

# Are disciplinary sanctions tough enough?

**In the flurry of complaints filed by the Office of the Syndic, some members question the sanctions imposed by the Disciplinary Council to engineers that are found guilty. It can sometimes be difficult to distinguish between a fair and appropriate sanction and an exemplary punishment. Some believe that the penalties are too lenient considering the testimony heard before the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry (Charbonneau Commission).**

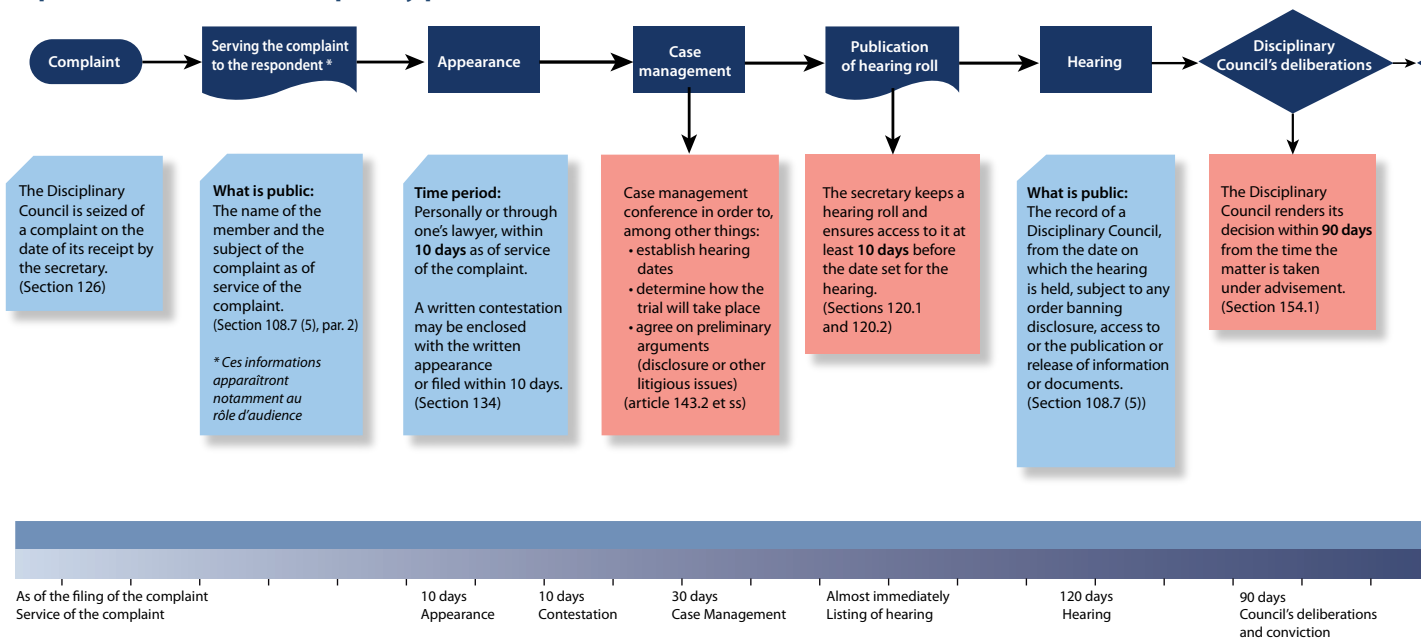
The Ordre's position is that professionals who violate their code of ethics and the Professional Code should receive dissuasive and exemplary sanctions. It bears reminding that the Disciplinary Council, which is independent from the Ordre, is responsible for establishing sanctions. These sanctions are based on disciplinary law, which is different from civil or criminal law in many ways. Without getting into too much detail, in disciplinary law, sanctions must be a deter-

rent and exemplary so that similar actions are not repeated in the future. They must discourage professionals and their peers from committing an offence or from reoffending, as the case may be. Furthermore, the Disciplinary Council does not have the authority to order an engineer who has been found guilty to compensate the plaintiff, the complainant or any other person. It cannot replace the courts responsible for enforcing civil and criminal rights.

