



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

The inquiry process of the office of the syndic



Professional orders exist to protect the public. Within an order, the office of the syndic is there to conduct inquiries into the **professional conduct of its members**¹. In the following, we will explain the office of the syndic's inquiry process for persons requesting the holding of an inquiry, for our **members** and the public in general. It describes the usual inquiry process, but does not purport to cover all situations. It outlines the general principles, options and various possible steps of an inquiry. However, not all of these steps are necessarily part of the inquiry process.

Mission

The office of the syndic of the *Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec* adheres to high values and standards of conduct with regard to inquiries. These are summarized in the following statement: "To carry out its mission of protecting the public, the office of the syndic:

1. uses a continuous quality improvement approach whenever this is in line with the protection of the public;
2. employs its resources and investigative powers in a manner commensurate with the seriousness of the allegations."

Purpose of inquiries

A **syndic** does not have the authority to find a **member** guilty of a **professional offense**. This authority rests with the **disciplinary council**. Nor does a syndic have the power to affect **members'** right to practice or other privileges. During an inquiry, **members** may continue to practice the profession. Like any citizen, they are presumed innocent.

At the end of the inquiry, when the **syndic** deems it necessary, for the protection of the public, to obtain a guilty verdict and disciplinary penalty, the **syndic** must refer the matter to the **disciplinary council** by means of a **disciplinary complaint**. In order to take this course of action, the **syndic** must be convinced that the **member** committed **ethical misconduct**. This conviction must be based on a careful analysis of the facts and evidence produced during the investigation. If a **disciplinary complaint** is lodged, the **syndic** becomes the prosecutor and is responsible for proving the truth of the charges before the **disciplinary council**, failing which the **member** will be acquitted.

The purpose of conducting an inquiry is to enable the **syndic** to determine whether the matter should be referred to the **disciplinary council** and, if so, to gather sufficient evidence. In a situation presented by the person requesting the inquiry, as soon as the **syndic** perceives the absence of any matter that could warrant involving the **disciplinary council**, the **syndic** may, at his or her own discretion, terminate the inquiry.

¹ Terms in italics refer to glossary.

Glossary

The following expressions are hereby defined in this glossary.

Code of ethics: Code of ethics of the members of the *Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec*. A new Code of ethics came into effect on November 1, 2020, replacing the former code, which continues to apply to **professional conduct** prior to that date.

Disciplinary complaint: A pleading containing the charges brought against a **member** by the **syndic**, the effect of which is to bring about a disciplinary trial. Although the public commonly refers to inquiry requests as "complaints", we reserve this term for disciplinary complaints to clarify the distinction between the two.

Disciplinary council: The disciplinary council is an independent judicial body vested with the authority to judge **disciplinary complaints** and impose, if necessary, the penalties it deems appropriate. Each disciplinary council panel is chaired by a lawyer and two **members** of the Order who render their decisions together.

Ethical misconduct²: Specific category of **professional misconduct** constituting a breach of the duty of care, diligence, skill or competence sufficiently serious to affect the perpetrator's character, ethics or professional probity. The conduct must be reprehensible, blameworthy, out of character or contrary to the values of the profession. Ethical misconduct does not generally have to be intentional. Gross ignorance, recklessness, laxity, or failure to update professional knowledge may constitute ethical misconduct. Mere mistakes, clumsiness, accidental lapses or behaviour that is not desirable, but not unacceptable, do not constitute ethical misconduct. With respect to generally accepted standards in the profession, there must be a marked difference between the conduct observed and the conduct expected. A slight or moderate deviation does not constitute ethical misconduct.

Member: Holds a permit as a social worker or marriage and family therapist, duly registered on the roll of the Order at the time of the relevant events. Includes former members, to the extent that the relevant **professional conduct** occurred while they were members.

Profession's regulatory framework: All legislative, regulatory and normative sources governing the practice of the profession of social worker or marriage and family therapist, namely: the *Professional Code*, the **Code of ethics**, other regulations of the Order and generally recognized standards of practice in the profession.

