

COMMISSION CHARBONNEAU

Recalling certain ethical rules

It is impossible to ignore the testimonies given at the hearings of the Commission of inquiry into the award and management of public contracts in the construction industry (unofficial translation of *Commission d'enquête sur l'octroi et la gestion des contrats publics dans l'industrie de la construction*), better known as the Charbonneau Commission. It is clear that engineers are the Québec professionals who have suffered the most from these allegations and whose reprehensible behaviour tarnishes the profession as a whole. In light of these revelations, it is important to reiterate some basic principles in disciplinary law that govern the practice of engineering.

THE CODE OF ETHICS OF ENGINEERS

It has been stated a number of times: one is not entitled to being a member of a professional order; one has the privilege of holding such title. And with this privilege come specific obligations to which a non-member is not subject.

In fact, the Code of ethics of engineers follows engineers everywhere, in space as well as in time. An irresponsible act carried out by an engineer (for example, committing or tolerating fraud, accepting or giving a bribe, stealing computer data) will have criminal and disciplinary repercussions. It bears reminding that this act must be related to the practice of the profession, but it can also deal with private matters.

SECTION 149.1 OF THE PROFESSIONAL CODE

When engineers carry out engineering acts that entail criminal consequences, they could face a complaint before the Ordre's Disciplinary Council under section 149.1 of the Professional Code:

"A syndic may, by way of a complaint, seize the disciplinary council of any decision of a Canadian court declaring the professional guilty of a criminal offence which, in the opinion of that syndic, is related to the practice of the profession. A certified copy of the judicial decision is proof before the disciplinary council that the offence was committed and that any facts reported in the decision are true. The disciplinary council then imposes on the professional, where expedient, one of the sanctions prescribed by section 156."

As is clearly stated in this section, a decision declaring a professional guilty of a criminal offence related to the practice of the profession (for example, fraud, bribery or theft) is proof before the disciplinary council that the offence was indeed committed. One of the only arguments that a professional could present in such case would be that the act was not related to the practice of the profession. Thus, a conviction for a criminal offence can have double consequences for an engineer.

THE OBLIGATION TO DISCLOSE

Few may be aware of this but if professionals are found guilty of a criminal offence, the Professional Code requires them to disclose such conviction to their professional order. Omitting to disclose a conviction can lead to an additional charge. For example, let us refer you to the last two cases

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presented to the Ordre's Disciplinary Council¹ relating to section 149.1 of the Professional Code.

THE PRESCRIPTION

It is also important to know that the concept of prescription, namely under civil law, does not apply in disciplinary law. Consequently, acts carried out some time ago can still be sanctioned under disciplinary proceedings. The mere passage of time could protect someone against civil action, but such is not the case under disciplinary law. To illustrate, the decisions to which we referred the reader in the preceding paragraph were handed down in January 2013 yet relate to acts committed in 2003 and 2005.

THINK OF IT!

As we have just seen, the status of professional comes with obligations. If you find yourself in a situation that you feel is unclear or leaves you doubtful, much like the situations relating to the testimonies heard during the Charbonneau Commission, do not yield to the pressures of contractors, promoters or even your superiors, because the consequences you could face can be twice as serious... and this is so regardless of time elapsed.

¹ Ingénieurs (Ordre professionnel des) v. Pilote, CDOIQ 22-12-0436 ; Ingénieurs (Ordre professionnel des) v. Fortin, CDOIQ 22-12-0418.w