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General Principles of Engineering Ethics and Statutes for Newfoundland & Labrador Professional Engineers

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Chapter 1

Professional Responsibility

Engineering Ethics

Engineering ethics is (1) the study of moral issues and decisions confronting individuals and organizations involved in engineering and (2) the study of related questions about moral conduct, character, ideals and relationships of peoples and organizations involved in technological development (Martin and Schinzinger, *Ethics in Engineering*).

Principles of Professional Responsibility

We, as Professional Engineers, are expected to take reasonable precautions and care in fulfilling our engineering duties, and uphold the honor and integrity of our profession. To understand further what this means, let's review the following principles of professional responsibility:

- *You must hold the utmost safety, health, and welfare of the public when practicing your profession.*
- *You must perform services only in the areas of your competence.*
- *You may issue public statements in an objective and truthful manner and disclose any personal connections you may have with the subject.*
- *You must represent each employer or client as a faithful trustee and avoid conflicts of interest.*
- *You must build your professional reputation on the merit of your services and must not compete with others unfairly.*
- *You must respect the proprietary information and intellectual property rights of other engineers.*

Now, to understand further what these principles mean, let's review the ethical standards associated with each principle individually.

How should you hold the utmost safety, health, and welfare of the public when practicing your profession?

If your professional judgment is overruled such that the safety, health and welfare of the public are compromised, you must inform your client, employer, or both of the possible outcomes or consequences.

If you believe that another person is in violation of engineering ethics, you must:

- present such information to the proper authority in writing, and
- cooperate with the proper authority in furnishing such information or assistance as required.

You must strive to advance the safety, health, and well-being of your community.

You must understand that the safety, health and welfare of the public are reliant on your sound engineering applications and judgments integrated into buildings, structures, machines, products, processes and devices.

You may approve or seal design documents only when they are:

- reviewed by you,
- designed safely, and
- in conformance with accepted engineering standards.

What does it mean to perform services only in the areas of your competence?

You must not affix your signature or seal to any plan or document if:

- it does not comply with applicable technical standards, or
- it was not prepared under your supervisory guidance and control.

You may conduct engineering work only when qualified by your academic background and professional experience in the specific field of engineering you are involved with.

You must always continue to advance your professional development in your engineering field by:

- engaging in professional practice,
- participating in continuing education programs,
- reading technical literature, and
- attending professional seminars.

You may accept an assignment requiring education and experience outside of your field of competence, provided that each technical segment of this assignment is reviewed, signed and sealed only by the qualified engineers who were in responsible charge of their respective segments.

Under what conditions you may issue public statements?

When serving as an expert or technical witness, you may express an engineering opinion only if it is founded on:

- your adequate knowledge of the facts,
- your technical competence in the subject matter, and
- your honest belief in the accuracy of your testimony.

You must not issue any statements, criticisms, or arguments on technical matters which are inspired or paid for by interested parties, unless you preface your comments by:

- identifying the interested parties on whose behalf the statements are made, and
- disclosing any financial interest you may have in such matters.

You must strive to extend the public knowledge and appreciation of engineering and its achievements, and must avoid the use of untrue or exaggerated statements pertaining to engineering.

You must be objective and truthful in all your professional reports, statements, or testimony, and must include all relevant information in such reports, statements, or testimony.

You must be honest in explaining your work and merit, and must not promote your own interests at the expense of the integrity, dignity and honor of the profession.

How should you represent each employer or client as a faithful trustee, and avoid conflicts of interest?

You must avoid all known conflicts of interest with your employer or client and immediately inform your employer or client of any business relationship, interest, or other situations that could influence your judgment or quality of your services.

You must not accept payment or other types of compensation from more than one party for services pertaining to the same project, unless the conditions are fully revealed to, and agreed to by, all interested parties.

You must not accept employment outside of your regular work before notifying your employer.

You must not propose or receive gifts or gratuities from outside parties who have a business affiliation with your employer or client associated with professional work for which you are in responsible charge.

If you are a member, advisor, or employee of a governmental body, you must not participate in decisions or actions that involve services you or your organization provide in any type of engineering practice.

Based on your research and evaluation, you must advise your employer or client of your belief that a project will be unsuccessful.

You must not use confidential information provided to you while executing your assignment as a means of personal gain, if such action contradicts the interests of your employer, your client, or the public.

You must not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their product.

You must not solicit or accept an engineering contract from a governmental body or other entity on which a principal, officer, or employee of your organization serves as a member.

How do you build your professional reputation on the merit of your services and not compete with others unfairly?

You must not influence the award of a contract. You may bid and negotiate a contract for professional services impartially based on your proven competence and qualifications for the type of professional service being solicited.

You must not strive to gain employment or advance your professional career by falsely condemning other engineers, or by other improper means.

You must not falsify your educational background, or your professional experience or qualifications.

You must not offer or accept any gift, gratuity or unlawful valuable consideration to secure work, exclusive of securing salaried positions through employment agencies.

You must not request, propose, or accept a commission on a provisional basis if your professional judgment may be compromised.

You must not use another engineer's ideas or written materials without due credit and advance notification to such engineer. You must, whenever possible, name the person who may be responsible for his or her designs, inventions, writings, or other accomplishments.

You must not harm the professional reputation, prospects, practice or employment of another engineer.

You may prepare engineering articles to be published provided:

- they are within the context of your competency, and
- you do not claim credit for work performed by others.

How should you handle proprietary information and intellectual property rights of other engineers?

You must not promote or arrange for new employment or practice in connection with a specific project in which you have gained specialized knowledge without the consent of all interested parties.

You must not disclose confidential information concerning the business affairs or technical processes of any present or former employer or client without the approval of your employer or client.

If you are using designs supplied by your client, you must be aware that such designs remain the property of your client and may not be duplicated for others without your client's expressed permission.

Before undertaking work for others in which you may make improvements, plans, designs, inventions, or other records that may justify copyrights, patents, or proprietary rights, you must enter into a positive agreement regarding ownership.

You must be aware that your designs, data, records and notes referring exclusively to your employer's work are the property of your employer.

