

By Charles Dupuis, attorney

Reduced services for reduced fees?

The Disciplinary Council at the Ordre des ingénieurs du Québec (hereafter the "Ordre") and the Professions Tribunal often render decisions in cases involving engineers accused of lacking professional thoroughness, for instance, for having expressed an opinion based on insufficient knowledge or for not rendering all services expected by the client. Indeed, engineers must be thorough in their professional practice; but are there situations in which they can "let down their guard"?

CLEAR AUTHORITIES

As you know, an engineer is called upon to perform acts which are as numerous as they are diversified: counsel clients and provide opinions; make computations, measurements and layouts; carry out analyses, designs, plans and specifications; prepare reports and estimates; inspect and supervise the work...

In carrying out each of these acts, engineers must take into account the fundamental values of their profession, among which is that of **competence**. This core value is based, among other things, on professional thoroughness; the provisions which regulate the practice of engineering are unmistakable on the matter. As it were, the latest edition of the Ordre's Guidelines to Professional Practice mentions the following, on page 23:

"Competent engineers are dedicated to mastering the knowledge necessary for their professional practice.

Competence is a question of applying scientific principles. Fundamentally grounded in logical and proven concepts, competence demands strict and constant application of standards of good practice in engineering."

[Our emphasis.]

Thoroughness is always relevant; it is one of the most important practice standards for all engineers, a notion that is clearly spelled out in the Code of ethics of engineers (hereafter the "Code"). More particularly, sections 2.02 and 2.04 aim to ensure that this principle is respected:

"2.02. The engineer must support every measure likely to improve the quality and availability of his professional services."

"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."

In fact, the Professions Tribunal awards great importance to professional thoroughness and gives a strict interpretation to those sections in the Code that refer to it. For example, an engineer¹ was charged of having expressed an opinion based on insufficient knowledge in his report following a pre-purchase inspection. The appeal tribunal pointed out that an engineer must, at all times, have sufficient technical knowledge of the area of practice at hand as well as knowledge of all factual elements in the file in which he or she renders an opinion.

ARE THERE EXCEPTIONS TO PROFESSIONAL THOROUGHNESS?

Despite these clear regulations, some engineers who have been charged have submitted arguments which, at first glance, might appear to circumvent the obligation to maintain a certain standard of professional thoroughness or reduce its scope. But what is the real situation?

In his defence, an engineer 2 pleaded that section 2.04 of the Code could not apply to him since, according to him, he had not rendered an "opinion", he had simply stated his "point of view". The Disciplinary Council determined that it was useless to engage in semantics; essentially, a "point of view" is indeed an "opinion" under the Code. Consequently, the Disciplinary Council reminded us that thoroughness is a real duty and that this is true regardless of the terms or phrasing engineers use to qualify their work.

Reducing their professional fees does not allow engineers to scale back on the quality of their professional services.

Some engineers claim that they are allowed to disregard professional thoroughness and justify this breach with respect to their work either because their clients requested it, it was stipulated in their service agreement or because they were not paid much for their work. Each one of these reasons is false and flies in the face of the letter and spirit of the Code of ethics of engineers, the Engineers Act, the Professional Code and all the various regulations enacted pursuant to these public order statutes.

In effect, engineers don't only have obligations towards their clients. In every aspect of their work, they are bound by obligations towards the public in general and must take into account the consequences of the performance of their work on the environment and on the life, health and property of every person. An engineer cannot justify violating his or her code of ethics by referring to a stipulation in a service contract or other such agreement.

Similarly, when engineers are found guilty of having violated their code of ethics, they cannot request a lighter sanction simply because they were paid less, even if the offence was committed

at their clients' request. On this topic, the Professions Tribunal availed itself of a case involving the Ordre des ingénieurs du Québec to recall this principle³: "Disciplinary law in no way justifies reducing one's ethical responsibilities in cases where a professional accepts lower fees."

The Professions Tribunal also reprimanded engineer Réal Deschênes for having refused to provide the product of his work to his client, on the grounds that he considered his remuneration to be insufficient⁴...

In other words, engineers must remain prudent and thorough in all aspects of their professional practice. Engineers who remain aware of their ethical and professional obligations towards their clients, the Ordre and society, are informed professionals who act intelligently and in a timely manner, thereby avoiding the pitfalls and inconveniences of a disciplinary inquiry as well as the shame that always comes with a guilty verdict from the Disciplinary Council.

1. P.T. Mingan district, case no 650-07-000004-058.

2. Louis Tremblay, Syndic O.I.Q. v. Vincent Boulet, Eng., C.D.O.I.Q. no 22-05-0305.

3. Reported in D.D.O.P. 249, 1995.

4. Rémi Alarent, in his quality of assistant syndic of the O.I.Q. v. Réal Deschênes, Eng., C.D.O.I.Q. no 22-94-0011 ; P.T. case no 500-07-000033-955.