

CLIENT EXPECTATIONS WHEN ENGAGING AN ENGINEERING FIRM

By José Vera, P.Eng., MEPP



When engaging in engineering work, it's important for practitioners to explain to clients what they may expect when engaging an engineer to perform professional engineering services. Prospective clients may be either first-time or repeat customers with varying degrees of expectations and knowledge about engineering work. Consequently, in some situations, it might be beneficial for the practitioner to clarify that clients:

- have the right to expect engineering opinions will be independent;
- can obtain second opinions or request a technical review of their first expert's opinion;
- should be careful when seeking additional expert opinions;
- can expect practitioners to disclose conflicting secondary interests; and
- should expect a clear written scope of services.

Let's consider this example: Sofia is a retired engineer and a director on a community housing board. In a board meeting, the other board members inform Sofia of a dispute with a contractor involving some damage to the community housing's fire sprinkler system. On one hand, the contractor's position is that the damage was reported to her after the warranty period; therefore, they are not responsible for it. On the other hand, the board believes some key components were damaged during the contractor's installation. Consequently, in the view of the board, the contractor should be liable for repairing the fire sprinkler system.

Sofia recommends that the board engage a forensic engineering firm to evaluate the damage to the fire sprinkler system and provide a report highlighting potential causes of the damage.

Michael, another director, is strongly opposed to engaging an engineering firm and tells Sofia: "What is the point of us engaging an engineering firm, since the contractor is just going to hire their own engineering firm to provide a report that favours their position; it will be their engineer's opinion against our engineer's opinion." Sofia replies: "Engineers have an obligation to provide independent opinions regardless of who engages them. The board needs an independent assessment by a professional engineer to make a claim that is based on facts."

Who is right, Michael or Sofia?

CLIENTS CAN EXPECT ENGINEERING OPINIONS WILL BE INDEPENDENT

Sofia is right, since engineers have a duty to provide independent opinions, regardless of the client who engaged them. Therefore, clients have a reasonable expectation for engineering opinions to be independent, impartial and objective (see "An engineer's duty to provide independent opinions," *Engineering Dimensions*, November/December 2018, p. 17).

The board engages engineering firm ABC to investigate the damage to the sprinkler system. Kay, an engineer at ABC, performs the study and concludes that key sprinkler system components were damaged during the contractor's installation. The contractor acknowledges the independent nature of the engineering report and repairs the damage to the sprinkler system at no cost to the board.

The independence of engineering opinions is beneficial to clients and to the public, since clients and other parties rely on impartial engineering advice to guide them in their decision-making process.

CLIENTS CAN OBTAIN SECOND OPINIONS OR REQUEST A TECHNICAL REVIEW OF THEIR FIRST EXPERT'S OPINION

Let's look at a different scenario. What if Kay, the engineer at ABC, determined that the damage resulted from lack of maintenance of the fire sprinkler system, meaning the contractor would not be responsible for the damage? What could the board do in consequence of these findings? In this situation the board has three options:

1. Rely on the findings of ABC engineering and pay for the repairs of the fire sprinkler system; or
2. Obtain a second opinion from another engineering firm; or
3. Request that another engineering firm perform a technical review of the ABC report.

The board reviews ABC's engineering report at a meeting, and Jane states: "I know ABC is a reputable firm; however, the fire sprinkler system repairs are costly, and a second opinion is not. It would be prudent for us as board members to obtain a second engineering opinion before spending so much in repairs." Michael and the other board members agree to engage engineering firm XYZ for a second opinion on the causes of the damage to the sprinkler system.

A few weeks later, Lisa, an engineer at XYZ, performs an investigation and submits her report to the board. The conclusions are very similar to the ABC report. In brief, Lisa from XYZ notes that the damage was caused by the lack of maintenance. Consequently, the board meets to decide what steps to take next. Jane notes: "At this point, we have no choice but to pay for repairing the fire sprinkler system, since two engineering reports state it was not the contractor's fault." Michael ada-

manly disagrees and states: “If we got two opinions, we can get three engineering opinions. Who knows, maybe a third time is the charm?”

Is Michael correct? Can clients obtain three engineering opinions on the same matter?