Chapter 2

Professional Conduct Procedure Overview

The professional conduct procedure that is described in this Guideline is a two-step process that begins when an allegation is made against a professional member or permit holder, also known as the Respondent. The person making the allegation is known as the Complainant. PEGNL first seeks to confirm the filing and give notice of the allegation according to this Guideline. The Registrar then considers whether the nature of the allegation may allow for its attempted resolution by the Registrar with the agreement of the Complainant and the Respondent without seeking a finding of conduct deserving of sanction against the Respondent.

If, in the opinion of the Registrar, it is not reasonable to attempt a Registrar Resolution or if a satisfactory resolution of the allegation by Registrar Resolution is not achieved, the allegation is referred to a committee of the Board known as the Complaints Authorization Committee (CAC). The Registrar informs the Complainant and the Respondent of the referral of the allegation to the CAC. The role of the CAC is to determine whether there are reasonable grounds to believe that the professional member or permit holder who is the subject of the allegation (the Respondent) has engaged in conduct deserving of sanction as defined in the Act. The CAC has several specific powers as defined in the Act and may refer the allegation for alternative dispute resolution (ADR), conduct an investigation of the allegation, conduct a practice review of the Respondent's practice, or dismiss the allegation. Under the Act, the Complainant has the right to appeal the dismissal of an allegation to the Supreme Court of Newfoundland and Labrador.

If the CAC determines that there are reasonable grounds to believe that the Respondent has engaged in conduct deserving of sanction, then the allegation is considered to be a Complaint. If the allegation is considered a Complaint, the CAC may itself counsel or caution the Respondent or refer the Complaint to the Disciplinary Panel for a hearing.

The Chairperson of the Disciplinary Panel appoints from the Panel an Adjudication Tribunal that hears the Complaint, normally in a public hearing, and renders a Decision that is also made public in accordance with the Act. The Respondent has the right to appeal the Decision of the Adjudication Tribunal to the Supreme Court. There is no provision for the Complainant to appeal the Decision of an Adjudication Tribunal following a hearing.

Below are three charts depicting the workflow process of the professional conduct procedure.

