

THE DUTIES OF ENGINEERS IN NON-ENGINEERING ROLES

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When engineers take on non-engineering roles—whether it is a paid or volunteer role—it is important for them to understand the laws and codes of conduct that apply to their specific roles. Here, we provide insight into an engineer's duties when taking on a non-engineering role, such as volunteering on a condominium board or working as an investment analyst.

Example 1: When an engineer becomes a director on a condominium board

Melissa, an engineer, runs for election on her condominium's board of directors. During her election speech, she emphasizes her current experience working for a chemical plant. However, she clearly notes that as a director she is not there to give engineering opinions but, rather, to help make the board a sophisticated client of engineering services. The owners are impressed by Melissa's engineering background and experience selecting engineering services, so they elect her in a landslide vote.

A few months later, on a weekend when the property manager is away, Melissa receives a call from Colin, another board member, informing Melissa of some cracks in parking garage columns; the cracks had been recently reported by residents. Colin tells Melissa: "The property manager is away, so as a board member, you must inspect the columns and give me your opinion. Aren't you an engineer?" What should Melissa's answer to Colin be?

When faced with similar situations, it is advisable for engineers to stop and ask themselves: What does the law say? This is important because often, as engineers, we may focus solely on the Code of Ethics and miss the fact that there are other laws that apply to specific situations. In this specific case, Melissa, as a director on a condominium board, needs to understand the *Condominium Act*, specifically section 37 Standard of Care (www.ontario.ca/laws/statute/98c19#BK120), which states:

Standard of Care

- 37 (1) Every director and every officer of a corporation in exercising the powers and discharging the duties of office shall
- (a) act honestly and in good faith; and
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstance

...

Liability of directors

- (3) A director shall not be found liable for a breach of a duty mentioned in subsection (1) if the breach arises as a result of the director's relying in good faith upon,
- ...
- (b) a report or opinion of a lawyer, public accountant, engineer, appraiser or other person whose profession lends credibility to the report or opinion...

Based on the above, to meet the standard of care expected of a director, Melissa needs to inform her fellow board members that the board must rely in good faith on an independent engineering assessment of the parking garage columns. While it might be argued that Melissa is an engineer, a key fact is that she is a director on the board and not the board's engineer. Consequently, Melissa's response to Colin should be: "I may be an engineer, but I am not the board's engineer. I am a director and I am letting you know, as a director, we need to contact our engineering firm, ABC, immediately to perform an assessment of the parking garage columns and provide the board with a report containing recommendations."

Example 2: When an engineer becomes an investment analyst

Marc is an engineer who has worked for numerous years in renewable energy engineering design projects. His vast knowledge of engineering and construction costs has helped him land a new career as an investment analyst for a well-known pension fund. Marc knows he will no longer be working as a professional engineer in his new role, but he decides to keep his licence in case he goes back to engineering one day.

A few months after landing his new job, Marc is sent to a solar panel installation in Prince Edward County, Ontario, to perform a financial evaluation for potential investors. Sarah, who works for the owner of the solar panel site, learns that Marc is a professional engineer. During their meeting, Sarah informs Marc that the solar panel system is generating less energy than originally expected and asks Marc to perform an engineering energy study with recommendations on how to improve efficiency. What should Marc's answer to Sarah be?

Again, engineers need to ask themselves: What does the law say? In this specific case, Marc, as a professional engineer, needs to understand the *Professional Engineers Act*, specifically section 12 Certificate of Authorization (www.ontario.ca/laws/statute/90p28#BK11), which states:

Certificate of Authorization

- (2) No person shall offer to the public or engage in the business of providing to the public services that are within the practice of professional engineering except under and in accordance with a certificate of authorization (C of A).

It might be argued that Marc could in theory apply for a C of A to offer engineering services. However, because Marc is employed in a non-engineering capacity, his employer will probably not allow Marc

to provide engineering services to their clients. After all, a key fact is that Marc was hired to be an investment analyst not an engineer.

Furthermore, Marc, as a professional engineer, needs to understand Regulation 941, specifically section 72 (www.ontario.ca/laws/regulation/900941#BK88), which states:

- (2) For the purposes of the act and this regulation, "professional misconduct" means,...
 - (i) failure to make prompt, voluntary and complete disclosure of an interest, direct or indirect, that might in any way be, or be construed as, prejudicial to the professional judgment of the practitioner in rendering service to the public, to an employer or to a client, and in particular, without limiting the generality of the foregoing, carrying out any of the following acts without making such a prior disclosure:...
5. Expressing opinions or making statements concerning matters within the practice of professional engineering of public interest where the opinions or statements are inspired or paid for by other interests...

Based on the above, Marc should be aware that acting as both investment analyst and energy study engineer could be perceived as a conflict of interest, since it could be argued that his engineering opinion cannot possibly be indepen-

dent. Furthermore, Marc could be in an alleged conflict of interest situation not only under the *Professional Engineers Act* but also under securities law.

Consequently, Marc's response to Sarah should be: "I may be an engineer, but I am not the owner's engineer. I am an investment analyst and I am letting you know, as an analyst, you need to contact your engineering firm XYZ to perform the energy study."

Engineers working in non-engineering roles need to understand the laws and codes of conduct that apply to their specific roles. Melissa, as director in a condominium board, needs to understand the *Condominium Act*. Marc, as an investment analyst, needs to understand securities law. Certainly, for professional engineers, the Code of Ethics and *Professional Engineers Act* are relevant; however, for engineers working in non-engineering roles, it is the laws that apply to their actual roles that may prove to be more relevant.

Finally, PEO's practice advisory team is available by email at practice-standards@peo.on.ca and is happy to assist engineers looking for more information on their duties in non-engineering roles. However, engineers looking for assistance on resolving legal problems occurring in specific, concrete situations should always contact their lawyer. **e**

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