

By Mélodie Sullivan, attorney

Repeat offences don't pay

In March 2004, a homeowner hired an engineer to design a new wastewater treatment system for his property. Some time later, he contacted the syndic of the OIQ, who, after reviewing the case, made an official complaint against the engineer. What follows is a summary of the case.

The engineer was charged with having, on two occasions seven days apart:

- expressed a contradictory, incomplete, ambiguous and insufficiently explicit opinion, thereby contravening section 3.02.04 of the Code of Ethics of Engineers;
- expressed an opinion that was not based on sufficient knowledge and honest convictions and that would not satisfy the requirements of the Regulation respecting the waste water disposal systems for isolated dwellings (Q-2, r.8), thereby contravening section 2.04 of the Code of Ethics of Engineers;
- failed to take into account the consequences of the execution of his works on the environment and on the life, health and property of individuals by issuing an opinion that did not satisfy the requirements of the Regulation respecting the waste water disposal systems for isolated dwellings (Q-2, r.8), thereby contravening section 2.01 of the Code of Ethics of Engineer.

In other words, the respondent was accused of having neglected his duties and obligations toward his client and the public by failing to comply, on two different occasions, with each of the following articles:

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.

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.

2.01. 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.

INCOMPLETE DOCUMENTS

The facts are straightforward. The client sought to renovate an old house located near a stream. The municipality in which it was located required that its sanitation standards be respected. The owner therefore hired the engineer. Sometime later, the engineer submitted a plan and a service contract but the municipality required changes to the plan. The second plan was also judged incomplete and lacked a soil study. The client therefore stopped his dealings with the engineer and unsuccessfully asked to be reimbursed.

Experts appearing before the Committee on Discipline of the OIQ clearly demonstrated that above all, soil testing must be performed to determine what type of system can be installed in order to satisfy the criteria of the Regulation respecting the waste water disposal systems for isolated residences (Q-2, r.8). In fact, the respondent did not perform any soil tests. He claimed he could not make percolation tests because the soil was still frozen. While he doubted the feasibility of his client's request, the engineer did not take the trouble to contact the municipality in this regard. He stated that he did what the client wanted, not what the municipality requested.

A CASE HEARD AND A JUDGMENT REVISED

The Committee on Discipline judged that in fact, the respondent engineer:

- submitted non-compliant permit requests;
- ought to have advised his client that his work would not be of any use until soil permeability tests had been performed;

Experts clearly established that it was necessary above all to conduct soil tests in order to determine what type of system can be installed to satisfy the criteria of the Regulation respecting the waste water disposal systems for isolated residences (Q-2,r.8);

- did not have real knowledge of Regulation Q-2, r.8;
- demonstrated unacceptable laxity and lack of diligence toward his client by not informing him adequately.

Furthermore, the Committee on Discipline found that the environmental risk would have been high if the work had been executed according to the plans.

However, the Syndic of the OIQ appealed the penalty before the Professions Tribunal. The Tribunal found the decision by the Committee too mild and instead concluded that the many years of experience of the defendant should have resulted in greater vigilance. The Tribunal also considered a previous case that had

occurred several years earlier, and for which the engineer had not shown any regrets. In point of fact, the engineer still did not sufficiently know the applicable laws and regulations in this field. Moreover, in his technical opinions, he used old versions of the laws and regulations. This proved to the complainant that the engineer did not have sufficient knowledge of the field and should never have accepted this assignment.

Concluding that the defendant still did not accept his responsibility, the Professions Tribunal opted for a more severe punishment.

The engineer was declared guilty of six charges and ordered to pay four fines of \$1,000 each for having issued a contradictory, incomplete, ambiguous and insufficiently explicit opinion, for a total of \$4,000. The Tribunal also imposed two temporary suspensions from the Roll for three months, for having failed to consider the consequences of the execution of his works for the environment and the life, health and property of individuals.

1. *Ginette Latulippe, Eng. v. Marc Brosseau, Eng.*, CDOIQ N° 22-05-310.

2. *Ingénieurs (Ordre professionnel des) c. Brosseau*, 2008 QCTP 99-A.