

By M^e Martin Hovington, lawyer

Is the person paying the bill the engineer's only client?

Very often, the regulations that govern the engineering profession refer to the "client". Not surprising since many of the engineer's ethical obligations involve a client or clients. But who are these clients? Are we to believe that they are limited to those who pay the engineer?

From the outset, there is very little that could lead us to adopt a unique and common meaning for this term, save for section 1.02 of the *Code of ethics of engineers*: 1.02. In this Regulation, unless the context indicates otherwise, the word "client" means a person to whom an engineer provides professional services, including an employer.

This definition, in turn, refers to the following expression: "a person to whom an engineer provides professional services". Even though author François Vandenbroek only briefly addresses the notion of client in his book *L'ingénieur et son Code de déontologie*¹, he does say the following:

Pursuant to section 1.02 of the Code of ethics of engineers, the term "client" refers to the person to whom an engineer provides professional services, including an employer. When engineering services are rendered by an engineer through a corporation, the "client" remains the engineer's employer. In effect, the salaried engineer sells his services to his employer who, in turn, offers those engineering services to a consumer. (Unofficial translation.)

This does not negate the salaried engineer's obligation to fully bear any professional liability relating to his actions and behaviour, not only towards his employer, but towards the public, his peers and the profession as well. However, this liability could be shared if a higher ranking engineer or one acting as a director for the company has also violated the rules of ethical conduct.

Trust is at the foundation of all client-professional relationships. An environment of trust is paramount if professional duties are to be carried out properly, and professionals, as well as clients, benefit from the protections against possible abuse.

Let us now try to determine who could be deemed an engineer's "client" under section 1.02.

AN ENLIGHTENING DECISION RENDERED BY THE PROFESSIONS TRIBUNAL

First and foremost, there is the paying client, the one

who retains the engineer's services in accordance with a mandate and who benefits from the engineer's professional services in exchange for payment. Such is the classic definition of a client:

Client: a person who engages the professional advice or services of another. (Source: Merriam Webster Dictionary.)

Then there is the employer, namely the company or firm for whom the engineer works pursuant to an employment contract. These clients benefit directly from the engineer's professional services.

But who can also be deemed to benefit from engineers' professional services? Can there be more than one category of clients within one professional service rendered by an engineer? The answer is yes, at least according to the *Code of ethics of engineers*. In a given context, this notion can become very broad in its application and include clients which do not and will not have any direct connection with the engineer. We can then speak of second or even third level clients.

The Professions Tribunal (P.T.) has somewhat dealt with the ethical notion relating to the term "client" in a case involving a professional technologist². At the time, the P.T. was asked to dispose of an appeal of a decision rendered by the *Ordre des technologues professionnels du Québec's* Disciplinary Council. The Council found that a professional technologist, employed by the APCHQ and appointed conciliator pursuant to the APCHQ's new home warranty plan, could not have an obligation to advise those who benefitted from the warranty, namely the home buyers.

Thus, the P.T. had to determine the scope of the term "client" in its interpretation of section 6 of the professional technologists' code of ethics, in force at the time, which read as follows:

6. In chapters 2 to 4, unless the context requires a different meaning, the term "client" refers to the person to whom the professional technologist provides professional services, including an employer. (Unofficial translation.)

This section was similar to section 1.02 of the *Code of ethics of engineers*. Here is how the P.T. construed the notion of client:

[66] The Committee interpreted the term "client" as suggested by its traditional sense or in keeping with jurisprudence in accordance with the word's grammatical sense. Along these lines, the appellant submitted a definition taken from a dictionary:

This notion can become very broad in its application and include clients which do not and will not have any direct connection with the engineer.

Client: 1o. A person who receives commercial goods or services from someone, in exchange for payment.

[67] The Committee made an overriding mistake. It should have used the definition found at section 6 of the Code of ethics: (...)

[68] Once the idea of “payment” is taken out of the definition, the term client takes on a much broader meaning. (Unofficial translation.)

A CHANGING NOTION AS THE CASE MAY BE

It becomes clear that, in ethical matters, the concept of “client” reaches much farther than the simple notion behind the “client-buyer” relationship. But how far can the client-beneficiary notion extend and, more importantly, does it have merely one meaning?

At this point, it is important to add that the Code of ethics aims to protect the public. Thus, we must always place ourselves on the public’s side when analysing the engineer’s ethical obligations. In other words, we must provide the necessary adaptations with respect to the terms used in those sections of the Code of ethics that deal with engineers’ obligations towards their clients.

In the Dubuc case, the P.T. does precisely that and adapts the various sections of the Code of ethics to the role the technologist played in the matter. In its decision, the P.T. states that:

[69] We understand that the legislator intended to give a broader sense to the term “client”; otherwise chapter II, entitled “Duties and obligations towards the client”, which makes up 38 sections of the Code’s 69 sections, would have a very limited scope.

[70] Furthermore, in using the term “client” from this chapter of the Code, we must make the required adaptations dictated by the matter at hand. For example, we can easily make these accommodations with respect to section 25: “a professional acting as expert-conciliator must demonstrate availability and diligence towards the parties who appear before him”.

Such is also the case for section 38: “If his professional duties require that he act differently for one of the par-

ties involved, the professional technologist must specify the nature of his responsibilities and inform all the parties that he will cease to act as such if the situation becomes incompatible with his duty to be impartial.” (Unofficial translation.)

This situation could very well arise in connection with a mandate of expertise in which an engineer would be acting on behalf of both parties in a given case. For example, let’s imagine a situation where an engineer is retained by both parties embroiled in litigation in order to pinpoint the nature of an engineering problem. The engineer is paid by one party but he is specifically asked to evaluate an engineering element and produce a report which would benefit both parties. In this example, the broad notion of client applies, and the engineer must be particularly vigilant with respect to both parties, especially when it comes to his duty to advise his client pursuant to section 3.03.02 of the *Code of ethics of engineers*:

3.03.02. In addition to opinion and counsel, the engineer must furnish his client with any explanations necessary to the understanding and appreciation of the services he is providing him.

In this fictitious case, the engineer will have to explain the exact scope and limitations of his mandate to both his clients. This should be done in writing so as to avoid any ambiguity or future interpretation issues.

We have seen that an engineer’s professional liability can span much wider than it initially seems. Even though each situation is different, it is advisable that engineers ask themselves the following question before accepting a mandate: “Who will benefit from my services?”

1. François Vandenbroek, *L’ingénieur et son Code de déontologie*, Trois-Rivières, éditions Juriméga, 1993, p. 53.
2. *Technologues professionnels v. Dubuc*, 2005, QCTP 006.