



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.

**THE PROFESSIONAL SYSTEM
WAS INSTITUTED TO GIVE TO
THE PROFESSIONAL ORDERS
RESPONSIBILITY FOR
PROTECTION OF THE PUBLIC.**

THE PSYCHOLOGIST AND THE SYNDIC: THE OBLIGATION TO CO-OPERATE

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INTRODUCTION

The title "psychologist" cannot be used by just anyone¹. Its use is a privilege, which is reserved exclusively for members of the Order and guarantees, in the eyes of the public, adherence to the professional rules that govern relationships with clients.

As the title "psychologist" is the foundation on which public trust in members of the Order rests, the right to use it imposes certain obligations on the bearer.

This means that, in return for the significant privileges imparted by membership in the Order and the right to use the title recognized under the law, the legislator has imposed the obligation to abide by certain ethical and professional guidelines. These guidelines are found primarily in the Code of Ethics of Psychologists² and the Professional Code³. We note that the legislator's intent in instituting Quebec's professional system in 1974 was to give to the professional orders responsibility for protection of the public. To ensure that these agencies would be able to carry out their mission of public protection, the legislator gave them the means to establish various standards. Among these standards is a very particular one: the obligation to co-operate. Psychologists are aware that they have an ethical obligation to make themselves available and to show diligence regarding their clients. But with regard to the Order of Psychologists, the members also have an obligation: to co-operate with the professional inspection service and with the Office of the Syndic.

REGULATORY FRAMEWORK

First, let us recall the legislative and regulatory context underpinning the obligation to co-operate with the Order's syndic, as this will be the focus of our discussion.

Under section 122 of the Professional Code, the syndic enjoys, with the professional inspection committee, the benefit of a special provision. It is set down in section 114 of the Professional Code:

"It is forbidden to hinder in any way a member of the committee, the person responsible for professional inspection appointed pursuant to section 90, an inspector, an investigator or an expert, in the performance of the duties conferred upon him by this Code, to mislead him by concealment or false declarations, refuse to furnish him with any information or document relating to an inspection or inquiry carried out by him under this Code or to refuse to let him take copy of such a document."

In the same vein, section 59 of the Code of Ethics of Psychologists states:

"A psychologist shall answer as soon as possible any correspondence from the syndic of the Corporation, investigators or members of the professional inspection committee acting in their official capacity."

Any contravention of these provisions may lead to the filing of a disciplinary complaint to the Order's disciplinary committee and in the event of a finding of guilt, the imposition of a penalty, which can range from a reprimand to striking off the roll of the Order⁴.

It should be noted that this generally accepted rule⁵ on co-operation enables the syndic to conduct inquiries in association with the public's right to receive quality services from a competent professional. We return here to the primary mission of protection of the public⁶, for which the Order bears responsibility.

We should also clarify that the expression "co-operate with the syndic" means answering him or her without reservations, delays or deceptions of any kind. Hesitations, lies, half-truths, selective memory losses and other behaviours that could be construed as procrastination or hindrance are to be avoided at all cost. Any such impediments interfere with the Syndic's investigations and thereby, with the Order's fulfillment of its responsibilities towards the public.

Recently, the Court of Appeal of Quebec⁷ confirmed the duty of every professional to respond to the syndic, while noting, however, that this obligation does not apply to third parties who are not professionals within the meaning of the Professional Code.

Is it possible to set against the obligation to the Syndic, the right to silence or professional secrecy?

In general, the psychologist may not invoke the right to silence or the right against self-incrimination because the Professional Code and the Code of Ethics of Psychologists oblige him or her to respond.

During an interview with the syndic, the psychologist may not refuse to provide a copy of requested documents⁸, or refuse to answer any questions asked, because, generally, he may not invoke against the syndic the obligation to ensure professional secrecy, or use this as a reason to refuse the syndic access or the right to examine a professional record⁹.

A PSYCHOLOGIST'S REFUSAL TO CO-OPERATE INTERFERES WITH THE SYNDIC'S ABILITY TO CONDUCT THE INQUIRY, AND THEREBY, THE ORDER'S FULFILLMENT OF ITS RESPONSIBILITIES TO THE PUBLIC.

In any case, the syndic is required to observe the strictest confidentiality with regard to any information he obtains; he cannot disclose such information without legal authorization in any context other than the disciplinary process¹⁰.

Despite being challenged several times, the obligation to respond has been confirmed by the courts¹¹, which have disallowed legal challenges of sections 114 and 122 of the Professional Code made on the grounds that they conflict with the basic rights provided under the Charters of Rights and Freedoms¹².

It is also very clear that the psychologist cannot dictate to the syndic when or how the interview or the examination of his records will take place¹³, nor oblige the syndic to answer the psychologist's questions before the psychologist will answer the syndic's questions¹⁴.

However, it should be noted that the syndic does not have the power to initiate an investigation of any psychologist at his own pleasure.