Professional conduct: Includes, but is not limited to, actions, omissions and attitudes in the course of professional practice. Also includes by extension certain misconduct involving boundary violations between professional and private life (in particular, gestures of a sexual nature, and emotional or friendly relationships with clients), posts on social networks where the author's profile indicates the professional affiliation, criminal convictions for offences related to the practice of the profession, criminal charges punishable by up to five years of imprisonment, and other conduct that is damaging to the honour and dignity of the profession.

Professional misconduct: Any form of violation of the **profession's regulatory framework**, no matter how serious it may be.

Professional offense: Violation of the **profession's regulatory framework**. It can only be determined by the **disciplinary council** when it renders a guilty verdict following a fair and equitable trial. Only professional misconduct that meets the criteria for **ethical misconduct** will result in a guilty verdict. Other professional misconduct would result in an acquittal if the **syndic** chose to lodge a complaint.

Review committee: A standing committee of the Order that is not under the **syndic's** authority and whose function is to give, on request, to a person who requested the holding of an inquiry, its opinion regarding any decision of a **syndic** not to lodge a complaint to the **disciplinary council**.

Syndic: An officer of the Order responsible for conducting an inquiry into the **professional conduct** of a **member**. This may be a syndic, assistant syndic, *ad hoc* syndic or a corresponding syndic.

² Ethical misconduct is defined herein according to Guy COURNOYER and Nicolas COURNOYER, « La faute déontologique : sa formulation, ses fondements et sa preuve », in *Service de la formation continue, Barreau du Québec*, vol. 271, *Développements récents en déontologie, droit professionnel et disciplinaire* (2007), Cowansville, Éditions Yvon Blais, p. 179.

Scope of inquiries

A syndic's inquiry focuses on allegations submitted by the person requesting the inquiry. The **syndic** may (but is not required to) decide during the course of the inquiry to expand its scope, but only if it is based on findings or evidence provided by the inquiry. The **syndic** shall endeavour to obtain such information, documents and other materials considered necessary and relevant to the inquiry. The syndic is not required to pursue all leads or contact all witnesses. The syndic's role is not to substitute for the services provided by the **member**, but only to investigate the member's **professional conduct**.

Powers of inquiry

The syndic has exceptional powers of inquiry. In fact, **members** under inquiry cannot hide behind their silence. Section 80 of the **Code of ethics** requires members to "cooperate and reply fully and truthfully [...] as soon as possible [...] and make themselves available for any meeting"³. The **syndic** may also require confidential information and documents held by third parties, even those that would normally be subject to professional secrecy⁴. Membership in a professional order is a privilege, not a right. This privilege is accompanied by numerous duties, including the duty to cooperate in investigations.

The office of the syndic does not intervene in legal proceedings in the Superior Court or Youth Court, even when it is investigating the situation. Nor can it quash a report produced by a **member** or cancel its impacts. The office of the syndic also does not interfere with an institution's decision to assign the clinical record to the **member** in question.

Confidentiality of inquiries and public nature of disciplinary records

The content of a syndic's inquiry is strictly confidential, including for the person requesting the inquiry and **members**. Information gathered by the syndic is held in the office of the syndic and is not accessible to other Order employees unless the protection of the public makes it necessary to share. However, if a **disciplinary complaint** is lodged, all information gathered and documents obtained must be disclosed to **members** in order to respect their right to a full and complete defense. Additionally, the **disciplinary council's** record (including the content of the complaint, documents produced before the Council, testimony given at the hearing, party representation and decisions rendered) is public, subject to non-disclosure orders issued by the Council to protect clients' privacy.

Dispute conciliation option

According to Section 123.6 of the Professional Code, if the **syndic** believes that the alleged facts can be settled, a conciliation of the dispute may be proposed provided this does not compromise the public's protection or trust. If a written settlement is reached and implemented in connection with such a conciliation, the request for an inquiry shall be deemed to be withdrawn and the matter cannot be referred to the **review committee**. Any answers or statements made by the parties during an attempted conciliation may not be used subsequently as evidence against the **member**.