Chart 1: Filing an Allegation, Resolution by Registrar, Referral to CAC

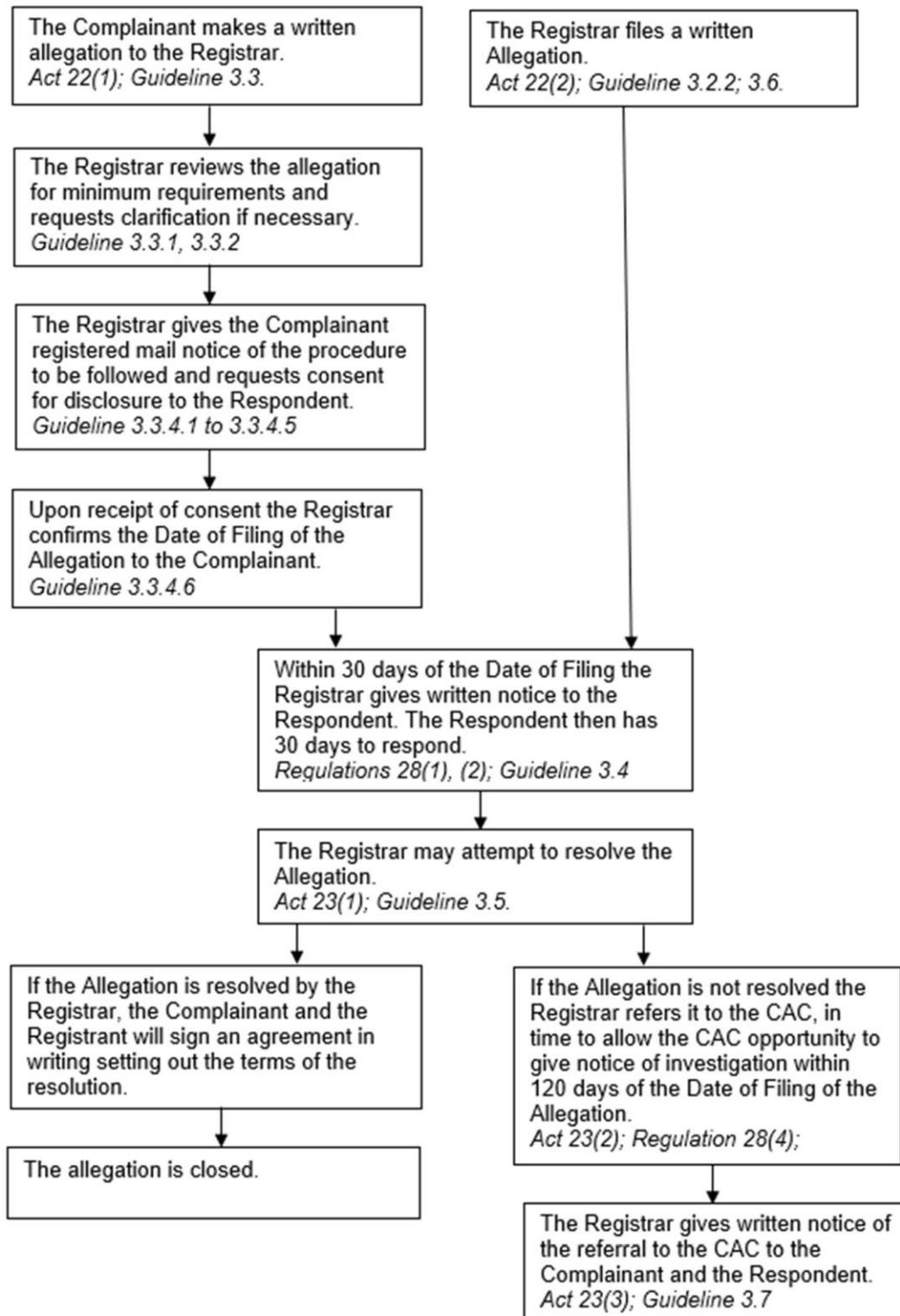


Chart 2: Complaints Authorization Committee (CAC) Process

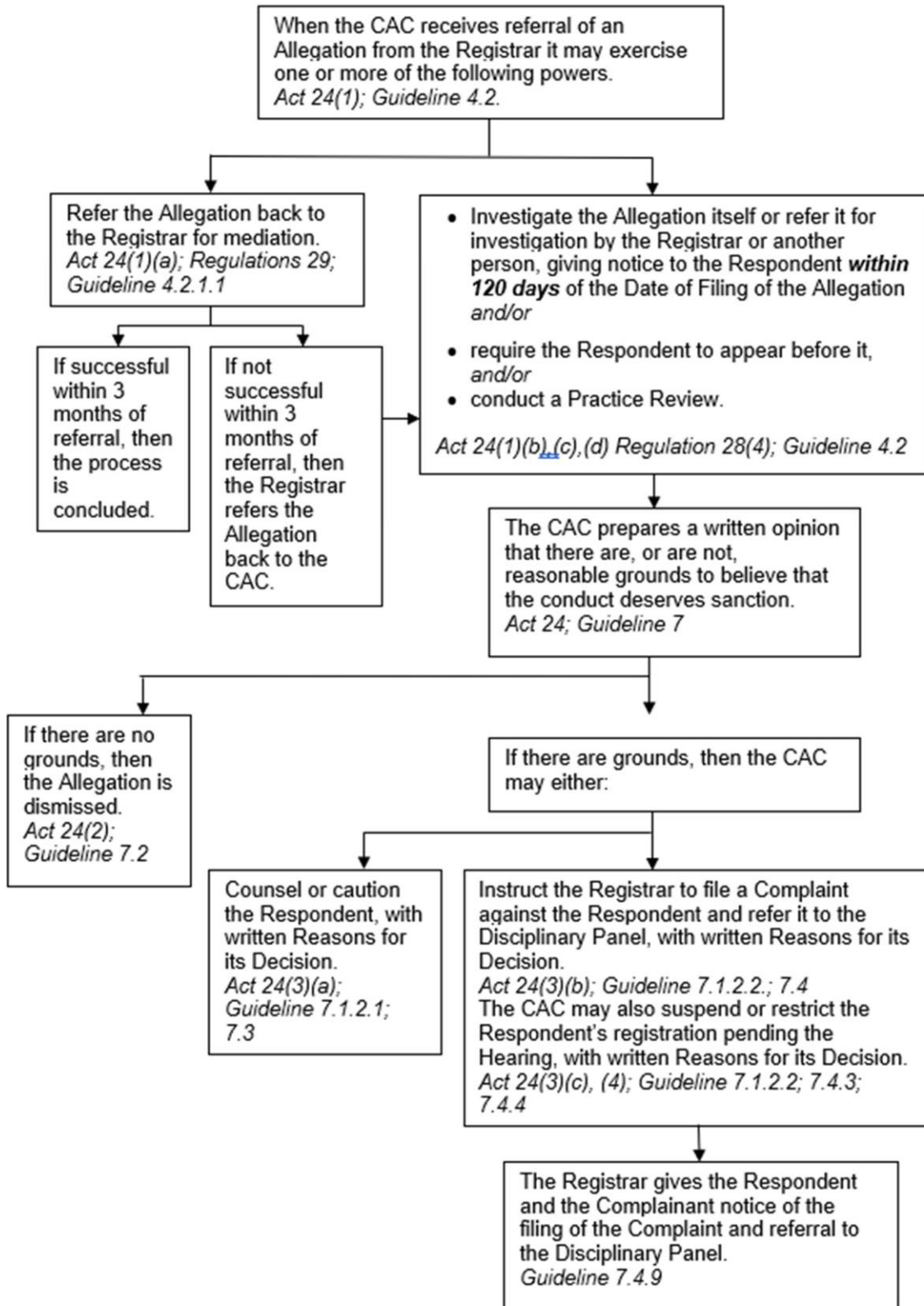
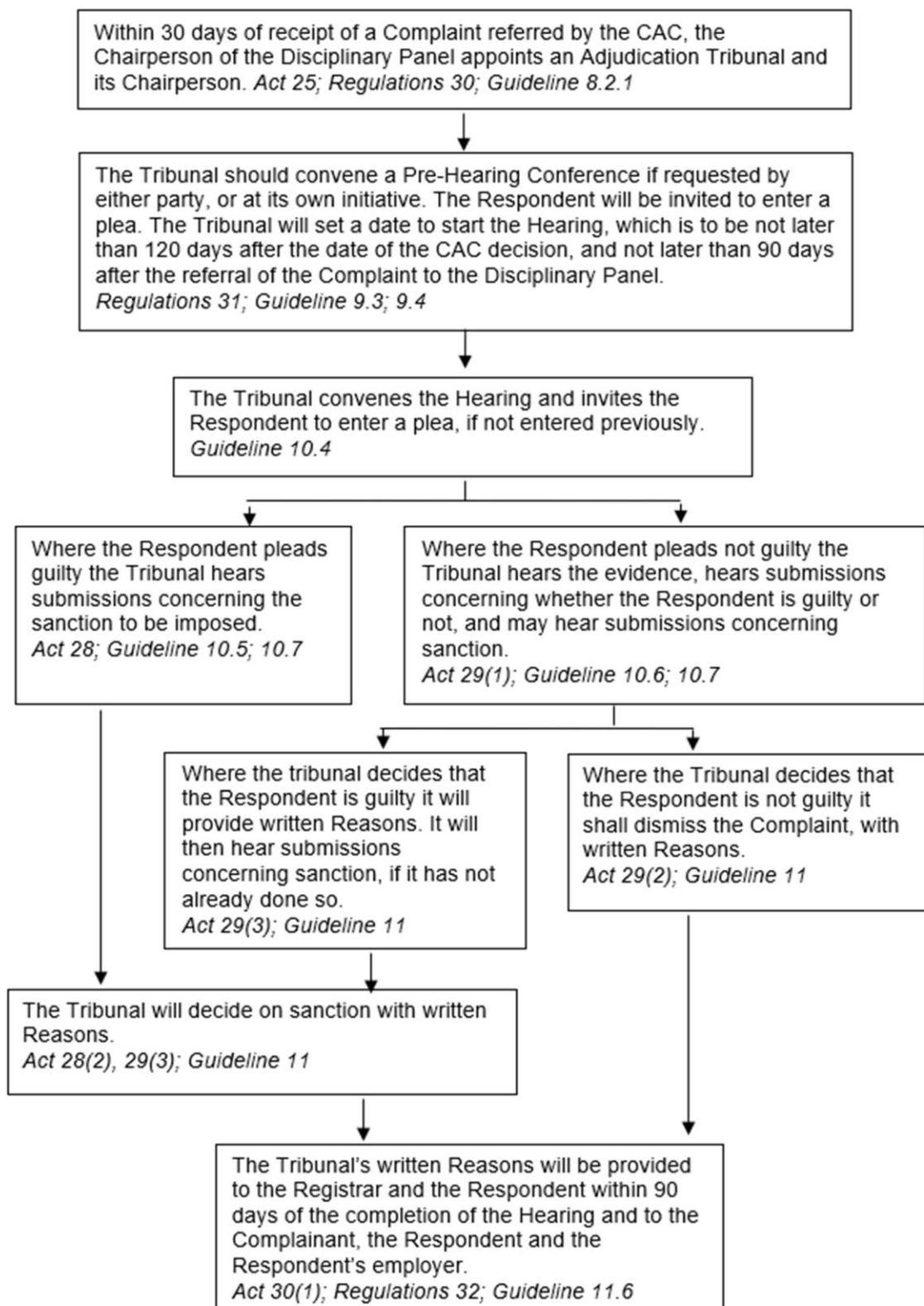


