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LIMITING AN ENGINEER'S RIGHT TO PRACTISE: Understanding "where the problem lies"

Should engineers take a limitation to their right to practise seriously? Whether it is imposed or voluntarily accepted, this type of notice handed down by the Ordre des ingénieurs du Québec (hereafter the "Ordre") prohibits a member from practising in a particular field, namely if he or she does not have the required competencies and knowledge. It is far from a simple formality! And that is precisely what one engineer learned during his last appearance before the Ordre's Disciplinary Concil this past June.

Upon recommendations from the Professional Inspection Committee (PIC), the Ordre, in 2007, imposed three limitations on the engineer's1 right to practise in building electricity, fire protection and urban drainage.

With respect to building electricity, the engineer in question agreed to take classes and refresher training in order to regain his right to practise, as recommended by the PIC. Furthermore, the following year, he signed a voluntary permanent limitation with respect to fire protection and urban drainage; in other words, he agreed never to practise in those fields again.

ACTING AS IF

As time went on, the engineer passed his courses but failed his training twice. During this period in 2010, he agreed to take part in two mandates: renovating a residential building and retrofitting hospital premises. However, in carrying out these projects, the engineer was called upon to practise in two areas in which he was subject to a limitation. Pursuant to applicable laws and regulations, this engineer must:

- notify his clients, at the outset, of these limitations and their implications;
- act, at all times, under the immediate control and supervision of his tutor for work relating to building electricity;
- have his tutor sign and seal every document he prepares relating to building electricity.

Not only did the engineer, a registered member since 1975, fail to notify his clients of his limitations at the outset, he carried out the mandates largely independently, keeping his tutor barely informed (if at all) of the work he did. In addition, he produced numerous documents – plans and specifications, addenda, recommendations, notices of change, change orders – without his tutor's signature and seal, some without any signature or seal at all, and others with an inadequate seal.

This type of behaviour led to serious consequences, namely work that progressed with difficulty and disastrous relations with an electrical contractor. After a certain time, the electrical contractor did some research and discovered the engineer's limitations.

A COMPLAINT COMPRISED OF 22 COUNTS

At that point, the assistant Syndic investigated the engineer's actions and filed a complaint with the Ordre's Disciplinary

Council, which carried 22 counts based primarily on the following sections:

- sections 4.02.03, 3.02.01, 3.04.01. 3.02.02 and 5.01.01 of the *Code of ethics of engineers;*
- sections 59.2 and 60.2 of the *Québec Professional Code;*
- section 4.05 of the *Regulation respecting refresher training periods of engineers;*
- section 39 of the *Regulation respecting the business of the board of directors, the administrative committee and general meetings of the Ordre des ingénieurs du Québec.*

The assistant Syndic's counsel accused the engineer of having carried out professional acts reserved for engineers while his right to practise was limited, having failed to act, at all times, under the immediate control and supervision of his tutor, having neglected to properly sign and seal engineering documents, having carried out acts that are derogatory to the honour and dignity of the profession and having engaged in misrepresentation.

PLANS FOR TENDER

The evidence presented by the complainant's (the assistant Syndic's) counsel is sound. During his testimony, the tutor stated that the respondent produced several documents without previously showing them to him, that he had to correct these documents after the fact and that he had voiced his discontent in that respect.

In his defence, the respondent presented his version of the facts on each count stating, among other things, that:

- he has met with his tutor every two weeks for the past two years;
- the unsigned plans were merely plans for tender, in other words they are documents that are of no consequence for the public;
- he didn't see any problem with providing recommendations with respect to shop drawings relating to fire protection;
- he didn't see the need to explain to his clients that he was completing a refresher training, given the fact that he has been drawing plans for the past 40 years.

The complainant's counsel replied that the respondent had not complied with the spirit of the limitation in that he alone decided when he needed to consult with his tutor; the latter never had direct discussions with the clients and was not able to follow up.

With respect to the plans for tender, the complainant's counsel demonstrated the importance of preparing them properly and having them adequately signed and sealed. In fact, tenderers must be able to rely on these plans to prepare their documents and estimate their costs, schedules and required materials. She reminded the Disciplinary Council that the respondent's limitation was ordered precisely because his plans are not detailed enough.

Finally, in complainant's counsel's opinion, the accusation of having engaged in misrepresentation is most serious because it goes to the heart of the trust between the respondent and his clients. As for the respondent's attorney, he argued that there was no misrepresentation: upon signing the agreement, the clients did not ask the respondent if his right to practise was limited and he answered truthfully once the question was asked.

HE KNEW…

Before rendering its decision, the Disciplinary Council explained that in disciplinary law, "the burden of proof requires clear, compelling and unequivocal evidence".

Based on the evidence presented, the Council determined that the respondent was perfectly aware of the implications of his limitations when he prepared documents reserved for engineers without being under the immediate control and supervision of his tutor and when he produced them without the required seal and signature. And in fact, some contractors used these documents to carry out their work.

By commenting on shop drawings relating to fire protection, the respondent provided his professional opinion in an area in which no longer had the right to practise.

The Disciplinary Council also found the respondent guilty of misrepresentation given that he knew his right to practise was limited when signing the agreement and that he had an obligation to act with integrity and notify his clients of such limitations.

In all, the respondent was found guilty on 20 counts2.

The Disciplinary Council emphasized that the sanctions were not meant to punish the respondent but rather to help him change his behaviour which, in this case, was reprehensible and tarnished the profession as a whole. Furthermore, the educational purpose of the limitation relating to building electricity clearly failed given that the respondent showed no remorse and the risk of repeating the offense is substantial.

For these reasons, the Council ordered:

- a temporary removal of 6 months with respect to 10 counts;
- a temporary removal of 12 months with respect to 5 counts;
- a $1,000 fine with respect to 5 counts;
- that the decision be published in a newspaper distributed in the area where the respondent's professional office is located;
- the payment of all fees.

The temporary removals are to be served concurrently even though they relate to two different projects because the Council determined that the offenses were committed over the course of a continuous period. These sanctions were under appeal when this article was being written.

1. Complaint CDOIQ 22-13-0441.
2. The respondent was acquitted of the two charges relating to the use of an unauthorized seal since there is no such disciplinary offence under the Regulation respecting the business of the board of directors, the administrative committee and general meetings of the Ordre des ingénieurs du Québec; according to the Disciplinary Council, the complainant should have joined this count to another offence. Furthermore, the respondent was also found guilty of the charge relating to the use of a corporate name using the word "Associates", even though he was the sole shareholder of the company and the only engineer employed by that company.