

The Anastasia Act: Implications for School and Health Networks

By Monique Brassard

The Act to protect persons with regard to activities involving firearms and amending the Act respecting safety in sports¹ was assented to on December 13, 2007² and came into force on September 1, 2008.

This Act was passed in the wake of the tragic events that occurred at Dawson College in September 2006, when a young 18-year old woman named Anastasia De Sousa lost her life in a shooting incident, hence its name, the “Anastasia Act”.

The Act contains several provisions that directly affect educational institutions and, to a lesser extent, health establishments. For instance, the obligation of the director of an hospital or local community service centre to notify the police of any person being treated for an injury caused by a firearm, and the obligation of teachers, professionals and any other persons working in an educational institution to notify the police where they have reasonable grounds to believe that a person is in possession of a firearm, or that a firearm is on the premises of the institution. We will return to this duty to inform in greater detail below.



Purpose of the Act

The main purpose of the Act is to protect persons who frequent certain places or use certain means of transportation against threats to their safety by reason of firearms.

To this end, the Act provides that no person may be in possession of a firearm within the meaning of the *Criminal Code*³ on the grounds or in the buildings of what the Act refers to as a “designated institution”, or in vehicles used for public transit or school transportation, except taxis. Any

person who contravenes this prohibition is guilty of an offence and liable to a fine of \$500 to \$5,000. However, the Act provides for exceptions, namely public officers within the meaning of certain provisions of the *Criminal Code*, persons authorized to bear firearms for the protection of their own or another’s life or for use in the course of their lawful professional activity, as well as persons designated by government regulation, depending on their responsibilities or functions.

Similarly, the Act requires or authorizes certain persons to report to the police a person who behaves in a way that compromises his or her own or another person’s safety through the use of a firearm.

Lastly, and although we will not discuss this part of the Act, several provisions are also aimed at regulating target shooting with the use of restricted and prohibited firearms in shooting clubs and shooting ranges.

¹ S.Q. 2007, c. 30 [Bill 9], the “Act”.

² *Ibid.*, s. 27.

³ R.S.C. 1985, c. C-46.



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“Designated institutions”

In the Act, the expression “designated institution” includes childcare centres, day care centres and nursery schools within the meaning of the *Educational Childcare Act*,⁴ schools that provide childcare services, preschools, elementary and secondary schools, post-secondary colleges, general and vocational colleges, vocational training centres, adult education centres, and universities. The protection of persons who frequent these places is at the core of the Act.

However, the Act states that its provisions and regulations also apply, with the necessary adjustments, to premises where home childcare is provided, whether or not the childcare provider is a recognized home childcare provider under the *Educational Childcare Act*.

This being said, the Act provides that the government may, by regulation, in such cases and upon such conditions as it may determine, designate any other institutions than those currently covered in the Act, or exempt specific institutions, specific premises of such institutions, or specific means of public transportation from the application of the Act.

In fact, a regulation was recently passed that, subject to strict conditions and for specific purposes, exempts or excludes certain persons, places and means of transportation from the application of section 2 of the Act, which prohibits the possession of a firearm on the premises of a designated institution or in a vehicle used for school or public transportation.⁵ For example, the following persons now benefit from such exemptions:

- instructors providing training involving the handling of firearms and students receiving such training, where certain premises of the designated institutions are used for the training. The premises of the institution used for storage of firearms belonging to the institution, or brought to the institution by the instructor or the enrolled students, are also excluded. Here again, strict requirements apply to the exclusion. The institution must hold a business licence issued under the *Firearms Act*.⁶ Firearms transported to or from the premises used for training or transported to the storage area must be unloaded and rendered inoperable; ammunition must be placed in a separate container; photo identification cards are required for both students and instructors; any movement about the premises of the institution with firearms is prohibited, except to access or leave the training premises or access the storage area.

- Instructors certified by Sécurité nature and the Fédération québécoise de tir who provide training in the safe handling of firearms on premises reserved for this purpose at designated institutions and students attending such training, for the duration of the training only. Firearms used during the training must be deactivated, and no real munitions may be used.

