

## STEPS TO TAKE IN THE EVENT OF A SEARCH

### NOTICE

The purpose of this document is to assist members on what to do in the event of a search warrant. It **is not a legal opinion**. If the company where you work is the subject of a search warrant, you should consult a lawyer.

## Background

Engineers are required to preserve professional secrecy. This means that they must ensure the confidentiality of all information they obtain in the practice of their profession. Confidentiality may be waived if the concerned client consents to this or if required by law.

- Professional secrecy is not absolute. For instance, just like other professionals, engineers must answer requests from the Office of the syndic and submit certain documents to him or her, even if these documents are usually protected by professional secrecy. Furthermore, when a person consults an engineer with the intention of committing an offence, that person may not benefit from professional secrecy. In fact, engineers may disclose confidential information to the police to prevent an act of violence.
- A client's entire file is not necessarily covered by professional secrecy. For example, building permit applications or photos taken while supervising a construction site are generally not considered confidential information.

An organization that prevents and controls offences, such as the permanent anti-corruption unit known as UPAC, Revenu Québec or the Régie du bâtiment du Québec, may obtain a search warrant to seize certain components of a file as part of an investigation.

## Purpose

This document describes the steps that engineers should take in the event that an investigator performs a search at their work location.

In this document, the terms “investigator” and “record” have the following meanings:

- i) “investigator” is defined as the person who performs the search (e.g. a law enforcement officer, a representative of a government authority or a professional order, etc.);

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- ii) "record" means the register, the general record respecting a project as well as the technical record of a project (sec. 2.01 of the *Regulation respecting the keeping of records and consulting offices by engineers*, CQLR c. I-9, r. 13).

## Instructions

### 1. *Read the search warrant and make a copy of it.*

Engineers should read the search warrant to ensure that it has the correct company name, address and information for their office and that the search warrant has been authorized by a judge.

If engineers notice incorrect information or irregularities, they should clearly state this to the investigator. Once they have done so, however, they may not hinder the search process if the investigator continues to carry it out.

- At this stage, it is appropriate to call a lawyer. If the lawyer is able to come to the site, engineers may ask the investigator to wait until the lawyer arrives. The investigator may nevertheless refuse to wait.

### 2. *Give clear instructions to staff members*

Only one person from the company should be designated to deal with the investigator; that person should ideally be someone in a position of authority or a lawyer. The designated person should stay on site during the entire search process and provide any required assistance to facilitate the investigator's work or accelerate the search process. For example, the designated person could unlock the filing cabinet that contains the record sought by the investigator or show the investigator to a room where an item to be seized is located.

To protect their clients' confidentiality, engineers should not provide additional information about their clients (sec. 3.06.01 of the Code of Ethics of Engineers). In fact, statements made before the investigator could be used to investigate one of their clients.

Furthermore, during the search, employees should not destroy any documents, including electronic documents, even if the documents may not seem to be of interest or related to the search.

- The search warrant may require company representatives to assist the investigator. In such a case, the designated person must comply and provide, where required, the password to access the computer system or the voice mailbox access code.

### 3. *Do not hinder the search process*

Even when engineers believe that a search is irregular, they may not refuse to grant the investigator access to records, documents or the computer system. Otherwise, they may be subject to judicial sanctions.

- The investigator is entitled to take photos of the search site or have a sketch made of it.

### 4. *Protect professional secrecy*

The engineer designated to deal with the investigator must inform the investigator that some records or documents covered by the search warrant may be subject to professional secrecy and should therefore be sealed.

- Whether a document is or is not covered by professional secrecy will not prevent the investigator from seizing it during a search. However, the investigator must seal the document. In the event of a dispute over this matter, it is important to note that only the courts can decide whether or not a document is covered by professional secrecy.
- Engineers are not required to protect professional secrecy if the search is performed under the Criminal Code or other federal legislation. In case of doubt, engineers should always request that professional secrecy be protected.

### 5. *Note what is seized*

The designated engineer should note the documents and records that are seized by the investigator and make photocopies of them, to the extent possible.

The designated engineer should also ask for a copy of any minutes of a seizure drafted by the investigator.

### 6. *Inform the clients*

The designated engineer should inform the clients as soon as possible that a search has taken place, let them know which documents were seized and suggest that they consult a lawyer. The clients or the engineer may then ask a judge to return the documents covered by professional secrecy.