Imposed sanctions must be in line with the severity of the actions and the circumstances that are specific to each case, namely the negative repercussions that these actions have had on the public's confidence in the engineering profession. Even if a professional is already subject to civil or penal court proceedings, the Ordre's Syndic must conduct its own disciplinary inquiry and determine if a complaint will be brought before the Disciplinary Council.

The Disciplinary Council hands down decisions based on facts, allegations and applicable jurisprudence. Jurisprudence refers to the course of decisions or case law relating to a

## A professional order's disciplinary process under the Professional Code



given legal point. Like in all areas of the law, previous decisions rendered by administrative or judicial courts have a certain weight and are taken into consideration when evaluating the evidence in a given case. By asking for more severe sanctions, the Office of the Syndic is contributing to the evolution of jurisprudence in professional law.

## WHAT KIND OF SANCTIONS CAN THE DISCIPLINARY COUNCIL IMPOSE?

Disciplinary sanctions are governed by the Professional Code. Sanctions imposed vary according to the severity of the offence as well as aggravating and mitigating factors that are specific to each case. These can be:

- a reprimand, which is published on the Ordre's website and remains in the engineer's file throughout his or her career;
- a fine (minimum: \$1,000; maximum: \$12,500 for each offence) ;
- a temporary or permanent striking off the roll;
- a restriction or suspension of one's right to practise;
- a revocation of permit;
- an order to pay costs.

Based on the foregoing, members can be permanently stricken off the roll. The Disciplinary Council can impose one or more of these sanctions for each charge. If a complaint is composed of several counts, the

Disciplinary Council must consider the result as a whole. Ultimately, the result should not be crushing, even if the sanctions imposed on each count can appear to be fair, appropriate and proportionate in the circumstances.

All decisions rendered by the Disciplinary Council – save for exceptional cases – are public and may be consulted. Please see <http://bit.ly/1MPip7l>.

Aside from the sanctions imposed by the Disciplinary Council, it is important to bear in mind how far reaching a sanction can be and remember the impact it can have on one's financial, professional and personal life. These multiple consequences are often as damning as the sanction itself (see the following chart).

### Beware of possible consequences

| Professional (Ordre)  | Professional (employment)   | Professional (private practice)   | Personal  | Financial   |
|---|---|---|---|---|
| Permanent disciplinary record (for life) : no possibility of pardon                 | Dismissal or termination of employment  | Loss of contracts and non-renewal of other contracts                    | Brutal awareness of the seriousness of one's actions and their impact on one's personal and professional life           | Loss of revenues  |
| Loss of right to sponsor a junior   | Lay off   | Difficulty recruiting new clients                                       | Scorn and disgrace from society, family and people in one's workplace   | Legal fees (expertise and defence)  |
| In case of removal from the order, no possibility of being part of a statutory body | Exclusion from important and strategic files and from groups with great decision-making authority | Possible increase in insurance premiums and loss or refusal of coverage | Tarnished reputation once the decision is published (newspapers and media)  | Payment of fees relating to sanctions imposed by the Disciplinary Council (fine, costs) and publication fees  |
| Loss of title   | Transfer  | Non-payment of fees owing   | Civil or criminal suit  | Personal bankruptcy   |
| Abandon of title  | Demotion  | Commercial bankruptcy   | Negative health repercussions, severe stress  | Enforcement or possibility of compulsory execution of the judgment after sanction:<br>- garnishment of wages<br>- seizure by garnishment<br>- seizure of assets |
|   | Difficulty finding new employment   |   | Name associated with a decision that sets a precedent or that is studied and referred to for many years (jurisprudence) |   |
|   | Loss of professional credibility  |   | Possibility that the case is reported by the media  |   |
|   | Exclusion from management positions   |   |   |   |
|   | Difficulty finding new employment   |   |   |   |
|   | Job insecurity  |   |   |   |
|   | Forced or early retirement  |   |   |   |
|   | Career shift or transition  |   |   |   |