³ Furthermore, *Professional Code*, sections 114, 116 and 122 prohibit hindering the syndic in any way, misleading the syndic by concealment or false declarations, refusing to furnish the syndic with any information or document relating to an inspection or refusing to allow the syndic to take a copy of such document.

⁴ *Professional Code*, s. 192: "[...] the professional shall, on request, allow the examination of such record or document and provide such information, and may not invoke his obligation to ensure professional secrecy as a reason for refusing to allow it."

Inquiry process



Step 1: Request for an inquiry

Any person may request an inquiry from the office of the syndic. A form is available for this purpose on the Order's website. The Order's board of directors and the professional inspection committee may also submit requests for an inquiry. Additionally, the syndic may initiate an inquiry should information justifying such an initiative become available.



Step 2: Analysis of admissibility

Admissibility is analyzed to provide answers to the following questions:

1. Is the person identified in the request for an inquiry registered on the roll of the Order as a social worker or a marriage and family therapist?
2. Was this person duly registered with the Order at the time of the events in question?

If the answer to any one of these two questions is no, the syndic does not have the authority to act and cannot entertain the request for an inquiry. If the answer is yes, the next question needs to be answered:

3. Assuming the inquiry applicant's allegations are true, would this constitute **professional misconduct**?⁵

The person who requested an inquiry is informed in writing of the decision on admissibility. If the request is found to be not admissible, the reasons are given. Should the request for inquiry be declared not admissible solely on the basis of a negative answer to the third question, the person who requested an inquiry may apply to the **review committee**.

Eligible requests for an inquiry are placed on hold for processing. The syndic will not contact the **member** immediately, in part to avoid unnecessarily prolonging the stress of undergoing an investigation. The **member** will be notified only when the **syndic** is ready to obtain the member's version of the facts.

When the request for an inquiry concerns a dispute relating to fees, the syndic may propose a conciliation of the account if the applicable regulation so permits.



Step 3: Version of the person requesting the inquiry

A request for the holding of an inquiry contains an outline of this person's version. The **syndic** always gives these persons the opportunity to complete their version and provide any other document or exhibit useful to the inquiry.

Under section 122.2 of the *Professional Code*, persons requesting the holding of an inquiry may be assisted by another person at all stages of the inquiry, while respecting the rules of confidentiality. However, the person assisting must not be a potential witness, otherwise he or she will be met separately.



Step 4: Version of the person requesting the inquiry

Within the *profession's regulatory framework*, the **syndic** identifies the specific provisions that correspond to the allegations of the person requesting the inquiry. These provisions provide the basis for the investigation and guide the entire analysis.



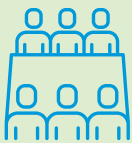
Step 5: Consultation and analysis of client records

Because of the syndic's abovementioned powers of inquiry, no authorization is needed for the **syndic** to consult the client's file. The **syndic** will decide if this step is necessary in determining whether the situation under investigation warrants the lodging of a **disciplinary complaint**. Consulting client records may also include records kept by other professionals.



Step 6: Version of member under inquiry

When obtaining the **member's** version of the facts, the **syndic** explains the inquiry process, what it is about and gives the member the opportunity to provide any explanations and evidence deemed relevant. This interview will be recorded. The member may request to be accompanied during this interview. The accompanying person may observe, without intervening, must be a **member** of a professional order and sign a confidentiality agreement.



Step 7: Version of other witnesses, at the syndic's discretion



Step 8: Expert opinion

The **syndic** may seek the opinion of an expert in the field of practice concerned, for example, when it comes to interpreting the standards of practice. In fact, **syndics** could not act as an expert in a disciplinary case where they would be the prosecutor. The expert has complete independence to formulate a professional opinion. The **syndic** is not bound by the expert's opinion. The expert is required to respect the rules of confidentiality.

Main findings of inquiry

The **syndic** shall inform the person requesting the inquiry and the **member** in writing of the findings of the inquiry. There are two main categories of findings: (1) the inquiry has provided grounds for a **disciplinary complaint**; or (2) the inquiry has not provided grounds for a **disciplinary complaint**. In order to lodge a **disciplinary complaint**, the **syndic** must be convinced that **ethical misconduct** has occurred and feel able to prove this to the **disciplinary council** through a preponderance of evidence.

