

# THE SYNDIC'S INQUIRY PROCESS



Ordre des travailleurs sociaux  
et des thérapeutes conjugaux  
et familiaux du Québec

L'Humain avant tout

## THE SYNDIC'S INQUIRY PROCESS

Every new inquiry conducted by a syndic (or assistant syndic) gives rise to the same questions: How are you carrying out your work? What are the steps leading to the conclusions of a given request for inquiry or, as the case may be, how does the Office of the Syndic plan to deal with this situation?

## ADMISSIBILITY OF A REQUEST FOR INQUIRY

A request for an inquiry starts with an oral or written statement, which someone (the requester) has submitted to the Office of the Syndic. The syndic can also act on his own, at the request of the Order's Board of Directors or the Professional Inspection Committee

In order to rule on the admissibility of a request for inquiry as it relates to prevailing laws and regulations, the syndic processes every new request by asking the following questions:

- ▶ Was the social worker or the Marriage and Family Therapist targeted by this inquiry request a member of our Order at the time the alleged events occurred
- ▶ Are the allegations submitted in support of the request based on facts and objective data identifiable within a timeframe?
- ▶ Do articles of the Professional Code, Code of Ethics, current regulations or any relevant laws apply to the reported situation?

The syndic concludes this admissibility phase by notifying the requester, in writing, of his decision on whether or not to carry out an inquiry. If he decides to deny the request, he states the reasons for his decision in the letter. His decision can then be the subject to a request for review by the Review Committee.

Processing of the requested inquiry will then be pending. The syndic will not immediately contact the member involved in order to avoid causing him stress for an unduly long period of time. The member will be advised once the syndic responsible for the inquiry is ready to obtain his version of the facts.

When a request for an inquiry relates to litigation on fees, the syndic can offer the parties involved a process calling for a conciliation of accounts, should settlement of the issue permit.

## THE INQUIRY PER SE

The syndic has significant investigative powers, as defined in article 122 of the Professional Code (CQLR, Chapter C-26): *"The syndic (and assistant syndics) may, following information to the effect that a professional has committed an offence referred to in article 116, inquire into the matter and require any information or document related to the inquiry."* This obligation is further reinforced by article 114: *"It is forbidden to hinder in any way... to mislead him (the syndic) by concealment or false declarations, refuse to furnish him with any information or document relating to an inspection carried out by him under this Code or to refuse to let him take copy of such a document."*

Article 192 also defines the syndic's power, in the performance of his duties, to *"examine a record kept by a professional, require the production of any document, make a copy of such a record or document"...*

*"The professional shall, on request, allow the examination of such record or document and may not invoke his obligation to ensure professional secrecy as a reason for refusing to allow it."*

The syndic is mandated to investigate the actions of a professional after obtaining information indicating that the latter may have committed an offence. However, he does not have the power to remove a professional from a specific client's file or intervene in current legal procedures in either Youth or Superior Court. The syndic must not limit his investigation strictly to the allegations that were submitted but must, if necessary, consider other shortcomings that his investigation might uncover or that he has personally observed.

In accordance with the provisions of the Professional Code and jurisprudence in this area, the contents of an inquiry conducted by the syndic are strictly confidential, both for the requester and the professional involved. Information gathered by the syndic is kept by the Office of the Syndic and is not accessible to the Order's other employees. Should a complaint against the professional be filed with the Disciplinary Council, all information gathered as well as all documents obtained must be disclosed to the professional to ensure a full and complete defence. Moreover, a complaint becomes public as soon as it is filed and supporting documents also become accessible once they are submitted to the Disciplinary Council (barring a ban ordered by that same Council).

An inquiry generally involves the following activities:

- ▶ Taking into account all documents gathered along with the allegations made by the person who requested the inquiry.
- ▶ **Contact with the requester to launch the process**

During this telephone or face-to-face encounter, the requester will be informed of the investigative process and the mandate of the Office of the Syndic. At the syndic's

request, the person who requested the inquiry will specify the elements of which the professional is being accused. The syndic will then gather all additional documentation (electronic or hard copy), identify potential witnesses and answer any questions related to the investigative process. As set forth in article 122.2 of the Professional Code, the person who requests the holding of an inquiry may be assisted by another person at every stage of the process, in compliance with rules relating to confidentiality. This assistant must not, however, be a potential witness, otherwise, he should be met separately.

