



GUIDELINES
for establishing a special
YOUTH PROTECTION PROGRAM
for Native people

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Masculine pronouns are used generically in this document.

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PREAMBLE

In the spirit of the government's general approach to aboriginal affairs¹ and in response to the demands of several First Nations and Native communities, the Government of Quebec has committed to making adjustments to its laws and regulations with a view to granting Native people more autonomy in the exercise of their responsibilities.

More particularly concerning youth-related legislation, several reports² published in the last two decades have highlighted difficulties with the enforcement of the Youth Protection Act (ch. P-34.1) and the Youth Criminal Justice Act (L.C. 2002, c. 1) as they relate to Native people. In general, these reports emphasize that the problems encountered have more to do with the mechanisms for the application of these laws than with the objectives and principles underlying them. The great majority of Native children and their families live in settings different from those of other Quebec children. They live in communities with their own culture and values, especially as regards family life and community organization. The cultural characteristics of Native communities dictate that services be better adapted to their needs, which are moreover conditioned by a set of geographical, economic, sociocultural, and political factors that may differ from one community to another.



This is why, in June 2001, in response to the demands of several Native communities and in particular the Atikamekw Nation, the Government of Quebec incorporated a provision into the Youth Protection Act to allow for the establishment of special youth protection programs for Native communities. Though such agreements are contained within the framework of the Youth Protection Act, they allow for different modes of application that are better adapted to the cultural context of Native communities.

This paper presents and discusses the guidelines for the drafting and implementation of such agreements. This is the second edition. The first edition, published by the *Ministère de la Santé et des Services sociaux* in 2004, had to be revised due, in part, to amendments made to the Youth Protection Act and to changes in the organization of basic social services³ in Native communities not under agreement. This second, completely revised edition is also intended as a guide for Native communities in their efforts to take charge of youth protection services, as well as for their partners in the health and social services system who assist them in these efforts.

1 See the brochure *Partenariat, développement, actions*, Secrétariat aux affaires autochtones, *Government of Quebec*, 1998.

2 See, for example, the *Jasmin Report*, *La protection de la jeunesse: plus qu'une loi*. Rapport du Groupe de travail sur l'évaluation de la Loi sur la protection de la jeunesse (*Government of Quebec*, 1992), and the *Coutu Report*, *La Justice pour et par les Autochtones: Rapport et recommandations du comité de consultation sur l'administration de la justice en milieu autochtone*, (*Government of Quebec*, 1995).

3 In this paper, "basic social services" refer to services implemented as part of the Enhanced Prevention Focused Approach (EPFA) under the First Nation Child and Family Services Program and to social services provided by other programs, such as the Assisted Living Program and the Family Violence Prevention Program, funded by Indigenous and Northern Affairs Canada.

4 Certain of Quebec's Native communities are said to be "under agreement" while others are said to be "not under agreement." Communities under agreement (Cree, Naskapi, and Inuit) account for about 30% of Quebec's Native population while communities not under agreement (Abenaki, Algonquin, Atikamekw, Huron-Wendat, Innu, Malecite, Micmac, and Mohawk) account for about 70%. Under the James Bay and Northern Quebec Agreement (signed with the Cree and Inuit nations in 1975) and the Northeastern Quebec Agreement (signed with the Naskapi nation in 1978), the Government of Quebec bears responsibility for the provision and financing of health services and social services to Native communities under agreement. The federal government is responsible for funding of health services and social services offered on the territory of Native communities not under agreement, with the exception of medical care, which is covered by the Régie de l'assurance maladie du Québec. For further details, see the brochure titled *Delivery and Funding of Health Services and Social Services for Aboriginal People (First Nations and Inuit)*, Ministère de la Santé et des Services sociaux, 2007.



INTRODUCTION

The basic aims of the *Youth Protection Act* (hereinafter, “YPA”) are to put an end to situations in which the security or development of a child is in danger and to prevent recurrences of such situations. The YPA establishes an intervention process circumscribed by guidelines that are designed to provide sufficient protection for children while respecting their rights and their parents’ rights. It is important to keep in mind the exceptional nature of government intervention in the lives of children and their families. The YPA must be applied strictly in order to answer children’s need to be protected, but it must not be used as a stopgap in the absence of basic social services designed to meet the needs of children and their families.

Today, most Native communities not under agreement⁵ provide basic social services to their members and have entered into agreements with the integrated health and social services centres and the integrated university health and social services centres (hereinafter, “integrated centres”), which have responsibility for youth protection services. Where basic social services are concerned, certain communities are served by the integrated centres under agreements between the relevant integrated centres and Indigenous and Northern Affairs Canada. In both types of agreements, the integrated centres have responsibility for applying the YPA and the Youth Criminal Justice Act (hereinafter, “YCJA”). While collaborative mechanisms between the communities and the integrated centres are in place under these agreements, and these mechanisms allow for community participation in the intervention process, the services offered do not always respond appropriately to the needs of Native youths and their families. Quite apart from language and culture-related obstacles, Native people generally prefer a community approach characterized by interaction, sharing, consensus, restoring balance, and healing.

