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Quebec engineers win court battle against Microsoft

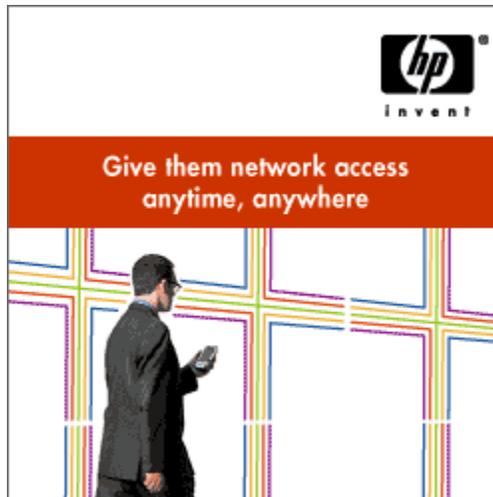
4/7/2004 5:00:00 PM - The software giant is penalized for the first time over its use of the word "engineer" in its professional certification program. Just when you thought it was over, an old debate is reignited



by Shane Schick

Microsoft Canada has contravened a provincial professional code by using the word "engineer" in its international software certification program, a Quebec court has ruled.

The decision by Judge Claude Millette of this Court of Quebec this week marks the first time in Microsoft's history it has been penalized over use of the term. It also provides a historic, if largely symbolic, victory for professional engineers across Canada who have been trying to curtail the word's use in the context of software development.



Microsoft said Wednesday it would appeal the decision, which carried a small fine of \$1,000, once it has obtained a transcript later this week. The case was brought forward by the **Ordre des ingenieurs du Quebec (OIQ)**, a group of more than 48,000 professionals in every field of engineering except forestry. The OIQ

prosecuted the software company under a Quebec quasi-criminal statute, the Professional Code, that regulates the use of a number of professional designations.

OIQ general manager Denis Leblanc said the group initially waited to litigate because it believed Microsoft Canada was going to drop the word engineer in 2001 in its Microsoft Certified Systems Engineer (MCSE) designation.



"There is a risk for the public to be fooled by people who pretend to be an engineer without having gone through a university-approved program in engineering," he said. "Our job is to make sure we protect the public against any misconception about the way the real engineers practice their protection."

So far no one from the public has brought forth any complaints or concerns to the OIQ over the use of the word, Leblanc admitted, but he said it was still a possibility.

Microsoft Canada corporate counsel Nadine Letson said she could not see how the public would confuse an MCSE with a chemical or other kind of engineer.

"I was very surprised (by the judge's decision)," she said. "A provincial judge in Quebec dealing with Quebec legislation isn't mandated to follow precedent from other provinces but it's very usual for a judge to completely discount or ignore decisions from his colleagues."

The engineering dispute has raged for more than five years, causing battles in Ontario, Alberta and elsewhere. The Canadian Council for Professional Engineers (CCPE), for example, **launched a lawsuit** in the late 1990s against Memorial University of Newfoundland over use of the term "software engineer" in a bachelor of science program that was not part of the engineering department. The school has since abandoned the term, but the CCPE still disputes its use as a designation for industry professionals who do not hold engineering accreditation recognized by the CCPE.

Earlier this year, meanwhile, an Alberta court **ruled** in favour of an Apple-certified systems engineer who had been sued by a provincial engineering association.

Microsoft Canada initially responded to the criticism by encouraging MSCEs to stick to the acronym, but after a year-long investigation into the legal and ethical use of the term **announced** that they could continue to call themselves engineers.

The **Canadian Information Processing Society (CIPS)** has tried to reconcile the differences between the two camps. Paul Bassett, who is leading a committee on software engineering issues, said the society would soon publish a brochure and Web site to discuss some of these issues.

"To me it's a turf war that's been systematically waged by organizations with very deep pockets who have the benefit of prior legal legislation to be able to push their agenda," he said. "The opposition is largely unorganized, except perhaps for somebody like Microsoft."

In Canada, the federal government gives provinces the right to set up professions as self-governing associations supported by memberships and fees. In the United States, state registration boards license professions. "It's a government-run organization," said Eric Newton, manager of appeals and prosecutions at the **Professional Engineers of Ontario (PEO)**. "I can tell you politically, if you were the Association of Professional Engineers of New York, you'd have to get the permission of the attorney-general of New York to prosecute."

The PEO has yet to prosecute anyone calling himself a software engineer because it has found no evidence that the public has been misled by the term, Newton said.

"What we've had is a lot of members who call in and say they don't like the term, and of course we say we agree, we don't like the term."

Bassett said the professional engineering groups may be doing more harm than good with their efforts to enforce terminology.

"It's kind of ironic that the engineers are arguing that they're trying to protect the public interest, when in fact the expertise for this sort of work lies outside of engineering per se," he said. "The accreditation that the engineering accrediting body uses is a one-size-fits-all sort of criteria. Whether you're a forest engineer or a chemical engineer or a systems engineer, it makes no difference."

Letson agreed.

"Microsoft Certified Systems Engineers have skills in their own right. They've worked to have their designation, they've had to go through a number of steps," she said. "They don't want to give it up, and I think rightly not."

Leblanc would not say if the OIQ would begin prosecuting individuals who use the term software engineer.

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