In the case of disciplinary complaints

When the **syndic** lodges a **disciplinary complaint**, the person requesting the inquiry does not have to pay the fees and costs of the lawsuit. Individuals may lodge a **disciplinary complaint** on their own, but they bear the burden of proof, fees and costs. The office of the syndic does not get involved in **disciplinary complaints** lodged by individuals, even in situations where it conducted an inquiry.

After **members** have been informed of the **disciplinary complaint**, all evidence produced during the investigation will be disclosed to them. This allows members to make an informed decision as to whether they should plead guilty or not guilty and prepare a defense accordingly.

The **disciplinary council** renders its verdict after a fair and equitable trial. In the event of a guilty verdict, it then determines the appropriate penalties based on the parties' arguments and case law. Possible penalties include reprimands, fines, temporary or permanent striking off the roll, temporary or permanent limitation of practice, and revocation of permit. Penalties may also be accompanied by a recommendation for mandatory education, mandatory supervision or a combination of both.

The office of the syndic and the **disciplinary council** do not have the authority to rule on a **member's** civil liability. If a person believes that he or she is entitled to damages as a result of a **member's professional conduct**, he or she must apply to the courts of general jurisdiction.



In the absence of disciplinary complaints

When the **syndic** decides not to lodge a complaint with the **disciplinary council**, this decision is explained to the person who requested the holding of the inquiry, who then has 30 days to ask the **review committee** to give its opinion on the decision.

The syndic's inquiry generally yields collateral findings in addition to the abovementioned principal findings. **Syndics** are not required to conclude on collateral findings if they do not feel able to do so. Collateral findings are categorized as follows:

- a) The inquiry revealed no **professional misconduct**;
- b) The inquiry revealed one or more types of **professional misconduct** that warrant serving the **member** with a warning letter called a «warning»;
- c) The inquiry revealed one or more types of **professional misconduct** that warrant referring the **member** for a specific professional inspection;
- d) The inquiry revealed **professional misconduct** or raised serious concerns, but the public will be adequately protected because of a voluntary commitment made by the **member**.

In rare cases, the decision not to refer the matter to the **disciplinary council** is based on an inability to complete the inquiry or prove guilt by a preponderance of evidence.

Warning

The warning letter is not a statement of guilt. It means only that the office of the syndic is calling on the **member's** vigilance to correct a specific aspect of **professional conduct** in the future. If a subsequent inquiry reveals a repetition of the same **professional misconduct**, the existing warning will be taken into consideration in deciding whether to refer the matter to the **disciplinary council**. If the disciplinary council subsequently renders a guilty verdict, the existing warning will be used to determine the penalty.

Benchmark for specific professional inspection

This mechanism provides for the inspection of a **member's** professional competence or general record keeping. Based on the inspector's findings, the professional inspection committee may then seek corrective action. Persons requesting the holding of an inquiry are not informed of the findings of the inspection.

Voluntary commitments

Apart from the obligation to collaborate during an inquiry process, a syndic does not have the power to compel a person to do, or refrain from doing, anything against his or her will. However, a **member** may voluntarily decide to take actions that would better protect the public. In this case, the **syndic** formally records this commitment in writing and may decide to terminate the inquiry. Since Section 84 of the **Code of ethics** requires **members** to comply with such a commitment, failure to do so could expose them to disciplinary proceedings.

Commitments fall into three categories: (1) a commitment to improve one's practice, e.g., by taking a refresher course or obtaining professional supervision; the office of the syndic will ensure that these commitments are respected; (2) an undertaking to cease practicing, which is forwarded to the Secretary of the Order and involves the **member** voluntarily withdrawing from the roll of the Order; or (3) an application for voluntary limitation of the right to practice; this request is forwarded to a standing committee of the Order, which has the authority to dispose of the request, and the voluntary limitation so ordered would be public in nature.

