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CONFLICTS OF INTERESTS

A very important case

In our feature article published last March, we asked if you could recognize a conflict of interest in connection with your practice. To help you, we cited the sections of the Code of ethics of engineers pertaining to the matter. What follows is a disciplinary case which showcases this question well.

Just a few months ago, an engineer learned a costly lesson regarding conflicts of interests as part of a decision rendered by the Ordre des ingénieurs du Québec's Disciplinary Council 1. The case started in 1999 when the engineer in question was asked to produce a presale expertise for a single family home.

His clients were a couple, engineers by profession, settling in Baie-Comeau who asked him to verify various structural elements, such as the state of the chimney and the foundations. The engineer inspected the residence and produced a report a few days later. Following his professional opinion, the clients bought the residence.

NEW CLIENTS FOR THE SAME RESIDENCE

In 2003, these clients decided to sell their residence. Interested in this property, a couple from the area hired the same engineer to carry out the presale inspection. The respondent accepted the mandate and went to the site.

He later confirmed that his mandate was the same as the one he was given in 1999, namely to inspect the chimney and foundations. During the 2003 inspection, the respondent noticed that the foundations were in the same state as they were in 1999 and that nothing had really changed since that date, which is what he told the potential buyers who then purchased the property.

When renovating their basement in the Spring of 2006, the new owners discovered cracks behind interior walls. A few days later, they informed the respondent that there was water infiltration in the basement, at which point he quickly went to the house. Following his inspection, the engineer told the owners that water was infiltrating through cracks in the foundations. He recommended that the problem be solved from the outside, by excavating the foundations and installing a membrane.

IN SMALL CLAIMS COURT

The owners then decided to call upon the sellers to ascertain the defect before carrying out the repairs. In order to examine the site, the sellers wished to retain the services of their engineer only to learn that he was now working for the owners. The sellers were forced to hire another engi-

neer to fight the owners' demand. In the meantime, the work recommended by the respondent was carried out.

In May 2007, the owners filed suit before the Small Claims Court against the couple who sold them the house and presented the respondent's supplementary expert report which included his findings relating to the cracks. The respondent testified on behalf of the owners, despite the fact that his first clients sent him a letter objecting to his testimony. The content of this letter, much like the objectionable position, was disclosed to the court during the hearing. Finally, the court determined that the objection was admissible and rejected the owners' application.

THE CONFLICT OF INTEREST

The former owners, being engineers themselves, notified the Office of the Syndic and brought the situation and the respondent's behaviour to its attention. After having conducted its investigation, the assistant syndic assigned to the case decided to file a complaint before the Disciplinary Council against the respondent in June 2010.

The complaint included violations to sections 3.05.03 and 3.05.04 of the Code of ethics:

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.

3.05.04. As soon as he ascertains that he is in a situation of conflict of interest, the engineer must notify his client thereof and ask his authorization to continue his mandate.

The Disciplinary Council concluded that by accepting to act as an expert for the buyers in a case against his former clients (the complainants) relating to the same matter (the home's foundations), the respondent placed himself in a situation amounting to a conflict of interest and violated section 3.05.03 of the Code of ethics.

With respect to the count based on section 3.05.04, the Council confirmed that the respondent should have notified his former clients regarding the conflict of interest in which he found himself. He should have also ceased to act on behalf of the new owners as soon as his former clients, the complainants, indicated that they objected to his pursuing this mandate.

When rendering its decision on sanction, the Disciplinary Council qualified the respondent's actions as serious and noted that they went to the heart of the matter with respect to the practice of engineering. In effect, the respondent provided opinions to two clients for the same mat-

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ter, namely a building's structural elements, while these clients had competing interests. The respondent was ordered to pay a fine of \$1000 for the first count and \$2000 for the second count.

In retrospect, the respondent should have taken the time to fully analyse his implication in this file before accepting a mandate from the second buyers. When they asked him to carry out a presale inspection in 2003, the respondent should have questioned his role in the matter and, in all likelihood, refused the mandate. It bears reminding that an apparent conflict of interest is just as serious as a real conflict.

Had he objectively analysed the situation like a prudent and diligent engineer would have done in similar circumstances, the engineer in question could have avoided these unpleasant disciplinary procedures and their unfortunate consequences.

1. C.D.O.I.Q. 22-10-0382, decision dated March 17, 2011.