



# How are whistleblowers protected?

**Did you know that since 2017, the Professional Code of Québec has granted a degree of protection to whistleblowers who report an offence or cooperate with an inquiry conducted by a professional order's syndic? This protection is granted in three ways.**

## **1. RETALIATION AND THREATENING TO RETALIATE IS PROHIBITED**

Whistleblowers may institute civil proceedings against an individual or an organization (e.g. their employer) for damages caused by retaliation or threats of retaliation.

In that case, they must demonstrate that they were retaliated against - such as losing wages or privileges - because they cooperated with the syndic and that the retaliation caused damages.

If the OIQ's Syndic concludes that an engineer has threatened or retaliated against someone who has

cooperated with his inquiry, he may submit this offence to the Disciplinary Council for evaluation and the Council will decide whether the engineer should be punished.

## **2. DISCIPLINARY IMMUNITY MAY BE GRANTED**

The Syndic may, under certain conditions, grant disciplinary immunity to engineers who inform him that an offence has been committed, even if they have themselves participated in the offence.

The Syndic may actually consider the information so important or useful that he has to make sure that the whistleblowers fully cooperate with him by promising

not to file a complaint against them with the Disciplinary Council.

Before granting the immunity to whistleblowers, the Syndic specifically takes the following into account:

- the protection of the public;
- the importance of maintaining public trust in OIQ members;
- the nature and seriousness of the offence;
- the importance of the allegations to the inquiry and their reliability;
- the whistleblowers' cooperation during the inquiry;
- the degree to which whistleblowers participated in the offence.

The Syndic must also remain independent by making sure that his decision is made without any undue pressure or attempted influence from anyone else.

Once granted, the immunity will be valid only before the Disciplinary Council. In other words, engineers who are granted disciplinary immunity could still be punished by their employer or prosecuted in civil, penal or criminal cases.

### 3. WHISTLEBLOWERS MAY NOT BE PROSECUTED SIMPLY BECAUSE THEY REPORT AN OFFENCE

Under the Professional Code, no one may be taken to court simply because they disclosed information in good faith to the Syndic about an OIQ member who committed

an offence or because they cooperated with the Syndic in an inquiry. If legal proceedings are instituted against them, whistleblowers may use the defence that they acted in good faith and cite the provisions of the Code.

### OTHER FORMS OF PROTECTION ARE POSSIBLE

To encourage public interest disclosure of wrongdoing, lawmakers have legislated other types of protection that whistleblowers may receive from various agencies, including:

- the Director of Criminal and Penal Prosecutions,
- the Québec Ombudsman,
- the Anti-Corruption Commissioner.

### THINGS TO KEEP IN MIND

All of these protections are designed to encourage cooperation with the agencies responsible for investigating. There are still other types of protection, and we suggest that you check whether a particular agency can take these types of measures in the event that you report an offence to it.

All members of the Ordre des ingénieurs du Québec are concerned by the honour and dignity of the engineering profession, and they have a duty to maintain, protect and cultivate the bond of trust with the public. It is therefore your responsibility to report wrongdoings that could tarnish the honour of the profession and the public trust. Taking this responsible action is now easier to do thanks to the protection granted in the Professional Code. ◀

#### THE PRIORITY: ACT IN GOOD FAITH AND IN THE PUBLIC INTEREST

When whistleblowers report potential wrongdoings in good faith to an agency responsible for investigating them, they may be asked to demonstrate their good faith at the outset if certain factors seem to suggest that their act is motivated by vengeance, an attempt to pressure or retaliate, driven by purely personal reasons or done in an abusive, pointless, frivolous, excessive or untimely manner. Obviously, whistleblowers receive no protection when they do not act in good faith and they may even be taken to court.