was at all times worrying evidence of unskilled practice. The length of the investigation was directly proportionate to the Committee's desire to give Farooq enough time to improve, thereby avoiding a referral to an investigating committee.

[51] This analysis should not be taken as endorsing an investigator's unlimited powers. Here, the powers were not used for ulterior motives or to incriminate Farooq. Moreover, Farooq was not compelled to undergo any of these tests against his will. The first on-site assessment evidenced unskilled practice sufficient to cause the Practice Review Committee to refer the conduct to the Registrar. The second and third assessment (to each of which Farooq agreed) occurred after periods of mentorship that were intended to assist him in showing an improved skill level. Likewise, Farooq agreed to take the OSCE to demonstrate that he had the practical skills to practice pharmacy, notwithstanding his inability to demonstrate this during the earlier on-site assessments.

[52] Thus, Farooq cooperated because it was in his best interests to show that he had the necessary skills – despite failing to show this during his initial on-site assessment. Had he refused to comply, the Infringement Committee might have had little alternative but to refer his conduct to

an Investigating Committee sooner. We need not decide whether Farooq was obliged to undergo these further assessments against his will, as that did not happen here.

[53] We conclude, therefore, that the Council correctly dismissed this alleged error of jurisdiction.

3. Improper intermingling of the practice review process with the discipline process

[54] Farooq asserts that the Infringement Committee's investigation improperly intermingled the practice review process with the discipline process. His premise is that practice review is designed to be non-disciplinary, educational, or practical, such that the Infringement Committee was not entitled to consult with the Practice Review Committee or to use its tool, the on-site assessment, for discipline purposes.

[55] This argument is misplaced. The Practice Review Committee neither conducted a hearing nor made findings. When it became concerned, as a result of the first on-site assessment, that Farooq demonstrated unskilled practice, it referred of the matter to the Registrar who treated it as a complaint pursuant to section 41(1)(d) of the *Act*. The Registrar then referred the matter to the Infringement Committee which oversaw a preliminary investigation to determine whether the complaint would be summarily dismissed or sent on to a hearing.

[56] Once the referral was made to the Infringement Committee, the investigation proceeded under the disciplinary processes for investigating a complaint. The correspondence from the College to Farooq makes it clear that, following this referral, the matter was being treated as a complaint and Farooq was involved in the disciplinary process. While the evidence indicates that, following the referral, the Infringement Committee shared information with the Practice Review Committee and solicited its advice from time to time, the legislation does not prohibit this. Nor was it demonstrated that any procedural unfairness arose. We agree with the decision of the Council on this point. It stated at page 13:

The investigator arranged for the second on-site assessment and the Infringement Committee requested the third on-site assessment. These assessments were done under the direction of the Infringement Committee that had the authority to determine how the preliminary investigation will take place. We do not consider that this breached the legislation or fairness in any way. We note that the Appellant had a full opportunity before the Investigating Committee to challenge the results of the on-site assessments and to provide whatever information he wished concerning his overall competence.

[57] We are not persuaded that Farooq has shown the Council erred in failing to find any procedural unfairness in the investigative process.

B. Merits of Findings of Unskilled Practice

[58] Farooq submits that the Investigating Committee and the Council erred in finding that his conduct constituted unskilled practice. He complains that the on-site assessments were subjective and not a reliable tool to assess skill in the practice of pharmacy.

[59] Farooq essentially asks this Court to reweigh and reassess the evidence and substitute its own opinion for that of the Investigating Committee. We do not think the Committee's findings lacked an evidentiary basis or that they were otherwise unreasonable.

[60] Furthermore, Farooq's contention that the on-site assessments were subjective, and an unreliable measure of his practical skills, loses its force in light of the following:

- (i) the objective of an on-site assessment is to observe pharmacists in their practice to ensure that they are performing at a competent level;
- (ii) three different trained assessors observed Farooq independently over a two-year period and each concluded that his practical skills were wanting; and
- (iii) it is conceded that the OSCE is an objective measure of the practice skills of pharmacists. After years of practice in Alberta, including periods of mentorship, Farooq failed this examination by a wide margin.

[61] In addition to these measurements of skill, the Investigating Committee heard evidence from Farooq's co-workers and supervisors. Not all the evidence was unfavourable, nor can it be doubted that Farooq made genuine effort to improve and to cooperate with the College in its efforts to assist him. Nevertheless, the weight of the evidence supports the Investigating Committee's findings. The decision of the Investigating Committee, as affirmed by the Council, was reasonable.

C. Inappropriate Penalties

[62] Farooq urges that he requires support rather than discipline. He stresses that he was trained elsewhere and his method of communication was initially based on his prior experience. Further, he points out that the College currently acknowledges that foreign-trained pharmacists can face language and cultural challenges, and programs now exist to assist in their assimilation. Regrettably, no such programs were in place when Farooq commenced his practice in Alberta.

[63] Farooq was neither reprimanded nor fined. The conditions placed upon his practice were aimed at protecting the public while enabling him to improve his skills. He was given the opportunity to challenge the OSCE again. In our view, the conditions imposed on him are within the powers and discretion vested in an Investigating Committee pursuant to sections 67 and 68 of the *Act*. Indeed, having found that Farooq's conduct constituted unskilled practice, it would have been unreasonable for the Investigating Committee not to impose these orders, both to protect the public and to attempt to remedy the practice issues Farooq had not yet been able to address.

[64] We note, specifically, that the Council reduced Farooq's share of the costs to \$20,000, including the costs of the appeal. These costs are but a fraction of the total incurred by the College in dealing with issues concerning Farooq's practice. It is appropriate for the College to bear the bulk of the costs, as it permitted Farooq's registration as a member without ensuring that he had the requisite qualifications. That said, it appears the College was motivated throughout by a desire to encourage Farooq to improve his skills and demonstrate his qualifications, while fulfilling its duty to protect the public.

VI. Conclusion

[65] The appeal is dismissed.

Appeal heard on September 9, 2010

Memorandum filed at Edmonton, Alberta
this 20th day of October, 2010

C O'Brien for Hunt J.A.
Authorized to sign for: Hunt J.A.

C O'Brien
O'Brien J.A.
[Signature]
Belzil J.



Appearances:

E.A. Olszewski, Q.C. and
K.L. Lemon
for the Appellant

D.N. Jardine
for the Respondent