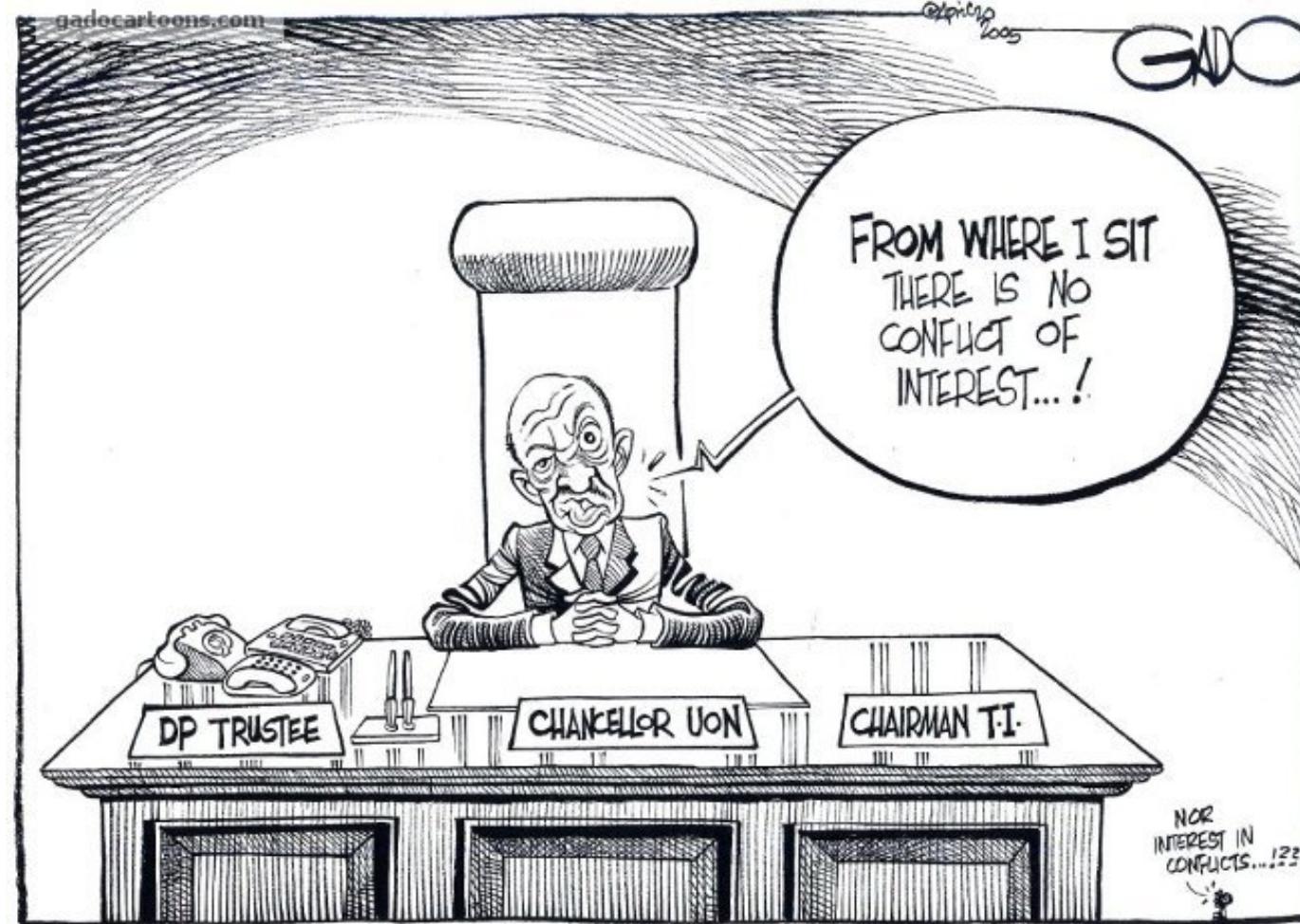


## Lecture 6: Conflict of Interest



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**Funny Video Clip on  
When Conflict of  
Interest can occur**



## 2 EXAMPLES

## Various DEFINITIONS

## EXAMPLE 1 – Overlapping Service Arrangements

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Engineers can most often become involved in conflicts of interest when they are confronted with the possibility of working for more than one client on the same project.



