

CAN ENGINEERING DESIGN PLANS BE ALTERED BY ANOTHER PRACTITIONER?

By José Vera, P.Eng., MEPP

Consider this scenario: A practitioner provides structural design plans to a fabricator. Based on the advice of another practitioner, the steel fabricator changes the method of construction outlined in the plans to save costs. A dispute arises between the practitioner and the fabricator. On one hand, the practitioner claims the fabricator infringed copyright by using and changing the design plans without permission. On the other hand, the fabricator points out the contract gave them the right to make substantial changes. In an appeal to the Supreme Court of Canada, the judge notes the alterations made by the fabricator were within acceptable limits of the contract. Consequently, the appeal is dismissed. If this case study sounds familiar it is because it is based on *Netupsky v. Dominion Bridge*, a case widely cited in disputes involving the alteration of design plans (<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/4847/index.do>).

PEO's practice advisory team often receives questions from practitioners regarding issues involving alterations to engineering design plans. Specifically, practitioners typically can find themselves in one of the following situations:

- Practitioner A issues engineering design plans to a client. Some time later, the client engages practitioner B, who works for another firm, to modify these plans. Practitioner A would like to know his or her professional obligations in this situation, when his or her design plans may be altered by another practitioner; or
- Practitioner B receives a request from a client to alter the engineering design plans issued by practitioner A, who works for a different firm. Practitioner B would like to know his or her professional obligations in this situation, when there is a request for him or her to alter the design plans issued by another practitioner.

STATUTORY OBLIGATIONS

Practitioners have several statutory obligations under the *Professional Engineers Act* (the act) and its regulations. These obligations do not cover the specific case of an engagement to alter the engineering design plans of another practitioner. However, there are two sections in PEO's Code of Ethics that may provide insight into this situation:

- Section 77(7)(ii): A practitioner shall,... not accept an engagement to review the work of another practitioner for the same employer except with the knowledge of the other practitioner or except where the connection of the other practitioner with the work has been terminated; and
- Section 77(7)(v): A practitioner shall,... give proper credit for engineering work.

At first glance, section 77(7)(ii) does not appear to apply, since it refers to "an engagement to review the work of another practitioner," which is not the same as an engagement to alter the design plans of another practitioner. However, it could be argued that a reasonable and prudent practitioner may choose to mirror this requirement and only accept an engagement to alter the design plans of another practitioner with the knowledge of the other practitioner

or where the connection of the other practitioner with the work has terminated. In contrast, section 77(7)(v) clearly applies, since a practitioner who alters the design plans of another practitioner cannot take credit for the original practitioner's work.

While these two sections provide some basic level of guidance, it is worth noting that the core legal concepts found in *Netupsky v. Dominion Bridge* were copyright law and contract law. In his article, "Engineering Ethics: The conversation without end," American engineer and author Samuel C. Florman proposed: "when engineers discuss ethics they avoid a simplistic approach that is no longer adequate to the complexities of the current day" (<https://www.nae.edu/File.aspx?id=7378&v=f37740e0>). Taking a page from Florman, it is clear that altering design plans of another practitioner is a complex subject that goes beyond ethical obligations and involves an understanding of copyrights and contracts. Therefore, we need to look beyond the practitioner's statutory obligations under the act to fully grasp this issue.



IT IS CLEAR THAT ALTERING DESIGN PLANS OF ANOTHER PRACTITIONER IS A COMPLEX SUBJECT THAT GOES BEYOND ETHICAL OBLIGATIONS AND INVOLVES AN UNDERSTANDING OF COPYRIGHTS AND CONTRACTS. THEREFORE, WE NEED TO LOOK BEYOND THE PRACTITIONER'S STATUTORY OBLIGATIONS UNDER THE ACT TO FULLY GRASP THIS ISSUE.

COPYRIGHT OF ENGINEERING DESIGN PLANS

The PEO guideline *Use of the Professional Engineer's Seal* contains some guidance for dealing with copyright issues (www.peo.on.ca/index.php/ci_id/22148/la_id/1.htm). Below are some key points:

- In simple terms, copyright belongs to the author or authors of the work (i.e. the engineer(s) who developed the design plans);

- However, due to employment considerations, it is the employer of the engineer(s) who owns the copyright to design plans; and
- Contracts can influence copyrights.

The above indicates that contractual agreements are a key consideration to the question whether design plans can be altered by another practitioner.

WELL-WRITTEN CONTRACTS

Netupsky v. Dominion Bridge notes: "The extent to which the copyright material may be altered is not unfettered, however. The court may imply terms limiting that right, or the contract may expressly or impliedly forbid any alterations...." Consequently, rather than addressing this issue through the courts, which can be expensive, practitioners and clients should mutually agree on the acceptable limits for altering design plans.

Practitioners who issue design plans to clients should clearly limit their liability for alterations done to their work (e.g. alterations by another practitioner). Practitioners who are engaged to alter the design plans of another practitioner should ensure their proposed alterations are not at odds with reasonable and prudent practice. In that vein, well-written agreements provide clarity as well as a process for addressing these situations.

What the acceptable limits for altering design plans are is a complicated question, which depends on the particulars of a specific situation. However, written agreements between practitioners and clients can set limits for such alterations. Practitioners should seek legal advice when drafting these agreements in order to manage their risks. Finally, PEO's practice advisory team is available by email at practice-standards@peo.on.ca to answer practitioners' questions on this subject and other related issues. [e](#)

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