CLIENTS SHOULD BE CAREFUL WHEN SEEKING ADDITIONAL EXPERT OPINIONS

First, we must ask ourselves: What does the law say? In this case, the relevant law is the *Ontario Business Corporations Act* (www.ontario.ca/laws/statute/90b16), specifically the following section:

Standards of care, etc., of directors, etc.

134 (1) Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation shall,

- (a) act honestly and in good faith with a view to the best interests of the corporation; and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances

Based on the above, it is sensible to conclude that for directors to act honestly when making decisions requiring specialized knowledge, they should place reasonable reliance on the independent opinion of experts, such as engineers. And furthermore, to act in good faith, boards cannot shop for expert opinions that merely suit their needs. Although it may be reasonable in the board’s judgment to obtain a second engineering opinion out of prudence, obtaining a third engineering opinion when the second opinion supports the first may not be looked at favourably—particularly by the courts in the event of litigation against the board for having launched unreasonable litigation against the contractor. Consequently, Michael is likely incorrect: The board should probably not get three engineering opinions in this case.

CLIENTS CAN EXPECT PRACTITIONERS TO DISCLOSE CONFLICTING SECONDARY INTERESTS

On this point, PEO’s Code of Ethics is clear: Practitioners must disclose to clients any interest that might be construed as prejudicial to their professional judgment. For example, let’s imagine that engineering firm XYZ had previously done work for the fire sprinkler system installation contractor. The community housing board may perceive this relationship as creating a potential conflict of interest if firm XYZ were to perform a study of the fire sprinkler system damage. Consequently, XYZ would have to disclose to the board their previous relationship with the contractor. Naturally, the board has the right to reject XYZ, considering the past relationship they disclosed, and select another engineering firm. Or the board could still select XYZ’s services knowing that engineers already have a duty to provide independent opinions.

CLIENTS AND PRACTITIONERS SHOULD EXPECT A CLEAR WRITTEN SCOPE OF SERVICES

Let’s imagine yet another scenario where Lisa, the engineer at XYZ, leaves the firm after the board selects engineering

firm XYZ to perform a new, completely independent assessment of the fire sprinkler system damage. However, in this scenario, unfortunately, there was no written scope of services. The board briefly meets with Lisa to start the project but a week after their meeting, Lisa resigns from XYZ to pursue a dream job helping a non-governmental organization in developing countries. Lisa is replaced by Charles, another engineer from XYZ, who mistakenly performs a technical review of ABC’s engineering report instead of providing a second opinion. When Charles submits his technical review to the board, the members are dismayed to find out that they do not have the second opinion they requested. Instead, they have a technical review of the work of ABC, which basically is an opinion regarding the quality of the output of the work of ABC. What the board wanted was a second opinion, where another engineer takes a fresh look at the same situation provided to the first engineer, and without reference to the first engineer’s work, proposes a solution, designs a concept or makes recommendations.

The moral of the story is that practitioners should always clarify whether the client is requesting a technical review of a practitioner’s work or requesting a second opinion. Because mistakes in communication do happen, both clients and practitioners are advised to spend time and agree to a clearly written scope of services.

Clients who engage practitioners for professional engineering services should understand that engineers have duties to their clients. In this article, we covered some of these duties, such as independence and disclosure. Clients have rights, such as the right to second opinions, but they also have duties, such as the duty to act honestly and in good faith. Both clients and practitioners must collaborate and agree on a clearly written scope of engineering services. Practitioners can better manage expectations by clarifying the key concepts covered in this article to their clients.

Finally, PEO’s practice advisory team is available by email at practice-standards@peo.on.ca and is glad to hear from practitioners or clients of engineering services looking for more information on the professional duties of practitioners to clients. However, practitioners or clients looking for assistance on resolving legal problems occurring in specific, concrete situations should always contact their lawyer. **e**

José Vera, P.Eng., MEPP, is PEO’s manager of standards and practice.

Guideline Reminder

Did you know? PEO offers useful guidelines for practitioners, including *Professional Engineers Reviewing Work Prepared by Another Professional Engineer* (www.peo.on.ca/index.php/ci_id/22122/la_id/1.htm)