Chart 3: Hearing by an Adjudication Tribunal



Chapter 3

Engineers and Geoscientists Act, 2008

Exclusive scope of the practice of engineering

- 1) A person, corporation, partnership or other association of persons, except a professional engineer or a permit holder, shall not engage in the practice of engineering.
- 2) A professional engineer or permit holder may engage in the practice of surveying except land surveying as defined in the Land Surveyors Act, 1991 and as defined for geological and geophysical surveying in the practice of geoscience.
- 3) Subsection (1) does not apply to
 - a) the performance of engineering work by persons who are not professional engineers where a professional engineer is responsible for the maintenance of engineering standards in the performance of the work;
 - b) a person engaging in testing, inspecting and reporting, where the specifications and standards involved have been prepared or approved by a professional engineer;
 - c) a person designing special production machinery, equipment or tools and dies for the use of his or her employer's facilities;
 - d) a person engaging in the repair, maintenance or operation of equipment and facilities of his or her employer;
 - e) an engineer-in-training, in the course of his or her being employed or supervised and directed by a professional engineer; and
 - f) a person who, on his or her property and for his or her sole use or the use of his or her domestic establishment, carries out work that does not involve the safety of the general public.
- 4) Subsection (1) does not apply to a person engaged in
 - a) planning, designing or giving advice on the design of;
 - b) preparing plans, drawings, detail drawings, specification or graphic

representations for the design of; or

- c) inspecting work or assessing the performance of work under a contract for the erection, construction or alteration of or addition to a building.
- 5) In subsection (4), "building" means a building in a category or type for which the services of a designer are not required by the National Building Code in the construction of the building, except as provided in the Code.
- 6) In subsection (5), "designer" has the same meaning as that given to it in the latest edition of the National Building Code.

Exclusive use of name engineer

- 1) A professional engineer only shall use the title "professional engineer" or the abbreviation "P. Eng."
- 2) A person, corporation, partnership or other association of persons, except a professional engineer or permit holder, shall not
 - a) use the word "engineer or engineering" in combination with a name, title, description, letter, symbol or abbreviation, except a registered engineering geologist, that represents expressly or by implication that he or she is a professional engineer or permit holder;
 - b) represent, expressly or by implication, that
 - (i) he or she is entitled to engage in the practice of engineering, or
 - (ii) he or she is a professional engineer or permit holder; or
- 3) affix the stamp or seal of a professional engineer or permit holder, or allow that stamp or seal to be affixed to a plan, drawing, detail drawing, specification, other document or reproduction of either of them unless
 - i) the plan, drawing, detail drawing, specification, other document or reproduction was prepared by or under the supervision and control of a professional engineer,
 - ii) the stamp or seal is affixed with the knowledge and consent or in accordance with the direction of the professional engineer or permit holder to whom the stamp or seal was issued, and
 - iii) a professional engineer signs the stamp or seal affixed.

Complaints and disciplinary panel

- 1) The board shall appoint at least 3 of its members, at least one of whom is a member appointed under section 5, to constitute a complaints authorization committee.
- 2) The registrar is not eligible to be a member of the complaints authorization committee.
- 3) The board shall appoint the chairperson and vice-chairperson of the complaints authorization committee from the persons appointed under subsection (1).
- 4) The board shall appoint at least 12 members who are not members of the board, one of whom shall be appointed to serve as chairperson, and the minister shall appoint at least 4 persons who are not members to represent the public interest, who shall together constitute a disciplinary panel.
- 5) Of the members first appointed to the disciplinary panel, one half shall be appointed for a term of 2 years and the remainder for a term of 3 years and all subsequent appointments of members to the disciplinary panel shall be for a term of 3 years.
- 6) Notwithstanding the expiry of his or her term, a member of the disciplinary panel continues to be a member until he or she is re-appointed or his or her replacement is appointed.
- 7) Persons appointed to the disciplinary panel may be reappointed.
- 8) Members of the disciplinary panel shall serve on the panel without payment for their services, but may be remunerated for service as a member of an adjudication tribunal and paid their travel and other expenses associated with the work of that tribunal by the board, in accordance with and at the rates set by the by-laws.
- 9) The complaints authorization committee and an adjudication tribunal appointed under section 25 and a person appointed by either of them may summon witnesses and require those witnesses to give evidence, orally or in writing, upon oath or affirmation, and produce the documents and things that either of them considers necessary to the full investigation and hearing of an allegation or complaint and have the powers, privileges and immunities that are conferred on a commissioner appointed under the Public Inquiries Act, 2006.