**Engineer A** serves as *managing director* and *president*, and reports to the Board of Directors, of a **start-up company (XPro)**, in which he is also an *investor*. XPro is involved in the development of a new low-cost technology to purify drinking water in developing countries. **Engineer A also has** a separate *engineering company* that is under contract with XPro to provide engineering services. The XPro board is aware of this relationship and **does not object**.

Fabrico, a fabrication company, has begun to **provide** technical services to **star-up company XPro**. Fabrico is now **requesting** engineering services (this, unrelated to its work with Xpro) from **Engineer A's engineering company**. **Fabrico does not want to invoice the start-up. Instead, Fabrico has proposed that Engineer A's company perform the engineering services for Fabrico for free (in exchange)** and that Fabrico provide technical support to the start-up on a “pro bono” (FOC) basis?

Would it be ethical for Engineer A's company to perform the engineering services for Fabrico for free and to permit Fabrico to provide technical support to the start-up on a “pro bono” basis?

## EXAMPLE 2 – Privy to privileged, specialized, and confidential info

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This case illustrates a conflict of interest that might occur in circumstances involving a situation in which engineers are privy to privileged or confidential information.

Engineering firm **ABC** is retained to investigate the collapse of a large warehouse on behalf of the **contractor** who constructed it. A senior engineer employed by ABC is assigned to this project to work closely with the contractor's lawyer and chief engineer.

The **owners** of the warehouse also retain an engineering expert through their lawyer. This engineer is employed by **XYZ** Engineering and works closely with the owner's lawyer and building manager.



## EXAMPLE 2

During litigation investigations, ABC's senior engineer is assisted by a junior engineer who carries out calculations, reviews drawings, and accompanies the senior engineer at the occasional meeting with the contractor's lawyer and chief engineer. Both experts prepare reports, and litigation drags out for a considerable time. ABC's junior engineer is assigned to several other projects in the interim, and years pass without any further participation on the warehouse collapse.

Eventually, the junior engineer leaves ABC and is hired by XYZ to work in the bridge design department.

The contractor's lawyer learns that XYZ has the junior engineer on staff. The contractor's lawyer applies to the court seeking a declaration that the firm XYZ is ineligible to continue to act for the owners because it is now in possession of the contractor's privileged and confidential information through the junior engineer who worked on the case for the contractor.



# Conflict of Interest – some definitions

A situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the person's self-interest and professional interest or public interest.

<http://www.businessdictionary.com/definition/conflict-of-interest.html>

A conflict between an obligation to exercise good judgment and interest(s) that may compromise that judgment.

by Engineering Ethics Charles E. Harris et al.

## Definition of Conflict of Interest

*"A conflict of interest is a set of conditions in which professional judgment concerning a primary interest (such as a patient's welfare or the validity of research) tends to be unduly influenced by a secondary interest (such as financial gain)."*

D. F. Thompson, *Understanding Financial Conflicts of Interest*, 1993



What **keywords** do you observed?:

- (1) obligation, impartiality, exercise good judgement,
- (2) undermine/compromised/influenced,
- (3) professional & public interest **vs** self-interest/secondary interest/financial gain

# Conflict of Interest – by Code of Ethics –NSPE/EC

NSPE Code of Ethics states that “**Engineers shall act for each employer or client as faithful agents of trustees.**

The Engineers Canada Code of Ethics states that engineers must “**Act as faithful agents of their clients or employers, maintain confidentiality, and avoid conflicts of interest;**”

As professionals, engineers **must act to maintain the trust** of each client (individually) and of the public (collectively). When conflicts of interest exist and are **not properly managed**, they lead the public **to question the honesty and trustworthiness** of engineers.

\*\*\*The **APPEARANCE (PERCEIVED)** of a COI is as detrimental to the profession's honour, dignity, and credibility **as is a REAL (POTENTIAL & ACTUAL) COI.** \*\*\*

In addition, serious **mismanagment** of COI can lead to findings of professional misconduct. For this reason, ALL **potential COI** must be **properly declared and managed.**

# Conflicts of Interest- when do they arise?

Conflicts of interest arise when there is an actual or perceived risk that an engineer's actions for one client or the public interest will be adversely affected by another client's interest or by a personal interest.

