

By Charles Dupuis, attorney

The “good faith” defence

Before the disciplinary council, can one plead a “good faith” defence against an accusation based on a statutory provision governing the engineer’s ethical conduct?

In the April issue, our feature article dealt with a recent decision rendered by the Disciplinary Council of the Ordre des ingénieurs du Québec (hereafter the “Ordre”)¹ in which the respondent, a junior engineer, was found guilty of the fourteen charges against him.

More particularly, the junior engineer was accused of having violated section 8 of the Regulation respecting other terms and conditions for the issuance of permits by the Ordre des ingénieurs du Québec and having committed an act that is derogatory to the dignity of the profession by participating or contributing to the illegal practice of the profession, thereby violating section 4.01.01 a) of the Code of ethics of engineers.

Certain questions were brought to our attention which prompted us to refer to this case once more and insist on a very important aspect.

During the hearing before the Disciplinary Council, the respondent vigorously denied having the intention to violate the public order provisions on which the complaint lodged against him was based. In short, he pleaded having acted in good faith at all times and as such, he could not be held ethically liable.

This defence raised an issue with certain members of the Disciplinary Council to such an extent that the hearing was suspended so as to allow the assistant syndic’s attorney to examine the validity of such a defence in view of preparing and presenting information to the members of the Disciplinary Council in order to help them render an informed decision.

During this suspension, we were able to conduct an in-depth research relating to the state of the law on the matter and present a complete review in this regard.

Consequently, the assistant syndic was able to remind members of the Council that the “good faith” defence is inadmissible in disciplinary law.

The Professions Tribunal adopted this position in its judgment on appeal from a decision rendered by the Disciplinary Council of the Chambre des notaires du Québec².

This tribunal also came to the same conclusion in the case involving an engineer³, concerning a complaint based on section 4.01.01 e) of the Code of ethics of engineers.

In this decision, the appeal tribunal mentions that:
 “[87] The court cannot retain the appellant’s (Nowodowski) argument to the effect that he was acting in good faith and that his interpretation of the regulation was reasonable as this would amount to pleading error in law, an inadmissible defence.

[88] In fact, the appellant knew, prior to initiating proceedings, that he had not presented a request for conciliation to the

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president (of his order). His erroneous interpretation of the section at hand cannot constitute a means of defence.

[89] As the Supreme Court of Canada pointed out (...) mistake of law with respect to the scope of a statutory provision is not an admissible defence (...). (Unofficial translation).

Based on the notes and authorities produced⁴ during the hearing, the Disciplinary Council reiterated the principle according to which the “good faith” defence is inadmissible, much like ignorance of the facts or the law, against a disciplinary complaint.

Furthermore, the Council reminded the junior engineer that when in doubt, he had a duty to act as would a prudent and diligent person and, if needed, obtain the required information, namely by contacting his professional order.

It bears reminding our readers that the fact of adhering to a professional order comes with the obligation to respect high standards of conducts, particularly rules of ethical and professional conduct. Supreme Court Justice Cory insisted on that point in R. –v- Wholesale Travel Group inc.⁵

This decision reminds us that when one chooses, of his or her own free will, to become a member of a professional order (in our case, the Ordre des ingénieurs du Québec), this person is deemed to be aware of all the rules that govern the practice of his or her profession and agrees to comply at all times with such rules, which specifically include those relating to ethical obligations.

1. Rémi Alarent Eng. in his quality of assistant syndic for the Ordre des ingénieurs du Québec –v- François Brousseau, Junior Engineer; C.D.O.I.Q. file # 22-07-0346.

2. Notaires –v- Morin (2007) QCTP 85.

3. Henrik Nowodowski Eng. –v- Jacques Guilbault, in his quality of assistant syndic for the Ordre des ingénieurs du Québec; T.P. # 500-07-000305-007; January 17, 2001, on appeal from C.D.O.I.Q. file #22–97-005.

4. See also Disciplinary Council in connection with the file relating to Rémi Alarent, Eng., in his quality of assistant syndic for the O.I.Q. v. Jean-Marc Dugré, Eng., (C.D.O.I.Q. no 22-02-0262).

5. R. –v- Wholesale Travel Group inc.5 (reported at [1991] 3 S.C.R. 154), page 116 of the judgment.