

By Mélodie Sullivan, attorney

Can engineers act as their client's supplier's supplier?

In a recent case involving two engineers, the Ordre des ingénieurs du Québec's (hereafter the "OIQ") Committee on Discipline disposed of this question and gave an unequivocal answer: the two engineers were clearly in a position of conflict of interest.

BOTH MASTER AND SERVANT AT THE SAME TIME

Let's summarize the facts in this case. Some time ago, a municipality invited a contractor to prepare the specifications and invitation to tender documents pertaining to work relating to its water supply system. The invitation to tender prepared by the two engineers provides that the subcontractor will retain the engineers' employer to execute a certain type of work. The document indicates that any bid which does not comply with this condition will be rejected. By requiring the future supplier to retain a particular subcontractor, the specifications eliminate competition.

Once the subcontractor is retained, the engineers are responsible for programming and coordinating the work on behalf of the subcontractor. In the course of their duties for their employer, the engineers are to make sure that the subcontractor is paid, a payment which, as it turns out, ensures their own remuneration. In this situation, the two engineers are acting as both masters and servants, so to speak, since they contribute to the performance of the contract while monitoring its execution as well. Consequently, they were charged under the following three counts:

1. having omitted to safeguard their professional independence at all times and placed themselves in a situation which put them in conflict of interest, thereby violating section 3.05.03 of the Code of ethics of engineers (hereafter "the Code");
2. having engaged in an act derogatory to the honour or dignity of their profession, having resorted or lent themselves to dishonest or doubtful practices and having omitted to be impartial in their relations between their client and the contractors, suppliers and other persons doing business with their client, in violation of section 59.2 of the Professional Code as well as sections 3.02.08 and 3.02.10 of the Code;
3. having violated their duty to act only for one of the parties concerned in carrying out a mandate and to accept the payment of their fees only from their client or the latter's representative, thereby violating section 3.05.06 of the Code.

Therefore, both engineers were accused of having disregarded their obligations and duties toward their client as well as the public in contravention, namely, of the following sections of the Code:

3.02.10. An engineer must be impartial in his relations between his client and the contractors, suppliers and other persons doing business with his client.

3.05.03. An engineer must safeguard his professional independence at all times and avoid any situation which would put him in conflict of interest.

3.05.06. In carrying out a mandate, the engineer shall generally act only for one of the parties concerned, namely, his client. However, where his professional duties require that he act otherwise, the engineer must notify his client thereof. He shall accept the payment of his fees only from his client or the latter's representative.

In its decision, the Committee on Discipline took into account the context of the events and each engineer's situation. With respect to the first defendant, the Committee considered her lack of experience in this particular field as well as the fact that this was a first offence to which she pleaded guilty and that she was unlikely to reoffend.

The Committee also took into consideration the second defendant's guilty plea and noted that this was a first offence for this defendant as well. However, the severity of the sanctions reflects another charge.

SPECIFICATIONS PREPARED BY ONE AND SIGNED BY THE OTHER

Both engineers were each charged under a fourth count. As for the first defendant, she was accused of having signed specifications prepared by her colleague who, in an effort to release himself from any professional liability toward his client, neglected to sign and seal his work. With respect to the first defendant, the offence reads as follows:

4. having taken upon herself the credit for engineering work which belongs to a colleague by signing and sealing alone a "special specification", an important part of which had been prepared by her colleague and thus, having tolerated or lent herself to the dishonest or doubtful practices carried on by this colleague, thereby violating sections 3.02.08, 3.04.01 and 4.02.03 a) of the Code.

Concurrently, her colleague was accused of the following:

4. having omitted to sign and seal invitation to tender documents, namely the "special specification" knowing that he had prepared a significant part of these documents, letting his colleague take upon herself the credit for engineering work which was not her own, thereby engaging in dishonest or doubtful practices and

in an act derogatory to the honour or dignity of his profession, in violation of sections 3.02.08, 3.04.01 and 4.02.03 c) of the Code and of section 59.2 of the Professional Code.

The engineers were accused of having infringed the following provision, in particular:

3.04.01. An engineer must affix his seal and signature on the original and the copies of every engineering plan and specification prepared by himself or prepared under his immediate control and supervision by persons who are not members of the Order.

An engineer may also affix his seal and signature on the original and the copies of documents mentioned in this section which have been prepared, signed and sealed by another engineer.

An engineer must not affix his seal and signature except in the cases provided for in this section.

Again, given that both defendants had admitted their guilt, the Committee on Discipline weighed the seriousness of the offences. The Committee ordered the first defendant to pay a total fine of \$4,200 for all four counts, plus 40% of the costs incurred in both files. The second defendant was ordered to pay a total fine of \$6,000, plus the remaining 60% of costs incurred in both files. Both engineers were also reprimanded with respect to counts 1, 2 and 4.

1. Rémi Alaurant, Eng. v. Stéphane Viel, Eng., CDOIQ, N° 22-07-0342 and Rémi Alaurant, Eng. v. Véronique Roberge, Eng., CDOIQ, N° 22-07-0341