Am I My Brother's Keeper? Implications of the Lang Michener Affair

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The so-called Lang Michener affair, in which a lawyer was disbarred for illegal practices and five of his partners were reprimanded for not notifying the Law Society of his suspected misconduct sooner, has catapulted professional discipline hearings to the headlines. This article examines the implications of the case for the engineering profession.

Reprinted from
Engineering Dimensions
September/October 1990, pp. 42-45
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>
> *Michael Royce, McCarthy Tétrault*

Picture this happening in your engineering firm. You take on a new partner because of his lucrative practice in a certain field. Within months, suspicions are raised about his conduct. Complaints are made to the firm's managing partners, who don't feel the complaints are substantial enough to investigate. The complainants come back with more suspicions—including the idea that the management group wants to cover up the problem. Both sides are offended.

The whistleblower is told to cool his heels, nothing more. The management team begins to investigate the new partner, who doesn't cooperate and threatens to sue. He's an unlikeable guy, but he brings in a lot of business. The management team continues the investigation, but cautiously. The whistleblower is still kept in the dark and is now convinced the firm is doing nothing.

Hard evidence comes to light, and it's infinitely worse than anyone suspected. The new partner has to go. But that isn't all: he should be reported for disciplinary action, and clients should be advised. This has the makings of being very bad for business, so the decision, not to be taken lightly at the best of times, is mulled over.

One of the partners chairs the licensing body's discipline committee. The whistleblower becomes even more frustrated, believing that the firm wants to avoid embarrassing this partner more than it wants to right whatever wrongs have been done.

The firm fires the accused partner and reports to the licensing body, promising more information to come. Amazingly, the licensing body doesn't record receipt of this information and its investigator therefore believes the firm isn't acting in good faith. The accused partner loses his licence in short order, but the firm's handling of the situation becomes a bigger discipline case. The whistleblower resigns.

Eventually five of the partners are reprimanded for failure to report in a timely manner. The case is now attracting daily press headlines. Frustrated beyond belief, the whistleblower goes to the press, saying that nine of the partners should have been charged, but favouritism was shown. The investigator quits the licensing body in disgust.

Now the whole profession is polarized: the big established firms, seeing a "there but for the grace of God go I" situation, think the licensing body has gone too far. The smaller firms cry favouritism—would we have got off so lightly? The very self-government of the profession is in doubt, so the licensing body calls for an independent review, which slams the whistleblower and the investigator but exonerates the licensing body. Everybody dusts off their hands and thinks that's that.

But the case doesn't go away. It continues to attract headlines months after the independent review has taken place. Reams of newspaper pages, complete with photographs, are published on the subject. As this issue of **Engineering Dimensions** goes to press, another consumer magazine is planning a major feature on the case.

A Cautionary Tale

Everyone who reads newspapers has now heard of "the Lang Michener af-

Michael Royce, LLB: The Law Society went too far against Lang Michener partners.

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fair." It's a cautionary tale for professionals, showing how even a 100-year-old reputation can be shaken by poor communication and slowness to act on information.

Would your firm have a way of handling this debacle? Would it be "circle the wagons and break out the ammunition" or "Let's get this thing out in the open before it gets any worse"? Better still, does your firm have a crisis management plan in place before a crisis?

Michael Royce, legal counsel for the Association with the firm of McCarthy Tétrault, is one of the lawyers who believes the Law Society of Upper Canada went too far in its action against the partners for failure to report in a timely manner.

"The decision of the discipline committee suggests that professionals practising together have a higher responsibility than previously thought," he says. "As soon as you have any inkling at all (that a partner may be guilty of unprofessional conduct) it may be professional misconduct not to turn him in. If we were advising a client on such a matter, we'd tell them to nail down the evidence first. We're being told to do something you'd never tell a client to do."

If an engineer were to call the Association with such a complaint, he said, the engineer would be told to be very sure of the facts. A complaint must relate to the Professional Engineers Act and the Regulations, rather than simply to disgruntled differences of opinion. Business disputes are usually handled by other means.

In the Lang Michener case, whistleblower Tom Douglas became disgruntled—but had strong cause for a legitimate complaint about another lawyer's behaviour. The firm gave him the impression of being more concerned about his disgruntled attitude than about the wrongdoing of Martin Pilzmaker, who now faces approximately 50 criminal charges. In fact, the firm was gathering evidence about Pilzmaker—but wasn't telling Douglas that's what it was doing.

Gathering evidence is not necessarily an engineer's specialty. Royce suggests: "That's why most firms have lawyers—get them involved if you think you'll have to lay a complaint."

Duty to Report

As the APEO's *Guideline on the Professional Engineer's Duty to Report* is being prepared for publication, it's as well to look at the implications of the Lang Michener case for engineering. The duty to report, Royce told **Engineering Dimensions**, is not one to be taken lightly in any profession. "It's a big thing to be reported to the Law Society, and people who have to do it have a strong sense they're throwing old Ralph to the wolves. It's unfair to the lawyer and to the Law Society to do this too soon."

Asked if that doesn't smack of protecting the guilty, he responded: "There's always an obnoxious lawyer in every firm—the partners don't like them, they antagonize the staff. If they bill a lot of money, you tolerate that. If they're a marginal performer you take action a lot earlier."

He believes the case against the Lang Michener partners boiled down to poor communication all around. "It's well known that lawyers deal much more effectively with their clients' problems than they do with their own."