The syndic's power of investigation is limited insofar as the syndic can conduct an inquiry only on the basis of information that a professional is guilty of an ethical offence¹⁵. As soon as the syndic receives such information, he can proceed and require from the psychologist concerned an answer to any relevant question in order to clarify the situation.

The syndic's investigation is not static; rather, it is a dynamic and adaptable process. Thus, if the syndic finds in the course of the investigation that other offences have been committed, he can direct his investigation to these matters and the psychologist will have to respond and show transparency.

Moreover, the obligation to co-operate with the syndic is such that there is no need to demonstrate dishonest intent on the psychologist's part in order to establish hindrance.

Refusal, misleading by concealment or false statements are sufficient to establish a breach of the obligation.

All forms of hindrance do not necessarily have the same consequences, but they all constitute, in principle, a derogatory act, having the quality of insubordination.

In certain cases, such conduct may, if the professional is found guilty by the disciplinary committee, lead to striking off the roll¹⁶.

Although it may be perceived as an irritant, even a necessary evil, the obligation to co-operate is an indispensable means for ensuring effective control over the profession and consequently, maintaining public trust towards the profession and its members.

SITUATIONAL SCENARIOS

- 1. A psychologist refuses to provide the content of his file to the syndic following a request for an inquiry, alleging that it contains unprocessed data and that under section 5 of the Regulation respecting the keeping of records and consulting-rooms by psychologists, he must avoid adding to a file any unprocessed data. He believes that providing this information could adversely affect his client.*

In order to conduct his investigation, the syndic needs to have access to information concerning the psychologist's work, in particular, all the content of the file recording the provided treatment. In this case, this means a complete copy of the file, including the unprocessed data. The psychologist does not need to obtain the client's permission, nor should he be concerned, as he normally would be pursuant to section 77 of the Code of Ethics, about possible misinterpretation of the material during the investigation. The oath of discretion taken by the syndic acting as investigator prevents him from disclosing the content of any material obtained in the course of his investigation unless a complaint is lodged to the disciplinary committee.

2. *A psychologist refuses to provide the content of a file, claiming that she has not been informed of the grounds on which a former client has made a request to the Syndic's Office for an inquiry.*

This refusal contravenes the obligation to co-operate with the syndic. The syndic does not have to justify his investigation, nor provide information on the nature of the alleged breach. Although the policy of non-referral of inquiry cases to the courts, which is generally followed by the Office of the Syndic, usually leads the syndic to specify the nature of the information sought, in some cases it may not be possible to provide this information without affecting the result of the investigation. Consequently, demanding more details prior to co-operation constitutes a breach by the psychologist concerned, which could potentially lead the syndic to lodge a complaint to the disciplinary committee for hindrance of his work.

REFERENCES

1. Professional Code, R.S.Q., c. C-26, sec. 36.
2. Code of Ethics of Psychologists, R.S.Q., c. C-26, r. 148.1.
3. Professional Code, *op. cit.*
4. Professional Code, *op. cit.*, sec. 116, 152 and 156.
5. *R. v. Wholesale Travel Group Inc.*, [1991] 3 S.C.R. 154.
6. *Marin v. Lemay*, 2002 QCTP 029; application for judicial review denied: *Lemay v. Professions tribunal*, REJB 02-39604 (S.C.).
7. *Pharmascience Inc. v. Binet*, REJB 05-89509 (C.A.).
8. See section 192 of the Professional Code. The professional also may not refuse to provide the originals: *Podiatres (Corp. professionnelle des) v. Gendron*, [1993] D.D.C.P. 134.
9. Professional Code, *op. cit.*, sec. 192.
10. *Ibid.*, sec. 124 and Schedule II.
11. *Notaires (Corp. professionnelle des) v. Lupien*, [1991] D.D.C.P. 94; *Mailloux v. Beltrami*, REJB 98-05250 (S.C.); appeal to the Court of Appeal disallowed: C.A. no. 200-09-001902-987, February 19, 1999; request to appeal to the Supreme Court disallowed, November 10, 1999 (27182).
12. Charter of Human Rights and Freedoms, R.S.Q., c. C-12, sec. 24.1; Canadian Charter of Rights and Freedoms, R.S.C. (1985), App. II, no. 44, sec. 8.
13. *Podiatres (Corp. professionnelle des) v. Gendron*, *op. cit.*, note 8.
14. *Saine v. Collège des médecins et chirurgiens de la province de Québec*, C.A. Montreal, no. 500-09-000097-73, May 16, 1975, J.J. Owen, Brossard, Bernier; *Sylvestre v. Parizeau*, REJB 98-05076 (C.A.).
15. Professional Code, *op. cit.*, sec. 122.
16. *Lussier-Price v. Price*, Disciplinary Committee of the Ordre des comptables agréés du Québec, no. 09-2003-00415, January 10, 2005, where permanent striking off the roll was imposed.

The practice of a profession is defined by two co-existing realities: one 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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