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UNLAWFUL PRACTICE

Author of his own misfortune

How can an engineer lose his right to practise and his title, be found guilty three times and be charged on another count? How did he wind up bound by an interlocutory injunction?

As the author is writing this article, an ex-engineer is charged of having drafted documents in which he performed acts that are reserved for engineers, namely having placed the term “engineer” beside his signature and sealed documents. He is also bound by an interlocutory injunction ordering him, in particular, to stop using the title of engineer and working in areas which lie in the engineer’s field of practice. If the former engineer in question does not comply with this injunction, he could face a prison term if the court finds that he is in contempt of court. Such injunction is related to the pending case and could become permanent following a Superior Court decision to that effect, should the engineer be found guilty. Let’s start from the beginning.

A LIMITATION WHICH AMOUNTS TO A REVOCATION

A member of the Ordre des ingénieurs du Québec (hereafter the “Ordre”) since 1965, this individual lost his engineer’s permit in May 2006 for having failed to respect a condition limiting his right to practise. In 2003, the Ordre’s Disciplinary Committee had found him guilty of having expressed opinions which were not based on sufficient knowledge and honest convictions and having failed to take into account the consequences of the performance of his work on the environment and on the life, health and property of every person. As a result, he had been stricken off the roll for a period of two months.

At the same time, following a professional inspection, the engineer’s right to practise had been limited until such time as he successfully passed the courses and training periods that he was ordered to complete. Shortly thereafter, two complaints were filed against him for having acted beyond the limitations placed upon his right to practise. He pleaded guilty on both counts and the court revoked his permit. From then on, he was no longer an engineer and could not act as such, nor could he claim to be one...

SEVERAL LEGAL PROCEEDINGS FOR UNLAWFUL PRACTICE OF ENGINEERING

That being said, the former engineer did not waste any time to violate the Engineers Act. Let us note, in passing, that he had illegally kept the Ordre’s seal and that he continued to use it. Consequently, in March 2007, he was found guilty of having unlawfully practised engineering by signing and sealing plans while he had been temporarily stricken off the roll, and was ordered to pay fines amounting to \$3,500.

A little while later, in September 2007, this individual was again found guilty of having used the title of engineer even though

he was no longer a member of the Ordre, in connection with acts he performed in early January 2007. He was ordered to pay a fine of over \$5,000.

Two other proceedings were brought against him following reports about him. In the case in which a decision was rendered last April, the respondent was accused of having prepared a report relating to residential septic systems, used the title of engineer, and signed and sealed the plans and report for the same project. The decision reads that the respondent had violated subsections 22(1), 22(2) and 22(5) of the Engineers Act and section 188 of the Professional Code which state the following:

22. Any person not a member in good standing of the Order who:

(1)°performs any of the acts contemplated in section 3 of this Act,

(2)°assumes the title of engineer alone or qualified, or makes use of any abbreviation of such title, or of any name, title or designation which might lead to the belief that he is an engineer or a member of the Order,

[...]

(5)°authenticates by means of a seal, signature or initials a document relating to the practice of the engineering profession,

[...]
is guilty of an offence and is liable to the penalties provided in section 188 of the Professional Code (chapter C-26).
Engineers Act

188. Every person who contravenes a provision of this Code, of the Act or letters patent constituting an order or of an amalgamation or integration order is guilty of an offence and is liable to a fine of not less than \$1,500 nor more than \$20,000 or, in the case of a legal person, of not less than \$3,000 nor more than \$40,000.

Subsequent offence

In the case of a subsequent offence, the minimum and maximum fines are doubled.
Professional Code

In April 2009, the respondent was found guilty and ordered to pay three fines totalling \$15,500. Another similar action is still pending before the Court of Québec.

AN INJUNCTION TO PROTECT THE PUBLIC

Last summer, in August 2008 to be more precise, an injunction was ordered against this individual forbidding him from practising engineering or using the title and seal reserved for engineers.

At that time, the seal was seized and returned to the Ordre, its rightful owner.

This former engineer is bound by an interlocutory injunction. The Québec Superior Court granted the Ordre's request. In its application, the Ordre submitted that the respondent would, in all likelihood, carry on with illegal acts and, in doing so, would continue to cause damages to his clients and jeopardize the public's protection and interests. The Ordre also alleged that, in this particular case, "not granting the interlocutory injunction would cause the public irreparable harm and would prevent the Ordre from carrying out its mandate, namely protecting the public".

The outcome of the case that is still pending will determine if this person will be subject to a permanent injunction.