

By M^e Johanne Pinsonnault, lawyer

Respecting one's obligations towards man: an essential duty of utmost importance

"In all aspects of his work, the engineer must respect his obligations towards man and take into account the consequences of the performance of his work on the environment and on the life, health and property of every person."

Code of ethics of engineers, section 2.01

Section 2.01 is certainly one of the most important sections of the Code of ethics of engineers. On a number of occasions, the Ordre's Disciplinary Council and higher courts have reiterated how important and essential it is, and imposed harsh penalties with respect to violations to this section. The public is more and more informed and expects to be understood and well taken care of by engineers. While new technologies are being developed at a dizzying pace and environmental issues are making headlines, it can be challenging for engineers to respect this ethical and social duty in the course of their practice, hence the importance of looking into its nature and scope.

FIRST, RESPECTING LAWS AND REGULATIONS

Section 2.01 requires that engineers respect all applicable laws and regulations – codes, laws, regulations, orders and by-laws. Here are a few examples:

- the Environment Quality Act, R.S.Q., c. Q-2, and its regulations, in particular:
 - the Regulation respecting the application of the Environment Quality Act, R.S.Q., c. Q-2, r. 3;
 - the Regulation respecting waste water disposal systems for isolated dwellings, R.S.Q., c. Q-2, r. 22;
 - the Protection Policy for Lakeshores, Riverbanks, Littoral Zones and Floodplains, R.S.Q., c. Q-2, r. 35;
- the Construction Code, R.S.Q., c. B-1.1, r.0.01.01;
- the Safety Code for the construction industry, R.Q., c. S-2.1, r.6; and
- municipal by-laws, etc.

Engineers must be aware of all applicable laws and regulations and work with their current versions; they must also ensure that their work complies with all requirements pursuant to these laws and regulations¹. Some of the laws which engineers must take into consideration in the course of their practice, and their associated regulations, are of public order, namely the Environment Quality Act. They contain mandatory provisions which must be respected at all times. Respecting these provisions is by no means left to the engineer's discretion².

SECOND, RESPECTING TRADE PRACTICES

Section 2.01 also dictates that engineers must respect trade practices that provide guidelines within their field of practice such as designing, carrying out, supervising and verifying work as well as certifying the compliance of such work. Trade practices deal, among other things, with calculation methods, characteristics of materials used as well as construction and assembly techniques.

In practical terms, engineers must have all the required factual, technical and legal knowledge to design, execute and oversee the work, and give advice related thereto. They must be foresighted, meaning that they must carefully examine the circumstances surrounding the work they are carrying out. They must also analyse the possible repercussions of their work, provide their professional judgment, particularly in a context of conflicting interests (such as protecting the environment versus protecting private property), and avoid all conflict situations which skew or could skew their judgment with respect to the interests at hand³.

What's more, engineers must be extremely vigilant when it comes to health and safety and devote great attention to this matter. They should be able to pinpoint and address potentially dangerous and risky situations. Consequently, engineers must carry out all necessary calculations and verifications⁴, adequately assess potential, but real, risks⁵, and establish security measures⁶ or appropriate measures in terms of protecting the environment, particularly by explicitly including them in the documents they prepare⁷. If they notice elements which might be a threat to people's lives or security, engineers should not hesitate to advise their clients on the matter, for example by recommending that an in-depth expertise be carried out⁸.

Vigilance is also in order with respect to work habits: if a task has become routine, engineers must make sure that the norm or standard has not changed or evolved and that it is still applicable in the given situation. Under no circumstances can engineers hide behind a misconception of the norm or a lack of experience.

To sum up their obligations regarding trade practices, engineers must ensure that they have all the required knowledge and competencies; they must keep them up to date and apply them appropriately to the situation requiring their professional attention.

IN ALL ASPECTS OF ONE'S WORK

Engineers must respect the ethical obligation pursuant to section 2.01 every step of the way in their professional actions, in every aspect of their activities and in all means of practice⁹.

A DUTY THAT SUPERSEDES OBLIGATIONS TOWARDS THE CLIENT

Engineers are required to comply with section 2.01, over and above their contractual obligations. They must detect and expose any anomaly or irregularity that they notice or should notice given their experience and expertise, so that all appropriate corrective measures can be made¹⁰.

When it comes to environmental requirements, engineers cannot disregard their professional obligations so as to prioritize a client's pressing situation.

When the public's interest (public health and security, protecting the environment) comes into conflict with that of their client, engineers have an obligation to discriminate in favour of public interest. For example, if regulations require that work authorizations be obtained, engineers cannot allow or tolerate that the work be carried out without such authorizations, unless they can show that interests greater than protecting the environment came into play, such as an urgency to secure the public's life and safety¹¹.

When it comes to environmental requirements, engineers cannot disregard their professional obligations so as to prioritize a client's pressing situation. Failure to do so amounts to wilful blindness or acting as a mere agent. Quite the contrary, they must comply with their social duty pursuant to section 2.01 by erring on the side of caution and taking necessary measures to protect the environment (clearly informing their clients, providing for

protective measures prescribed by law, proceeding with certain steps even though that might jeopardize grants and delay the work, etc.). Engineers cannot be relieved from liability by arguing that a municipality, a government department or a contractor was responsible for making such decisions¹².

ALWAYS TAKE CONSEQUENCES INTO CONSIDERATION

Respecting section 2.01 implies that we perform "positive acts in hopes of favouring those execution procedures and technological choices that are most compatible with respecting the environment and the life, health and property of every person¹³".

In other words, engineers are required to act completely responsibly in order to ensure the safety of others, whether it be those working on the project or the people who will use or benefit from the work. The work should ensure the public's safety all through the life cycle of the work, equipment or product. The work should also be carried out in a way that material damages to the building and, in turn, loss of use for the owner and tenants are avoided, and that everyone's safety is ensured once construction is over. Finally, the work should be executed in a way to ensure the protection of the environment.

As we have just seen, section 2.01 of the Code of ethics imposes very important general obligations upon every engineer who accomplishes professional acts. Engineers are key figures and play an essential role in developing our society, and their work can have serious consequences. This is why they must perform these acts while taking into account quality, reliability, credibility, security and confidence. Section 2.01 attests to the importance of these professional acts and is at the very heart of the practice of engineering.

1. Latulippe v. Brosseau, 22-05-0310, 2008 QCTP 99-A; Tremblay c. Héroux, 22-06-0329; Alauront c. Roghani, 22-07-0354; Alauront c. Thibault, 22-03-0270.
2. Rousseau v. Ingénieurs (Ordre professionnel des), 2005 QCTP 41.
3. Tremblay v. Lamarche, 22-03-0280.
4. Alauront v. Cantin, 22-04-0293; Alauront c. McDougall, 22-04-0287; Tremblay v. Chassé, 22-05-0314.
5. Ordre des ingénieurs v. Guimond, 2006 QCTP 84.
6. Latulippe v. Joly, 22-05-0309.
7. Tremblay v. Héroux, op. cit. note 1; Khayat c. Kumps, 22-03-0284.
8. Latulippe v. Guillot, 22-02-0264, 2006 QCTP 112.
9. François VANDENBROECK, L'ingénieur et son Code de déontologie, Les Éditions Juriméga, 1993, p. 38.
10. Tremblay v. Dionne, 2005 QCCA 1441, par. 64.
11. Tremblay v. Lamarche, op. cit., note 3.
12. Tremblay v. Héroux, op. cit., note 1.
13. VANDENBROECK, op. cit., p. 40.