

# Translation of Recommendations 27 to 30 of the Charbonneau Commission’s Final Report

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## RECOMMENDATIONS 27 TO 30 — IMPROVE THE MONITORING OF QUEBEC’S PROFESSIONAL SYSTEM

Findings that came to light during the hearings concerning a lack of ethics among a number of professionals have led the Commission to examine the monitoring of Quebec’s professional system and to make recommendations on how to improve it.

### RECOMMENDATION 27

#### **Improve the Financial Reporting of Professional Orders**

The Office des professions du Québec (OPQ) is the watchdog of Quebec’s professional system.<sup>589</sup> To fulfill its mandate, the *Professional Code* confers on the Office an auditing power that enables it to monitor the mechanisms established by each professional order to protect the public and see whether these are sufficient and operating adequately. To this end, the OPQ pays special attention to the amounts spent by each order on training, professional inspection and discipline. The main source of information used is the annual report produced by each order. If additional information is required, under the *Professional Code*, the Office can request any document it deems essential to its understanding. The OPQ may also “in situations in which it considers it necessary for the protection of the public, propose a course of action or measures to be taken by an order.”<sup>590</sup>

Three levels of intervention are set out in the *Professional Code*: coaching, enquiry and, ultimately, trusteeship. The OPQ is autonomous at the level of coaching and may, on its own, decide to propose such a process to a professional order. If the proposed measures are not implemented and the protection of the public is compromised, the Office must issue a report to the Minister responsible for the application of professional laws, who can demand that an enquiry be

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<sup>589</sup> A detailed presentation of the roles and responsibilities of the Office des professions du Québec appears in Part 2 of this report.

<sup>590</sup> *Professional Code*, CQLR, c. C-26, s. 12.

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held.<sup>591</sup> Finally, if at the conclusion of the enquiry the problem persists, the government may demand that the order be put under trusteeship.<sup>592</sup>

The Commission's work and the testimony heard during the hearings, however, showed the limitations of the OPQ's monitoring and regulation of the professional system. Firstly, as part of its monitoring activities, the Office confines itself to drawing an overall picture of the professional system using aggregate data,<sup>593</sup> without making any comparisons between the orders or identifying the orders where discrepancies have been found and the fields in which these discrepancies have been observed. Nor is it possible from the annual report of the Office to determine which orders have been audited. By its own admission, the OPQ reviews the number of professional inspections carried out but not the quality or content of the inspections.<sup>594</sup> Furthermore, the Office does not have any accurate gauge to determine the frequency with which professionals of an order should be inspected.

Moreover, while the Office is autonomous in matters of coaching and can decide on its own whether to suggest such an approach to a professional order, its president admitted before the Commission that this power is used only in exceptional cases.<sup>595</sup> When problems do arise, the OPQ opts instead to hold feedback meetings with the boards of directors of the orders.<sup>596</sup>

The Commission's analysis indicates that the OPQ's monitoring and control of the professional system is clearly inadequate: the Office should review the way it performs its role of monitoring professional orders. This change should be implemented in two stages.

Firstly, it is vital that the OPQ ensure that it has the necessary information to carry out its monitoring mission. The Code confers on the Office the responsibility to set the standards governing the content of the annual report of an order.

The elements that must appear in the annual reports of the orders are indeed well established. Nevertheless, the presentation and organization of this information is arbitrary, with the result that the Office does not have any standardized data with which to properly compare the orders as to the adequacy of the funds and resources that they dedicate to activities related to protecting the public, such as the syndic, disciplinary committee and professional inspection.<sup>597</sup>

Secondly, the OPQ must be able to cast a critical eye on the data obtained. Currently there is no benchmark to enable it to evaluate whether the actions taken by

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<sup>591</sup> *Professional Code*, CQLR, c. C-26, s. 14.

<sup>592</sup> *Professional Code*, CQLR, c. C-26, s. 15.

<sup>593</sup> Exhibit CEIC-R-3186, Appendix V.

