

By Mélodie Sullivan, attorney

# Two guilty pleas

A few months ago, the OIQ's Committee on Discipline heard two very different cases that had one thing in common: prior to the hearings, the parties had been able to reach an agreement as to the guilty pleas and the requested sanctions.

## HOUSE DAMAGED BY AN ICE STORM

In this case, the engineer was charged with six counts which can be summarized as follows:

- Having prepared, drafted and delivered to his client two expert reports in which he expressed incomplete opinions that were not based on sufficient knowledge and honest convictions, thereby violating sections 2.04 and 3.02.04 of the Code of ethics of engineers (hereafter "the Code") (counts 1 and 2);
- Upon his client's request, having tolerated or authorised that part of his report be modified so as to lead one to believe that the author of the report personally witnessed what was mentioned therein, for the purposes of using this report in connection with a claim against the client's insurance carrier; in doing so, the accused:
  - neglected to safeguard his professional independence, thereby violating section 3.05.03 of the Code (count 3),
  - showed signs of bias and engaged in an act that was derogatory to the honour, dignity or practice of his profession, violating section 59.2 of the Professional Code (count 4),
  - resorted or lent himself to dishonest or doubtful practices, or tolerated such practices, in the course of performing his professional activities, in violation of sections 3.02.08 of the Code and 59.2 of the Professional Code (count 5);
- Having omitted to sign a copy of his expert report, thereby violating section 3.04.02 of the Code (count 6).

The complainant submitted that the accused had produced a report without ever having gone to the site to witness the damages and that he displayed a lack of independence by crumbling under his client's pressure. However, his actions had not endangered the public and chances of committing a subsequent offence were slim.

Consequently, the Committee on Discipline considered that both parties' recommendations were reasonable and were in line with the public's interests.

The Committee imposed a \$2,000 fine on the accused for having prepared, drafted and delivered an expert report based on unfounded and incomplete opinions, as well as two \$1,000 fines for lack of professional independence and impartiality, and a \$600 fine for not having signed a copy of his expert report, for a grand total of \$4,600, plus hearing costs.

## VIOLATION OF LIMITATION TO THE RIGHT TO PRACTICE

In this case, the engineer was accused of the five following counts:

- Having expressed incomplete opinions which were not based on sufficient knowledge and honest convictions, thereby violating sections 2.04 and 3.02.04 of the Code (count 1);
- Having omitted or neglected to 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, thereby violating section 2.01 of the Code (count 2);
- Having omitted or neglected to affix his seal and signature on a plan, thereby violating section 3.04.01 of the Code (count 3);
- Having omitted to bear in mind the extent of his proficiency and aptitudes before accepting the mandate in question, despite the fact that the Administrative Committee had restricted his right to practice, thereby violating section 3.01.01 of the Code (count 4);
- Having expressed and signed opinions relating to sanitary facilities and permeability of soils, despite the fact the his right to engage in professional activities in this field, thereby violating section 4.05 of the Regulation respecting refresher training periods of engineers (count 5).

In the spring of 2005, the complainant had asked the accused to produce then review a report on permeability for the purposes of installing a septic tank. However, the accused was subject to a restriction relating to his right to practice in that particular field. Incidentally, the engineer at fault pleaded guilty to this offence. While it found that the joint recommendations were reasonable, the Committee considered the nature and gravity of the offences committed against the OIQ in this case as well as the potential consequences of the engineer's illegal actions.

Consequently, the Committee found the accused guilty on counts 1, 2, 4 and 5 and imposed two \$1,000 fines for having expressed incomplete opinions, for a total of \$2,000. Furthermore, the Committee imposed two temporary strikings off the roll, one for a period of three months for having violated section 2.01 of the Code of ethics of engineers and the other for a period of twelve months for having contravened to the restriction pertaining to his right to engage in professional activities.

1. Jean-Pierre Raymond, Eng. v. Jacques Chartrand, Eng., CDOIQ No 22-07-0338

2. Alexandre Khayat, Eng., v. Peter Kupin, Eng., CDOIQ No 22-07-0344