



LOSS OF IMMOVABLE WORKS

In which cases can engineers be exempted from their liability?

In a recent article (January-February 2017 issue of PLAN), we discussed the presumption of civil liability to which an engineer is subject in certain cases of a lost work (article 2118 of the Civil Code of Québec). That article also suggested that there are cases where engineers may be exempted from their liability; article 2121 of the Civil Code of Québec gives an example:

Article 2121. "An architect or an engineer who does not direct or supervise work is liable only for the loss occasioned by a defect or error in the plans or in the expert opinions he supplied."

This makes it very clear that engineers who provide an expert opinion remain liable for everything that they provide, if a loss of a work occurs.

IS AN ENGINEER'S LIABILITY LIMITED TO THE WORK ITSELF?

The answer has to be 'no.' First, the Code of Ethics of Engineers imposes a much broader duty on engineers, i.e. to fulfill their obligations toward humans and take into account the consequences of the performance of their work on the environment and life, health and property of every person (section 2.01 of the Code of Ethics of Engineers).

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The Civil Code provisions relating to certain specific rules for the ownership of immovables (articles 976 and following) give examples of situations to which engineers should pay attention.

For instance, article 976 stipulates the general duty by which neighbours are required to accept normal neighbourhood annoyances. Naturally, this implies that a person must refrain from subjecting their neighbours to annoyances that are beyond the limit of tolerance that neighbours owe each other. Engineers who prepare an expert opinion for others must ensure that the performance of their work does not create neighbourhood problems, such as seriously disturbing a neighbouring building.

ACTING IN GOOD FAITH

De façon similaire, et conformément aux devoirs déontologiques qui lui incombent, l'ingénieur devrait s'assurer que les ouvrages qu'il conçoit ne causent pas la modification, la pollution ou l'épuisement de l'eau d'un lac, d'une nappe d'eau, d'une rivière souterraine, ou d'une eau courante (article 982 du Code civil).

Similarly, and in accordance with their ethical duties, engineers should ensure that that the works they design do not cause the modification, pollution or depletion of lake water, a sheet of water, an underground stream, or any running water (article 982 of the Civil Code). These are just two of many examples that basically illustrate one of the key tenants of Québec civil law: Everyone is bound to exercise their civil rights in accordance with the requirements of good faith (article 6), and without the intent of injuring another or in an excessive or unreasonable manner (article 7).