Allegation

- 1) An allegation shall be in writing and signed by the complainant or his or her solicitor, and filed with the registrar.
- 2) The registrar may on his or her own motion make an allegation and file it, and the allegation has the same effect as an allegation referred to in subsection (1).
- 3) Where the registrar has been informed that a professional member or permit holder has been convicted of an offence under the provisions of the Criminal Code or a similar penal statute of another country or has been suspended by a governing body of professional members and permit holders in another province or territory of Canada or another territory or country for reason of professional misconduct, conduct unbecoming a professional member or permit holder, or professional incompetence, the information shall be dealt with by the registrar as an allegation.
- 4) For the purpose of subsection (3), a certified copy of the record of a conviction or findings made or the action taken by an external regulatory body constitutes proof, in the absence of evidence to the contrary, of the conviction or findings made or the action taken by that body, without proof of the signature of the convicting justice or person purporting to have signed on behalf of that body.

Effect of filing allegation

- 1) Where it appears to the registrar after notifying the respondent of the allegation that the allegation may be resolved satisfactorily and where the complainant and the respondent consent, the registrar may attempt to resolve the matter.
- 2) Where the allegation is not satisfactorily resolved by the registrar under subsection (1), he or she shall refer the allegation and all other allegations to the complaints authorization committee.
- 3) The registrar shall inform a complainant and a respondent of the referral of the allegation to the complaints authorization committee.

Hearing

- 1) Where a complaint has been referred under paragraph 24(3)(b), an adjudication tribunal shall hear the complaint.
- 2) The parties to a hearing are the board and the respondent and a party may be represented by his or her counsel at a hearing.

- 3) A hearing shall be conducted in public but an adjudication tribunal may exclude the public from a hearing, or from part of it, where it considers the desirability of protecting a party to the complaint or a witness against the consequences of possible disclosure of personal matters outweighs the desirability of holding the hearing in public.

Guilty plea by respondent

- 1) Where a respondent pleads guilty to one or more of the charges set out in a complaint, the adjudication tribunal shall, without calling evidence or hearing witnesses, unless the tribunal believes it is appropriate to do so, hear submissions from the parties.
- 2) Where a respondent pleads guilty, and following submissions under subsection (1), the adjudication tribunal may
 - a) reprimand the respondent;
 - b) order that the respondent be suspended for a fixed period that it considers appropriate, until conditions which it may impose are fulfilled, or until further order of the adjudication tribunal;
 - c) allow or direct the respondent to surrender his or her registration or permit to the board upon those conditions that may be considered appropriate and strike the respondents name from the register;
 - d) impose a fine not to exceed \$25,000 to be paid to the association;
 - e) order that the respondent pay the costs or a part of the costs incurred by the association in the investigation and hearing of the complaint;
 - f) order that the registrar publish a summary of the decision including the information set out in subsection 30(4) and other information that the tribunal may specify; and
 - g) order that the respondent comply with one or more of the following:
 - i) make restitution to the complainant or other person affected by the conduct of the respondent,
 - ii) obtain medical treatment
 - iii) obtain counselling,
 - iv) obtain substance abuse counselling or treatment, until the respondent can demonstrate to the board or other body or person designated by the

- adjudication tribunal that a condition related to substance abuse rendering the respondent incapable or unfit to practise has been overcome,
- v) engage in continuing education programs,
 - vi) complete a course of studies satisfactory to the board or another body or person designated by the adjudication tribunal,
 - vii) report on his or her compliance with an order made under this section and authorize others involved with his or her treatment or supervision to report on it,
 - viii) restrict his or her practice or continue his or her practice under specified conditions,
 - ix) permit periodic inspection of records relating to his or her practice, or
 - x) impose other requirements that are just and reasonable in the circumstances.
- 3) The costs incurred by the association to ensure the compliance of a respondent with an order or direction of an adjudication tribunal under this section shall be borne by the respondent.

Filing and publication of decisions

- 1) An adjudication tribunal shall file a decision or order made under subsection 28(2) or 29(2) or (3) and its reasons with the registrar and provide a copy to the complainant and the respondent and the respondent's employer.
- 2) The registrar shall maintain a copy of a decision or order filed under subsection (1) for a minimum of 5 years after the day the decision is filed and shall upon receiving a request to view the disciplinary records in relation to a professional member or permit holder permit a person to view those records.
- 3) The registrar shall publish a summary of a decision or order of an adjudication tribunal in a newspaper of general circulation in or nearest to the community in which the respondent practises within 14 days of the appeal period under section 36, unless a court orders otherwise, where the decision or order
 - a) suspends the respondent;
 - b) allows or directs the respondent to surrender his or her registration or permit;

- c) restricts the respondents practice;
 - d) specifies conditions for the continuing practice of the respondent; or
 - e) requires that a summary of the decision or order be published.
- 4) The summary of the decision published under subsection (3) shall include
- a) the name of the respondent and the address where he or she practises;
 - b) the date, location and a brief description of the conduct of the respondent that was found to be deserving of sanction
 - c) the name of the complainant, unless the complainant has requested that his or her name be withheld;
 - d) the contents of the order in relation to the actions referenced in paragraphs (3)(a) to (d); and
 - e) other information specified for publication in the decision or order.
- 5) Where a decision published under this section is confirmed, varied or set aside, the registrar shall within 14 days of the filing of the subsequent decision or order publish a summary of the decision or order and subsections (2) and (3) apply, with the necessary changes.
- 6) The registrar may give notice of the decision and information respecting the decision to other persons the board may direct and shall include a summary of the decision in a certificate of good standing issued in relation to the respondent.

