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# Are a company's executives and upper management subject to the laws and regulations that govern the practice of the profession?

Nowadays, engineering is practiced in a wide variety of ways. A great number of members of the Ordre des ingénieurs du Québec (hereafter the Ordre) are salaried employees. They work for engineering companies, government departments, municipalities or other public or para-public agencies, private corporations of all sizes, etc. Many are executives and carry out administrative duties. Others are even directors or shareholders of these companies. However, engineers are particularly vulnerable when their work environment is highly competitive; it puts pressure on them to obtain new contracts and requires that work be produced faster or with limited means, the client's satisfaction being, at all times, the number one priority...

In any case, how are the executives or managers and their engineers required to act with respect to the laws and regulations governing the practice of engineering?

## COMPLIANCE WITH THE LAWS AND REGULATIONS BY ALL

The answer to this question is unequivocal: regardless of how engineers practice their profession or their status, the laws and regulations governing the profession apply to everyone. Whether it's the Professional Code, the Engineers Act or the regulations adopted pursuant to these acts, including the Code of ethics of engineers (hereafter the Code), these laws and regulations are of public order. These laws and regulations as well as the duties and obligations that arise from them transcend any employment contract or agreement with a client<sup>1</sup>.

## MEMBRES OF THE ORDRE

That means that engineers, whether they are employees or executives, must comply with the provisions of these laws and regulations at all times and failure to do so can result in their having to face the Ordre's Disciplinary Council. Obeying an employer's order, instruction or policy cannot protect a salaried engineer against a disciplinary complaint nor can it constitute a valid means of defense against a disciplinary action.

What's more, all engineers, including those who carry out administrative or managerial functions, have important duties towards the public, namely those under sections 2.01 and 2.03<sup>2</sup> of the Code. These refer to the public's health and safety, the environment and, incidentally, sustainable development.

## EXECUTIVES AND OTHER DIRECTORS, MEMBERS OF THE ORDRE

Other obligations, even if they do apply to all members, should be specifically reminded to directors and executives of companies or salaried engineers' immediate supervisors. Such engineers run the risk of being brought before the Disciplinary Council when the safeguards of professional practice are not respected. This would be the case if an inquiry carried out by the syndic revealed that::

- such an executive participated or contributed, directly or indirectly, to the illegal practice of the profession by a non-engineer (section 4.01.01 of the Code);
- he has taken the credit for a colleague's engineering work (section 4.02.03 a) of the Code);
- he has taken advantage of his capacity as an executive to limit the professional independence of an engineer employed by him (section 4.02.03 b) of the Code);
- he has incited a colleague to commit an offence against the laws and regulations governing the practice of the profession (section 4.02.03 c) of the Code);
- he has lent himself or tolerated dishonest or doubtful practices in the performance of his professional activities (section 3.02.08 of the Code);
- etc.

With respect to career development, section 4.03.01 of the Code requires that engineers contribute to the development of their peers' competencies.

## EXECUTIVES WHO ARE NOT MEMBERS OF THE ORDRE

A company's executives or managers, who are not engineers, also have a responsibility to respect and ensure compliance with the laws and regulations governing the practice of the profession. Notwithstanding this responsibility, executives and upper management can be called upon to become key players and play an important role, even a crucial one, in order to ensure that engineers who practice within their company adhere to the highest standards of professionalism.

As such, executives must promote and maintain a professional environment and working conditions which allow engineers to comply with the strict requirements of their profession. Specifically, they must ensure that these requirements are taken into consideration when it comes to their administrative policies and procedures, such as those relating to authenticating engineering documents or their internal

auditing processes. The same goes for tasks carried out by technicians and junior engineers who, when taking part in engineering work, must always work under the immediate direction and supervision of an engineer, and can never advise anyone or provide an opinion<sup>3</sup>.

### **PENAL OFFENCES FOR UNLAWFUL BEHAVIOURS**

The Professional Code provides a number of penal provisions aimed at putting a stop to the illegal practice of engineering or the unlawful use of the title of engineer<sup>4</sup>. Other provisions are specifically intended for directors, officers or

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representatives of a company who help or, in various ways, encourage a member of the Ordre to violate the laws and regulations:

For corporations constituted for the purpose of practising engineering<sup>5</sup>.

**187.18.** No director, officer or representative of a joint-stock company may help or, by encouragement, advice or consent, or by an authorization or order, induce a member of an order carrying on his or her professional activities within the company to contravene a provision of this Code, the Act constituting the order or the regulations made under this Code or that Act.

For other companies:

**188.2.1.** Every person who knowingly helps or, by encouragement, advice or consent, or by an authorization or order, but otherwise than by soliciting or receiving professional services from a member of an order, leads a member of a professional order to contravene a provision of the code of ethics adopted under section 87 is guilty of an offence and is liable, for each day the code of ethics is contravened, to the fine prescribed in section 188.

**188.3.** Where a legal person is guilty of an offence under section 188.1, 188.1.2, 188.2 or 188.2.1, every director, officer, representative, attorney or employee of the legal person who knowingly authorized, encouraged, ordered or advised the commission of the offence is guilty of an offence and is liable to the fine prescribed in section 188.

These provisions create penal offences<sup>6</sup>. It should be noted that the Ordre's Syndic could also plead these provisions with respect to a disciplinary complaint brought against a member, where applicable. Section 188.2.1 of the Professional Code, in itself, underlines the Code of ethics of engineers' particular importance. This provision demonstrates the legislator's intention to inherently unite both poles of responsibility – disciplinary and penal – in order to ensure the public's protection.

### **A SOCIAL RESPONSIBILITY**

Over and above compliance to with laws and regulations, the public, who benefits from the engineers' professional activities, has every right to expect the best from engineers since they play a leading role in the development of tomorrow's society. In the age of globalization, environmental considerations and, as the headlines often point out, the public's concern with the safety of infrastructures and the profession's integrity, officers and directors should work in concert with their engineers so they may practise in accordance with the profession's highest standards at all times.

1. In particular, see the feature articles in the May 2007 and February-March 2010 editions of PLAN "The Code of ethics above all- Duties towards the profession first and foremost" (unofficial translation of « Pr eminence du Code de d ontologie – Les devoirs envers la profession d'abord » and "Engineers and their employees: what about professional independence?"). These texts are posted on the Ordre Web site.
2. **2.01.** In all aspects of his work, the engineer must respect his obligations towards man and take into account the consequences of the performance of his work on the environment and on the life, health and property of every person. (R.R.Q., 1981, c. 1-9, r. 3, s. 2.01).  
**2.03.** Whenever an engineer considers that certain works are a danger to public safety, he must notify the Ordre des ing nieurs du Qu bec or the persons responsible for such work. (R.R.Q., 1981, c. 1-9, r. 3, s. 2.03).
3. On this matter, please refer to the Guidelines to professional practice on the Ordre's Web site, namely the blue section on the guidelines relating to engineering documents.
4. Chapter VII of the Professional Code (sec. 188 and following).
5. That is to say joint-stock companies constituted for that purpose before June 21, 2001 (sec. 28.1 of the Engineers Act).
6. A professional order may, on a resolution of its board of directors or executive committee and in accordance with article 10 of the Code of Penal Procedure (chapter C-25.1), institute penal proceedings for an offence under section 187.18 or 188.2.1. The minimum fine is \$1,500 while the maximum fine is \$20,000 or, in the case of a legal person, a minimum of \$3,000 or a maximum of \$40,000 for a first offence, pursuant to section 188.