

Ethics and code of conduct

In June 2009, we received the following question relating to the retention of engineers' files: "Must engineers who digitize all of their files keep those records in paper form as well?"

The answer is no, subject to certain conditions. The Québec Civil Code (sections 2837 and following) and the Act to establish a legal framework for information technology (R.S.Q., chapter C-1.1) (hereafter the "Act respecting the framework") provide fairly strict requirements with respect to transferring information onto technology-based documents and preserving such documents.

RELEVANT PROVISIONS AND THE GUIDELINES PREPARED BY THE ORDRE DES INGÉNIEURS DU QUÉBEC

The Regulation respecting the keeping of records and consulting offices by engineers governs the maintenance and retention of an engineer's files. The Regulation's relevant sections provide that:

"1.03 Nothing in this Regulation shall be interpreted as excluding the use of data processing or any other technical means in constituting and keeping the records of an engineer."

"2.04. The engineer's records must be kept for a minimum period of 10 years from the date of the last service rendered or, when the project has been carried out, from the date of the end of the work."

In May 2008, the new Guidelines for engineering documents (hereafter the "Guidelines") were published (Note: the English version of the Guidelines were published in October 2008). Sections 13.1 and following of the Guidelines dictate the principles relating to preserving engineers' files with respect to technology-based documents. The relevant sections are set out below:

"13.1. Once an engineering document is authenticated, it must be kept in a way to preserve it and guarantee its integrity."

"13.3. Technology-based engineering documents, authenticated or not, must be archived in such a way as to ensure that their integrity is maintained, in accordance with the provisions of section 13.2."

"13.4. A technology-based engineering document must not contain imprints of seals or signatures of engineers if it is kept without a guarantee that its integrity will be maintained."

"13.5. If access to an archived document or its intelligibility requires the use of specific hardware, tools or systems, these must also be kept during the same period of time as that prescribed for keeping the document and must be regularly verified."

"13.6. The original of any engineering document must be easily locatable. In the absence of a system designed for this purpose, it must contain a note indicating its location."

THE NOTION OF "INTEGRITY"

Provided that a document's integrity is protected in accordance with the requirements set out in the Act respecting the framework, it is possible for engineers to transfer, archive, transmit through a network or modify a document's medium while maintaining its legal value ("functional equivalence").

The newly transferred document will be considered as the original's functional equivalent in terms of the Act, so long as the transfer process is documented, in order to ensure, among other things, that the document resulting from the transfer contains the same information found in the original (the source document) and that its integrity is respected. Section 6 of the Act respecting the framework defines the notion of "integrity":

"6. The integrity of a document is ensured if it is possible to verify that the information it contains has not been altered and has been maintained in its entirety, and that the medium used provides stability and the required perennity to the information. [...]"

In addition, some of the sections in this act provide the requirements that need to be met in order to allow for a document which, given its nature, should only appear in a single original form to exist in a technology-based form as well (Sections 12, 13, 14, 15, 16 and 18).

Engineers who want to destroy their paper records must also comply with the legal obligations relating to clients' right to access their files pursuant to the code of ethics – namely sections 3.07.01 and 3.07.02 of the Code of ethics of engineers – as well as section 2.03 of the Regulation respecting the keeping of records and consulting offices of engineers dealing with confidentiality of records and where they are kept.

The following are some conditions which engineers must respect if they wish to destroy their paper records:

- Having the possibility to verify that the information has not been altered and that it has been maintained in its entirety in the document resulting from the transfer (Section 6);
- Document the transfer of information from a document to a technology-based document (Sections 17 and 20);
- Ensure that the information contained in a document resulting from a transfer is accessible and intelligible (Section 23);
- Take all necessary measures to ensure the protection of personal and confidential information. More specifically, access to information must be protected by means of a restricted view technique, or any technique that prevents

1. Document: structured set of information.

"Technology-based engineering document: an engineering document recorded in the form of a technology-based document." (Guidelines for engineering documents -October 2008).

"Technology-based document: document on a medium using information technologies, whether electronic, magnetic, optical, wireless or other, or based on a combination of such technologies." (Act to establish a legal framework for information technology), (Guidelines for engineering documents -October 2008).

unauthorized persons from becoming aware of confidential information. (Sections 25 and 26);

- Ensure that the materials, tools or systems necessary to preserve a document have a life cycle equal to or longer than the period during which a document is required to be preserved. Update the software used, if any, to ensure that a document's integrity is maintained (Sections 6, 17, 19 and 20);
- Be prepared to provide paper copies, upon request (Section 29);
- Be sure to keep backup copies in a separate location or in a flame-proof and waterproof safe (it bears reminding that locking metal filing cabinets are not usually flameproof or waterproof);
- Have a good understanding of the scope of liability which lies on service providers who act as third parties offering technology-based document maintenance services. (Sections 22, 26, 27 and 37).

This series of conditions is by no means exhaustive and should not be deemed restrictive.

CONCLUSION

Consequently, engineers who wish to digitize their files in hopes of destroying their "paper" records must be very vigilant during the entire process. They will have to circulate throughout their firm or company a policy relating to file digitizing and destruction of documents which should provide specific rules that must be followed, or retain the services of a firm specialized in digitizing and archiving. They must have sound knowledge of the Act to establish a legal framework for information technology, and ensure that their employees receive adequate training on how to use the selected technology-based media. In addition, they should seriously take into account all of the technical elements of the process (physical means of archiving, reliability of software being used, quality of service provider, etc.).

Caveat : This article should not be taken as a legal opinion. the Ordre des ingénieurs du Québec does not have a policy or guidelines with respect to digitizing documents. if you wish to undertake such a process, we suggest that you refer to the analyses and comments of the cyberspace law research team at the Université de Montréal's Centre de recherche en droit public (crdp).

References

- Act to establish a legal framework for information technology, R.S.Q. chapter C-1.1.
- Guidelines for engineering documents - May 2008.
- Chantal Côté, notary, Numérisation de dossiers et destruction de documents: quelques règles à observer published in *Entracte*, vol. 17 n°10/ 15, December 2008.
- CRCP of the Université de Montréal, Loi concernant le cadre juridique des technologies de l'information : analyses et commentaires du CRDP [http://www.msg.gouv.qc.ca/fr/enligne/loi_ti/index.asp].