In the context of an agreement reached under section 37.5 of the YPA, a community, a group of communities, a nation represented by all of its councils or, in the absence of such councils, any other Native group, may take charge of all or part of the youth protection services and adapt these services to the needs of its members. Essentially, the effect of the agreement is to give Native persons or entities some or all of the responsibilities normally assigned to the director of youth protection (hereinafter, “DYP”), including those responsibilities concerning the enforcement of the YCJA that are assigned to the provincial director (hereinafter, “DP”).⁶ The responsibilities thus granted are exercised with full authority and independence, and the agreement may provide for different procedures for the exercise of these responsibilities than those provided for in the YPA. The objective of such an agreement is to allow Native communities to adapt social services interventions relating to application of the YPA and the YCJA to their realities. The communities have a crucial role to play in the protection of their children. These agreements will allow them to take on greater responsibility and to play a lead role for the benefit of their children and of future generations.

This discussion paper is primarily intended as a guide to Native communities wishing to undertake a process leading to an agreement to establish a special youth protection program. It first sets out the provisions governing the content and implementation of such agreements, then goes on to discuss the stages in the implementation of a special youth protection program as well as the roles and responsibilities of the different entities involved.

⁵ The situation is somewhat different in Native communities under agreement, given the specific ways in which services are organized in these communities. Nevertheless, these communities may wish to establish a special youth protection program that is better suited to their situation and values.

⁶ In Quebec, pursuant to section 33.3 of the YPA, the powers and responsibilities assigned to the DP under the YCJA are vested in the DYP.

1. PROVISIONS GOVERNING THE CREATION OF A SPECIAL YOUTH PROTECTION PROGRAM

It is a critical concern of Native communities to protect their children from all forms of abuse or negligence and to offer them a safe living environment in which to grow up. Everyone – the parents, the extended family, and the community – shares responsibility in this regard. It goes without saying, therefore, that any special youth protection program put in place for the benefit of Native people must establish standards as high as those upheld by the regular provincial program, in terms of both child protection and respect for the child's and the parents' rights.

It is important to emphasize that even in the context of an agreement reached under section 37.5 of the YPA, the Minister of Health and Social Services remains responsible for the application of the YPA. He or she has the duty and the obligation to guarantee that all Quebec children, including Native children, receive the necessary services if their security or their development is or may be in danger. Conscious of its responsibility in this regard and committed to providing the necessary tools to Native communities, as well as those of their partners wishing to embark on a process leading to an agreement under section 37.5 of the YPA, the *Ministère de la Santé et des Services sociaux* considers it essential to present and discuss the various provisions governing the drafting and implementation of such agreements. These provisions derive from two sources:

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- section 37.5 of the YPA;
- the operation of the general youth protection program.



1.1 Section 37.5 of the YPA

The legality of agreements for the establishment of special youth protection programs is predicated on their adherence to a set of conditions set out in section 37.5 of the YPA. For a better understanding of the content and scope of this section, each of these conditions is discussed below.

Section 37.5. In order to better adapt the application of this Act to the realities of Native life, the Government is authorized, subject to the applicable legislative provisions, to enter into an agreement with a first nation represented by all the band councils of the communities making up that nation, with a Native community represented by its band council or by the council of a northern village, with a group of communities so represented or, in the absence of such councils, with any other Native group, for the establishment of a special youth protection program applicable to any child whose security or development is or may be considered to be in danger within the meaning of this Act.

The program established by such an agreement must be compatible with the general principles stated in this Act and with children's rights thereunder, and is subject to the provisions of Division I of Chapter III thereof. In particular, the powers provided for in section 26 may be exercised with respect to the record relating to the case of a child to whom such an agreement applies.

The agreement shall specify the persons to whom it applies and define the territory in which the services are to be organized and provided. It shall identify the persons or authorities that will be entrusted with exercising, with full authority and independence, all or part of the responsibilities assigned to the director, and may provide, as regards the exercise of the entrusted responsibilities, procedures different from those provided for in this Act. The agreement shall contain provisions determining the manner in which a situation is to be taken in charge by the youth protection system provided for in this Act.

The agreement shall also provide measures to evaluate its implementation, and specify the cases, conditions and circumstances in which the provisions of the agreement cease to have effect.

To the extent that they are in conformity with the provisions of this section, the provisions of an agreement shall have precedence over any inconsistent provision of this Act and, as regards the organization and provision of services, of the Act respecting health services and social services (ch. S-4.2) or of the Act respecting health services and social services for Cree Native persons (ch. S-5).

Any agreement entered into under this section shall be tabled in the National Assembly within 15 days of being signed, or, if the Assembly is not in session, within 15 days of resumption. It shall also be published in the *Gazette officielle du Québec*.



1.1.1 Parties to the agreement

The first paragraph of section 37.5 lists the parties with whom the Government is authorized to enter into an agreement. These are:

- a first nation represented by all the band councils of the communities making up that nation;
- a Native community represented by its band council or, in the case of an Inuit community, by the council of a northern village;
- a group of Native communities each represented by their council;
- in the absence of such councils, any other Native group.

In the first three cases, a resolution authorizing the signing of the agreement is required from each of the councils concerned. The last case essentially relates to Native groups located outside of communities, and here a resolution from the board of directors authorizing the signing of the agreement is necessary.

For the Government of Quebec, a decree, i.e., an order issued by the Executive Council (Cabinet) authorizing the signing of the agreement, is required. Typically, three Ministers are signatories to the agreement: the Ministers responsible for Health and Social Services, Native or Aboriginal Affairs, and Canadian Intergovernmental Affairs.