De-registration and suspension

- 1) Where a professional member or permit holder is allowed or directed to surrender his or her registration or permit, his or her rights and privileges as a professional member or permit holder cease.
- 2) Where a professional member or permit holder is suspended, his or her rights and privileges as a professional member or permit holder cease for the period of suspension.
- 3) Where conditions or restrictions have been imposed upon a respondents ability to carry on his or her practice, his or her rights and privileges as a professional member or permit holder shall be limited to the extent specified by the conditions or restrictions

Failure to comply

- 1) On application by the board to the disciplinary panel, an adjudication tribunal may make an order suspending the rights and privileges of a respondent where it determines that the respondent has failed to comply with a decision or an order under subsection 28(2) or 29 (3).
- 2) The parties to the application are the board and the respondent.
- 3) An order of an adjudication tribunal under this section may suspend the rights and privileges of the respondent for a fixed period that the adjudication tribunal may consider appropriate, or until conditions which it may impose are fulfilled, or until further order of the adjudication tribunal.

Use of stamp

- 1) A professional member shall sign and stamp or seal and a permit holder shall stamp or seal all documents or records in accordance with the regulations.
- 2) A person other than a professional member or permit holder shall not use a stamp or seal issued by the registrar under this Act.

Liability to others

- 1) The relationship between a permit holder engaged in the practice of engineering or of geoscience and a person receiving the professional services of the permit holder is subject to this Act and the regulations.
- 2) The relationship of a member to a permit holder, whether as a member, shareholder or employee of the permit holder, does not affect, modify or diminish the application of this Act to
 - a. the member; or
 - b. the relationship between the member and a client

Practice prohibitions

- 1) A person whose registration as an engineer, geoscientist or permit holder is cancelled or suspended under this Act shall not, without the consent of the board, engage in the practice of engineering or of geoscience or directly or indirectly associate in the practice of engineering or of geoscience with another member or permit holder.

- 2) A professional engineer, geoscientist or permit holder shall not, except with the consent of the board, associate in the practice of engineering or of geoscience directly or indirectly with or employ a person whose registration has been cancelled or suspended under this Act.
- 3) The board may permit a member or permit holder to employ in connection with the practice of engineering or of geoscience a person whose registration has been cancelled or suspended under this Act, in the capacity and subject to the terms and conditions that are prescribed by the board.

Penalties

- 1) A person who contravenes section 15 or 17 is guilty of an offence and liable on summary conviction to a fine of not more than \$10,000.
- 2) A person who contravenes this Act, other than section 15 or 17, is guilty of an offence and is liable on summary conviction to a fine not exceeding
 - a) in the case of a natural person, \$5,000 for a first conviction and to a fine not exceeding \$10,000 for a second or subsequent conviction; and
 - b) in the case of a corporation, \$25,000 for a first conviction and to a fine not exceeding \$100,000 for a second or subsequent conviction.

Chapter 4

Professional Practice & Ethics: Case Studies

As explained in Chapter 1, we, as Professional Engineers, are expected to take reasonable precautions or care in the practice of our engineering profession as we must hold paramount the safety, health and welfare of the public. So, what happens when we fall short of our professional responsibilities, for which we were entrusted by the public when we earned our honorable title of “Professional Engineer”?

The following ethical case studies were randomly selected to emphasize the different scenarios of professional misconduct and their potential consequences.

CASE STUDY 1:

Omega, P.Eng., as a process engineer for Universal Chemical Corporation (Universal) signed a secrecy agreement with Universal that prohibits Omega from divulging information that the firm considers proprietary. Universal developed an adaptation of a standard piece of equipment that makes it highly efficient for cooling viscous plastics slurry. The company decided not to patent the idea but to keep it a trade secret.

Omega subsequently left the employment of Universal to work for a candy processing facility that is not in any way competition to Universal. Omega soon realized that a modification similar to Universal's trade secret could be applied to a machine used for cooking fudge and at once arranged for the change to be made.

Has Omega acted unethically? Did he commit professional misconduct? What other steps, if any, should Omega have taken?

Omega has a duty to act with fairness and loyalty to his former employer and has a duty to regard as confidential information obtained as to the technical methods or processes of an employer.

As this is a specific process, it cannot be considered a skill of the engineer who is aware of it and therefore, by common law, Omega has a duty of confidence to his former employer.

Any process has a number of sub-processes and components associated with it. If the modification of the process used at Universal is only one sub-process that uses only a relatively small number of components, and it is reasonable to understand that the original process could not in any way be reconstructed from the modification, then it may be reasonable to use the modification.

If, however, the modification is only a small variation of the original process, it would be unreasonable to apply the modification without an agreement with Universal. The justification for this statement is that knowledge of the modified process may allow a third party to realize that it could have been used in a situation similar to the original purpose of the process and therefore potentially affect Universal.

If Omega had not arranged for the change yet, he should first approach his employer, indicate that there is a modification which exists which could improve upon the current processes and provide an estimate as to the savings. If his employer agrees, Omega could then act as an agent and approach Universal to determine if there are any conditions under which the trade secret could be licensed.

If Omega has already arranged for the change in such a way that others are aware of it, Omega may already be guilty of professional misconduct and his employer may be vicariously liable to Universal who may have the right to sue the company for damages. In this case, it is Omega's responsibility to inform his employer and to mitigate any potential damage caused by his actions.

CASE STUDY 2:

Alpha is a P.Eng. employed by EngInc, an engineering company. As Chief Project Engineering, Alpha is in charge of a project for BigGuy, an important client of EngInc. BigGuy and Alpha have several disagreements over the design that Alpha has developed. BigGuy wants a cheaper, more conventional solution. Alpha is convinced that the design is a "masterpiece" and believes that BigGuy "doesn't have an ounce of imagination". Alpha simply shrugs off BigGuy and refuses to discuss any other alternative.

BigGuy is furious and phones Beta, P.Eng., the president of EngInc, to yell and complain about Alpha. BigGuy threatens to hire another engineering firm to complete the design according to BigGuy's wishes.

You work for EngInc as an intermediate design engineer. Beta calls you into a private office and closes the door. Beta asks you to review Alpha's design and instructs you to keep the review a secret from Alpha. Beta explains that Alpha is a senior engineer who has been with EngInc for 28 years and could be "a bit sensitive at times".