- ▶ Analysis of the file(s) of the client(s) involved
- ▶ Identification in the Professional Code, Code of Ethics or any other applicable regulation of articles that could be related to this request for an inquiry.
- ▶ **Contacting the accused member**

During an interview conducted by telephone, in person or by videoconference, the syndic will present the process to the member under investigation and remind him that he is conducting a study further to a "request for inquiry". This will then be followed by a decision on the validity of said request. Next, the syndic will present information on the elements of which the member is being accused and obtain his version of the facts supported by all relevant documentation, identify potential witnesses and answer any question relating to the inquiry process. The member can ask to be accompanied for this interview. The person accompanying him can observe the inquiry process without interfering. He must be a member of a professional order and will be required to sign a confidentiality agreement.

If the member is in private practice, at the time he is met at his place of work, the syndic

will ask him to provide the file of the client involved in order to note its contents.

► **Meeting with a witness**

Depending on the inquiry's needs, the syndic can meet with any witness who can, in his view, contribute to the investigation. It should be noted that neither the requester nor the accused member can impose, on the syndic, a list of witnesses to be met.

► **Seeking an expert's opinion**

The syndic can seek the advice of an expert on the interpretation of practice standards in the field of practice subject to the inquiry. He cannot serve as both the investigator and the expert, even if he is familiar with the field of practice involved. However, he is not bound by the analysis and conclusions submitted by the expert.

- The expert is bound by the same rules of confidentiality as the syndic.

## INQUIRY CONCLUSIONS

The inquiry comes to a close when the syndic has all relevant information needed to rule on the soundness of the request for an inquiry.

The inquiry ends with one of the following three conclusions:

1. Inability to move forward: lack of proof
2. Unfounded allegations: the allegations are unfounded or the allegations are founded but do not constitute professional misconduct
3. Substantiated allegations: allegations are substantiated and constitute professional misconduct.

At the end of his investigation, the syndic advises the person who requested the inquiry of its conclusion. He also advises the accused member by certified mail or email.

As set forth in article 123.4 of the Professional Code, the person who requested the inquiry can, within 30 days following receipt of the syndic's decision, submit a written application to the Review Committee for an opinion on the syndic's decision not to submit a complaint to the Disciplinary Council.

When the syndic has identified professional misconduct, there are five possible scenarios, depending on the seriousness of the professional offence:

**Resolution by conciliation**

As set forth in article 123.6 of the Professional Code, *"A syndic who considers that a settlement could be reached on the facts alleged in support of the request for an inquiry may propose conciliation to the person who made the request. However, a syndic may not propose conciliation if he considers that the fact alleged in support of the request for an inquiry are such that the public could be at risk if the professional were to continue practicing."*

If the parties come to an agreement, a written conciliation document is produced. This measure serves to withdraw the request for an inquiry. The contents of this agreement cannot subsequently be presented as proof before another body and the person who requested the inquiry cannot refer the case for review by the Review Committee.

**A warning**

This measure is applied to a first, minor offence that has been acknowledged by the professional. In the event of a repeat, this warning can be taken into account by the syndic in analyzing a subsequent request for inquiry. The professional and the person who requested the inquiry are notified of this warning and the requester can refer this measure for review, in keeping with established conditions.

### Agreement with the syndic

In some cases, if the member acknowledges his offence, it is possible for him to come to an agreement with the syndic. This agreement serves to implement, on a voluntary basis, measures for improving his practice and preventing any recurrence of the professional offence. The member could offer to attend training sessions, submit to supervision and even limit his practice. In the event of non-compliance, the syndic reserves the right to file a complaint with the Disciplinary Council. This measure could be subject to a request for review by the person who requested the inquiry.

### Referral for professional inspection

When an inquiry reveals moderate offences that are basically related to standards of practice, the syndic can recommend a professional inspection of the targeted member's practice (article 122.1 of the Professional Code). This measure can also be referred to a review committee by the person who requested the inquiry.

Should this inspection uncover professional offences, the syndic can, in accordance with article 122 of the Professional Code, *"inform the Professional Inspection Committee if he has reasonable grounds to believe that a professional has committed an offence."* The syndic must then decide if going ahead with a new inquiry is warranted.

### Filing a complaint with the Disciplinary Council

To ensure the protection of the public, after noting serious offences by a member, the syndic files a complaint with the Disciplinary Council.

