

## Registration—Canadian Firm’s Noncompliance with Engineering Licensure Law

### Case No. 11-3

#### Facts:

Engineer A is a professional engineer in private practice in State A. Engineer A performs consulting engineering services for assuring Code compliance on a project that was originally designed by a consulting engineering firm based in a province in Canada. Although the Canadian firm’s work met all appropriate engineering code requirements in State A, the work performed by the Canadian firm was not signed and sealed by a professional engineer licensed in State A. Engineer A also discovers that the Canadian firm was not registered in State A to perform engineering services during the design and construction of the project, and that the Canadian firm had also been performing consulting engineering services in State A for a number of years without being properly registered. The Canadian firm’s engineers and the firm are all licensed in the Canadian province in which the firm is based. Engineer A advises the State A engineering licensing board in writing of the unlicensed practice by the Canadian firm.

Thereafter, Engineer A receives a notice from the Canadian firm advising Engineer A that Engineer A had not acted in an ethical manner because Engineer A did not first discuss the issue with the Canadian firm but instead filed a written complaint against the Canadian firm.

#### Question:

Was it ethical for Engineer A to advise the State A engineering licensing board in writing of the unlicensed practice by the Canadian firm?

#### References:

- Section I.6. - NSPE Code of Ethics: *Engineers in the fulfillment of their professional duties shall conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession.*
- Section II.1.e. - NSPE Code of Ethics: *Engineers shall not aid or abet the unlawful practice of engineering by a person or firm.*
- Section II.1.f. - NSPE Code of Ethics: *Engineers having knowledge of any alleged violation of this Code shall report thereon to appropriate professional bodies and, when relevant, also to public authorities, and cooperate with the proper authorities in furnishing such information or assistance as may be required.*
- Section III.7 - NSPE Code of Ethics: *Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.*

**Discussion:**

The practice of engineering increasingly occurs across international borders, which sometimes raises ethical issues for professional engineers and their firms. Engineering ethics principles are generally the same in most jurisdictions, although ethical values vary in some cases. Engineers practicing internationally or locally with international firms should be mindful of differences when they occur.

The Board has had occasions to examine international engineering ethics issues. One example is BER Case No. 96-5. In that case, Engineer A was a consulting engineer who did work in the United States and abroad. Engineer A was contacted by the government of Country A and asked to submit a proposal on a major water project being constructed in Country A. As part of the project, Engineer A was encouraged to associate with and retain Engineer B, a local engineer in Country A, who Engineer A had worked with in the past on private projects in Country A. One of the acceptable “customs” in Country A was for consultants such as engineers to give substantial gifts to public officials in connection with the awarding of public works contracts. Engineer A recognized that the giving of such gifts would be a violation of U.S. law—although not technically a violation of the law in Country A. Engineer B proposed to Engineer A that if the project is awarded to Engineer A’s firm, Engineer B would handle “business arrangements” in Country A and that Engineer A would be involved in overall management of the project as well as all technical matters. In deciding that it would be unethical for Engineer A to proceed with the project under the circumstances, the Board noted that Engineer A was being asked to participate in a project under circumstances that may involve a violation of U.S. law as well as the NSPE Code of Ethics for Engineers. The Board noted that Engineer A should respectfully and diplomatically indicate that he would be interested in participating in the project in question and offering the professional service but not under the described arrangement since it would be illegal and unethical for Engineer A to participate in the project as proposed.

While the facts in the present case involve a U.S. engineer doing business with foreign engineers and a foreign engineering company in the U.S., the Board believes some of the principles from BER Case No. 96-5 apply here. Both cases involve a U.S. engineer involved with international parties becoming aware of some type of illegal and unethical conduct. However, in Case 96-5, the engineer had the option of declining participation and walking away from the project, while in the present case Engineer A has already provided professional engineering services and later becomes aware of the possible violation of the law.

It is the Board’s view that Engineer A had an ethical obligation to take action in connection with the Canadian firm’s apparent violation of the state engineering licensure requirements. At the same time, it may have been more respectful and diplomatic for Engineer A to advise the Canadian firm of the action Engineer A planned to take and to

provide an explanation for the action (e.g., Engineer A's obligation to report under the state engineering licensing law or the Code of Ethics), thus giving the Canadian firm an opportunity to become compliant on future projects rather than summarily reporting the potential violation by the Canadian firm to the state engineering licensing board.

**Conclusion:**

Engineer A had an ethical obligation to take action in connection with the Canadian firm's apparent violation of the state engineering licensure requirements. However, under the circumstances, Engineer A should have first advised the Canadian firm of the action Engineer A planned to take and provide an explanation for taking the action (e.g., Engineer A's obligation to report under the state engineering licensing law or the Code of Ethics) and also encourage the firm to self-report.

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