What do you tell Beta?

Alpha is another professional engineer, and therefore it is necessary that you and Beta act at all times with fairness and loyalty and with courtesy and good faith. In addition, as Alpha is still employed by EngInc, it would be unethical to accept an engagement to review the work of another practitioner for the same employer except with the knowledge of the other practitioner.

One may suggest to Beta to discuss the issues with Alpha, but not in the presence of the client, BigGuy. It should be emphasized that the purpose of providing engineering services is to create a design that safeguards the economic interests, as well as others, of the client. Consequently, an unconventional design, no matter how imaginative or correct, that unnecessarily causes increased economic costs on the client, should be cautioned against if there are cheaper alternatives that continue to satisfy other requirements of protecting the public welfare, the environment, etc.

Additionally, it may be considered to be a professional misconduct to provide a design that does not make reasonable provision for safeguarding the finances of the client. If the masterpiece is unnecessarily extravagant with the sole purpose of allowing Alpha to demonstrate his abilities, this could even potentially be seen as negligence if the design would not meet the standards that a reasonable and prudent practitioner would maintain in these circumstances.

What do you think of Alpha's conduct in dealing with BigGuy? How should Alpha have responded to BigGuy's request?

By "shrugging off" the client and refusing to discuss any other alternatives, Alpha is neither acting with fairness nor with loyalty to his client. In addition to displaying hubris, a good engineering design does not require imagination. The purpose of a design is to satisfy the requirements of the client while maintain the protection of the safety and welfare of the public and other interests as well as complying with applicable statutes, regulations, standards, codes, by-laws and rules. As the client is paying for the design, Alpha should address the concerns of BigGuy and indicate exactly why this design deviates so significantly from other conventional designs.

Additionally, as Alpha is an employee engineer of EngInc, by perhaps unnecessarily antagonizing a client, he may be threatening the relationship between EngInc and the client, and is therefore not acting with fairness to his employer.

CASE STUDY 3:

Omega, a P.Eng. with many years of experience and a valid Certificate of Authorization, was hired by ABC to design a fire protection system for a new building and supervise its installation. Omega produced the design and gave signed, sealed and dated copies of the final design to Theta (P.Eng.) of Faultless to install. Faultless is a contractor hired by ABC and Theta is their project manager.

Once the installation was complete, Omega provided the city with a sealed, signed and dated report affirming that the fire protection system had been installed as designed and that it met all codes and standards. Omega did not check the installation but had depended on the assurance of Theta who said that it had been installed as designed. Omega had worked with Theta and Faultless for many years and was very confident about their work.

Three months later the city conducted a building review and found twenty deficiencies in the as-built work. They issued a letter to Omega requesting that the construction be fixed to comply with the design and standards. Omega forwarded the letter to Theta and asked her to make the necessary changes. Theta made some modifications and informed Omega a few weeks later that all the changes had been made. Omega then sent the city another sealed, signed and dated report affirming that the fire protection system had been installed as designed and that it met all codes and standards.

A second building inspection by the city found that a number of significant deficiencies still remained.

What do you think of Omega's conduct? What consequences may he face? (Keep in mind that the deficiencies appear to be the result of the installation and not the design.)

First, Omega is expected to regard his duty to the public welfare as paramount. He is also expected to have fidelity to public needs by ensuring that the installation is safe. In devotion to high ideals of personal honor and professional integrity, he should not seal a report verifying that work had been performed when that work had not checked by himself.

On two occasions, Omega acted unprofessionally by signing and sealing a report that was not actually checked by himself. As a fire protection system is in place primarily for safeguarding the life of those using the facilities in which it is installed, checking the installation would be considered a reasonable provision the engineer should take into account. In addition, checking the installation would also be a responsible provision for ensuring the installation complies with applicable

statutes, regulations, standards, codes, by-laws and rules in connection with the work under the responsibility of the practitioner. Finally, given that the original installation had twenty deficiencies, to verify that those deficiencies had all been corrected would be an action that a reasonable and prudent practitioner would maintain in this circumstance, and failure to do so would therefore, again, constitute negligence. One may be able to argue that, while being unprofessional, the first lapse did not necessarily constitute negligence; however, the second lapse almost certainly did.

What do you think of Theta's conduct? What consequences may she face?

As Theta is overseeing the installation of a fire suppression system, she should regard her duty to public welfare as paramount. In addition, she should be faithful to the public needs in providing an environment that is safe.

Next, Theta should act toward Omega with good faith, and this would include inspecting the installation and conveying correct information to Omega. This also applies when the deficiencies were being corrected. In addition, by not verifying—or even possibly deceiving—Omega, this does not present the loyalty one would expect to one's associate.

By not ensuring that the installation was compliant with the design on two occasions, this would constitute a failure to make reasonable provisions for safeguarding the life and health of those using the facilities; a failure to make responsible provisions for complying with applicable statutes, regulations, standards, codes, by-laws and rules in connection with work being undertaken by the practitioner; an act that constitutes a failure to maintain the standards that a reasonable and prudent practitioner would maintain in the position of supervision the installation, and therefore negligence, and possibly conduct that would be regarded as dishonorable or unprofessional.

CASE STUDY 4:

WorldEng designed and inspected the construction of a plant for MegaChem. MegaChem is now selling the plant to BuyerCo. BuyerCo is contracting EngInc to inspect the plant. I work at WorldEng and work part-time at EngInc. I have been assigned to perform the inspection of the plant.

What do you have to say about the appropriateness of your employment arrangements?

As long as I have provided EngInc with a written statement of the nature of the practitioner's status as an employee at WorldEng and the attendant limitations on the practitioner's services to the client, I feel that the work I do at EngInc does not conflict with my duty to WorldEng, and I have informed WorldEng about my part-time employment, I am not in violation of the Code of Ethics.

However, I would be guilty of professional misconduct if I ever fail 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 my professional judgment in rendering service to the public, to WorldEng or to EngInc when contracting in my own right to perform professional engineering services for other than WorldEng.

