

By Charles Dupuis, attorney

VIOLATING THE CODE OF ETHICS OF ENGINEERS

Do you have an obligation to inform?

Like all engineers, you know that at the Ordre des ingénieurs du Québec (hereafter “the Ordre”), our mission is, among other things, to protect the public, to ensure that engineers provide quality services to society, either individually or collectively, and to promote its members’ professional and personal growth.

This mission accurately reflects the will to see our profession evolve harmoniously with society and our progressing communities. In that respect, it bears reminding that in its Guidelines to Professional Practice, the Ordre spells out four fundamental values of the engineer’s professional practice aimed at ensuring the public’s protection, namely: competence, a sense of ethics, responsibility and social commitment.

AN OBLIGATION, WITHOUT EXCEPTION

These values have provided a framework for the drafting of various legislative and regulatory provisions which govern the engineering profession, such as the *Code of ethics of engineers*. Maintaining high standards of professional performance constitutes the essence of these provisions. In order to ensure compliance with their application, the legislator established two mechanisms: one preventive (professional inspection) and one disciplinary (the Office of the Syndic).

The Supreme Court of Canada reminded us on many occasions, specifically in its decision in the Finney case, that¹:

*“Under the Professional Code, an independent functionary, the Syndic, is responsible for investigating disciplinary complaints and deciding whether a complaint should be lodged with the Committee on Discipline.”**

Consequently, when an engineer’s integrity and conduct are questioned and upon receiving information relating to this engineer’s reprehensible behaviour, the Syndic has the authority to conduct an inquiry and, if required, to lodge a complaint before the Disciplinary Council. Such information could come from a member of the public, for example. However, and this is the purpose of this article, it could also come from an engineer, who might have suffered damages or been prejudiced as a result of the actions of a colleague who has violated the Code of ethics, or by an engineer who simply knows of a colleague’s violation or infringement.

In fact, if an engineer believes that a colleague has infringed one or several provisions of the Code of ethics, such engineer is required to notify the Ordre’s Syndic without delay. Failing to do so constitutes an “act that is derogatory to the dignity of the profession” pursuant to section 4.01.01 g) of the Code.

INFORMING OR REPORTING?

The Ordre needs the cooperation of each and every one of its members to adequately fulfill its mission. Certain members may

not like the idea of acting as “an informant” when it comes to a colleague. In response to such an objection, M^e François Vandebroek, Eng. explains:

“(…) in every case, the violation or breach must be reported in good faith. For the engineer, it is not a question of recklessly reporting every action but rather a duty to carry out, in a spirit of maintaining high standards of performance, the responsibility that one shares with his or her colleagues for the greater good².” (unofficial translation)

This “greater good” resides in the fact that the engineering community as a whole will benefit if each and every engineer strictly adheres to the values deemed essential by all members of the Ordre, namely competence, integrity, availability, quality service and discretion, which have been incorporated into the Code of ethics.

WHAT ABOUT THE FEAR OF REPRISALS?

Could the obligation to provide information relating to a Code of ethics violation be tempered by the fear of reprisals from the engineer having allegedly committed the violation?

First of all, section 4.01.01 c) of the Code of ethics provides that an engineer commits an act that is derogatory to the dignity of the profession when he or she is communicating with the person who lodged a complaint against him or her:

- without the prior written permission of the Syndic;
- whenever he or she is informed of an inquiry into his or her professional conduct or competence;
- or whenever he or she has received notice that a complaint has been lodged against him or her.

Moreover, in *Latulippe v. Tribunal des Professions* (R.E.J.B. 1998-06604)³, the Professions Tribunal refused to allow a physician to gain access to the content of complaint letters concerning him which had been sent to the Syndic of his order by two colleagues who wished to remain anonymous. The Court of Appeal unanimously confirmed this decision. What follows is an excerpt taken from the summary of the aforementioned decision:

“The reason for the protection granted to these medical informers is the public interest in encouraging medical practitioners to inform the Collège (des médecins) when they become aware of unprofessional acts committed by their colleagues. Indeed, under sec. 2.04.13 of the Code de déontologie des médecins, a doctor has a duty to report to the Collège any incompetence, dishonesty or professional misconduct he has reason to believe has been committed by a colleague. Under sec. 87 of the Professional Code, the Bureau of the Collège des médecins

* Now called the Discipline Council.

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has a duty of preserving the secrecy of confidential information known to members of the Order in the practice of their profession. [...]”

The obligation referred to by the Court of Appeal with respect to physicians applies to engineers as well. Consequently, an engineer who provides information relating to a colleague who has violated the Code of ethics may remain anonymous, if he or she so wishes and if he or she is not required to testify before the Disciplinary Council.

Finally, it bears reminding that several years ago, the Ordre established the Ethics Defense Fund. This fund is earmarked to provide financial assistance to engineers who suffer prejudice, reprisals or damages, or who incur costs, lose their employment or are suspended following their refusal to contravene any one of their duties under the Code of ethics. A list of these duties is attached to the fund’s operating rules. Any member of the Ordre who requires such assistance can submit a substantiated written application to that effect to the Ordre’s Secretary, who will then determine such request’s eligibility based on applicable criteria.

1. *Barreau du Québec v. Christina McCulloch-Finney et al.* [2004] 2 S.C.R. 17

2. M^e François Vandebroek, *L’ingénieur et son Code de déontologie*, Trois-Rivières, Les éditions Jurimédia, 1993, page 180.

3. *Latulippe c. Tribunal des professions 3* (R.E.J.B. 1998-06604).