Potential conflicts of interest often arise in situations where engineers:

- work for more than one client on the same project or interrelated projects;
- leave organizations to join a competitor, or start their own firms;
- participate in bid selection where family members are bidding;
- are involved in hiring decisions regarding family members (nepotism); or
- own personal property or have business interests that may be affected by their work.

Personal experience:

1. As a journal reviewer, I cannot review a paper submitted by a 'competitor'.
2. As an examiner, I cannot mark a student's paper who is a relative.

# Conflict of Interest- primary & secondary interest

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**Primary interest:** This interest refers to the principal goals of the profession or activity. In this case, it is the duty of engineers to protect the public interest in the first place and to serve their clients with due diligence.

**Secondary interest:** This interest could include things such as personal financial gain, the desire for professional advancement, the wish to help family and friends, the desire to secure future contracts, or the wish to advance a second client's interest.

The “**secondary interests**” may not be wrong per se, but they can raise public doubts and suspicions about the integrity and impartiality of professionals. COI become objectionable when the secondary interests are believed to have influence over the decisions regarding the “**primary interests**”.

# Conflict of Interest- “secondary” interest?

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- The “conflict” in a conflict of interest exists whether or not the engineer is actually influenced by the “secondary interest”.  
(it is the suspicion that the engineer’s judgement/decision **might have been** influenced by other interests, that renders it questionable and undermine public trust)
- The “**secondary interests**” may not be wrong per se, but they can raise public doubts and suspicions about the integrity and impartiality of professionals. COI become objectionable when the secondary interests are believed to have influence over the decisions regarding the “**primary interests**”.
- Conflict exists if the circumstances are reasonably believed to create a risk that actions may be unduly (~excessively, significantly) influenced by “secondary interests” at the expense of the “primary interest”.

# Conflict of Interest- what is and what is not

In considering code prohibitions and conflicts of interest more generally, several important points must be kept in mind:

- **First**, a conflict of interest is not just any set of conflicting interests..
- **Second**, simply having more commitments than one can satisfy in a given period of time is not a conflict of interest. Over commitment can best be characterized as a conflict of commitment not conflict of interest.



More like the  
pictures on the  
right



# Conflict of Interest- what is and what is not

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- **Third**, the interests of the client, employer, or public that the engineer must protect are restricted to those that are morally legitimate.
- **Fourth**, a distinction is sometimes made between *actual* and *potential* conflicts of interest:
  - i. **Actual:** John has to recommend parts for one of his company's products. One of the vendors is Ajax Suppliers, a company in which John has heavily invested. (John is in it)
  - ii. **Potential:** Roger will have a conflict of interest if he agrees to serve on a committee to review proposals if he has already submitted his own proposal to be reviewed. (Roger is not it yet)
- **Fifth**, even though it is best to avoid conflicts of interest, sometimes this cannot reasonably be done so need to manage it.

# How to manage conflicts of interest

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The requirements for successfully managing conflicts of interest are quite basic: be aware of obligations, exercise good judgment, and effectively communicate (to fully disclose) and document (black and white) the decisions made and actions taken when dealing with conflicts of interest.

Although all engineers would prefer to avoid all conflicts of interest, it is likely that some will arise. In those cases, it is important to have an effective procedure for managing them.

The first step is to have a procedure to identify conflicts of interest. These are often easy to spot in hindsight but tend to start in such an innocuous way that the problem is not noticed as it is developing.

## Identify Potential COI

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Therefore, each new potential client or work activity should be considered from a conflict of interest point of view. Individuals and organizations should have processes in place to facilitate this. The first series of questions to ask is:

- Who is the client?
- What am I being asked to do?
- Who could be affected by this work?

With this information, it is now possible to ask more detailed questions:

- Are there current clients whose interests are related or in conflict?
- Is there current or past work that is related or in conflict?
- Are there personal or family ties to the client or anyone affected by the client's work?

