



The Ethics Guidelines are produced by the Office of the Syndic in collaboration with the Professional Inspection Committee. These guidelines do not constitute legal opinions; each case is particular and must be analyzed in the light of the circumstances peculiar to it.

# DISCIPLINARY DECISIONS FOR 2003-2004 AND THE NATURE OF CONCILIATION AGREEMENTS

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## 1. JUDICIAL BODIES CONCERNED

The jurisprudence in disciplinary matters consists mainly of decisions rendered by the Disciplinary Committee. This committee consists of a member of the Quebec Bar, who is appointed by the Office des professions, and two psychologists chosen from the Order's roll of members. Each time a complaint is lodged, the Disciplinary Committee secretary establishes a committee, taking care to select, to the extent possible, members who have knowledge in the field in question. The decision of the Disciplinary Committee can be appealed by either party to the Professions Tribunal, which is made up of judges of the Court of Quebec.

## 2. CONTENTS OF DECISIONS

### DISCIPLINARY COMMITTEE

For ease of understanding, we present the decisions by subject.

#### Non-conforming Assessment

*Decision no. 33-03-00287*

In her testimony to the court, the psychologist had made recommendations concerning a parent's access rights without having met or assessed the parent. She pleaded guilty to a complaint filed against her for neglecting to act with caution, objectivity and moderation and to adhere to the scientific principles generally used for psycho-legal assessments. She was penalized by the imposition of a \$600 fine and a recommendation to the Bureau of the Order that her right to perform psycho-legal assessments be restricted for an indeterminate period. In addition, she undertook to fill the gaps in her knowledge in this field if she wished to perform the assessments in future.

## **Conflict of Roles and Conflict of Interest**

### *Decision no. 33-03-00294*

A psychologist placed himself in a conflict of roles and conflict of interest situation by taking a pleasure trip with an ex-client and a client still in therapy with him. The psychologist pleaded guilty to the identified offences and the Disciplinary Committee imposed a fine of \$2,000 (\$1,000 for each offence), plus payment of costs.

### *Decision no. 33-02-00282*

A psychologist put herself in a conflict of roles and conflict of interest situation with regard to a client receiving therapy from her, by hiring the client as a house-keeper and providing her with transportation and gifts. The psychologist was also charged with interfering in her client's personal affairs by completing forms to help her obtain allowances, searching for housing for her and telephoning her several times a day. Further, she was charged with neglecting to refer her client to another psychologist or another member of a professional order when the client's interest required this.

The psychologist pleaded guilty to the three charges and the Disciplinary Committee imposed fines totalling \$2,200. In addition, the Disciplinary Committee recommended to the Bureau that the psychologist undergo six months of supervision and take the ethics course provided by the Order.

### *Decision no. 33-03-00283*

A psychologist was asked by a major company to deliver information sessions to its management on a specific psychopathology, when this involved the conflict-ridden working environment of her ex-client, who herself had this pathology. The complaint charged the psychologist with putting herself in a conflict of roles and conflict of interest situation. It also accused her of having given an overly gloomy portrayal of this psychopathology and persons who have it during the sessions.

The psychologist pleaded guilty to the two charges. The Committee accepted as mitigating factors the psychologist's good faith and her outstanding specialization in the field. It imposed a fine of \$600 for the first offence and a reprimand for the second, plus payment of costs.

## **Sexual Misconduct**

### *Decision no. 33-03-00295*

A psychologist pleaded guilty to a complaint that, shortly after a therapeutic relationship with a client, he had sexual relations with the client, made remarks of a sexual nature, and developed a friendly, and then amorous, relationship with her. He was also found guilty of placing himself in a conflict of roles and conflict of interest situation and interfering in the client's personal affairs. The Committee ruled that he should be struck from the roll for two months, and imposed fines totalling \$2,600, plus costs. Publication of a notice of striking-off was also ordered, at the psychologist's expense.