1.1.2 Special program

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The purpose of the agreement is to establish a special youth protection program making it possible to adapt the application of the YPA to the realities of Native life. The general legal framework of the YPA remains applicable. Thus, except as specifically provided in the agreement, the provisions of the YPA apply to the special youth protection program.

It is important to emphasize, however, that agreements cannot adapt the YPA provisions governing judicial intervention. In other words, the responsibilities of the tribunal – i.e., the Youth Division of the Court of Quebec – cannot be transferred by agreement to an Aboriginal entity.⁷

Furthermore, since the responsibilities of the DP form a part of the responsibilities of the DYP, the relevant provisions of the YCJA⁸ may also apply to the agreement.

The specific feature of this program has to do with the fact that the DYP responsibilities entrusted to Native persons or entities may be exercised differently from how they are exercised under the YPA.

⁷ Nevertheless, the DYP retains various responsibilities at different stages of the judicial intervention. For example, it must submit cases to the tribunal where it deems necessary, act as a party during the investigation and the hearing, and so forth. These responsibilities may be entrusted by agreement to an Aboriginal entity.

⁸ The YCJA applies to adolescents ages 12 to 17 who have committed an offence as defined by this act.

1.1.3 Situations covered by the YPA (sections 38 and 38.1)

In order to guarantee appropriate protection for the children of the communities in question, the special youth protection program for Native people must cover all situations in which the security or development of a child⁹ is or may be considered to be in danger in the sense of the YPA. The grounds for considering such a situation to exist are set out in sections 38 and 38.1 of the YPA.¹⁰

Section 38. For the purposes of this Act, the security or development of a child is considered to be in danger if the child is abandoned, neglected, subjected to psychological ill-treatment or sexual or physical abuse, or if the child has serious behavioural disturbances.

In this Act,

(a) “abandonment” refers to a situation in which a child’s parents are deceased or fail to provide for the child’s care, maintenance or education and those responsibilities are not assumed by another person in accordance with the child’s needs;

(b) “neglect” refers to

(1) a situation in which the child’s parents or the person having custody of the child do not meet the child’s basic needs;

(i) failing to meet the child’s basic physical needs with respect to food, clothing, hygiene or lodging, taking into account their resources;

(ii) failing to give the child the care required for the child’s physical or mental health, or not allowing the child to receive such care; or

(iii) failing to provide the child with the appropriate supervision or support, or failing to take the necessary steps to provide the child with schooling; or

(2) a situation in which there is a serious risk that a child’s parents or the person having custody of the child are not providing for the child’s basic needs in the manner referred to in subparagraph 1;

(c) “psychological ill-treatment” refers to a situation in which a child is seriously or repeatedly subjected to behaviour on the part of the child’s parents or another person that could cause harm to the child, and the child’s parents fail to take the necessary steps to put an end to the situation. Such behaviour includes in particular indifference, denigration, emotional rejection, isolation, threats, exploitation, particularly if the child is forced to do work disproportionate to the child’s capacity, and exposure to conjugal or domestic violence;

(d) “sexual abuse” refers to

(1) a situation in which the child is subjected to gestures of a sexual nature by the child’s parents or another person, with or without physical contact, and the child’s parents fail to take the necessary steps to put an end to the situation; or

⁹ According to the YPA, a child means a person under 18 years of age (see article 1c).

¹⁰ For more detailed explanations of the grounds for considering a child’s security or development to be potentially in danger, and particularly the signs and symptoms that could lead one to such a conclusion, see the brochure *Filing a Report with the DYP Is Already Protecting a Child*, available online at www.msss.gouv.qc.ca. There is also a brochure produced by the First Nations of Quebec and Labrador Health and Social Services Commission titled *Our Children’s Security Is Our Responsibility*, which outlines the contents of the YPA as it relates to Native communities. Finally, the *Manuel de référence sur la protection de la jeunesse* contains a detailed review and discussion of the application of the YPA. This document is available for viewing or download in the “Publications” section of the Ministère de la Santé et des Services sociaux website at www.msss.gouv.qc.ca.



(2) a situation in which the child runs a serious risk of being subjected to gestures of a sexual nature by the child's parents or another person, with or without physical contact, and the child's parents fail to take the necessary steps to put an end to the situation;

(e) "physical abuse" refers to

(1) a situation in which the child is the victim of bodily injury or is subjected to unreasonable methods of upbringing by his parents or another person, and the child's parents fail to take the necessary steps to put an end to the situation; or

(2) a situation in which the child runs a serious risk of becoming the victim of bodily injury or being subjected to unreasonable methods of upbringing by his parents or another person, and the child's parents fail to take the necessary steps to put an end to the situation;

(f) "serious behavioural disturbance" refers to a situation in which a child behaves in such a way as to repeatedly or seriously undermine the child's or others' physical or psychological integrity, and the child's parents fail to take the necessary steps to put an end to the situation or, if the child is 14 or over, the child objects to such steps.

Section 38.1. The security or development of a child may be considered to be in danger where

(a) he leaves his own home, a foster family, a facility maintained by an institution operating a rehabilitation centre or a hospital centre without authorization while his situation is not under the responsibility of the director of youth protection;

(b) he is of school age and does not attend school, or is frequently absent without reason;

(c) his parents do not carry out their obligations to provide him with care, maintenance and education or do not exercise stable supervision over him, while he has been entrusted to the care of an institution or foster family for one year.

