

# Turf War

## The architect vs. the engineer in Manitoba

There is a turf war in Manitoba and the issue is whether or not engineers are practising in the exclusive scope of architecture when engaging in the planning or supervision of building construction.

The battle began back in 1993 when the Manitoba Association of Architects (MAA) brought a charge against a professional engineer, Mr. Denoon, and a draftsman, Mr. Sitar, in relation to consulting and drafting work done on a Revenue Canada building and a Buddhist temple in the city of Winnipeg.

There was no issue with the quality or safety of the design or supervision of either of the buildings. The case arose on the sole point of whether or not Denoon and Sitar were practising architecture without being members of the MAA.

There are different approaches to the division of responsibility between architects and engineers across Canada. In Quebec, the two professions are segregated into two distinct, and mutually exclusive, spheres. The design and the supervision of the construction of buildings is the exclusive jurisdiction of architects. Engineers are prohibited from designing buildings, except in two categories: (1) buildings accessory to engineering works; and (2) work done in collaboration with an architect on foundations, framework and electrical and mechanical systems. In contrast, in British Columbia, either profession can perform work with respect to any subject matter or type of project, provided the activities are an appropriate application of the consultant's skills. In Ontario, the Architects Act specifies what services a professional engineer may perform and which are exempt from the application of the Act. In New Brunswick, the Architects Act specifies that nothing in the Act prevents an engineer from carrying on the practice of architecture in connection with the professional's work as an engineer.

By 1998 in Manitoba, the Manitoba Court of Queen's Bench had acquitted Sitar, but found that Denoon was practising architecture, as he had a pattern of planning, designing and constructing buildings. Denon was fined \$250. The Manitoba Court of Appeal declined to hear the appeal because by then it was the year 2000 and the legislation that had governed engineers in Manitoba had been replaced in

1998 by the Engineering and Geoscientific Professions Act. With the new legislation there was a new definition of the practice of professional engineering.

But the turf war was not over. Soon the province's Court of Queen's Bench was hearing *The Manitoba Association of Architects v. The City of Winnipeg and The Association of Professional Engineers and Geoscientists of Manitoba (APEGM)*. The architects had brought an application for an injunction to stop anyone not registered as an MAA member from practising architecture.

The MAA argued that by issuing building and occupancy permits on the basis of architectural drawings prepared, signed and sealed by professional engineers, and by accepting undertakings from professional engineers to plan and supervise the construction

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of buildings, the city of Winnipeg was not properly interpreting the Architects Act and was allowing engineers to practise outside the scope of their profession.

The Engineering and Geoscientific Professions Act included a new definition of what constitutes the practice of professional engineering: "The practice of professional engineering means any act of planning, designing, composing, measuring, evaluating, inspecting, advising, reporting, directing or supervising, or managing any of the foregoing that requires the application of engineering principles and that concerns the safeguarding of life, health, property, economic interest, the public interest or the environment."

The judge found that the effect of the Engineering and Geoscientific Professions Act is that a member of the Manitoba Association of Architects is not precluded from practising architecture where the activity in question also falls within the practice of engineering. But the judge also pointed out that there is no similar exemption in the Architects Act to allow professional engineers to practise in the area of architecture.

The city of Winnipeg argued that its building bylaw and the Manitoba Building Code were consistent in requiring either an architect or a professional engineer to prepare, sign and seal drawings. However, the court said the subordinate bylaws could not expand or limit the scope of the professional regulatory scheme. (A judge in the earlier case

continued on page 44

continued from page 42

had made the same point: "It would be the case of the regulation wagging the statute.")

It was also the position of APEGM that because Winnipeg's practice of allowing engineers to submit plans had been ongoing since 1977, the industry practice should be maintained. The judge rejected this argument by stating that industry practice cannot override legislative intention.

In September 2005, the court issued its decision. While the new Engineering and Geoscientific Professions Act had changed the definition of engineering considerably by including in it any act of "planning, designing, inspecting or supervising" the construction, alteration, improvement or enlargement of buildings, that was not enough to persuade the judge in the engineers' favour. When the amendments to the professional engineering legislation had been under consideration, the president of APEGM had assured the MAA that the scope of activity was not being expanded and that the new definition being proposed was "more restrictive of the practice of professional engineering with respect to the practice of architecture than the one in the current Act." Still not entirely comfortable with this answer, the MAA sought further confirmation from the government and consequently when the bill was introduced in the Legislature, the APEGM's position as to the new definition was read into the legislative record. Based on this provision the judge found that there was no legislative intent to expand the practice of professional engineering.

In the end, the judge found that the definition of professional engineering in Manitoba's Engineering and Geoscientific Professions Act does not expand the scope of practice of professional engineers into the realm occupied by the practice of architects. As a result, the city of Winnipeg would have to administer its building bylaw in a manner which does not condone the violation of the Architects Act by non-members of the MAA. The court concluded that drawings and related documents submitted with an application to build a building must be prepared, signed and sealed by an architect licensed by the MAA, while drawings and related documents of the structural, mechanical or electrical members of such buildings, must be prepared, signed and sealed by an engineer, skilled in the work concerned.

In Manitoba, the turf war has been won by the architects, not once, but twice. This recent decision may be appealed.

**CCE**

*Jane Sidnell*

*Postscript. The situation in Manitoba is ongoing and is stalling development activity. To alleviate the problem, on November 7, the Government of Manitoba proposed changes to the Manitoba Building Code and to the Architects Act and the Engineering and Geoscientists Act to clarify the roles of the professions. The proposals would permit engineers to plan certain buildings without an architect, including offices or retail buildings of less than 600 square metres.*

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