*Note: When answering these questions, it is important to look at them from different perspectives: from the client's perspective, from the public's perspective, from the perspective of other clients, and from the perspective of the organization overall.*

# Identify Potential COI

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Some questions that can help identify a personal conflict of interest include:

- What is the client's interest?
- What is my interest?
- Will maximizing my interest negatively affect the client's interest?
- Will I always be able to place the interests of my client first?
- Is there potential for a falling out with the client in connection with the matter?

## Identify Potential COI

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Every time that a potential conflict is identified, the engineer must then consider it in greater detail to determine if the conflict could lead to a substantial risk that the duty of due diligence owed to the client would be affected. The specific questions to examine are:

- What type of potential conflict exists?
- Is there a risk of disclosing or misusing confidential information that is either already in-house or that would be obtained through the new client?
- Is there a risk of this work being undermined or being inconsistent with any other work (and vice versa)?
- Would the personal interest of any individual or of the organization as a whole affect the performance of this new work?

## How to act?

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Once the answers to the above questions are known, then it is possible to decide how to act. There are four possible actions that can be taken:

1. Proceed with the work. After analysis, if the engineer and organization agree that there is no potential conflict of interest, the work can proceed. It is wise to document this decision and the information that was considered in arriving at this conclusion.

2. Proceed with the work and erect any necessary confidentiality screens. This could be, for example, between the manufacturing and consulting arms of a company. Note that this course of action is only suitable for professional/professional conflicts. It is not possible to effectively create confidentiality screens in personal situations (e.g. when a spouse is evaluating their partner's bid).

## How to act?

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3. Proceed with the work after having informed the client(s) (both new and existing, if applicable) and obtained consent. This is often the simplest and most effective way to deal with potential conflicts of interest. Talk to all parties about the identified circumstances that could lead them to question the engineer's judgment. In most cases, there will either be no perceived conflict (i.e. the parties are willing to accept the situation) or steps can be taken to eliminate the possibility of one occurring. [4]

By obtaining the agreement of all interested parties that there is no conflict of interest, engineers reduce the possibility of litigation and charges of professional misconduct. If agreement cannot be found, engineers have no option but to withdraw their services, thereby avoiding an embarrassing investment in services by clients and eliminating the possibility of costly litigation. [5] In either case, the process should be documented; from the engineer's analysis to the conclusion.

## How to act?

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4. Do not proceed with the work. In some circumstances it will be clear that a conflict would likely arise if the work were undertaken. In these cases it is best to not accept the work. Engineers owe a duty of due diligence to their clients and to the public, and if this cannot be provided, the work should be declined or not continued.

# 3 cases for considerations

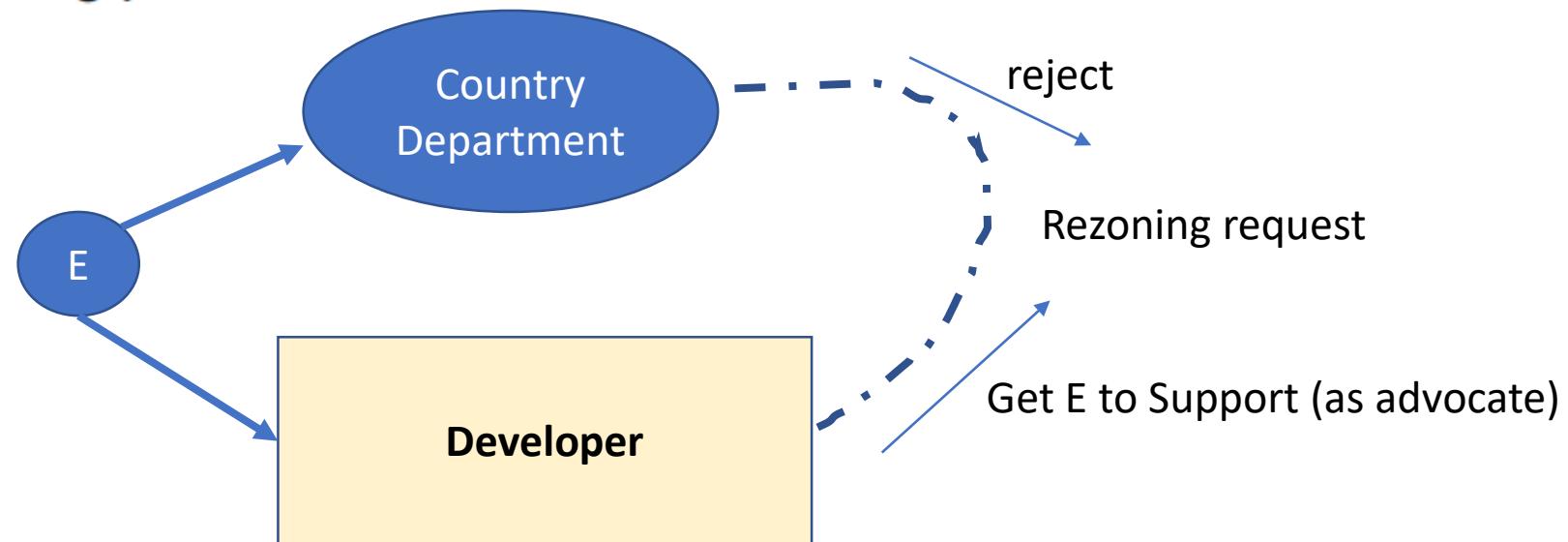
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## NSPE Code of Ethics References:

- Section II.4. - Engineers shall act for each employer or client as faithful agents or trustees.
- Section II.4.a. - *Engineers shall disclose all known or potential conflicts of interest that could influence or appear to influence their judgment or the quality of their services.*
- Section II.4.b. - *Engineers shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed and agreed to by all interested parties.*
- Section III.1.e. - *Engineers shall not promote their own interest at the expense of the dignity and integrity of the profession.*
- Section III.2. - *Engineers shall at all times strive to serve the public interest.*
- Section III.5. - *Engineers shall not be influenced in their professional duties by conflicting interests.*
- Section III.5.a - *Engineers shall not accept financial or other considerations, including free engineering designs, from material or equipment suppliers for specifying their product.*

## Case 1

In BER Case No. 76-3, an engineer principal under retainer for many years with a county for services on a water project was then retained by a developer with the approval of county officials. The developer filed a petition with the county zoning board to rezone a substantial area of the county for commercial purposes. The county department of public works filed several engineering reports averse to the zoning petition recommending denial of the rezoning because the proposed construction would overload available water and sewer facilities. The development company called the engineer as an expert witness at the zoning hearing. The engineer testified in support of the rezoning petition.



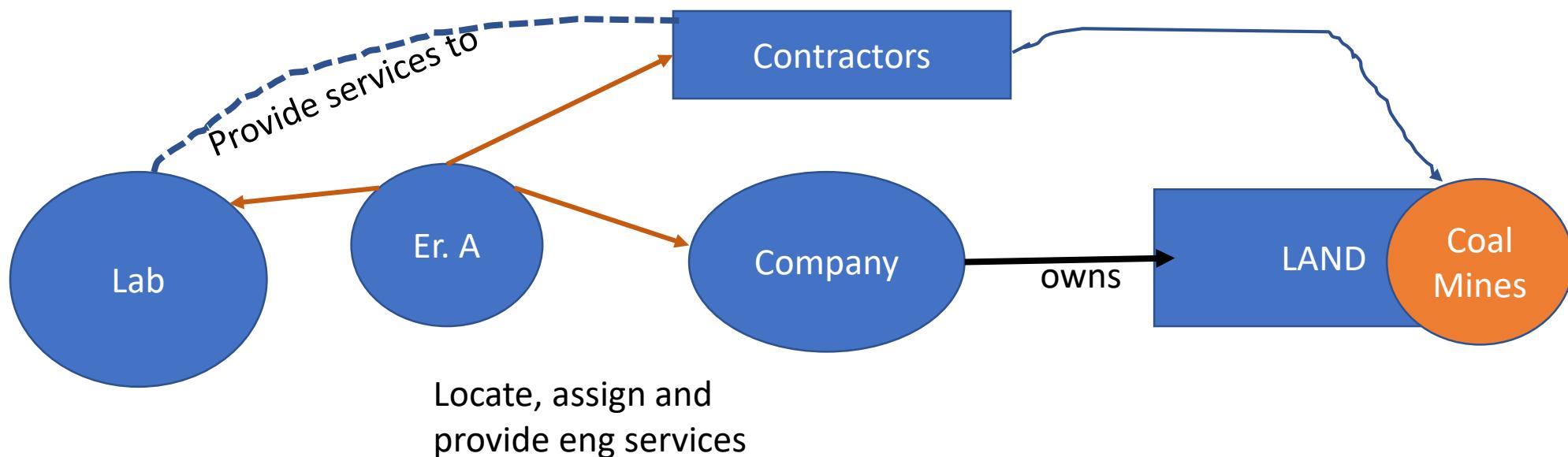
## Case 1 - comments

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In concluding that the engineer was not ethical in appearing for the development company while serving as engineering consultant to the county, the Board noted that when the engineer was approached by the developer, while still on retainer to the county, it should have been quite clear to him that a conflict of interest was inevitable. “It would seem,” said the Board, “that a little interrogation of the development company concerning its plans would have revealed the conflict of interest.” The Board went further, stating that “it would be incorrect to accept the engineer’s role as an expert witness in the ordinary sense of that kind of professional service arrangement.” “The engineer,” continued the Board, “was doing more than offering his expertise in engineering matters as an aid to a fuller understanding by the zoning board—he was in fact a paid advocate of a private interest in open conflict with the engineering opinions of the county engineers.”

