

McGee, P.Eng., is employed by EngrCIS, Inc., where his current supervisor, DiNozzo, P.Eng., has been making derogatory jokes and remarks about McGee's race and religion even in the presence of colleagues and clients despite McGee's informing DiNozzo that his comments are unwelcomed and unwanted. McGee has been offered a contract with the potential of full-time employment by Sciuto, P.Eng., with another engineering firm, NYCE. We will look at DiNozzo's actions, how McGee should respond, and whether or not McGee should take the contract with NYCE.

Based on the Code of Ethics, McGee and DiNozzo have a duty to their employer to act with fairness and loyalty (77.1) and should avoid or disclose any conflict of interest that might influence their actions or judgment (77.3). Towards other members of the profession, all individuals involved have a duty to act with fairness and loyalty (77.1), with courtesy and good faith (77.7), and should not maliciously injure the reputation of another practitioner. In this case, DiNozzo is breaching the code, through his derogatory jokes and remarks, by not treating McGee with fairness and courtesy. Also, by making these comments in the presence of other professional engineers and clients, he cannot have any consequence other than injuring the reputation of McGee. DiNozzo is also breaching the code with respect to fairness to his company in that he is creating a situation where an employee is considering finding other employment.

McGee had already approached DiNozzo concerning the latter's conduct and had made DiNozzo aware that such comments were unwelcome. The continuation of such conduct by DiNozzo toward McGee therefore constitutes harassment; that is, a course of vexatious comment or conduct that, in this case, is known as unwelcome and that might reasonably be regarded as interfering in a professional engineering relationship. By 72(2)(n), this falls under the definition of professional misconduct. By making McGee the target of derogatory jokes and remarks, DiNozzo is discriminating against him on account of both religion and race, both of which are prohibited by the Ontario Human Rights Code. By the Ontario Occupational Health and Safety Act, EngrCIS has an obligation to provide for a workplace that is free from harassment. As a professional engineer, McGee does, however, have a responsibility under loyalty and fairness to both his colleague and to his employer to attempt to rectify the situation internally. He could do so by following the policy for reporting harassment as required in the Occupational Health and Safety Act. If this does not result in a rectification of DiNozzo's behaviour, McGee could file a complaint with Professional Engineers Ontario, while at the same time having the option of filing a complaint with the Ontario Human Rights Commission.

With respect to the contract offered to McGee by Sciuto, McGee would be rendering services within the practice of professional engineering to an organization other than his employer. From the Code of Ethics, McGee has the duty to act towards his employer with fairness and loyalty (77.1), he should regard as con-

fidential information obtained during that employment (77.3), and he should avoid or disclose any possible conflict of interest (77.3). In taking the contract, McGee would have to ensure that this does not affect the services he is obligated to provide for his employer. Additionally, he should not disclose any of the business affairs, technical methods or processes of EngrCIS he has learned of while providing services to NYCE. Finally, by taking a client while being employed, this constitutes a conflict of interest that might influence his actions or judgment and he must therefore disclose this to his employer.

If McGee takes on this contract without informing his employer, he would be engaging in professional misconduct by 77(2)(i); that is, failure 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 the professional judgment of the practitioner in rendering service to an employer or to a client. Specifically breaching the fourth example given in 77(2)(i), McGee would be contracting in his own right to perform professional engineering services for an organization other than his employer.

Finally, if McGee accepts the contract, he by providing professional engineering services to an organization other than his employer; *i.e.*, he is providing such services to the public. Section 12(2) of the Professional Engineers Act states that no person shall engage in the business of providing to the public services that are within the practice of professional engineering except under and in accordance with a Certificate of Authorization. Assuming McGee has at least five years of experience since obtaining his licence; he could apply for and obtain a Certificate of Authorization. If he does not have the required experience, he should not accept the contract. In either case, if McGee accepted the contract without obtaining a Certificate of Authorization, he would breach the Professional Engineers Act. Under 72(2)(g) of the regulations, a breach of the Act is under the definition of professional misconduct. Additionally, if Sciuto and NYCE were to offer such a contract to McGee without McGee holding a Certificate of Authorization, they would be permitting McGee, who is not holder of a Certificate of Authorization, to engage in the practice of professional engineering in a manner that is not provided for in the Act. This action would also fall under the definition of professional misconduct under 72(2)(m).

In conclusion, as long as McGee is employed with EngrCIS, he should approach follow company instructions for reporting harassment in order to resolve DiNozzo's vexatious conduct. DiNozzo himself has a legal obligation to correct his behaviour while EngrCIS has a legal obligation to provide a harassment-free workplace. If the situation is not resolved in a timely manner, McGee could file a complaint with one or both of Professional Engineers Ontario and the Ontario Human Rights Commission. If McGee accepts the contract with NYCE, he must first obtain a Certificate of Authorization and he must inform EngrCIS of him taking on this client.