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Affixing a seal: are there conflicting regulations?

When affixing their seal on a certification, attestation or statement, an engineer may question whether or not he or she is committing an offence. Even though an engineer may believe he or she is working well within the confines of the laws and regulations of their profession, an engineer may, with reason, hesitate when performing this act since certain regulations adopted under such acts as the Occupational and Health Safety Act, seem to contradict the Code of ethics of engineers.

Under the Code of ethics of engineers (c. I-9, r. 3):

3.04.01. An engineer must affix his seal and signature on the original and the copies of every engineering plan and specification prepared by himself or prepared under his immediate control and supervision by persons who are not members of the Order.

An engineer may also affix his seal and signature on the original and the copies of documents mentioned in this section which have been prepared, signed and sealed by another engineer.

An engineer may seal a document other than a plan or specification only when specifically required to do so by a law or regulation, enacted by the provincial authority.

An engineer must not affix his seal and signature except in the cases provided for in this section. (Italics are for emphasis.)

3.04.02. An engineer must affix his signature on the original and the copies of every written consultation and opinion, measurement, layout, report, computation, study, drawing and specification prepared by himself or prepared under his immediate control and supervision by persons who are not members of the Order.

An engineer may also affix his signature on the original and the copies of documents mentioned in this section which have been prepared and signed by another engineer.

At first glance, certain regulations seem to ignore these rules of professional conduct. For example, the Safety Code for the construction industry (R.Q., c. S-2.1, r. 6) stipulates that:

3.3.5. In order to make sure of the soundness of a construction or installation, an inspector may require a statement signed and sealed by an engineer or an architect certifying that the construction or installation is safe.

In short, under section 3.04.01 of the Code of ethics of engineers, only plans and specifications need to be signed and sealed by the engineer; however, the Safety Code provides that an inspector may request a sealed certification. Furthermore, section 3.04.02 of the Code of ethics of engineers stipulates that a certification (or written notice) must only be signed by the engineer. In such a situation, the engineer seems to be faced with contradicting professional obligations. Which obligations should he or she follow? In order to answer this perplexing question, we combed through the principles relating to statutory interpretation.

PRECEDENCE OF THE SPECIFIC REGULATION

According to one of the principles of statutory interpretation, the statute or regulation which is more on point has precedence over the general law or regulation.

In light of this principle, we can conclude that the rule set out in section 3.04.01 of the Code of ethics of engineers, whereby plans and specifications are the only documents which require a seal, is a general one. However, the Safety Code, which stipulates that a certification or declaration may, under certain circumstances, be sealed by an engineer, sets out a more specific or "special" rule. Following the principles of interpretation, the latter, being more specific or precise in nature, will then have precedence thereby creating an exception to the general rule stipulated in the Code of ethics of engineers.

RECONCILIATION OF RULES

According to another principle of interpretation, when two statutes or regulations seem to contradict each other, they must be interpreted or construed in such a way as to attempt to reconcile the inconsistencies they create.

On the one hand, the purpose of section 3.04.01 of the Code of ethics of engineers is to protect and acknowledge the importance of the engineer's seal so as to maintain its value, particularly in the eyes of the public. The seal then becomes a sign or pledge of authenticity. On the other hand, section 3.5.5 of the Safety Code also underlines the importance of the engineer's seal by recognizing the need for the engineer's professional expertise in certain situations relating to the public's protection. Consequently, these two rules can be reconciled given that their objectives are so similar: recognizing the importance of the seal and ensuring the protection of the public.

Thus, section 3.5.5 of the Safety Code is **an exception** to the rule set out in section 3.04.01 of the Code of ethics of engineers. The provincial legislator, whose intention is to protect the public and emphasize the importance of the engineer's seal, knowingly enacted these two regulations. One must give the exception

provided in the Safety Code a narrow interpretation and only allow engineers to seal those certifications under the circumstances mentioned therein.

Let us reiterate that section 3.3.5 of the Safety Code for the construction industry is not the only provision which appears to be contradictory to section 3.04.01 of the Code of ethics of engineers. Our research has revealed that other provisions, duly enacted by the provincial authority, require that a “work plan”, “statement” or “attestation” be sealed by an engineer. In these cases, one should apply the principles of statutory construction previously discussed and give such exceptions to the Code of ethics a narrow interpretation.

In conclusion, an engineer cannot seal a document other than an engineer plan or specification unless required to do so under a statute or regulation, enacted by the provincial authority. When in doubt, engineers may contact the Office of the Syndic at 514-845-6141 or 1-800-461-6141, extension 3201 or at syndic@ioq.qc.ca, in order to obtain more information.

1. P.-A. Côté, *Interprétation des lois*, (3rd edition), p. 42.

2. For example:

Regulation respecting Concrete pumps and distribution masts, Regulation respecting, R.Q. c. S-2.1, r.12.5

34. Before using a pump-truck, an employer shall:

- (1) ensure that the work space is sufficient for completely extending the outriggers of the pump-truck;
- (2) send to the Commission de la santé et de la sécurité du travail a work plan signed and sealed by an engineer where the space mentioned in subparagraph 1 is insufficient;

59. The report shall contain the following information:

- (5) a statement signed and sealed by an engineer certifying that the fittings or equipment are in conformity with the regulations.

61. A pump-truck shall not be modified unless an engineer signs and seals an attestation to the effect that the pump-truck, once modified, offers the same level of safety as when it was new.