These instructors are also exempted when using buses, shuttles, trains, aircraft or ferry boats where no other means of transportation can be used to travel to an institution, whether designated or not, where the training is provided. When firearms are transported, they must be placed in a securely locked opaque container designed to resist forced opening.

The other exemptions or exclusions provided for in the Regulation relate to biathlon sporting activities, residences providing home childcare where a firearm is being kept, forested areas used by designated institutions for hunting and trapping, storage areas and shooting ranges, and certain means of public or chartered transportation used by persons licenced to hold firearms under the *Firearms Act*. We again stress that these exemptions and exclusions are subject to strict conditions and requirements.

Powers granted to peace officers

Where a peace officer has reasonable grounds to believe that a person is in possession of a firearm on the premises of a designated institution, or in a vehicle used for school or public transportation, he may search that person and the person’s immediate environment without a warrant, and seize any firearm in the person’s possession.

A firearm seized in this manner may be detained for up to 90 days. At the end of this period, it must be returned to its owner, unless he or she is not in compliance with the *Firearms Act*, or the detention of the firearm is required for legal proceedings.

⁴ R.S.Q., c. S-4.1.1

⁵ *Regulation respecting the exclusion of certain premises and certain means of transportation and respecting the exemption of certain persons* O. C. 773-2008, 23 July 2008, *Gazette officielle du Québec, Part 2*, August 6, 2008 p. 3203 (in force on September 1, 2008).

⁶ S.C. 1995, c. 39

Mandatory reporting to police authorities

As noted in the introduction, the Act imposes a duty on certain persons to notify the police in specific cases. This duty applies to the following persons:

- a teacher, professional or any other person working in a designated institution who has reasonable grounds to believe that a person is in possession of a firearm on the premises of the institution, or that a firearm is on the premises of the institution.

The notification must be made immediately, and no particular formality is required.

- a teacher or a professional holding a management position in a designated institution who has reasonable grounds to believe that a person on the premises of the institution is behaving in a way that compromises the safety of that person or another person through the use of a firearm.

In this case, only information necessary to facilitate police intervention may be provided.

- public transportation or school transportation admission attendants and drivers of vehicles who have reasonable grounds to believe that a person using such transportation is in possession of a firearm, a firearm is in the vehicle, or a person aboard the vehicle is behaving in a way that compromises his or her own or another person's safety through the use of a firearm.

Where the notification only involves the behaviour of a person that could compromise the safety of that person or another person, only the information necessary to facilitate police intervention may be provided.

- the director of an institution operating a hospital centre or local community service, or the person designated by the director, where a person is being treated in the institution for an injury caused by a projectile from a firearm.

Subject to any other information that the government may, by regulation, determine to be necessary when a notification is made, the only information that may be provided to the police is the person's identity, if known, and the name of the institution.

This information is to be communicated orally and as soon as is practicably possible taking into account the importance of not hampering the treatment of the person concerned or disrupting the institution's normal operations.

- any other health establishment or private health facility operated by physicians on which the government may, by regulation, in such cases and subject to such conditions as it may determine, impose a duty to notify the police where a person injured by a projectile from a firearm is being treated in the establishment or facility.

Discretionary reporting to police authorities

Where a physician, psychologist, vocational guidance counsellor, psychoeducator, nurse, social worker or marriage and family therapist, and any other professional that the government may add to this list by regulation, has reasonable grounds to believe, in the course of his or her professional practice, that a person is behaving in a way that compromises the safety of that person or another person through the use of a firearm, he or she may, under the Act, report that behaviour to the police. In this specific case, such reporting is discretionary and not mandatory.

This being said, only information that is necessary to facilitate police intervention may be communicated to the police when such a notification is made. Such information may include information protected by professional secrecy or by any other provision governing the professional's confidentiality obligations, particularly relating to health and social services, where this is necessary.

Immunity and confidentiality of identity of informant

No person may be prosecuted for reporting a situation or incident in good faith to the police under the Act.