<sup>594</sup> Testimony of Jean Paul Dutrisac, transcript of October 9, 2014, p. 272, 274–278.

<sup>595</sup> Testimony of Jean Paul Dutrisac, transcript of October 9, 2014, p. 288.

<sup>596</sup> Testimony of Jean Paul Dutrisac, transcript of October 9, 2014, p. 274.

<sup>597</sup> Testimony of Jean Paul Dutrisac, transcript of October 9, 2014, p. 257–259.

the professional orders are sufficient to protect the public.<sup>598</sup> As well, because there is no qualitative evaluation of the professional inspections conducted by the orders, the Office is unable to determine whether an attempt has been made to look for elements of corruption and collusion during the professional inspections.<sup>599</sup> Moreover, the OPQ admitted to the Commission that it failed to identify any anomaly with the Ordre des ingénieurs du Québec prior to 2012–2013.<sup>600</sup>

The commissioners therefore recommend that the government:

*Amend the Regulation respecting the annual reports of professional orders to impose standardized financial reporting of expenditures, for the protection of the public, including professional inspection and discipline.*

## RECOMMENDATION 28

### **Subject Firms to the Professional System in order to Protect the Public**

Under Quebec's professional system, only professionals, and not the firms that employ them, are subject to the authority of their order even when these firms' main activity is to provide professional services.<sup>601</sup> But the firm in which a professional works can have a major influence on the employee's behaviour.<sup>602</sup> The Commission in fact noted that some engineering consulting firms had an organizational culture that gave free rein to certain corrupt practices regarding political financing and collusion.<sup>603</sup>

As things currently stand, a professional order is not authorized to sanction a firm, even when the actions of the firm's senior management or owners encourage professionals to adopt deviant practices. The order's syndic can only discipline professionals.<sup>604</sup>

In a brief presented to the Commission, the Ordre des ingénieurs du Québec (OIQ) stated that monitoring engineering firms would encourage ethical behaviour not only among professionals but also among their superiors, the firm's senior management and other employees who are not necessarily professionals themselves. For example, an order could

<sup>598</sup> Testimony of Jean Paul Dutrisac, transcript of October 9, 2014, p. 259.

<sup>599</sup> Testimony of Jean Paul Dutrisac, transcript of October 9, 2014, p. 257–259.

<sup>600</sup> Testimony of Jean Paul Dutrisac, transcript of October 9, 2014, p. 273–274, 279, 293–294.

<sup>601</sup> Exhibit CEIC-R-3188, p. 12.

<sup>602</sup> Exhibit CEIC-R-3188, p. 32–33.

<sup>603</sup> The account of the facts is presented in Part 2 of this report.

<sup>604</sup> Testimony of Denis Saint-Martin, transcript of October 27, 2014, p. 104; exhibit 227P-3329, p. 8.

<sup>605</sup> Exhibit CEIC-R-3188, p. 12–13.

intervene if the senior manager of a firm was soliciting contracts in an unethical manner.<sup>606</sup>

Monitoring firms would also make it easier to uncover documents during enquiries into corruption, collusion and illegal political financing.<sup>607</sup> Documented reports on systems of corruption and collusion can be held by the firm rather than by the individual professional. By way of illustration, an engineer working for an engineering consulting firm mentioned that the OIQ had failed to uncover illegal billing practices used by his firm to fund political parties for years, because these practices did not fall within the professional part of its activities.

Quebec currently stands alone when it comes to monitoring firms that provide professional engineering services. Nearly all the other provinces, along with 35 U.S. states, require an authorization certificate for engineering consulting firms.<sup>608</sup> Controls are imposed on these firms in five stages: (1) mandatory registration; (2) issuance of conditional licenses in compliance with certain regulations; (3) requirement to transmit certain information; (4) implementation of compliance systems (including possible audits by the professional order); and (5) imposition of sanctions.<sup>609</sup>

Convinced that monitoring firms is desirable for all professions, the Office des professions du Québec stated before the Commission its desire to adopt effective monitoring tools and announced its intention to propose legislative changes to this effect.<sup>610</sup> Whether for the engineering sector or other professions connected to the construction industry, the Commission shares the belief that better monitoring of professional firms could ensure that professionals work in an environment conducive to the practice of their profession. The Commission also considers that this could help the syndic more easily uncover documents during enquiries into corruption, collusion and political financing.