## Case 2

In BER Case 99-2, Engineer A, a mining engineer, was retained by a company that owned land upon which coal mines were located. Engineer A provided engineering services and surveys to determine the location of coal veins in the mine, assigned coal contractors to the locations in the mine, and performed other engineering services as required. Engineer A also owned a laboratory that evaluated the quality of coal mined by coal contractors that contract with the coal mine owner. The quality and cost of mining the coal varied. Although Engineer A mentioned that he owned a laboratory, Engineer A never informed the coal mine owner that it was substantial and employed several other engineers and technicians, nor about his clients who were mining the owner's coal.



## Case 2 - comments

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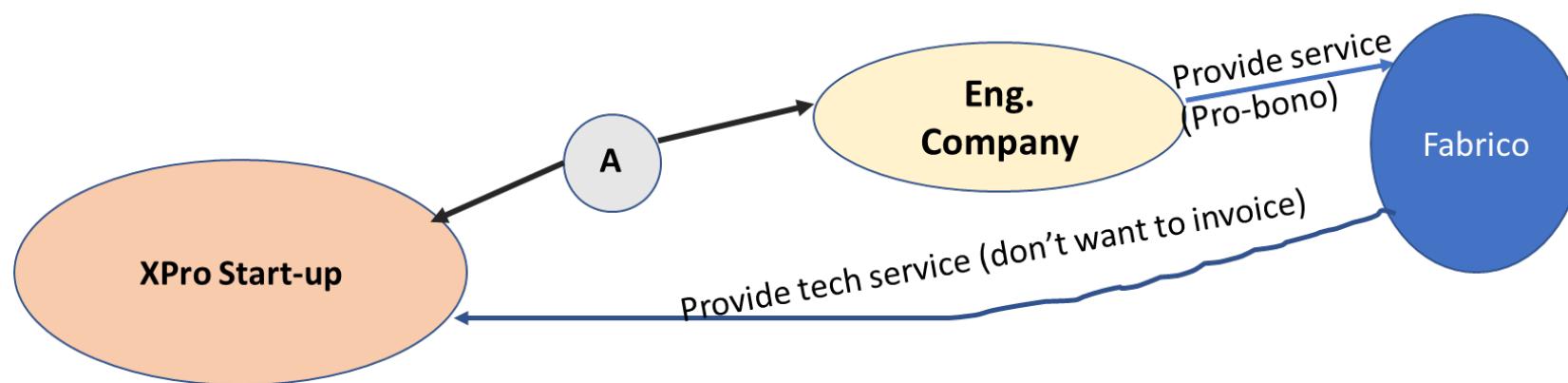
In deciding that it was unethical for Engineer A to not fully disclose the size and extent of his laboratory and his clients to the coal mine owner, the Board of Ethical Review expressed concerned about the appearance and the relationship between Engineer A's mining engineering consulting practice and his laboratory practice. Under the facts, among the responsibilities and obligations the mine owner had given to Engineer A was the assignment of coal veins to contractors who were then responsible for performing the coal mining operation. While the assignment of coal veins to the mining contractors by the engineer was dependent upon identifiable factors such as the competencies of the contractors and their experience, the Board concluded that the engineer could have been accused by contractors or by the owner of basing his decision to assign higher quality coal veins upon unrelated factors such as whether the mining contractor used Engineer A's laboratory or whether the mining contractor was a better laboratory customer than other mining contractors. In light of those factors, the Board determined that Engineer A had an obligation to fully disclose the nature and extent of his laboratory practice to the mine owner in order for the mine owner to fully understand the implications of the relationship between the two activities.