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It is important to recall that any person who has reasonable grounds to believe that the security or development of a child is or may be considered to be in danger within the meaning of sections 38 and 38.1 must or may, as the case may be, bring the situation to the attention of the DYP. This responsibility rests with the entire population, but creates special obligations for professionals and for employees of the health and social services system, education, and public security who work with children, as well as persons working in childcare institutions. However, as regards sexual and physical abuse, any person, regardless of professional status, who has reasonable grounds to believe that the security or development of a child is or may be considered to be in danger as a result of such abuse has the obligation to bring the situation to the attention of the DYP, irrespective of whatever steps may be taken by the parents to put an end to the situation.¹¹

It is also important to reiterate that because the YPA provides for intervention in the lives of families, it is a law that must only be applied in exceptional situations. In this regard, any decision to determine whether a report must be accepted for evaluation or whether the security or development of a child is in danger must take the factors contemplated in section 38.2 of the YPA into consideration, these being:

- a) the nature, gravity, persistence and frequency of the facts reported;
- b) the child's age and personal characteristics;
- c) the capacity and the will of the parents to put an end to the situation in which the security or development of the child is in danger;
- d) the community resources available to help the child and the child's parents.

¹¹ See sections 39 and 39.1 of the YPA.

1.1.4. General principles and children's rights covered by the YPA

Children have specific rights and must be given appropriate attention and protection with respect to their age and vulnerability. Thus, the special youth protection program for Native people must adhere to the general principles and the rights of children that are protected by the YPA, particularly under sections 2.2-11.3. It is important to mention that some of the rights enjoyed by children are also enjoyed by their parents.

The following are the most important aspects of the general principles to keep in mind:

- ☉ all decisions made under the YPA must be in the interest of the child and respectful of his rights (section 3);
- ☉ the primary responsibility for the care, maintenance and education of a child and for ensuring his supervision rests with his parents (section 2.2);
- ☉ the child's and parents' participation, as well as the involvement of the community, must be fostered and, in particular, parents must be encouraged to play an active part in the application of measures designed to put an end to a situation in which the security or development of their child is in danger (section 2.3);
- ☉ decisions made under the YPA must aim at keeping the child in the family environment (section 4);
- ☉ if it is not possible to keep a child in the family environment, in view of the need to protect the child's interests, the decisions made must aim at ensuring that the child enjoys continuity of care, stable relationships, and stable living conditions corresponding to the child's needs and age, insofar as possible in the home of persons important to the child, such as grandparents or other members of the extended family; moreover, the parents' involvement must always be sought and encouraged, with a view to helping them exercise their parental responsibilities (section 4);
- ☉ If, in the interest of the child, returning the child to the family is impossible, the decision must aim at ensuring continuity of care, stable relationships, and stable living conditions corresponding to the child's needs and age on a permanent basis (section 4);
- ☉ any intervention under the YPA must take into account the importance of acting with diligence, considering children's particular perception of time (section 2.4);
- ☉ any intervention under the YPA must take into account the characteristics of cultural communities and Native communities (section 2.4).

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The following is a summary of the rights of children and their parents under the YPA:

- ☉ the right to be informed (sections 2.4 and 5);
- ☉ the right to be heard and consulted (sections 2.4 and 6);
- ☉ the right to consult an advocate (section 5);
- ☉ the right to support and assistance (section 8);
- ☉ the right of refusal and the right to challenge a measure or decision (sections 47, 47.2, 52, 53.1, and 87 for the right of refusal; section 74.2 for the right to challenge a decision);
- ☉ the right to receive appropriate health services, social services, and educational services with continuity and in a personalized manner (section 8).



Where the child is placed with a foster family or in a rehabilitation centre, the following rights are more particularly applicable:

- ☉ the child's right to be placed in premises appropriate to his needs and respectful of his rights (section 11.1);
- ☉ the child's right to confidential communication (section 9);
- ☉ the child's and the parents' right to be consulted before a child is transferred from one site of foster care to another, and the child's right to receive the information and preparation necessary for his transfer;
- ☉ the child's and the parents' rights in regard to the use of disciplinary measures by a rehabilitation centre (section 10) and the resort to placement in an intensive supervision unit (section 11.1.1).

Additional rights of children and parents are set out in other statutes, notably the *Charter of Human Rights and Freedoms* and the *Civil Code of Québec*. Section 39 of the Charter and section 32 of the Civil Code provide that "Every child has a right to the protection, security and attention that his parents or the persons acting in their stead are capable of providing."

1.1.5 Declaration of principle of the YCJA

Apart from observing the general principles and the rights of children related to the application of the YPA, a special youth protection program for Native people must also, when applied to young offenders, obey the provisions of the YCJA, and particularly the declaration of principle set out in section 3.

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The declaration of principle is intended to guide the interpretation of each provision of the YCJA. It begins by setting out the purpose of the youth criminal justice system, which is to protect the public by:

- ☉ holding young persons accountable through measures that are proportionate to the seriousness of the offence and the degree of responsibility of the young person;
- ☉ promoting the rehabilitation and reintegration of young persons who have committed offences; and
- ☉ supporting the prevention of crime by referring young persons to programs or agencies in the community to address the circumstances underlying their offending behaviour.