### *Decision no. 33-03-00285*

The Disciplinary Committee accepted the guilty plea of a psychologist who had put herself in a conflict of roles and conflict interest situation and neglected to show conduct above reproach by developing a friendly, and then amorous, relationship with an ex-client, and having sexual relations with him. She also pleaded guilty to interfering in the ex-client's personal affairs by trying to contact him. The therapeutic relationship started when the psychologist was a trainee and continued after she became a member of the Ordre des psychologues. Considering the facts in the case, the Disciplinary Committee imposed a striking from the roll for two weeks and a \$1,000 fine, plus payment of costs. Publication of a notice of striking-off was also ordered, at the psychologist's expense, and a recommendation was made to the Bureau that the psychologist's work be supervised for a period six months or 20 to 25 meetings with regard to transference and counter-transference.

### *Decision no. 33-02-00278*

A psychologist admitted his guilt on four charges, the most serious of which was having engaged, during and/or after therapy with a client, in a friendly, amorous and then sexual relationship with her, thus putting himself in a position of conflict of roles and conflict of interest and derogatory conduct. He was also charged with interfering in this client's personal affairs by calling her to have conversations that were unrelated to the therapy. In addition, he neglected to enter in his client's record

certain elements required by the regulations. Lastly, he committed an act derogatory to the dignity of the profession by falsely indicating in a fee statement that professional services had been rendered to this client on a certain date. In its decision, the Disciplinary Committee reiterated its zero tolerance for sexual offences by imposing a striking from the roll for one month and a \$2,200 fine, plus costs. Publication of a notice of striking-off was also ordered, at the psychologist's expense, and a recommendation was made to the Bureau that the psychologist's work be supervised for a period six months or 15 to 20 meetings with regard to transference and counter-transference.

The psychologist was also given a reprimand for his deficient record-keeping.

### **Miscellaneous**

#### *Decision no. 33-03-00292*

##### *(Approach not conforming to scientific principles and other offences)*

The Disciplinary Committee accepted the guilty plea of a psychologist who had placed himself in a conflict of roles and conflict of interest situation by engaging with a client in a relationship liable to adversely affect the quality of his services (confiding to her elements of his personal life, giving her a birthday present and visiting her at her home without any therapeutic justification). The complaint also charged him with interfering in the client's personal affairs, disclosing confidential information about her and using with her a psychotherapeutic approach not conforming to the recognized scientific principles (analysis of energy fields and blocks, "undoing the karmic knot" and "harmonization of the body, heart and chakras").

The Disciplinary Committee imposed fines totalling \$1,800 and reprimands for three offences, plus payment of expenses. In addition, the Disciplinary Committee recommended to the Bureau that the psychologist be subject to supervision for 20 meetings over a 12-month period with regard to transference and counter-transference, and take the ethics course given by the Order.

#### *Decision no. 33-02-00280*

##### *(Professional secrecy and assessment of dangerousness)*

The psychologist was charged with neglecting his obligations by using 911 to get help for a client on the grounds that he presented a suicide risk. During the hearing, the complaint was amended to include a reference to the recent section 60.4 of the Professional Code, which states that professional secrecy can be disregarded in certain circumstances, for example, if reasonable grounds exist to believe there is imminent danger of violence, including suicide, toward clearly identifiable persons. The Disciplinary Committee found that the proceeding did not demonstrate, through a preponderance of evidence, that the psychologist had lacked reasonable grounds to make his call. Incidentally, because of procedural problems, the expert retained for the proceeding was not heard by the Committee. Consequently, the psychologist was acquitted. This decision does not fully address the issue of what constitutes reasonable grounds within the meaning of section 60.4 of the Professional Code because part of the discussion failed to take place during the proceeding. Therefore, we have to wait for future decisions analyzing this provision in order to know its full scope. For now, we note the Disciplinary Committee's statement that "it is up to the professional himself to determine whether the circumstances justify the communication of professional information protected by professional secrecy. The discretion is entirely his." Therefore, psychologists must use their professional judgment wisely, showing the caution that is required in all interventions.

#### *Decision no. 33-03-00289*

##### *(Obstructing the Syndic's work)*

The psychologist concerned pleaded guilty to two counts of obstructing the Syndic's work in an investigation relating to one of his clients. He neglected to respond to three letters written over a period of almost three months by the *ad hoc* Syndic and did not react when served with the complaint.