## Case 3

### Facts:

Engineer A serves as managing director and president, and reports to the Board of Directors, of a start-up company (XPro), in which he is also an investor. XPro is involved in the development of a new low-cost technology to purify drinking water in developing countries. Engineer A also has a separate engineering company that is under contract with XPro to provide engineering services. The XPro board is aware of this relationship and does not object.

Fabrico, a fabrication company, has begun to provide technical services to XPro. Fabrico is now requesting professional engineering services—unrelated to its work with XPro—from Engineer A's engineering company. Fabrico does not want to invoice the start-up. Instead, Fabrico has proposed that Engineer A's company perform the engineering services for Fabrico for free and that Fabrico provide technical support to the start-up on a “pro bono” basis.



## Case 3 - comments

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Turning to the facts in the present case, as a starting point, it is the Board's view that because of the unique and critically important role Engineer A is being asked to play on behalf of the start-up XPro, Engineer A had a clear ethical obligation to provide full disclosure to the XPro Board of Directors and to keep the board fully informed of his many business relationships. This includes details of all business and related assigned arrangements that may exist or occur between XPro, Engineer A's separate engineering company, and any other third-party vendors, including Fabrico.

## Case 3 - comments

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On its face, the arrangement proposed by Fabrico—for Engineer A's company to perform the engineering services for Fabrico for free and to permit Fabrico to provide technical support to the start-up a “pro bono” basis—may appear to arguably serve the relative interests of all parties. Under the arrangement, (1) XPro, a start-up, would gain the benefit from the fabrication services without having to pay for those services; (2) Fabrico would contribute fabrication services to XPro and receive engineering services from Engineer A's firm (under what is arguably a “barter exchange”); and (3) Engineer A would contribute engineering services to Fabrico and, as the managing director, president, and a shareholder of XPro, would gain the material benefits. At the same time, Engineer A's multiple roles—as an employee, officer, and director of XPro; principal of his engineering firm; and service provider to both XPro and Fabrico—creates a series of clear conflicts of interest.

## Case 3 - comments

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In addition, while the mission of XPro is admirable and consistent with the public interest, under the proposed “three-part arrangement,” Engineer A’s services and relationship with Fabrico, including its unrelated engineering work for Fabrico, could raise contractual liability issues for XPro and its Board of Directors that could potentially harm the interests of XPro and create compromising circumstances over which XPro has no direct involvement or control.

For those reasons, Engineer A’s new relationship as an engineering service provider to Fabrico as well as the details of the “three-part arrangement” proposed by Fabrico must be fully disclosed to the XPro Board of Directors in order for the board to determine the appropriate manner for Engineer A to proceed. The three-part arrangement proposed by Fabrico also implies that the work by Fabrico for XPro would be similar in quantity (cost) to that of Engineer A for Fabrico, which is not likely. Should there be a significant imbalance of work done by Fabrico for XPro, there is a possibility for substandard or incomplete work by Engineer A for Fabrico or by Fabrico for XPro, which would also be an ethical violation.