No person may divulge or be compelled to divulge the identity of a person who has reported a situation or incident to the police notwithstanding the provisions of the *Act respecting Access to documents held by public bodies and the Protection of personal information*⁷.

Confinement in an institution and psychiatric assessment

Pursuant to the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*⁸ and articles 26 to 31 of the *Civil Code of Québec*, no person may be confined in a health or social services institution for a psychiatric assessment or following a psychiatric assessment without his or her consent or authorized by law or by the court. The court hearing such applications is the Court of Québec.⁹

⁷ R.S.Q., c. A-2.1.

⁸ R.S.Q. c. P-38.001.

⁹ *Code of Civil Procedure of Quebec*, s. 36.2.

Under the Anastasia Act, the clerk of the Court of Québec must henceforth inform the chief firearms officer immediately of any application for a psychiatric assessment or confinement in an institution with respect to a person whose mental state presents a danger to himself or other persons, and provide the chief firearms officer with the name, address and date of birth of the person, as well as the court file number.

The chief firearms officer will verify whether the person is in possession of a firearm, has access to a firearm, or holds a licence to acquire a firearm. If the answer is negative, the chief firearms officer will destroy the information five years after the date on which he was so informed.

In addition, at the request of the chief firearms officer, the clerk must confirm whether or not a person identified by the officer, who is applying for a licence or authorization under the *Firearms Act*, was previously the subject of an application for a psychiatric assessment or confinement in an institution under the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*. If so, the clerk will provide the chief firearms officer with the court file number of the said application.

Conclusion

While this statute, and the regulation currently associated with it, are quite technical in nature, many of their provisions directly affect schools and, to a lesser extent, the health sector. As a result, workers in these fields must pay special attention to them.

Monique Brassard
514 877-2942
mbrassard@lavery.qc.ca

You can contact the following members of the Labour and Employment / Education Group with any questions concerning this newsletter.



Pierre L. Baribeau	514 877-2965	Pierre Daviault	450 978-8107	Nicolas Joubert	514 877-2918	Catherine Maheu	514 877-2912
Eve Beaudet	418 266-3066	Michel Desrosiers	514 877-2939	Nadine Landry	514 878-5668	Isabelle Marcoux	514 877-3085
Pierre Beaudoin	418 266-3068	Jocelyne Forget	514 877-2956	Claude Larose	418 266-3062	Véronique Morin	514 877-3082
Jean Beauregard	514 877-2976	Philippe Frère	514 877-2978	France Legault	514 877-2923	Marie-Claude Perreault	514 877-2958
Valérie Belle-Isle	418 266-3059	Alain Gascon	514 877-2953	Guy Lemay	514 877-2966	Marie-Hélène Riverin	418 266-3082
Monique Brassard	514 877-2942	Michel Gélinas	514 877-2984	Vicky Lemelin	514 877-3002	Madeleine Roy	418 266-3074
Denis Charest	514 877-2962	Jean-François Hotte	514 877-2916	Carl Lessard	514 877-2963		
C. François Couture	514 878-5528	Pierre Jauvin	514 878-5577	Josiane L'Heureux	514 877-2954		

Montreal
 Suite 4000
 1 Place Ville Marie
 Montreal Quebec
 H3B 4M4

Telephone:
 514 871-1522
 Fax:
 514 871-8977

Montreal
 Suite 2400
 600 De La
 Gauchetière West
 Montreal Quebec
 H3B 4L8

Telephone:
 514 871-1522
 Fax:
 514 871-8977

Quebec City
 Suite 500
 925 Grande Allée
 Ouest
 Quebec Quebec
 G1S 1C1

Telephone:
 418 688-5000
 Fax:
 418 688-3458

Laval
 Suite 500
 3080 boul.
 Le Carrefour
 Laval Quebec
 H7T 2R5

Telephone:
 514 978-8100
 Fax:
 514 978-8111

Ottawa
 Suite 1810
 360 Albert Street
 Ottawa Ontario
 K1R 7X7

Telephone:
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