

By Mélodie Sullivan, attorney

Inspection report: unforeseen work for the new owners

Every buyer hopes to be able to rely on a competent and professional inspector to scrutinize the home of his or her dreams and detect its defects. This is the case of two owners who were greatly disappointed by the work performed by the engineer they had retained...

In 2004, these two individuals hired an engineer to inspect the residence they were planning to purchase. The respondent inspected the house and delivered his first report following the inspection. A few months after having purchased the house, the new owners noticed certain anomalies and defects which had not been pointed out in the engineer's inspection report and sent him a demand letter. Following a subsequent inspection, the engineer issued a second report. As a result, the new owners were forced to carry out unexpected work in light of the first inspection report and gave notice to the engineer for a second time.

SEVERAL SHORTCOMINGS AND PROBLEMS

Even though the civil claim brought by the owners against the engineer was settled out of court, the Ordre des ingénieurs du Québec (hereafter "the Ordre") conducted a fact-finding investigation which resulted in the Ordre charging the engineer before the Disciplinary Council, despite the fact that the respondent had resigned and was no longer a member of the Ordre when the assistant syndic filed the complaint against him. It bears reminding that the Disciplinary Council retains jurisdiction on an individual for the actions that this person performed or executed while he or she was a member of the Ordre.

Here is a summary of the six accusations brought against this engineer:

- 1- The engineer's initial inspection report was incomplete, ambiguous and insufficiently explicit, thereby violating section 3.02.04 of the Code of ethics of engineers (hereafter "the Code");
- 2- He neglected to inform his client, as soon as possible, of the extent and of the terms and conditions of his inspection report, and to obtain his client's agreement in that respect, thereby violating section 3.02.03 of the Code;
- 3- He issued a second undated inspection report which contained opinions that were not based on sufficient knowledge and honest convictions, thereby violating section 2.04 of the Code;
- 4- While carrying on in private practice, the engineer did not contract and maintain a liability insurance policy as per section 7 of the Regulation respecting professional liability insurance for the members of the Ordre;
- 5- The engineer made false, misleading or incomplete advertising with respect to his professional activities and services, thereby violating section 5.01.01 of the Code;

- 6- He omitted to keep a complete record pertaining to this inspection mandate at the place where he practises his profession, thereby violating section 2.01 of the Regulation respecting the keeping of records and consulting offices by engineers.

CONTRADICTORY OPINIONS

The respondent was accused of disregarding his duties and obligations toward his client as well as the public by contravening to the following sections of the Code:

3.02.04. An engineer must refrain from expressing or giving contradictory or incomplete opinions or advice, and from presenting or using plans, specifications and other documents which he knows to be ambiguous or which are not sufficiently explicit.

3.02.03. An engineer must, as soon as possible, inform his client of the extent and the terms and conditions of the mandate entrusted to him by the latter and obtain his agreement in that respect.

2.04. The engineer shall express his opinion on matters dealing with engineering only if such opinion is based on sufficient knowledge and honest convictions.

5.01.01. An engineer may not in any way and under any circumstances make false, misleading or incomplete advertising with respect to his professional activities and services.

The engineer did indeed acknowledge having prepared an ambiguous and incomplete report in which he noted vague comments relating to such elements as the floors and the electrical panel. He indicated that the oil tank could eventually require repairs, without providing any details as to the nature or reason for those repairs, or to their cost, etc.

The respondent also neglected to set out and explain the limits and restrictions inherent to inspections to his clients prior to undertaking the inspection.

After his second visit, the engineer issued a subsequent report in which he modified his opinion concerning the oil tanks by stating that the tanks dating 25 years or more were no longer insurable. However, this assertion is not based on any legal or regulatory provision. As such, the engineer's opinion was based on insufficient knowledge.

Finally, in the documents given to the clients, the engineer advertised professional engineering services protected by liability insurance, but he did not hold proper professional liability insurance with respect to his obligations. In fact, his insurance policy specifically indicated that he was not covered for his actions as an engineer. Consequently, he was guilty, in particular, of false and misleading advertising.

TWO REGULATORY INFRACTIONS

The engineer is also accused of having violated two provisions pertaining to the practice of engineering:

A member who exercises [...] the profession of engineer, [...], on his own account, [...], shall, [...] hold an insurance contract [...] establishing a guarantee against any liability which the member may incur by himself or through the member's employees or agents resulting from fault or negligence committed in the exercise of the profession. The member remains subject to this obligation for at least five years after the performance of any act in the exercise of his profession. (Section 7, Regulation respecting professional liability insurance for the members of the Ordre des ingénieurs du Québec)

[...] the engineer must keep, at the place where he practises his profession:

- a) a register [...];*
- b) the general record respecting a project including the correspondence exchanged with the client or third parties during the development process of the project and respecting the studies, appraisals, reports, plans, specifications or other pertinent documents;*
- c) the technical record of a project including the data provided by the client or collected by the engineer, the charges for which the computations are made and the computations themselves with an indication of the methods used, where applicable. (Section 2.01, Regulation respecting the keeping of records and consulting offices by engineers)*

As discussed above, the engineer was not insured with respect to the opinions he issued to his clients and this amounted to a violation of the relevant regulation. Furthermore, the engineer was not able to provide many documents during the syndic's inquiry, in violation of the Regulation respecting the keeping of records and consulting offices by engineers.

The engineer pleaded guilty on all counts. In its decision, the Disciplinary Council took into account that this was the respondent's first offence, that he was aware of his error and that he showed remorse. Keeping the public's protection in mind, the Council also hoped to make an example of this case and wanted its decision to have a deterrent effect throughout the profession. Consequently, the Council found the engineer guilty on all counts, imposed two reprimands and ordered him to pay fines totalling \$3,600.00, plus hearing fees.

1. Alexandre Khayat, Eng. v. Angelo Laforte, CDOIQ N° 22-07-0350

2. Please note that following the coming into force of the Act to amend the Professional Code and other legislative provisions, the committee on discipline is now known as the Disciplinary Council.