

By Charles Dupuis, attorney

# The “little brown envelope”? never!

**D**uring the past year, news reports reminded us on more than one occasion how important it is that each and every one of us adopt and adhere to a code of ethics. PLAN's readers will recall that in my last article, this author referred to the values that govern the engineering profession namely, that of ethical conduct which sets out the guidelines according to which an engineer should act. But what can be said of the temptations that may present themselves in one form or another?

On that topic, the Guidelines to Professional Practice published by the Ordre des ingénieurs du Québec (hereafter the “Ordre”), mention the following at page 23 of their last edition:

“Committed to ethical conduct, an engineer's top priorities are the interests of society and of his or her clients; personal interest and profitability come second.

Ethical conduct means dedication to integrity, availability, independence, professional discretion and solidarity with clients.

In the search for technical and scientific success within the limits of legislation and regulations, the engineer's actions are guided by his or her professional conscience.”

More particularly, as regards integrity and thoroughness, the legislator enacted various provisions aimed at ensuring that engineers respect these values which not only remain current in this day and age but are always among the most important when it comes to practising engineering. For instance, it is interesting to review sections 3.02.01, 3.02.08, 3.02.09, 3.05.02 and 3.05.03 of the Code of ethics of engineers:

“3.02.01. An engineer must fulfill his professional obligations with integrity.”

“3.02.08. The engineer shall not resort nor lend himself to nor tolerate dishonest or doubtful practices in the performance of his professional activities.”

“3.02.09. An engineer shall not pay or undertake to pay, directly or indirectly, any benefit, rebate or commission in order to obtain a contract or upon the carrying out of engineering work.”

“3.05.02. Any engineer must ignore any intervention by a third party which could influence the performance of his professional duties to the detriment of 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.”

In other words, and without limiting the generality of the foregoing, an engineer who carries out engineering works for a client cannot accept, either directly or indirectly, any benefit or rebate in kind or otherwise from a service provider or goods supplier relating to these works.

Independence cannot be exchanged...

Resuming with section 3.05.03 of the Code of ethics of engineers:

“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.”

The bribe or kickback, commonly known as the “brown envelope”, is but one example of those “dishonest or doubtful practices” that engineers must avoid. Resorting to such practices is and will always be considered as one of the most serious breaches of one's duty to maintain his or her integrity which all engineers are required to respect throughout their career.

What's more, as Me François Vandebroek, Eng., appropriately points out on page 73 of his study entitled *L'ingénieur et son Code de déontologie* :

Extensive coverage sometimes given to this type of event by the media also contributes to discrediting the profession and some of its members in a way that is often impossible to remedy.

What are the risks incurred by engineers who attempt to wrongfully use their influence? With respect to interpreting and applying the above-mentioned sections of the Code of ethics of engineers, Vandebroek indicates the following:

Sections 3.02.08 and 3.02.09 are written so as to cover a wide array of scenarios. As such, section 3.02.08 forbids engineers not only to resort to dishonest or doubtful practices, but to lend themselves to such practices or tolerate them during the course of their professional activities.

[...]

Pursuant to section 3.02.08, dishonest or doubtful practices also refer to what is commonly known as influence peddling. In these particular cases, these practices relate to granting or obtaining contracts for professional services.

In most cases, the engineer in default will be accused of violating both sections 3.02.08 and 3.02.09 for having paid or agreed to pay any benefit, rebate or commission within the meaning of section 3.02.09 in order to obtain a contract or upon carrying out engineering work.

However, jurisprudence always interprets the terms “benefit”, “rebate” or “commission” in their usual sense, even in cases where indications are that the engineer in question acted with good intentions, for example he or she intended to give back to the community. In effect, these terms all cover a reality that is one and the same: it is strictly forbidden for an engineer to pay or undertake to pay, whether directly or indirectly, any amount of money or any gift in order to obtain a contract, to place oneself in a better competitive position in order to obtain a contract or to gain an advantage therefrom.

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Section 3.05.02 deals with the opposite situation: that of an engineer who is offered a bribe from a service provider or a goods supplier seeking an undue advantage in return, such as being awarded a contract overseen by the engineer in question, or his or her employer or principal.

... and a defence that does not carry its own weight!

Some might plead that the act in question was not an engineering act or that he or she was not carrying out an act reserved for engineers pursuant to the Engineers Act when the bribe was offered or given and that, for this reason, the relevant sections of the Code of ethics of engineers do not apply to them. Unfortunately for them, the courts have always ruled that such a defence was inadmissible.

One must also be aware that besides being contradictory to the values of the engineering profession, the awarding or acceptance of a bribe by an engineer will always be considered as an “act derogatory to the honour, dignity or discipline of his profession”, pursuant to section 59.2 of the Professional Code.

Finally, it bears reminding that, in addition to seeing his or her reputation greatly tarnished, an engineer who is found guilty of having violated either one of these public order provisions will usually receive a harsh sentence such as being stricken off the roll. In fact, the courts are particularly strict when it comes to these types of offences since they consider them to be among the most serious .

Word to the wise...