The commissioners therefore recommend that the government:

Amend the *Professional Code* so that professional services firms connected to the construction industry are subject to the oversight of the professional orders in their field of activity.

<sup>606</sup> Exhibit CEIC-R-3188, October 1998.

<sup>607</sup> Testimony of André Prud'homme, transcript of April 24, 2014, p. 105–106.

<sup>608</sup> Exhibit CEIC-R-3536.

<sup>609</sup> Adam DODEK, "Regulating Law Firms in Canada," (2012) 90-2 *Canadian Bar Law Review* 383, p. 407–409.

<sup>610</sup> Testimony of Jean Paul Dutrisac, transcript of October 9, 2014, p. 307, 313.

## RECOMMENDATION 29

### **Require Training in Ethics and Professional Conduct for Members of Professional Orders**

Schemes unearthed by the Commission pointed to the involvement of several professionals in cases of collusion or corruption.<sup>611</sup> When faced with an unethical situation, a professional should, without hesitation, comply with the obligation to act in a professional manner at all times. As part of their mandate to protect the public, professional orders should have as one of their main concerns ensuring the integrity of the professionals that they represent.

The Commission concluded, however, that professional orders do not always require applicants to the profession, or professionals subject to mandatory training, to complete a minimum number of hours of training in ethics and professional conduct.<sup>612</sup>

Ethics training is obviously not a panacea, but it is a step in the right direction. Consequently, professional orders should ensure that professionals receive adequate ethics training, as part of both initial training and ongoing professional development.

While evidence heard by the Commission dealt in particular with the situation of engineers,<sup>613</sup> training in ethics and professional conduct should nonetheless apply at a minimum to all orders connected with the construction industry.

The commissioners therefore recommend that the government:

Make it mandatory for all professional orders that fall under the mandate of the Commission to adopt a regulation requiring the order's professional members or those wishing to become members to receive training in ethics and professional conduct.

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<sup>611</sup> Accounts of the facts relating to Montréal, Laval and the Ministère des Transports du Québec are presented in Part 3 of this report.

<sup>612</sup> Testimony of Louis Tremblay, transcript of October 9, 2014, p. 64.

<sup>613</sup> Testimony of Louis Tremblay, transcript of October 9, 2014, p. 64; exhibit 233P-3339, June 18, 2014.

## RECOMMENDATION 30

### **Improve the Training of Directors of Professional Orders**

For the most part, directors of a professional order are members of the order elected by their peers,<sup>614</sup> with the exception of some members of the public named by the Office des professions du Québec (OPQ).<sup>615</sup> Since they are not professional administrators, there is no guarantee that they have the training or knowledge required to adequately perform their role. In fact, in the opinion of the OPQ, directors do not necessarily understand the order's mission to protect the public and are not always able to make sound decisions to ensure that the order fulfills this mission.<sup>616</sup> The case of the Ordre des ingénieurs du Québec is a flagrant example of this.

The directors of a professional order have a vital role to play in governing the order and, ultimately, in protecting the public. They must be adequately trained to be able to perform this role properly.

The commissioners therefore recommend that the government:

Require newly elected directors of professional orders that fall under the Commission's mandate to receive training in good governance and ethics, as well as on the laws and regulations to which they are subject within the scope of their duties.