The declaration of principle further specifies that the youth criminal justice system must be separate from that of adults, and must emphasize:

- ☉ rehabilitation and reintegration of youth;
- ☉ fair and proportionate accountability that is consistent with their greater dependency and reduced level of maturity;
- ☉ enhanced procedural protection to ensure them fair treatment and protection of their rights, including their right to privacy;
- ☉ timely intervention that reinforces the link between the offending behaviour and its consequences;
- ☉ the necessary promptness and speed of interventions, given young persons' perception of time.

In addition, within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should reinforce their respect for societal values, encourage the repair of harm done to victims and the community, be meaningful for the individual young person given his or her needs and level of development and, where appropriate, involve the parents, the extended family, and the community in the young person's rehabilitation and reintegration. Such measures must also respect gender, ethnic, cultural, and linguistic differences and respond to the needs of aboriginal young persons and of young persons with special requirements.

It is also important to note that special considerations apply in respect of proceedings against young persons and, in particular, that young persons have rights and freedoms, such as the right to be heard in the course of and to participate in processes leading to decisions that affect them, this participation going hand in hand with special guarantees of their rights and freedoms. Furthermore, victims should be treated with courtesy, compassion, and respect for their dignity and privacy, should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system, and should be provided with information about the proceedings and given an opportunity to participate and be heard. Finally, parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

Lastly, a special youth protection program for Native people must abide by the program adopted by Quebec in regard to the extrajudicial sanctions contemplated in the YCJA.



1.1.6 *Commission des droits de la personne et des droits de la jeunesse*

Section 37.5 of the YPA provides that special youth protection programs are subject to the provisions of division I of chapter III of the YPA, i.e., sections 23–27. These provisions concern the role and responsibilities of the *Commission des droits de la personne et des droits de la jeunesse*. The Commission has, inter alia, the following mandates:

- ☉ to ensure, by any appropriate measures, the promotion and protection of the rights of children which are recognized by the YPA and the YCJA (section 23(a));
- ☉ to investigate, upon an application or of its own motion, any situation where it has reason to believe that the rights of a child or of a group of children have been encroached upon by persons, institutions or bodies, unless the tribunal is already seized of it (section 23(b));
- ☉ to take the legal means it considers necessary to remedy any situation where the rights of a child are being encroached upon (section 23(c));
- ☉ to prepare and implement information and educational programs on the rights of children for the benefit of the public in general and of children in particular (section 23(d));
- ☉ to make recommendations at all times, in particular, to the *Ministère de la Santé et des services sociaux*, the *Ministère de l'Éducation et de l'Enseignement supérieur* and the *Ministère de la justice* (section 23(e));
- ☉ to carry out or cause to be carried out studies and research on any question related to its competence (section 23(f)).

Its principal role is one of oversight, and anyone who believes the rights of a child have been violated may make a submission to it. In this regard, the members of the Commission hold certain special powers, and in particular the power to:

- ☉ enter premises where there is reasonable cause to believe there is a child whose security or development is or may be considered to be in danger, under certain conditions set out in the YPA (section 25);
- ☉ enter any facility maintained by an institution to consult on the premises the record relating to the case of a child and make copies thereof (section 26).

In view of the responsibilities with which it is entrusted, the Commission may refer to the tribunal the case of a child whose security or development is considered to be in danger, as well as any situation where it has reason to believe that the rights of the child have been wronged (section 74.1).

1.1.7 Territory and population concerned

An agreement entered into pursuant to section 37.5 of the YPA must specify the persons to whom it applies and define the territory in which the services are to be provided.

Typically, this corresponds to the territory of one or more Native communities, but it could also include an area outside the community in which a significant Native population resides, provided that the area is clearly delimited in the agreement.

As to the status of the beneficiaries of the agreement, it essentially covers those members of Native communities or groups who have signed the agreement and reside on the territory defined therein. For mixed families, i.e., those composed of members from different communities or origins, the family members' status as members of a community as well as the child's place of residence can serve as criteria for determining whether or not the special youth protection program applies.



1.1.8 Responsibilities that may be transferred by agreement

Pursuant to section 37.5 of the YPA, it is possible to enter into an agreement for the entirety or only a portion of the DYP's responsibilities, including the responsibilities entrusted to the DP under the YCJA. It is up to Native communities to specify which responsibilities they intend to take on.

In general, the responsibilities given to the DYP by the YPA may be summarized as follows¹²:

As regards protection:

- to receive reports regarding children, analyze them briefly, and decide whether they must be evaluated further (sections 32 and 45);
- to register the information prescribed in the regulation concerning children with respect to whom a report has been made (section 72.9);
- to collect the information necessary to ascertain whether immediate protective measures must be taken and, if necessary, to take such measures (section 46);
- to assess a child's situation and living conditions and decide whether the child's security or development is in danger (sections 32 and 49);
- to reach a provisional agreement with the parents and the child, if the child is 14 years of age or over during the assessment of the situation (sections 47.1–47.5);
- to decide on the direction of a child by reaching an agreement on voluntary measures or by submitting the situation to the tribunal (sections 32 and 51–53.1);
- to propose protective measures as part of an agreement on voluntary measures (section 54);
- to ensure that the agreement on voluntary measures or the order is put into effect and to ensure that the required services are provided (sections 54 and 92);
- to communicate regularly with the child and his family and acquire a first-hand knowledge of the child's living conditions by visiting the premises as often as possible (section 69);
- to review the child's situation (sections 32 and 57–57.2);
- to put an end to the intervention if a child's security or development is not or is no longer in danger (sections 32 and 57.2) and, where the situation requires it, to direct the child and his parents to the resources best suited to assist them, if they consent to it (sections 45.1, 50, and 57.2));
- to record the relevant information in the child's file and keep the information on file for the period prescribed by the YPA (sections 37.1–37.4);
- personally authorize the placement of a child under the age of 14 in an intensive supervision unit (section 11.1.1).