Assuming that your employment arrangements have not changed since the plant was designed and constructed, how do you respond to EngInc's request for assistance?

To avoid professional misconduct, I would have to immediately point out my prior connection with the plant at WorldEng and indicate that this would be a direct interest which, even if I was to be professional in my conduct, would be construed as prejudicial. Depending on the size of EngInc, it may be necessary to take a voluntary leave for the duration of the inspection.

Is a P.Eng. license sufficient to permit you to provide services to EngInc.?

A Certificate of Authorization is required if a P.Eng. is a full-time employee, but offer engineering services directly to the public on a part-time, moonlighting, or volunteer basis. Therefore, regardless of whether or not my colleague at EngInc is taking responsibility for my work, if my actions are in the practice of professional engineering, I would require a Certificate of Authorization as EngInc is not my direct employer.

CASE STUDY 5:

Tau, the owner of a house in the City of Alpha, Ontario, was notified by the city that the condition of the foundation walls of his house violated the standards set out in the city's property standards by-law. The city, being concerned that the foundation walls had deteriorated to the point of being structurally unsafe, ordered Tau to obtain a written report by a professional engineer as to the walls' condition. Omega prepared a report stating that he had inspected the foundation and that the foundation walls appeared to be "structurally sound and capable of safely sustaining the house for many more years".

Tau submitted Omega's report to the city. In response, the city sent a letter to Tau with a copy to Omega pointing out the city's observations regarding the deterioration of the walls, including evidence of significant water permeation, together with photographs taken by the city's inspector. In the letter, the city requested the condition of the foundation be reassessed and a response be made to the city within two weeks. Tau was unaware that Omega would be waiting for authorization for him to spend more time on the project and accordingly did not contact Omega and request him to respond. Omega did not follow up with either Tau or the city.

Following a second request to Tau, copied to Omega, Omega responded by letter to the city, advising that he had never examined the interior of the walls, only the exterior and admitted the photographs provided by the city indicated that the foundation was structurally unsound.

What is your opinion on the engineering services provided by Omega? What do you think of his conduct regarding his dealings with the City?

The question indicates that Omega was licensed, but it does not mention that he had a Certificate of Authorization to provide engineering services to the public. If he did not have such a certificate, one could allege professional misconduct.

By not inspecting the interior of the walls, one could allege professional misconduct by negligence as one would suspect that a professional engineer asked to inspect walls would, at the very least, inspect both sides.

By attempting to assist Tau in not repairing the walls, one could allege professional misconduct as Omega would not be safeguarding the life of Tau and others.

The report does not state Omega's area of competence, but if he is not trained in civil engineering, one could allege professional misconduct by undertaking an inspection which would fall under the specialization of a civil engineer.

Finally, by submitting a report which could have the potential of the city by-laws not being enforced in a situation where they are being contravened, one could allege professional misconduct in attempting to allow Tau to not comply with local by-laws.

CASE STUDY 6:

Prodigy is a professional engineer who is employed on a full-time basis by

MajorEng, a large engineering firm. However, for a number of reasons, Prodigy is unhappy and for some time has been thinking about looking for a new job. Although Prodigy's current employment at MajorEng provides good pay and interesting work, Prodigy is finding it difficult to work with Overseer, a professional engineer who is Prodigy's supervisor at MajorEng.

Since joining MajorEng a year ago, Overseer has frequently made derogatory jokes and remarks about Prodigy's race and religion—sometimes even in meetings with other engineers and clients. On many occasions, Prodigy has informed Overseer that such remarks are offensive, hurtful, and inappropriate and has asked Overseer to stop. Overseer refuses to do so and says that Prodigy should "toughen up and learn to take a joke", if Prodigy expects to have a successful career at MajorEng.

Recently, Prodigy met with a professional engineer colleague who is a vice president at EngCo, another engineering company. Upon hearing that Prodigy was interested in considering other opportunities, the colleague offered Prodigy a part-time job to work in the evenings and on weekends on a trial basis as an engineer for EngCo. Prodigy would work under the colleague's supervision with the intent that in a few months, if Prodigy preferred working at EngCo, Prodigy would resign from MajorEng and become a full-time employee of EngCo.

What is your opinion on Overseer's conduct?

Overseer's jokes and remarks are not aligned with his ethical duty to act with fairness to his subordinate and his actions would not appear to be treating another practitioner with what one would consider courtesy. It would appear that Overseer is possibly guilty of professional misconduct with respect to both harassments, as a supervising engineer, failing to maintain the human rights code with respect to employment. As Prodigy has already approached Overseer on this issue, Overseer cannot claim ignorance on this matter.

What should Prodigy consider doing about Overseer's conduct?

Prodigy has the right to freedom from harassment in the workplace by another employee because of race and creed. Out of fairness to his supervisor, he should inform Overseer using an appropriate medium of the specific statutes which Prodigy believes are being violated and that he feels that they are applicable. If Overseer continues in his behavior, Prodigy should report the situation with supporting documentation to the Human Resources department of MajorEng. If neither of these produces an appropriate result, Prodigy would be correct to file a complaint with the authorities of his jurisdiction.

What requirements, if any, Prodigy must satisfy to properly undertake such part-time employment with EngCo?

Prodigy has an ethical responsibility to inform EngCo in a written statement as to his current employment status, he must determine that this part-time employment will not affect his current employment, and he must inform his employer that he is taking on this part-time employment.

Moreover, he must deal fairly with his current employer and therefore ensure that the part-time work does not affect his performance. He has a duty to personal integrity in ensuring that neither his employer nor EngCo are adversely affected by his dual-employment status.

Finally, it would constitute a professional misconduct not to make prompt, voluntary and complete disclosure of a shared interests between the work performed by the two companies, either direct or indirect, that might in any way be, or be construed as, prejudicial to Prodigy's professional judgment to an employer or to a client without making a full disclosure. Specifically, Prodigy should ensure that any work he does for EngCo does not directly or indirectly compete with MajorEng.

Appendix A

References

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