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Should one be insured... or not? The answer is obvious!

Regardless of one's circumstances or work environment, engineers cannot avoid their legal and regulatory obligations while practising their profession. Such is the case when it comes to their professional liability. One engineer learned this lesson during the last few years, not only once but twice...

IN FIRST INSTANCE

For several years, the engineer in question practised on his own account as a building inspector; granted this type of function is not regulated but it is part of the engineer's field of practice pursuant to section 2 of the Engineers Act. As far as this engineer is concerned, given that he promoted his professional title and that he signed and sealed his inspection reports, this member was indeed acting as an engineer. However, he was not covered by any professional liability insurance in accordance with the Regulation respecting professional liability insurance for the members of the Ordre des Ingénieurs du Québec (hereafter, "the Regulation").

At the end of 2005, this engineer learned that he was under the obligation to hold such insurance. In fact, section 7 of the Regulation is very clear on this point and states that:

A member who exercises, full or part-time, the profession of engineer in private practice in any sector of activity not listed in section 7.1, on his own account, or on the account of another member, a partnership or a corporation, shall, in addition to joining the contract referred to in section 1, hold an insurance contract which complies with the requirements set out in sections 8 and 9, establishing a guarantee against any liability which the member may incur by himself or through the member's employees or agents resulting from fault or negligence committed in the exercise of the profession. The member remains subject to this obligation for at least five years after the performance of any act in the exercise of his profession¹.

In other words, an engineer who performs acts, in private practice, which fall under the exclusive field of practice of an engineer (pursuant to section 3(a) of the Engineers Act) and which relate to the works mentioned at section 2, such as giving consultations, performing analyses or studies or providing opinions relating to engineering (whether it be verbally or by way of written reports), must not only contract an insurance policy establishing a guarantee against professional liability resulting from fault or negligence, he or she must hold such insurance for a period of at least five years after having ceased to practise engineering.

After having been advised of this regulatory requirement, the engineer in question was unable to prove that he was adequately

insured. Case in point: In the field of building inspections, more specifically inspections during the course of a building purchase, insurance companies tend to be picky when it comes to choosing their clients given that many inspectors are not members of a professional order, nor are they insured, the result of which may be a slew of claims and legal proceedings. In this case, the engineer could not contract professional liability insurance covering his acts as an engineer, including building inspection, for a period of five years following past inspections.

Given the lack of professional liability insurance, the Ordre's Executive Committee (formerly known as the Administrative Committee) ordered that this engineer be stricken off the roll for a period of five years, namely from November, 2005 to November, 2010.

IN JUDICIAL REVIEW

Dissatisfied, the engineer proceeded to petition the Québec Superior Court to review the decision which he claimed was unfair to him, arguing that he had not been properly heard by the Executive Committee prior to being stricken off the roll of the Ordre. He also asked the Court to grant a permanent injunction directing the Ordre to reinstate him as a member.

First and foremost, the judge in this case recognized the Ordre's Executive Committee jurisdiction as regards the strict enforcement of the Regulation given that "the Professional Code and the Regulation are very clear in this matter." Nevertheless, the Superior Court accepted to hear the engineer's arguments and see whether the Ordre's Executive Committee acted within the realm of its jurisdiction.

Did the Executive Committee render a reasonable decision? The Superior Court answered that indeed it did, pointing out that contrary to his allegations, the engineer had had every opportunity to be heard by the Committee but chose to do so in writing. Consequently, the Court declared that the Executive Committee acted rationally and within its jurisdiction.

The judge also confirmed the Regulation's validity and insisted on its purpose, namely to protect the public. He concluded by stating that in petitioning the Court to order an injunction, the engineer was attempting to circumvent the Regulation. The Court rejected the engineer's request and maintained his removal from the Roll of the Ordre².

1. It bears reminding that engineers who practise in the railway, nuclear, automotive or aeronautics industries or in the fields of naval architecture, asbestos removal or rehabilitation of contaminated sites are not subject to this section.
2. Québec Superior Court judgement no 500-17-027638-058, Allan White v. Ordre des ingénieurs du Québec.