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As regards tutorship:

- to exercise tutorship, or, in the cases provided for in the YPA, to apply to the tribunal for the appointment or replacement of a tutor (sections 32, 70.1, and 70.4);
- to assess the child's social situation where a parent wishes to be reinstated as tutor (section 70.5);
- to put an end to the intervention where the child has been entrusted to the care of his tutor as prescribed by the Act (section 70.2).

As regards the adoption of a child domiciled in Quebec:

- to review applications for adoption (section 71);
- to receive the general consents required for adoption (sections 32 and 71);
- to take charge of children entrusted to the director for adoption (section 71);
- to have children judicially declared eligible for adoption (section 71).

¹² For a detailed description of the DYP's responsibilities, see section 10.2 of the Reference Manual on Youth Protection.

As regards the adoption of a child domiciled outside Quebec by a person domiciled in Quebec:

- to make a psychosocial assessment of persons wishing to adopt a child (section 71.7);
- to take charge of the child and see to the child's placement where the adoption is to be granted in Quebec (section 71.9);
- in urgent or seriously problematic circumstances, to take charge of the situation of a child who is the subject of a motion for recognition of a decision granting an adoption made abroad and see that the necessary measures provided by the YPA for the child's protection are carried out (section 71.9).

In addition to these responsibilities, the following powers are assigned to the DYP by the YPA:

- to inquire into any matter within the competence of the director (section 35.1);
- to have a child searched for and brought before the director, and to enter premises (sections 35.2 and 35.3);
- to obtain information and to examine the record kept on a child, the child's parents, or a third party implicated in a report at certain stages of the application of the YPA (sections 35.4 and 36).

As to the YCJA enforcement-related responsibilities of the DP, these may be summarized as follows:

- to authorize temporary detention prior to an appearance before a judge;
- to perform assessment and referral where extrajudicial sanctions are at issue;
- to produce for the tribunal any reports necessary for decision-making purposes;
- to issue opinions on the availability and advisability of certain programs, in particular the non-residential program;
- to administer and see to the application of judicial decisions;
- to handle breaches of conditions;
- to authorize a temporary leave from another custody facility.

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A Native community may agree to take on all or only a part of the above-listed responsibilities of the DYP/DP. For example, a community may choose to exercise only the protection-related DYP responsibilities and not the young offender-related DP responsibilities or the adoption-related DYP responsibilities. More particularly concerning the protection-related DYP responsibilities, a community could sign an agreement leaving the responsibility for intake and processing of youth protection reports to the integrated centre. A range of scenarios are possible depending on the interest and capacity of each community to take charge of them.

It is important to reiterate, however, that for certain activities related to DYP responsibilities, those professionals authorized to intervene must be members of a professional order or be listed in the register of vested rights of the professional order concerned.¹³ These activities, as well as those not reserved to members of a professional order, are presented in Appendices 1A and 1B.



¹³ An Act to amend the Professional Code and other legislative provisions in the field of mental health and human relations, L.Q., 2009, c. 28. See also the Explanatory Guide to the Act to amend the Professional Code and other legislative provisions in the field of mental health and human relations, published by the Office des professions du Québec in 2012. The French version of this document is available online at www.opq.gouv.qc.ca.



1.1.9 Adaptability of procedures for the exercise of responsibilities

Besides the decision to take on all or part of the DYP's responsibilities, a Native community may agree upon different procedures for the exercise of responsibilities of which it intends to take charge. For example, the decision-making structure of the special youth protection program could be inspired by traditional Native models, giving pride of place to consensus-based decision-making and involving the extended family or a community organization.

Likewise, a community could agree upon specific procedures concerning the application of maximum placement periods for a child in the context of a voluntary intervention. In this case it would still have to provide for other arrangements, pursuant to section 4 of the YPA, for guaranteeing children's continuity of care, stable relationships, and stable living conditions on a permanent basis.

Thus, the procedures for the exercise of the DYP's responsibilities may be adapted to the cultural, social, and geographical context of Native communities. However, these different procedures must not have the effect of denying children and parents their rights, and must adhere to the principles of the YPA and the YCJA.

A Native community may choose to apply the same terms and conditions for the exercise of the responsibilities of the DYP as defined in the YPA. In that case, an agreement entered into under section 37.5 would simply recognize the authority of a Native entity in regard to the responsibilities that would otherwise rest with the DYP of the corresponding region.

1.1.10 Persons or entities to whom responsibilities are entrusted

The agreement must indicate the persons or entities to whom the responsibilities of the DYP or the DP, as the case may be, are to be entrusted with full authority and independence. That is, it must contain information on the organizational structure of the services, roles, and responsibilities of each person or entity concerned, the relationship between them, the decision-making arrangements, and so on.

