

The Highway Safety Code and Professional Practice

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INTRODUCTION

The *Highway Safety Code* has been in place in Quebec since 1986. This law governs the use of vehicles on public highways. Section 619 stipulates that the government may, by regulation, determine the cases where, and establish the criteria according to which, conditions may be attached to a licence (subsection 2); and establish the health standards identifying the illnesses, deficiencies and conditions affecting a person that are considered essentially or relatively inconsistent with the driving of a road vehicle (subsection 8). The details on this subject are found in the *Regulation respecting access to driving a road vehicle in connection with the health of drivers*.

Section 603 of the *Highway Safety Code* states that “a health professional may, according to his field of practice, report to the Société the name, address and state of health of a person 14 years of age or older whom he considers unfit to drive a road vehicle having regard, in particular, to the illnesses, deficiencies and situations incompatible with the driving of a road vehicle [...]. For the purposes of this section, health professionals are authorized to disclose to the Société any information revealed to them in the practice of their profession.”

This ethics guideline will look at this legislation, which directly affects

psychologists, particularly with relation to professional secrecy. The obligation to preserve professional secrecy generally leads psychologists to be cautious in order to avoid harming their clients by disclosing information concerning them. This approach complies with the requirements of the *Code of Ethics*. However, the legislation being considered here specifically mentions psychologists. The “health care professional,” as defined in this law (*Highway Safety Code*, sec. 4), includes the members of the Ordre des psychologues du Québec. The most important point for psychologists and the other professionals concerned (physicians, optometrists, occupational therapists, nurses) is the possibility granted them by the legislator to make a report to the Société de l'assurance automobile du Québec (SAAQ) on a client's unfitness to drive a road vehicle.

Psychologists are generally aware that the problems presented by certain clients, including some undergoing neuropsychological evaluation or seen in psychotherapy, merit attention because of the risk these patients may pose to society if they drive a road vehicle. For this reason, the scope of application of the *Highway Safety Code* to our members' professional practice needs to be clarified.

It is not our intent to provide a legal opinion on this matter, as this is not the mission of the Syndic's Office.

Rather, we will examine the issue in some depth to first, provide some food for thought, and second, help psychologists choose the appropriate course of action when their clinical observations of a client involve his fitness to drive a road vehicle.

When a psychologist evaluates a client's condition and finds that the client is probably unfit to drive a road vehicle, an ethical issue arises due to the possibility granted by the law to disclose this information.

SOME CLARIFICATIONS

Professional Secrecy

The *Code of Ethics of Psychologists* clearly establish the importance of professional secrecy¹. Moreover, the *Professional Code*, in section 60.4, notes that “every professional must preserve the secrecy of all confidential information that becomes known to him in the practice of his profession.” Psychologist can be released from professional secrecy only by written authorization from their client or by order of the law (sec. 39, *Code of Ethics*, 1983). Furthermore, Chapter I of the *Charter of Human Rights and Freedoms* includes, in the description of fundamental freedoms and rights, the “right to non-disclosure of confidential information” (sec. 9). This section stipulates that even in judicial proceedings, professionals

may not disclose confidential information revealed to them by reason of their position or profession or obtained by them in the practice of their profession. Even the tribunal “must, ex officio, ensure that professional secrecy is respected.” However, the Charter states further, and this clarification is important, that “in exercising his fundamental freedoms and rights, a person shall maintain a proper regard for democratic values, public order and the general well-being of the citizens of Québec” (sec. 9.1).

Rules Deriving from the Highway Safety Code

When a person applies to obtain or renew his driver’s license, the SAAQ may require an assessment of his health. This assessment may be made by a doctor or another health professional, including a psychologist. The assessment report must be submitted within 90 days (*Highway Safety Code*, sec. 73). A psychologist may also have to give an opinion on the condition of a person whose licence has been cancelled or suspended when the person ends a drug or alcohol rehabilitation program to confirm that his condition “does not compromise the safe operation of a road vehicle” (sec. 76).

The above two sections of the *Highway Safety Code* cover situations that can easily occur in the context of regular treatment to which the client has fully consented. In this case, the client knows the nature of the assessment required by the SAAQ and agrees to have the report sent to the agency.

However, as mentioned earlier, section 603 of the Code requires health professionals to take into account illnesses, deficiencies and situations that are incompatible with the driving of a road vehicle. In connection with the psychologist’s authority to report, it is important to note that, under section 605, “no action in damages may be brought against a health care

professional for having availed himself of section 603.”

To learn the nature of the illnesses and deficiencies concerned, we have to refer to sections 41 to 58 of the *Regulation respecting access to driving a road vehicle in connection with the health of drivers*. Although it does not provide an exhaustive list, the Regulation mentions mental illnesses and deficiencies, that is, psychiatric disorders² resulting in serious abnormal behaviour, pronounced aggressiveness, marked impairment of judgment, pronounced difficulty in perception or a pronounced slowing down or acceleration of psychomotor activity. Also included is the consumption of any drug, medication or substance medically known to cause psychomotor disorders. Further, the Regulation mentions alcoholism and drug dependency and illnesses and deficiencies of the nervous system, for example, neurological disorders resulting in serious or even slight disturbance of cognitive functions, alertness, consciousness, motor or sensory functions, equilibrium or coordination. Lastly, the Regulation states that the symptoms and signs of senility and loss of autonomy are relatively inconsistent with driving a road vehicle. The decision whether to report usually takes into account the degree and chronic character of the problem. In other words, judgment must be exercised in each case.