While reaffirming the seriousness of a professional neglecting to respond to the Syndic's requests, the Disciplinary Committee took account in its penalty of the respondent's psychological state, the difficulties he was experiencing during the period in question and the absence of a disciplinary record. It imposed a severe reprimand and a \$600 fine, plus payment of expenses.

Decision no. 33-03-00284

*(Health condition compromising the quality of services)*

The Disciplinary Committee had previously accepted a request by the Syndic for a provisional striking from the roll of a psychologist whose state of health no longer permitted her to practice her profession. The complaint related to certain professional acts performed by the psychologist when her health condition impeded and was liable to compromise the quality of her services. The Disciplinary Committee issued a reprimand against the psychologist and noted her undertaking not to re-enter the roll of members of the Order unless her health condition changed significantly, in which case she should undergo the necessary medical examinations.

### Professions Tribunal

Decision no. 33-01-00265 *(Rules on submission of evidence)*

The Professions Tribunal was dealing with a decision by the Disciplinary Committee disallowing the complaint filed against a psychologist for obstructing the Syndic's investigation. The Committee had ruled that the recorded telephone conversations submitted as evidence by the Syndic to support his position could not be allowed. The Professions Tribunal upheld this decision on the grounds that the recording did not satisfy the exception criteria for the acceptance of hearsay evidence.

## 3. CONCILIATIONS

The approach of encouraging conciliation in cases where violations have been determined seeks to integrate two aspects of the notion of protection of the public: to remedy the effects of the psychologist's faulty intervention and to take measures to prevent repetition of the problem. The table below illustrates the nature of the violations involved in conciliations and the measures that were applied in the agreements reached.

EXPERT ASSESSMENT (13 cases)	
<b>VIOLATIONS</b> <ul style="list-style-type: none"><li>▪ Report or testimony based on insufficient professional and scientific information/content lacks objectivity and moderation, rendering the assessment non-compliant (12)</li><li>▪ Lack of diligence in production of the report (1)</li><li>▪ Conflict of roles and conflict of interest (1)</li><li>▪ Breach concerning consent (1)</li></ul>	<b>AGREED-ON MEASURES</b> <ul style="list-style-type: none"><li>▪ Apology (6)</li><li>▪ Amended report/Letter of retraction (7)</li><li>▪ Training course or supervision (5)</li><li>▪ Repayment of a portion of the fees (4)</li><li>▪ Ethics course (3)</li><li>▪ Removal of the psychologist from the field of expertise (1)</li></ul>

PSYCHOTHERAPY AND OTHER INTERVENTIONS (26 cases)	
<b>VIOLATIONS</b> <ul style="list-style-type: none"><li>▪ Breach of confidentiality (3)</li><li>▪ Conflict of roles and/or conflict of interest (2)</li><li>▪ Breach concerning consent (4)</li><li>▪ Problematic conduct by the psychologist (4)</li><li>▪ Lack of diligence in providing a document or record (1)</li><li>▪ Conflict concerning fees (5)</li><li>▪ Non-conforming report (7)</li><li>▪ Substandard record-keeping or consulting room (1)</li></ul>	<b>AGREED-ON MEASURES</b> <ul style="list-style-type: none"><li>▪ Apology (10)</li><li>▪ Repayment of a portion of the fees (7)</li><li>▪ Ethics course (5)</li><li>▪ Amended report/Letter of correction (11)</li><li>▪ Supervision (2)</li><li>▪ Referral to professional inspection (1)</li><li>▪ Undertaking by the psychologist to improve his/her practice (1)</li><li>▪ Corrective action taken with the client or an agency (6)</li></ul>

The practice of a profession is defined by two co-existing realities: on the one hand, a recognition of the professional's right to decide on the most appropriate course of action, with every decision having an underlying ethical dimension, and on the other, the existence of a regulatory mechanism aimed at ensuring the protection of the public. The ethics guidelines are intended to inform psychologists about the existing regulatory framework to help them in the process of making informed decisions.



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