A community may develop a service organization model based on traditional Native values; the model could, for example, favour the sharing of responsibilities among several individuals and the use of consensus decision-making methods. The community may choose to include elders, particular individuals recognized for their wisdom, or community groups, such as justice committees, for situations relating to the YCJA. It is important, however, for any decision-making procedure adopted to allow the responsible party to act with diligence where an intervention under the YPA or the YCJA is necessary.

Furthermore, a community may choose to reproduce the same organizational structure as the one prescribed by the YPA, with a DYP/DP shouldering all of the responsibilities. It is up to the communities to decide on the type of organization that best suits them, based on their needs, values, and priorities.

1.1.11 Provisions governing the transfer of a situation

The agreement must also set out mechanisms allowing for certain cases to be taken back in charge by the general youth protection system, i.e., by the DYP of the integrated centre in the health and social services region or the territory concerned.

The following are some examples of situations in which a case handled under a special youth protection program might have to be transferred back to a youth centre:

- ⦿ the existence of a conflict of interest involving persons to whom the responsibilities of the DYP are entrusted, or involving their staff members;
- ⦿ where a child or his parents move out of the community;
- ⦿ further to a recommendation to this effect made by the *Commission des droits de la personne et des droits de la jeunesse*.

Other situations might also occur. The important thing is that, in such situations, the authority responsible for the special youth protection program agrees to transfer the child's case to the DYP of the region concerned. As to the procedures governing the transfer of a child's case, these can be modeled on those found in the document titled *Politique et procédures inter-centres jeunesse*, published by the *Association des centres jeunesse du Québec*.¹⁴

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In order to preserve the integrity of the special youth protection program for Native people and the continuity of interventions, a beneficiary of the agreement is not allowed to decide individually, without invoking any of the grounds stipulated in the agreement, to opt out of the agreement and be covered by the general youth protection system. However, where there is disagreement in regard to a decision made in the context of a special program, the child or his parents may apply to the tribunal, just as they are allowed to do in the general youth protection system. For example, if a child or his parents disagree with the protection measures proposed in order to put an end to a situation in which the child's security or development are in danger, they can submit the situation to a judge of the Court of Quebec, Youth Division. The judge, after having heard the arguments of the persons concerned, will rule on whether the child's security or development is in danger and determine which protection measures must be put in place.

1.1.12 Evaluation and monitoring of the agreement

Section 37.5 of the YPA requires that the parties to an agreement provide for measures to evaluate its implementation. Two points must be considered here: monitoring of the agreement, and evaluation of the special youth protection program.

Concerning monitoring of the agreement, the parties must, in addition to the annual statistics required by the *Ministère de la Santé et des Services sociaux* (listed in Appendix 4), provide a mechanism for monitoring the implementation of the agreement, and in particular, the fulfillment of the commitments undertaken by the parties. This mechanism may take the form of a monitoring committee composed of representatives of each party. In this way, the parties are able to see to the proper implementation of the agreement and, as necessary, request adjustments to the agreement.

In addition, the parties must provide a mechanism for regular evaluation of the special youth protection program, particularly in regard to service quality and user satisfaction. For this purpose, an evaluation protocol must be drafted when a special youth protection program is first being implemented. For purposes of illustration, evaluation could contain information on:

- ⦿ the application of the special program;
- ⦿ user satisfaction;
- ⦿ complaints received;
- ⦿ cooperation agreements signed;
- ⦿ staff training offered.

1.1.13 Termination clause and dispute settlement mechanism

A termination clause must be included in the agreement, indicating the cases, conditions, and circumstances in which the provisions of the agreement cease to have effect. Basically, this clause may be invoked for failure or incapacity to carry out the undertakings or fulfill the terms of the agreement. At the request of either party who believes that the other party is failing to fulfill a commitment under the agreement, the agreement may be terminated.

However, before requesting the termination of an agreement, the parties must attempt to find a solution to their dispute. For this purpose, a dispute settlement mechanism must be included in the agreement. The mechanism may comprise several steps, such as mediation.

Finally, the parties must agree on the term (duration) of the agreement. When the agreement expires, it may be renewed under the conditions set out in the agreement.

1.1.14 Precedence of provisions of the agreement

It is important to mention that, provided they are compliant with section 37.5, the provisions of an agreement take precedence over:

- ⊖ any incompatible provision of the YPA;
- ⊖ any incompatible provision, in regard to service organization, of the *Act respecting health services and social services* (hereinafter, "ARHSS") or the *Act respecting health services and social services for Cree native persons*.

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For example, the provisions of the agreement referring to the mechanisms whereby the Native DYP entity exercises its responsibility to assess a child's situation take precedence over the corresponding provisions of the YPA. Likewise, in regard to service organization, the Native entities responsible for the provision of youth protection services under the agreement may, for the purposes of application of the agreement, take on the responsibilities of an establishment operating a child and youth protection centre in the sense of the YPA and the ARHSS.

1.1.15 Tabling in the *Assemblée nationale* and publication in the *Gazette officielle du Québec*

An agreement entered into under section 37.5 must be tabled in the *Assemblée nationale* within the 15 days following the date it is signed. Where the *Assemblée nationale* is not sitting during that period, the agreement must be tabled within the 15 days following the resumption of the work of the *Assemblée*.

The agreement must also be published in the *Gazette officielle du Québec*, whereby the Government of Quebec makes its decisions official.





