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## INTERFERING WITH THE SYNDIC'S OR THE PIC'S WORK

# A serious and far-reaching offence

The Ordre's Office of the Syndic or Professional Inspection Committee has just requested information from you. What do you do: you decide not to respond or you collaborate immediately? You should think twice before refusing to cooperate because your refusal can be seen as hindering their work and could lead to you being provisionally stricken off the roll ...

### POWERS THAT DIRECTLY IMPACT YOU

The purpose of professional orders such as the Ordre des ingénieurs du Québec is, first and foremost, ensuring the public's protection. This is stipulated in the Professional Code (hereafter "the Code")<sup>1</sup>. Each professional order must supervise the practice of the profession by its members. Such control is generally carried out by the Office of the Syndic, which is composed of a syndic and assistant syndics chosen among the Ordre's members by the board of directors<sup>2</sup>. Other bodies, namely the Professional Inspection Committee (PIC), also have certain powers with respect to supervising the practice of engineering. .

The syndic has a duty to ensure the public's protection. In order to allow the syndic to adequately carry out this duty, the Code grants him or her certain powers, including the power to conduct an inquiry and require that members provide any information and documents relating to the inquiry<sup>3</sup>. These powers are important and it should be noted that they don't only target members of a professional order.

In fact, the Supreme Court, in its judgement in the Pharmascience case<sup>4</sup>, a precedent setting case for the past several years, confirmed the scope of the syndic's powers, especially in cases of interference.

### INTERFERENCE AND PROVISIONAL STRIKING OFF THE ROLL

Interference can come in many forms, but normally consists in refusing to respond to the syndic's requests for information or documents in order to fulfill the challenging task entrusted to him or her by the legislator.

Hindering constitutes an offence pursuant to the Professional Code<sup>5</sup>. Faced with a case of interference, the Code provides the syndic with an extraordinary "remedy": provisional striking off the roll<sup>6</sup>. This tool allows the syndic to ask the Disciplinary Council, upon summary evidence, to temporarily suspend a professional's right to practise in certain specific cases, mainly when the public's protection is compromised. Such action ensures the public's

protection before exhaustive evidence is presented to the Disciplinary Council. This is not a definitive decision; removal from the roll remains in force until such time as the Disciplinary Council, after having heard all the evidence, renders a decision on the merits of the complaint for interference, which can give rise to serious sanctions.

### INTERFERENCE, A NOTION THAT HAS GREATLY EVOLVED

Over time, the notion of interference has gone through a number of legislative changes, given that the legislator wanted to give the syndic more and more means to intervene in such cases.

Before the 1994 legislative change, section 130 of the Code allowed for temporary removal of a member for "continuous and repeated" acts which could "seriously" compromise the public's protection. Furthermore, before 2008, provisional striking off the roll was possible if the person in question was "charged with having committed an offence of such a nature that the protection of the public could be compromised if the professional were to continue to practise his profession".

Gradually, the legislator, ever concerned with protecting the public, amended section 130 to add a paragraph dealing specifically with interference<sup>7</sup>. This new section stipulates that the complainant may demand a provisional striking off the roll if someone is charged with violating their obligation to cooperate with the syndic. Thus, before 1994, temporary removal could only be requested in serious cases involving a certain repetition. Today, not only has the legislative evolution codified the concept of interference, but it no longer refers to notions of "seriousness" or "repetition".

The legislator's "silence" on this matter tells us that it is reasonable to believe that the mere fact of hindering the investigative work of the syndic or the professional inspection committee is enough to incur a provisional striking off the roll. In a recent decision, the Ordre's Disciplinary Council seems to favour that position<sup>8</sup>. An engineer who had refused to fully submit to a professional inspection procedure was provisionally stricken off the roll. This was not a case involving repeated or serious actions; it was simply an unjustified refusal to submit to a process intended to supervising the practice of engineering.

Why such severity? Given its nature, interference prevents one from verifying if a member's behaviour and practice are a threat to the public. Consequently, even if a

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professional’s practice is beyond reproach, the mere fact of preventing the syndic from carrying out his or her audits justifies a provisional striking off the roll. As far as the Disciplinary Council is concerned, the fact that the engineer did not cooperate with the syndic of her professional order or with the person in charge of professional inspection constitutes a serious and severe offence. According to the Council, there are situations where members cease to meet the criteria required to practise their profession. We feel that cases of interference fall specifically within that category.

## **THE PRIVILEGE AND ITS OBLIGATIONS**

On many occasions, the courts have acknowledged that being a member of a professional order is not a right; it is a privilege. Significant professional obligations come with this privilege, namely the duty to cooperate with the Ordre’s entities responsible for ensuring the public’s protection.

This obligation to cooperate is not limited to a simple “effort”. In other words, professionals from whom the syndic has required information do not merely have an obligation of means; they have an obligation of result. Considering professional orders’ primary role, legislative amendments and recent jurisprudence, behaviours that interfere with the work of the Ordre’s various entities should disappear... let’s hope.

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1. Professional Code, section 23.
  2. Professional Code, section 121.
  3. Professional Code, section 122.
  4. Pharmascience inc. v. Binet, [2006] 2 S.C.R. 513.
  5. Professional Code, section 114.
  6. Professional Code, section 130.
  7. Professional Code, section 130, paragraph 4.
  8. Drolet v. Truong, CDOIQ 22-11-0391.