And how about engineers? As one who handles discipline cases for the Association, Royce comments: "I'd like to think we aren't going to find engineers doing what Pilzmaker (the disbarred lawyer) was doing." Professions tend to have their own occupational hazards: doctors' discipline cases tend to involve drug abuse and sexual impropriety with patients; Royce says lawyers' cases primarily involve dishonesty. "The engineering profession doesn't face the same problems; their discipline cases usually involve a standard of care—doing a job badly. The profession isn't so politically charged, either: its discipline hearings are of little interest to the press."

The Professional Engineers Act specifically states that discipline hearings are not open to the public unless the engineer whose conduct is being investigated requests it. That engineer is always notified at the outset of a complaint and is given the opportunity to respond, as is the person bringing the complaint.

Informing The Whistleblower

In a situation where a whistleblower wonders what's going on in an investigation, Royce says the first approach should be to the person in the firm who is handling the situation with the APEO. "If that person says, 'yes, we've reported the situation and the APEO will be in touch with you,' the whistleblower should sit tight and wait." If the whistleblower is told that the firm doesn't think there's any need for the APEO to talk to him or her, "then he's entitled to go to the APEO directly—bearing in mind he knows only part of the facts."

Eric Smythe, P.Eng., APEO's manager of complaints and discipline, says the privacy of the lawyer-client relationship is in sharp contrast to an engineering firm, where the partners take an active interest in what other partners are telling clients. Eric Newton, APEO manager of legal and professional affairs, says the classic engineering whistleblower is a junior, who should go one step up in the chain of command to complain. If the engineer's superior says forget it, the engineer should go one step further up. If a complaint is made to the APEO, the engineer will be asked how far the

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complaint has been pursued within the company.

Managing The Crisis

The old saying about justice being seen to be done has particular force in the Lang Michener case. The usual organizational reaction to an internal problem is to fix it with the minimum amount of fuss or publicity. This is justice being done, perhaps—but not being seen to be done. If a problem is receiving media attention, the solutions need to receive media attention too. This is where a crisis management plan, agreed to as part of regular strategic planning and not just when a crisis strikes, is so important.

Like many professionals, once the situation hit the press the Lang Michener lawyers took the sit-tight-and-tough-it-out approach, reasoning that they'd have their day in court and that's where you win or lose. This is why Tom Douglas' action in going to the press is so abhorred, not just that he talked to reporters without knowing all the facts. Even when they were being gored by one of their own, the Lang Michener partners still said nothing publicly. Is this always the right thing to do?

Several prominent specialists in crisis management think it's exactly the wrong thing. Tom Reid, of Reid Management Ltd., who specializes in PR for professionals, told **Engineering Dimensions**: "I don't think there's ever been a time when I've said say nothing." Reid thinks professionals should get PR counsel at the first call from the media. "Every organization needs an update every couple of years on what the media are, how they work, how decisions are made on stories. The reporters are where the story is—develop your relationships there. Go back and go back and go back, so that the reporter understands your company."

Not talking to the media can have a detrimental effect, he says, citing the case of a client who, believing there was no harm stemming from lead in kettles, told a reporter he didn't want to talk about it, adding: "Don't come back until you can drag a body through the door."

He doesn't think crisis situations can be dismissed as a "communications breakdown": "There's likely to be some people who have not performed their duties as expected." The media, of course, know this—and are expected to find it.

Reid doesn't have much patience with the "what can you expect from the press" attitude of lawyers. "The law profession despises the media and thinks they have no right to know. I've found the media to be responsive, even at deadline. The media live by a guideline—that the story will be presented in a balanced way. They look for reliable sources." In the Lang Michener case, they found two reliable sources—the whistleblower and the Law Society's investigator. No one else would talk to the press, so these two people's views went uncontested.

It's too bad if you don't like what the press is saying about you, says Reid: "If the facts are correct, there's not much you can do except put your own spin on it—that's why we're called the spin doctors."

Getting Help

Eric Cunningham, president of OEB International, a PR consulting firm which advises the APEO on government relations, says that all companies or professional partnerships of any size should have three or four top people who are media trained. He calls it reputation management: "The value of a service company is its people and the perception of their capabilities. Those perceptions are earned. Law firms are now retaining PR firms."

Cunningham thinks good media relations are as important as good client relations. "You need to foster appropriate relations with the media long in advance of a problem. Build credibility, then you get the benefit of the doubt." Like Reid, he has little time for the "they always print lies anyhow" attitude, nor for the "how come they always quote the competition and not us" complaint. "The competition earned it—they made themselves available and they're attentive to journalists' requirements."

Good media relations should form part of a company's strategic plan, says Cunningham. "A fish rots from the head down—bad corporate attitudes develop in the boardroom. Whether you can see it or not at the time, that has an effect on the bottom line. You need to develop corporate objectives and ensure that the image you want to convey is perceived by the receptor—and you need to decide who those receptors are."

Some of those receptors may be internal. Knowing only part of the facts seems to have been the key in the Lang Michener case. The whistleblower, former partner Tom Douglas, knew he wasn't being told everything. The managing partners didn't want to act until they had all the facts. On the face of it, there doesn't appear to have been any ill will here, except, of course for the wrongdoer—who appears to be taking less of a beating than the law firm he disgraced.

Several sources used for this article were quick to criticize the whistleblower for being obsessed with the firm's lack of action instead of getting on with his law practice. Not one criticized the firm's attitude towards the whistleblower, who was excluded from the investigation, even to the point of having interviews with the Law Society cancelled by the firm's legal counsel.

Four years later, with the entire profession shaken, the ultimate lesson of the Lang Michener affair may be: keep the lines of communication open, even if you have to go public.