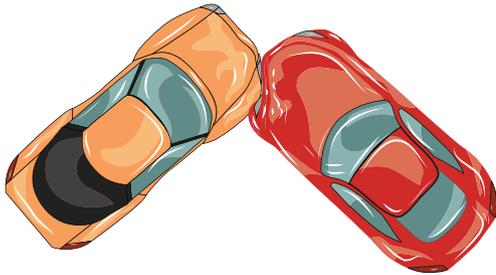


AN ENGINEER'S DUTY TO PROVIDE INDEPENDENT OPINIONS

By José Vera, P.Eng., MEPP



Consider this scenario: After a collision between a red vehicle and an orange vehicle, the following potential clients can choose to engage an engineering firm:

- The driver of the red vehicle,
- The driver of the orange vehicle,
- The different lawyers of the drivers,
- The police,
- The insurance companies, and
- The provincial court.

In this specific scenario, the driver of the orange vehicle engages ABC forensic engineering firm to prepare a forensic report of the automotive accident. This raises a few interesting questions:

Question:

Should the engineers at ABC write a forensic engineering report that is intentionally favourable to their client, the driver of the orange vehicle?

Answer:

No, since "expert witnesses have a duty to the court to give fair, objective and non-partisan opinion evidence...The acid test is whether the expert's opinion would not change regardless of which party retained him or her." This quote is taken from the Supreme Court of Canada judgment *White Burgess Langille Inman c. Abbott and Haliburton Co.*, [2015] 2 SCC 182. For more information, read the judgment at scc-csc.lexum.com/scc-csc/scc-csc/en/item/15328/index.do.

Note the above requirement mirrors PEO's Code of Ethics: "The practitioner shall...not express publicly, or while the practitioner is serving as a witness before a court, commission or other tribunal, opinions on professional engineering matters that are not founded on adequate knowledge and honest conviction."

The key lesson learned is that ABC forensic engineering must provide a non-partisan report, regardless of which client engaged them.

Q:

Does the duty to give non-partisan opinions apply only to forensic engineers? In other words, engineers who apply "professional engineering principles and methodologies to investigating failures and incidents, usually to determine causation. Normally, it involves preparing a report of findings, which may form the basis for testimony in legal proceedings as an expert witness." This definition is taken from the PEO guideline *Forensic Engineering Investigations*, which is available at www.peo.on.ca/index.php/ci_id/29496/la_id/1.htm.

A:

Recall PEO's Code of Ethics, which states, "A practitioner shall act in professional engineering matters for each employer as a faithful agent or trustee." Furthermore, the national guideline on the code of ethics notes, "Being a faithful agent or trustee...means being accurate, objective and truthful in making public statements on behalf of the client or employer when required to do so, while respecting the client's and employer's rights of confidentiality and proprietary information." From the above, it follows that all practitioners have a duty to give non-partisan opinions. For more information, read the *National Guideline on the code of ethics*, written by Engineers Canada, at engineerscanada.ca/publications/national-guide-line-on-the-code-of-ethics.

Q:

Is it professional misconduct to give partisan opinions?

A:

Recall that professional misconduct, which is under Regulation 941/90, section 72(2)(i), states that professional misconduct means, among other things, "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." The above indicates that the professional misconduct is in the failure to disclose situations where opinions were inspired by other interests. Nonetheless, it could also be argued that a reasonable and prudent practitioner under similar circumstances would act out of caution and provide only independent opinions, since the Code of Ethics clearly notes that practitioners shall act as a faithful agent or trustee and shall not express opinions that are not founded on honest conviction.

Finally, PEO's practice advisory team is available by email at practice-standards@peo.on.ca and is happy to help practitioners looking for more information on their duty to provide independent opinions. However, practitioners looking for assistance on resolving legal problems occurring in specific, concrete situations should always contact their lawyer.

Further reading: *The Professional Engineer as an Expert Witness*, available at www.peo.on.ca/index.php/ci_id/22088/la_id/1.htm. [e](#)

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