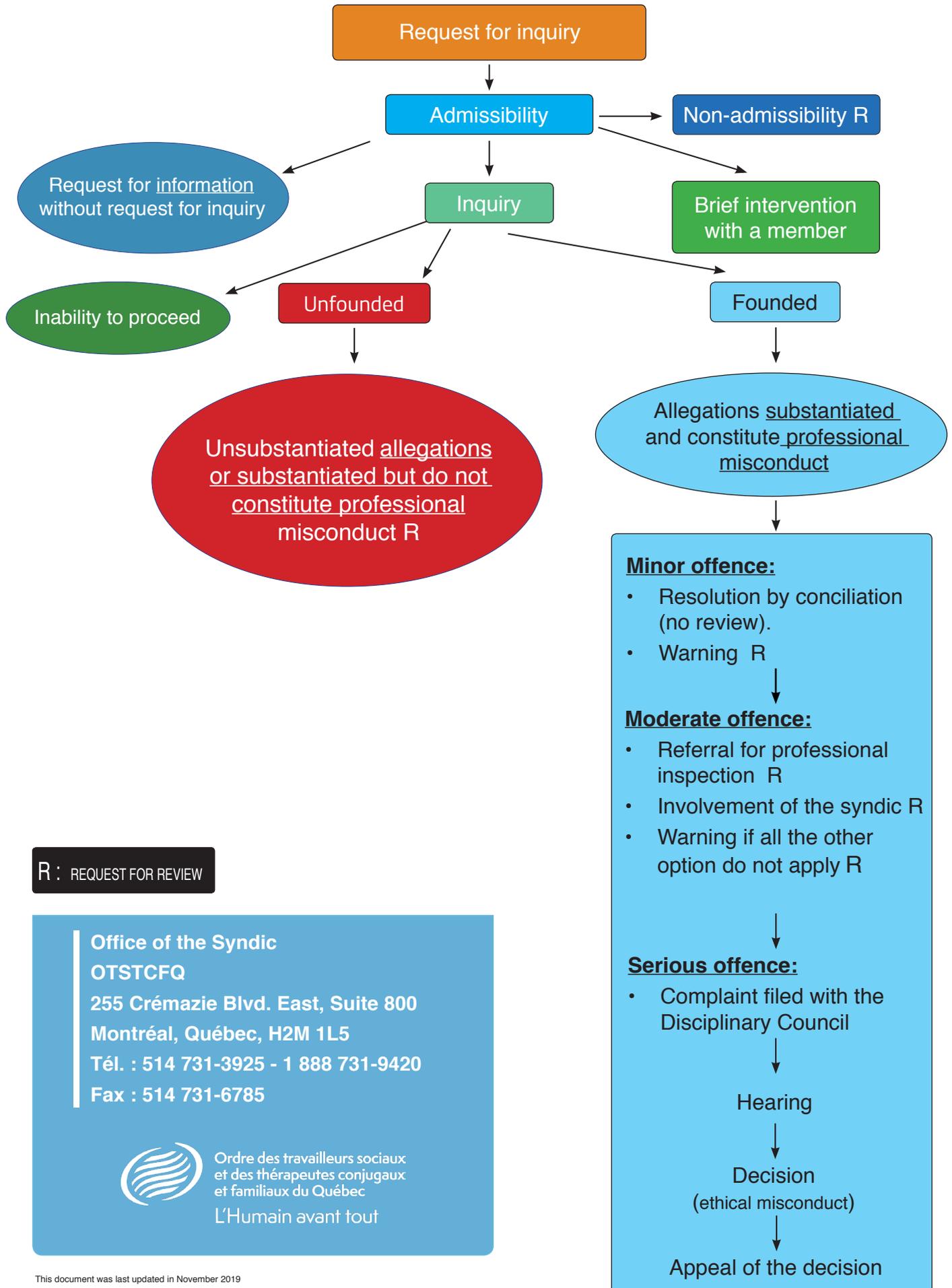
Moreover, in keeping with article 128 of the Professional Code, *"the syndic must, at the request of the Board of Directors, lodge any complaint*

*against a professional which appears to be justified; he may also, on his own initiative, act in this regard."* This same article specifies that a complaint may also be lodged by any other person. Therefore, a client can submit a request with the Disciplinary Council and lodge a private complaint against a member.

Once he has been apprised of the complaint, the professional will take note of the proof gathered against him during the course of the inquiry, in order to decide to plead guilty or not guilty.

When the Disciplinary Council finds a professional guilty, in whole or in part, of the accusations levied against him, it determines the appropriate sanctions based on relevant jurisprudence and representations made by each of the parties.

# Inquiry Process – Office of the Syndic



**R : REQUEST FOR REVIEW**

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