### **Improve Financial Reporting regarding the Contribution of Volunteers to Partisan Activities**

An officer of an engineering consulting firm testified to having made irregular financial contributions to the Union Montréal municipal party during the 2005 election campaign. In particular, at the request of the party, he agreed to pay \$75,000 to a communications firm<sup>665</sup> whose president claimed to be acting “in a volunteer capacity” as a communications consultant for the mayoral candidate.<sup>666</sup>

During his testimony, the “volunteer” outlined his 30 years of experience as a volunteer political communications consultant for provincial and federal party leaders. He also mentioned that his firm had rendered services that were billed to the Union Montréal during the 2005 municipal election campaign.<sup>667</sup> In a written statement prior to his testimony, he further admitted that the role he played in the Union Montréal was a factor in the engineering consulting firm paying him \$75,000.<sup>668</sup>

The value of volunteer work is not entered on the books as a political contribution. Nevertheless, there are rules that govern volunteer labour. Under the *Act respecting elections and referendums in municipalities*, volunteer work must always be performed “personally, voluntarily and without consideration.” The *Election Act* that applies provincially does not contain the same provisions, except for volunteer work performed during the election period.<sup>669</sup>

The Commission observed that, in an effort to prevent fraudulent compensation of volunteer work by companies, the election laws of the three other Canadian jurisdictions that prohibit corporate contributions — the federal administration, Nova Scotia and Manitoba — prohibit self-employed persons<sup>670</sup> from providing to a political party, free of charge, any service for which they are usually paid, for the positions of official representative, official agent and legal adviser.<sup>671</sup> The exception is Manitoba. Persons subject to the prohibition can perform uncompensated partisan work on condition that the work is divulged as an in-kind contribution, which is not the case for volunteer work.

The total value of contributions made by a single elector, whether in money or in kind, may not exceed the maximum allowable annual amount, which varies between \$1,500 and \$5,000 per

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<sup>665</sup> Testimony of Yves Cadotte, transcript of March 14, 2013, p. 264–269, 277–279.

<sup>666</sup> Testimony of André Morrow, transcript of March 28, 2013, p. 72.

<sup>667</sup> Testimony of André Morrow, transcript of March 28, 2013, p. 12, 26, 47.

<sup>668</sup> Exhibit 58PP-2750.

<sup>669</sup> *Election Act*, CQLR, c. E-3.3, s. 88, ss. 1 and 417, para. 2; *An Act respecting elections and referendums in municipalities*, CQLR, c. E-2.2, s. 428, ss. 1 and 461.

<sup>670</sup> According to various depositions and jurisprudence, a person may be self-employed as an independent worker, associate or shareholder of a company, even if that company pays him a salary.

<sup>671</sup> *Canada Elections Act*, S.C. 2000, c. 9, s. 2(1) “volunteer labour”; *The Election Financing Act* (Manitoba), C.P.S.M., c. E27, s. 32(3)5, 32(4)2; Nova Scotia, *Elections Act*, SNS 2011, c. 5, s. 166(d)(i) and 248(3).

party, depending on the jurisdiction. When the value of uncompensated partisan work performed by a person who is subject to the volunteer work prohibition reaches the maximum allowable contribution, the political party must pay the professional services of this person and enter such payment in the accounts as an electoral expense, as the case may be. This person may, however, continue to do volunteer work for the party in any capacity other than that of his professional expertise.

Quebec does not require disclosure of partisan volunteer work performed by a person in his field of professional expertise nor does it impose any maximum on this type of contribution to a political party. To ensure that hidden influences can be easily uncovered, where appropriate, the Commission believes that the name of individuals who perform volunteer work in their field of professional expertise should be declared as an in-kind contribution in political parties' annual financial reports.

The commissioners therefore recommend that the government:

#### RECOMMENDATION 39

Specify in the *Election Act* that volunteer work must be work done at all times by an individual personally, voluntarily and without consideration.

#### RECOMMENDATION 40

Amend the electoral regulations to require authorized political entities to disclose in their annual financial reports and in their election expenses reports the names of persons who have worked as volunteers in the field of expertise for which they are usually compensated.