The *Highway Safety Code* gives the possibility of making a report; it involves an element of discretion. This is in contrast to certain other laws, where a release from professional secrecy is rigidly imposed, without any need for the client’s consent. A well-known example of this approach is the *Youth Protection Act* (sec. 39). Another such example is the *Automobile Insurance Act*, which requires that every institution within the meaning of the *Act respecting health services and social services* (HSSSA) and every health professional – obviously including the psychologist – working in private practice and having treated a person or having been consulted by a person following

an accident must make a report of its or his findings, even without the client’s consent. Similarly, the *Act respecting industrial accidents and occupational diseases* clearly specifies that the health institution treating a worker must send information related to the employment injury (sec. 208), notwithstanding section 19 of the HSSSA, which normally requires the client’s consent.

The Quebec Charter of Human Rights and Freedoms says that the right to non-disclosure of confidential information must be exercised in harmony with the basic values of our society.

A Perspective for Psychologists

In the reflection they conducted for the College of Physicians and Surgeons, Giroux and Roberge (2006) refer to the notion of public interest. They believe that the issue of professional secrecy must be linked to the objective of road safety for all citizens. In their view, the incompatibility of a person’s illness or condition with the driving of a road vehicle would necessitate making a report. [Translation] “The protection of the collective interest has priority over the individual benefits associated with driving a motor vehicle.” (p. 47).

Their thinking is consistent with what we saw earlier, in section 9.1 of the Charter. Driving a road vehicle requires obtaining a driver’s licence (*Highway Safety Code*, sec. 65), which is not a right, but a privilege, as there are conditions associated with obtaining this licence (Ibid., sec. 69).

All psychologists know that preserving professional secrecy encourages the development and maintenance of a relationship of trust. The failure to respect professional secrecy could have a significant negative impact on the smooth conduct of the therapeutic process. However, from the ethical standpoint, the question must be asked: should professional secrecy be preserved if a client’s condition is incompatible with driving a vehicle? This becomes an even greater concern if the client denies

the situation, fails to understand its seriousness, or chooses to ignore it. Should respect for professional secrecy still remain the priority, or does it become secondary? For Giroux and Roberge (Ibid, p. 48), if we consider the public interest involved in ensuring safe vehicle travel, we will conclude that in this case, reporting should have priority over professional secrecy. The authors even express the opinion that this problem has a dimension of justice involving the professional's obligation to society.

A Stringent Process

The Highway Safety Code and the Regulation respecting access to driving a road vehicle in connection with the health of drivers give psychologists the possibility of reporting to the SAAQ the name, address and state of health of a client whose condition is incompatible with driving a road vehicle.

Upon receiving a report from a health professional, the SAAQ evaluates the situation. The decision it makes concerning a client may be nuanced and may include restrictions that the client will find acceptable. The client also has a right to challenge the decision³.

No action in damages can be brought against the psychologist for making a report. This means that the client cannot bring a suit against the psychologist in a civil court. However, the Syndic's Office could receive a request for inquiry from a client about whom a report was made to the SAAQ, not because of the report itself, but because the client questions the process used by the psychologist to reach his conclusion. Therefore, the following suggestions might be helpful.

Before making a report concerning a client, the psychologist should do a stringent assessment of the different aspects of the client's problem. If this is not possible, he could make a referral, in particular, for a medical or neuropsychological assessment. In the clinical context, the psychologist could

propose some measures to help reduce the risks of driving and observe whether the client complies with these measures. If necessary, he could get the client's consent to involve his family or friends and determine whether there is sufficient support in the client's immediate circles. In this case, the psychologist may decide that reporting, which risks breaking the therapeutic relationship of trust, is not necessary, given the effectiveness of the other measures. If reporting appears to be the only possible option, measures could be planned with the client to reduce the negative impact of a potential decision by the SAAQ to withdraw his driver's licence or impose restrictions (Crête and Vézina, 2006). The measures discussed could include other means of transport, such as public transit, if it is available and if the client is able to use it, being driven by relatives or friends or a volunteer service, relying on the delivery services of business establishments (grocery store, pharmacy) or participating in activities that provide a transportation service.

When considering the compatibility of a client's condition with the driving of a motor vehicle, psychologists should keep in mind the notion of public interest.

The psychologist should consider the seriousness of the problem and determine whether clinical measures can be taken.

As we can see, if the psychologist comes to the conclusion that a client's condition is incompatible with driving a road vehicle, there are several steps he should take, or at least consider, before making a report to the SAAQ. This process comes under the ethical obligation to be objective and moderate (sec. 14), and to issue opinions based on sufficient professional and scientific information (sec. 11). Maintaining the professional relationship and the client's cooperation could be reasons for preferring to avoid making a report despite a finding of incompatibility. However, if no clinical approach is conceivable, or if the client's condition

makes its application impossible, the psychologist may have no choice but to make a report to the SAAQ as provided by the legislation, from the perspective of preventing accidents and protecting the public interest.

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REFERENCES

1. See sections 38 and 39 of the *Code of Ethics* (1983) and section 15 of the new *Code of Ethics*, which is not yet published, being still in the process of enactment by cabinet.

2. The opinion issued by the Ordre des psychologues du Québec in June 2007, during the review of the *Regulation respecting access to driving a road vehicle in connection with the health*

of drivers, suggested a harmonization of terms by employing those used by the Trudeau group, which was commissioned by the Office des professions du Québec to help modernize the professional system. Under this approach, the term used should have been "troubles mentaux" / "mental disorders."

3. A recent decision by the Quebec Administrative Tribunal in 2007 QCTAQ 02527 demonstrates the possibility of having the SAAQ's decision reversed.



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