

By Mélodie Sullivan, attorney

An inescapable priority for the engineer: protecting the environment

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, s. 2.01

Being “green” is far from being a mere trend: it is a way of thinking that transforms our view of the world and our way of life. Engineers are particularly concerned by these new issues, a reality which is clearly stated in section 2.01 of the Code of ethics of engineers. However, in the course of his or her practice, does the engineer also have to consider the environment over and above his or her contractual and financial obligations? The following is a disciplinary case which offers a definitive answer to this question.

In November 2007, the Ordre des ingénieurs du Québec’s Committee on Discipline heard a complaint against one of its members. The complaint listed the following four counts:

- In August 2004, an engineer and project leader prepared plans which did not contain information or provisions pertaining to protection measures for the environment.
- In September, October and November of 2004, the engineer allowed or tolerated the preparation or presentation of an application for authorization, despite the fact that the application was incomplete.
- In September, October and November of 2004, the engineer allowed or tolerated the delivery of work without having obtained the proper authorizations required by law.
- In September, October and November of 2004, the engineer allowed or tolerated the delivery of work without regard to the implications on the environment.

It should be noted that each count of this complaint included an offence pursuant to section 2.01, dealing particularly with the consequences of the performance of the work on the environment. The first and second counts also relate to section 3.02.04 in that:

“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.”

Let us look at the facts of this case.

A LONG AWAITED ROAD

In the spring of 2004, after years of analyses and going through the necessary steps to obtain government grants, a municipality endeavoured to refurbish and extend a road for economic development purposes. The engineering firm retained for the work assigned this “turn-key project” to the respondent.

With that in mind, the respondent visited the site many times and ordered an environmental study relating to two particular points in the approved layout of the proposed road. The fact that the engineer neglected to indicate in this study that a part of the layout passed directly through a swamp and that several other points of the layout touched wetlands, is crucial. The respondent then filed an incomplete application for authorization with Environment Québec.

In that respect, let us point out that:

- the contract between the municipality and the contractor provided for the preparation of all necessary documents for obtaining governmental authorisations;
- the evidence revealed that the soil was indeed marshy in several places and that the layout touched watercourses and wetlands;
- the new road was intended to go on for kilometres – among other things, the Environment Quality Act stipulates that any road repair project carried out over a distance of at least one kilometre is subject to obtaining a certificate of authorisation prior to commencement of the work.

The work was already underway when the client received a “Notice of offence” from the department of Environment ordering that the work cease. On site, inspectors had noted that, among other things, work had been done in a swamp area without having previously obtained the required certificate of authorization, that

In this case, the engineer had to comply with the following provisions, among others:

Environment Quality Act, R.S.Q., c. Q-2: section 22 paragraph 2 states that no one may carry out any works or projects in a watercourse, a lake, pond, marsh, swamp or bog, unless he first obtains a certificate of authorization from the Minister.

Regulation respecting the application of the Environment Quality Act, R.Q., c. Q-2, r. 1.001: section 2, paragraph 3 (b) provides that one must obtain authorization for projects relating to the construction, reconstruction, widening or straightening of a road, if the project is to be carried out over a distance of at least 1 kilometre on a road that is located outside the town boundaries.

¹ Louis Tremblay, Eng. v. Normand Héroux, eng., CDOIQ, no 22-06-0329.

trees had been cut clean, that machinery had passed through the riparian strip of watercourses and that, at one junction, no confinement barriers had been placed to prevent sediments from reaching the water.

The evidence also showed that damages to environment arising from such illegal works were considerable and long-lasting. Consequently, the municipality received an order from the Minister to submit a restoration plan and to repair all damages.

A COMPLAINT FROM THE PUBLIC AND THE DECISION RENDERED BY THE COMMITTEE ON DISCIPLINE

Angry and worried about these events, citizens in the area asked the Ordre des ingénieurs du Québec to investigate the respondent's professional conduct. Subsequent to this investigation, the syndic filed a complaint with the Committee on Discipline. Thus, last fall, the Committee on Discipline heard all of the key witnesses in this case and found the respondent guilty on all four counts. What follows are the main reasons justifying this decision.

The Committee on Discipline agreed that the respondent had a duty to comply with all of the laws and regulations relating to the environment and to ensure that the project would be carried out legally. However, the Committee concluded that the respondent had breached his own professional obligations. More particularly, the Committee found that the respondent's behaviour amounted to wilful blindness in that he favoured his client's needs and became a subordinate, as it were, to agents of certain governmental departments, namely Transports Québec.

The respondent should have erred on the side of caution with respect to the situation concerning the environment and stayed true to his social commitment. While he did undertake some steps in order to address the environmental implications, these measures were clearly insufficient and incomplete. The Committee ruled that the respondent's professional duty called for him to carry these measures through, even if this had meant that the government subsidies may not have been granted.

As for the first count, the Committee states as follows:
“(120) With regard to the first count, the Committee considers that, during the preparation of the plans, the respondent had enough information concerning the environmental issues and that he failed in the proper execution of his obligation because he chose to turn a blind eye in order to serve the interests of his client.

(121) On the first count, the Committee concludes that the respondent should have included certain stipulations or at least anticipate or plan environmental protection measures, as required under the law.

(122) The Committee considers that the respondent was aware of the environmental implications of his work and that he should have advised the municipality.

(125) The respondent should have erred on the side of caution with respect to the situation concerning the environment and stayed true to his social commitment.”

As for the second count, the Committee ruled that the respondent had to have known about the relevant provisions of the Environment Quality Act and that, despite Transports Québec's notices, he should have requested an authorization for the layout as a whole.

As for the third and fourth counts, the Committee considers that:
“(146) On the third count, the respondent, in his capacity as project manager and knowing full well that the work in question required Environment Québec's action, authorized the performance of the work, the consequences of which were foreseeable.

(147) The respondent's behaviour was such that he failed in the performance of his mandate with the municipality which stated that he had to request all necessary approvals in compliance with the laws applicable to the project.

(148) Finally, with respect to the fourth count, the Committee considers that the evidence is clear as it relates to the fact that the respondent disregarded the environmental repercussions of his work.

(149) The Committee finds that, given the terms of his mandate relating to his monitoring obligations, the execution of the project was entirely the respondent's responsibility.”

This engineer was ordered to pay four fines of \$4,000 for lack of probity and integrity in the achievement of his social mission, namely protecting the public, as well as two \$1,000 fines for having rendered opinions which were based on insufficient knowledge of the facts, for a grand total of \$18,000. In its decision, the Committee took into account that the respondent admitted his wrong-doing, showed signs of remorse, had changed his behaviour and was unlikely to repeat a subsequent offence.

In short, during the course of their practice, engineers are required to consider environmental concerns as yet another variable of their unavoidable priority: protecting the public.