

By Mélodie Sullivan, attorney

# When the past comes back to haunt an ex-junior engineer...

**T**ime erases neither errors nor professional misconduct. That is what was illustrated in a case heard recently, the series of events of which began about fifteen years ago and unfolded over a period of eight years.

In order to understand the complaint filed by the assistant syndic before the Disciplinary Council in November 2006, one must revisit a time when the respondent, now an engineer, was merely a junior engineer. The complaint alleges that, at that time, the respondent committed malpractice as regards his level of competence, misused his title and did not adequately maintain his files.

Here is a summary of the charges to which the respondent pleaded guilty following negotiations concerning possible sanctions as well as the assistant syndic's withdrawal of five charges:

- First count – having neglected to bear in mind the means at his disposal to carry out his mandate, thereby violating section 3.01.01 of the Code of ethics of engineers (hereafter "the Code");
- Second count – having prepared an incomplete, ambiguous and insufficiently explicit "ballistics expert report", thereby violating section 3.02.04 of the Code;
- Third count – having prepared and signed an expert report outlining his opinion and advice, presenting and identifying himself as an engineer, while merely holding a junior engineer's title, thereby violating section 2 of the Regulation respecting the use of the title of engineer by the new members of the Ordre des ingénieurs du Québec;
- Ninth count – having neglected to keep a crucial part of his file, thereby violating section 2.01 c), 2.03 and 2.04 of the du Regulation respecting the keeping of records and consulting offices by engineers.

It bears mentioning that the respondent fully cooperated in the investigation.

## A PRECIOUS RECORDING

This story could easily tantalize police novel buffs given its backdrop.

The original facts of this case occurred in August 1992. At that time, a young Saint-Jean-sur-Richelieu man (a minor) and his father were arrested and brought to the police station by two municipal officers. The boy was accused of selling used golf balls he had picked up on lots of land adjacent to the local golf course.

The father and chief of police subsequently spoke at length about the event over the phone. As is the case with all telephone calls, this conversation was recorded on tape via the police station's recording system. This device is highly specialized and can record up to six continuous telephone conversations simultaneously.

A few days later, this citizen complained to the Police Ethics Commissioner; after an inquiry on the matter, a complaint was filed against two officers before the Police Ethics Committee. The taping of the aforementioned telephone conversation became contentious during the hearing relating to this complaint in 1993 and a decision was made at that time to have the magnetic tape examined by an expert at the Québec department of public security's *Laboratoire de sciences judiciaires*.

## SEVERAL CONSECUTIVE ERRORS

The respondent had been working at the Laboratoire for a short time and was enrolled in a practical training programme, the only training available at the time since there were no other courses pertaining to ballistics analysis offered in learning establishments. Given that he had graduated in physics and physics engineering and that he had some experience in the matter, the junior engineer was given the mandate of analysing the magnetic tape in order to spot possible modifications or alterations that could have been brought to the recorded conversation. However, the equipment at his disposal was not designed to analyse this rarely used medium. Consequently, he had to require the Sûreté du Québec's services.

First, the respondent conducted a visual exam of the magnetic tape and listened to its content. He then completed his expert analysis after having transferred the recording onto a 4-track cassette.

Subsequently, when preparing his written report, he followed his colleagues' advice and placed the emphasis on his findings rather than on an in-depth explanation of the technical aspects. In one fell swoop, he cast aside any explanation relating to having transferred the recording, delivering an incomplete, ambiguous and insufficiently explicit report.

With respect to this entire portion of the story, the respondent acknowledged that he clearly lacked experience when he accepted the mandate and that he had been inadequately supervised by his peers thereafter.

Furthermore, the junior engineer signed and presented his report as an engineering physicist for the ballistics division, a title that was definitely not his to use. The respondent qualified this act as an oversight and admitted that he should have indicated next to his signature either "junior engineer", "physicist" or "junior engineer and physicist".

Finally, once the work was completed, the young engineer returned the original tape and put the 4-track cassette away without giving it a second thought, only to stumble upon it much later at the bottom of a desk drawer, thereby violating the regulation pertaining to the keeping of records.

## GUILTY ON FOUR COUNTS

In light of this information and following the respondent's testimony, the Office of the syndic demanded sanctions on each count. It indicated that the parties had managed to agree as to these sanctions further to a detailed analysis of the facts at hand, keeping in mind its duty to ensure the public's protection.

In its decision, the Disciplinary Council explained that many elements were taken into account, namely that the respondent had admitted his guilt and that, in all likelihood, he would not reoffend. Considering the nature and the gravity of these offences, the Council carried out the proposed sanctions and ordered the respondent to pay four fines totalling \$4,600.00, plus hearing fees and including more than \$6,000.00 in fees to be paid to the complainant's expert.

## HERE ARE THE MAIN REGULATIONS WITH WHICH THE JUNIOR ENGINEER FAILED TO COMPLY

### The Code of ethics of engineers:

**3.01.01.** Before accepting a mandate, an engineer must bear in mind the extent of his proficiency and aptitudes and also the means at his disposal to carry out the mandate.

**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.

### The Regulation respecting the use of the title of engineer by the new members of the Ordre des ingénieurs du Québec (230-93 G.O. 2, 1326) provides that:

**1.** A member of the Ordre des ingénieurs du Québec shall be known as an engineer and is entitled to use the title if:

1° the member has satisfied the Order that he has been practising the profession continually for 2 years; or

2° the member has satisfied the Order that he has acquired experience equivalent to that normally acquired by persons meeting the requirements or paragraph 1.

**2.** Until such time as a member of the Order has satisfied either requirement set out in section 1, he shall be known as a junior engineer and shall always identify himself as such in his engineering activities.

To satisfy the Order that he meets the requirements of section 1, the member shall submit proof of compliance, normally attested to by 2 members of the Order.

### The Regulation respecting the keeping of records and consulting offices by engineers:

**2.01.** Subject to section 2.06, the engineer must keep, at the place where he practises his profession:

[...]

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.

**2.03.** The engineer must classify his records and the plans and specifications in such a way as to keep them in proper condition for utilization during the carrying out the project in a place not readily accessible to the public. Where, under section 1.03, the engineer uses data processing or any other technique for the constitution and keeping of his records, he must ensure that their confidentiality is respected.

**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.