

By Charles Dupuis, attorney

# Responsibility, an optional value?

Québec engineers have chosen values that they must respect in the course of their practice. Among them, responsibility plays a pivotal role with respect to relations with clients, employers and the public. Can this role be set aside?

Before becoming members of the Ordre des ingénieurs du Québec (hereafter the "Ordre"), all future engineers devote several years to their studies. Subsequently, they gain experience as junior engineers and take the required exams. In other words, they "get acquainted" with their field of expertise. However, once they are entered on the roll of the Ordre as engineers or junior engineers, every member of the Ordre is permanently recognized as being responsible for his or her professional actions.

## BECAUSE NO ENGINEER IS OMNISCIENT

A client or an employer who calls upon an engineer is entitled to expect nothing short of excellence. In fact, engineers must appear to have confidence in their abilities. They must be able to state the following to their clients and employers: "I am fully competent and I will assume the consequences of my professional actions."

But every engineer has limits, and it is up to all engineers to know their limits, to address them and, if appropriate, to disclose them when a mandate surpasses these limits. In fact, the Code of ethics of engineers provides that "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<sup>1</sup>."

On this topic, the Guidelines to professional practice mention that:

"Responsible engineers only accept assignments for which they have the necessary competence.

The Professional Code grants members of the Ordre des ingénieurs du Québec professional status and an exclusive title. Professional status entails obligations towards clients who trustingly engage the services of an engineer.

Engineers must, therefore, assume full responsibility for the consequences of their professional actions. Engineers are personally answerable to their clients and to society as a whole for the work they do<sup>2</sup>."

"Accepting only those mandates for which he or she has the required competencies" means that an engineer cannot take chances and explore fields with which he or she is "not acquainted". Or, like Me François Vandebroek, Eng., explains:

"[...] competence goes beyond the training required to be allowed to practise engineering. It relates to engineers being sufficiently qualified to solve a problem in every respect, taking into account all particular circumstances. This includes knowledge, experience, know-how and the ability to use these attributes in

the client's or the employer's best interest. When in doubt as to their competence or know-how to properly solve a situation or problem with which they are faced, engineers are bound by the rules of professional conduct to refuse such a mandate<sup>3</sup>." (Unofficial translation.)

Engineers' responsibility is not confined to professional acts. Their responsibility also comes into play when they are asked for advice, their opinion or even simply their point of view regarding a given issue or problem, whether it be during the course of their work or any other activity. In short, engineers are, at all times, accountable for every opinion they provide. Consequently, they must limit their opinions to topics:

- they master and with respect to which they have appropriate expertise; and
- on which they are able to verify all the facts.

It goes without saying that a responsible attitude protects clients,

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employers and the public alike against professional malpractice but it also protects engineers by preventing them from tarnishing their practice and their reputation as well as the notoriety of the engineering profession.

In light of the foregoing, it is clear that a responsible conduct is not a garment worn at work which can be taken off when we leave the office or "returned" when we so please. The following is an example of an engineer who seemed to believe that his responsibility was simply a provision in his contract.

## WHEN ENGINEERS WANT TO DENY THEIR RESPONSIBILITY

The question begs, and many will be happy to know the answer: can engineers limit or exclude their professional liability by including a clause to that effect in a client's service agreement?

An engineer advertised his services in presale building inspection.

His advertisement indicated that his firm carried out inspections, technical consultations, assessments and reports, all of which were covered by a professional liability insurance policy.

A citizen, attracted by this ad, retained the engineer's services and instructed him to inspect a residence on which he had just made an offer. As soon as he could, the engineer asked his client to sign a service agreement containing a disclaimer. Faced with the client's refusal to sign such a discharge, the engineer did not render the services for which he had been retained and left his client in the lurch, with his real estate agent and the seller's agent standing by.

After such a story, the Office of the syndic conducted an investigation and filed a complaint before the Ordre's Disciplinary Council. This complaint included a count based on section 59.2 of the Professional Code<sup>4</sup>, according to which the engineer's intention to exclude his professional liability pursuant to the service agreement he proposed to his client constituted an act that is derogatory to the honour and dignity of the engineering profession.

After hearing the witnesses' testimony, the Disciplinary Council found the engineer guilty, stating that his conduct was contrary to the dignity of the engineering profession. The Council pointed out that the engineer had not fulfilled his duty to protect the public by insisting that his client sign a document holding the engineer harmless of any professional liability.

Considering all the relevant factors applicable in these circumstances, including exemplary value, this engineer was ordered to pay a \$2,000 fine, plus costs<sup>5</sup>.

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1. Code of ethics of engineers (art. 3.01.01)
  2. Guidelines to professional practice, OIQ, 2nd Edition 2003, pp. 23-24.
  3. Me François Vandebroek, Eng. L'ingénieur et son Code de déontologie; Les éditions Juriméga, Trois-Rivières, 1993, pages 54-55.
  4. Section 59.2. No professional may engage in an act derogatory to the honour or dignity of his profession or to the discipline of the members of the order, or practise a profession, carry on a trade, enterprise or business or hold an office or function that is inconsistent with the honour, dignity or practice of his profession.
  5. Louis Tremblay, Eng. in his quality of syndic for the OIQ v. Philippe Prigent, Eng. C.D.O.I.Q. file #22-06-0334. It should be noted that Mr. Prigent is no longer a member of the Ordre at this time.