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# Five examples not to follow in order to avoid facing the Disciplinary Council

**A**t the outset of 2011, an appropriate time of year to review and assess the state of affairs, the Office of the Syndic wishes to present five recent decisions which touch upon certain important concepts for a responsible professional practice. These decisions can be found on the Ordre's website.

## SEAL OF CONVENIENCE FOR A GOOD CLIENT<sup>1</sup>

Approaches for a foot bridge over the Petite-Nation River, near Montebello, had to be erected. Initially, the general contractor retained the services of a member of the Association des architectes paysagistes du Québec to prepare the plans. However, given that they included retaining walls in excess of six feet in height, these approaches amounted to a type of work which falls within the engineer's purview.

### Charges against the engineer:

- 3.04.01 Seal of convenience.
- 3.02.04 Contradictory and incomplete opinion.
- 3.02.01 Failure to fulfill one's professional obligations with integrity.

The inquiry revealed that the engineer in question reviewed the plans prepared by the architect over a period of roughly two hours and that he spent two hours visiting the site, without preparing his own report or taking any pictures. He did not request any soil testing, which was necessary in these circumstances. In addition, he signed the plans prepared by the landscape architect upon the general contractor's request, someone with whom he had often worked in the past, without having directly supervised the architect's work.

### Lessons learned from this decision

- When affixing your seal on engineering plans and specifications, you are responsible for the information contained therein.
- Consequently, you have the duty to ensure that you are in a position to validate and explain such information.
- Never seal a document just to please a client, even if it happens to be your biggest client, and even if you do not reap any financial gain from it since you are the one, not your client, who will have to live with this blemish on your professional record.
- No client, however important they may be, can justify such a breach of your professional integrity.

## INADEQUATE SUPERVISION OF WORK<sup>2</sup>

An out of court settlement was entered into between the seller of a kit cottage and the buyer, who was dissatisfied with the goods and services he received. The seller agreed to make the

necessary corrections, at his expense. The seller's expert was retained by both parties in this case. The expert had to draw up specifications describing the corrective measures that had to be performed on the buyer's property; he also had to confirm, during an on-site visit, that the work was executed according to the specifications and trade practices.

The issue in dispute was to determine whether the engineer could certify, by signing and producing his report, that the work complied with his specifications and instructions as well as with trade practices, even though he had not supervised the work.

### Charges against the engineer:

- 2.04 Opinion not based on sufficient knowledge and honest convictions.

The Disciplinary Council had initially concluded that the report produced by the engineer should not be seen as a certification of compliance but rather as an examination report carried out pursuant to a mandate ordered by the court. The Professional Tribunal quashed that decision.

### Lessons learned from this decision

- Limited implication in a file does not relieve you from your obligation to comply with the rules of professional conduct.
- You cannot attest to the compliance of work that was carried out without having personally looked into the work while it was being executed or without having received information relating to the work by a third party responsible for overseeing the work, under your direction.

## A CLIENT'S INFLUENCE OF AN ENGINEER'S WORK<sup>3</sup>

This engineer was chosen by the owner to prepare an opinion relating to a building's structure. Even though the building was in a pathetic state, the engineer modified his reports in order to reflect his client's instructions.

### Charges against the engineer:

- 2.04 Opinion based on insufficient knowledge of the facts.
- 3.02.04 Incomplete, ambiguous and insufficiently explicit opinions.
- 3.05.03 Breach of professional independence.

The inquiry revealed that the engineer had no experience with respect to structures, and that he prepared two reports riddled with contradictions and ambiguities, the first of which was written to as to accommodate the client.

### Lessons learned from this decision

- It is better to refuse a mandate for which you do not have sufficient knowledge (as regards facts or theory).

- Income earned with a mandate is often much less than the cost associated with a defense should a complaint relating to professional conduct arise as well as a fine, if any.
- A client who dictates your conduct and your expertise is one you should do without.

#### **THE ENGINEER'S ROLE AS A WHOLE<sup>4</sup>**

While he was the head of the engineering department for the City of Lévis, this engineer authorized the installation of a harness system in an arena for the local skating club. He made sure that the building and structure were secure but neglected to verify the harness system designed to support the skaters during their practice.

#### **Charges against the engineer:**

- 2.01 Failure to respect his obligations towards man.
- 2.04 Opinions based on insufficient knowledge of the facts.
- 3.02.04 Incomplete, ambiguous and insufficiently explicit opinions.

The inquiry revealed that harness supplier's plans were rudimentary and incomplete. What's more, the engineer had been informed by the Ordre des ingénieurs that the plan was subject to the Engineers Act and that there could potentially be an ethical problem.

The Disciplinary Council found the engineer guilty and concluded that he had an obligation to ensure that the harness system, destined to be installed in a structure for which he was responsible, was indeed safe. The Council added that the engineer could not opt out of his professional or ethical duties by letting the burden of ensuring people's safety lie on the tenant of a public building for which he was responsible.

An engineer's professionalism cannot be defined by municipalities or their lawyers. The Code of ethics takes precedence above all and the engineer's overriding duty is to ensure the public's protection. By assessing the situation merely as a municipal employee and setting aside his professional status, the engineer failed to fulfill his obligations relating to professional conduct.

#### **Lessons learned from this decision**

- Always consider the overall context when approaching a mandate.
- When in doubt, push your questioning and analysis further, keeping the public's protection in mind.
- Your title follows you in every aspect of your professional activities, even if you are not directly working in engineering.

#### **COLLABORATION WITH THE OFFICE OF THE SYNDIC<sup>5</sup>**

#### **Charges against the engineer:**

Hindering the performance of the Syndic's duties (sec. 114 of the Professional Code and sec. 4.02.02 of the Code of ethics).

The engineer in question refused or omitted to diligently act upon his commitment to the assistant syndic and recover files

(which had been seized by Revenu Québec). The engineer pleaded guilty and was stricken from the roll for a period of eight months by the Disciplinary Council.

#### **Lessons learned from this decision**

- You have a duty to cooperate with the Office of the Syndic and fulfill your undertakings towards this Office during the course of an inquiry.
- Lack of time or not having your files on hand is no excuse for neglecting to respond to the Syndic or to one of his or her representatives.

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1. Benoit Marsolais file – CDOIQ 22-09-0377 (Disciplinary Council).
  2. Yves Gilbert file – T.P. 22-06-0328 (Professional Tribunal).
  3. Jean-Louis Morency file – CDOIQ 22-08-0370 (Disciplinary Council).
  4. Louis Audet file – CDOIQ 22-07-0339 (Disciplinary Council).
  5. Haim Katz file – CDOIQ 22-09-0381 (Disciplinary Council).
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