1.2 Provisions Ensuing from the General Youth Protection System

Like the general youth protection system, a special youth protection program for Native people must adopt certain principles and take the measures necessary to ensure not only the quality of the services offered to users but also to guarantee their basic rights. Where a community wishes to set up a special youth protection program, it must establish rules providing for non-interference in decisions made by persons responsible for child protection, mechanisms for cooperation with the principal partners, provisions concerning the protection of personal information, a mechanism for the handling of user complaints, a data exploitation system, and training and clinical support for professionals.

The following sections explain the various provisions ensuing from the general system that must form an integral part of any agreement reached under section 37.5 of the YPA.

1.2.1 Principle of non-interference

A special youth protection program for Native people must be independent and thus free of all interference from political, financial, or administrative bodies. The persons or bodies exercising all or part of the responsibilities of the DYP and the DP, with full authority and independence, must enjoy total clinical autonomy. When making decisions regarding children, they must be free from all forms of influence.

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As a guarantee that the DYP/DP possesses this independence, section 31.2 of the YPA provides that the board of directors of an institution operating a child and youth protection centre may not dismiss a director or reduce his salary except by a resolution adopted, at a meeting called for that purpose, by not less than two-thirds of the votes of all its members. Likewise, a proposed special program must comprise an adequate mechanism for ensuring the clinical autonomy of all persons responsible for child protection.

1.2.2 Collaborative mechanisms

The DYP does not have sole responsibility for child protection – that responsibility in fact rests primarily with parents and with the whole community. Furthermore, communities are not always able, in every circumstance, to provide for the needs of all their children. Communities wishing to establish a special youth protection program must therefore build ties with a broader network. By building alliances with partners who can support them in certain situations, communities are able to ensure the continuity and the complementarity of the services offered.

Just as the integrated centres sign agreements with a range of partners – for example, the educational system, childcare services, and alternative justice organizations – establishing mechanisms for collaboration with these partners, the persons or bodies responsible for a special youth protection program must sign collaboration agreements with their partners at the community, local, and regional levels.

With community partners

At the community level, collaboration agreements can be signed with various organizations present in the community, including organizations providing basic social services and community health services, schools, childcare centres, youth homes (*maisons de jeunes*), law enforcement agencies, justice committees, and so forth.

With local and regional partners, particularly integrated centres

To gain access to more specialized services that are not available in the community, agreements may be reached with outside partners at the local and regional levels, particularly with the integrated centres of the Quebec system. In this regard, the institutions of the health and social services system play a key supporting role for the communities so as to favour the signing of such complementary service agreements.

At the regional level, the integrated centres constitute important partners. As mentioned in point 1.1.11, mechanisms may be agreed upon with the integrated centre(s) concerned in regard to the taking back in charge of a situation of the general youth protection system and, more broadly, in regard to transfers between institutions. Mechanisms may also be agreed upon with all the integrated centres so that the Native entities responsible for the special youth protection program are notified, with adherence to the applicable rules of confidentiality, of any youth protection report accepted for evaluation that involves a child who is a member of the community.

Agreements with integrated centres may also deal with training of professionals, the data exploitation system, placement of children, etc. As regards placement, appropriate consideration shall be given to family-type resources, intermediate resources, and rehabilitation centres. For example, in the context of an agreement under section 37.5 of the YPA, a community could take on the responsibilities of recruiting, assessing, and overseeing the activities of its foster families as well as ensuring that the cases of children placed have professional oversight, in particular by performing quality control on the services offered. Moreover, it could sign an agreement with the integrated centre in its health and social services region or its territory for placement of youths from the community in rehabilitation centres.

For the application of the Multisectorial Agreement

It is important to recall that the *Entente multisectorielle relative aux enfants victimes d'abus sexuels, de mauvais traitements physiques ou d'une absence de soins menaçant leur santé physique*¹⁵ (hereinafter, the "Multisectorial Agreement") continues to apply in the context of a special youth protection program. This agreement applies when there are reasonable grounds to believe that a child's security or development is in danger and that a criminal act has been committed against a child. These situations concern:

- ☉ children who are victims of sexual abuse committed by their parents or by any adult or minor, whether or not in a relationship of authority to the child;
- ☉ children who are victims of physical abuse committed by their parents or by any adult, whether or not in a relationship of authority to the child;
- ☉ children whose physical health is threatened by an absence of care from their parents or from adults having a relationship of authority to them.

It is therefore essential to maintain coordination and interaction among the different partners covered by the Multisectorial Agreement: the agencies responsible for public security and law enforcement, justice, education, child care services, and health and social services, both those situated within the community and those situated outside of it. To this end, the DYP is responsible for coordinating the application of the Multisectorial Agreement and the relationships with the other partners. In the context of a special youth protection program, this role rests with the Native entities taking on the responsibilities of the DYP.

¹⁵ This agreement was published by the Ministère de la Santé et des Services sociaux in 2001. It is available online in the Publications section of the Ministère de la Santé et des Services sociaux website at www.msss.gouv.qc.ca. At press time, this agreement was undergoing a revision.



1.2.3 Provisions concerning the protection of personal information

Very often, the DYP's interventions in the life of a child or his parents concern the most intimate aspects of their lives. Like any citizen, children and their parents are entitled to the confidentiality of information concerning them and to the protection of their privacy. These basic rights are enshrined in several pieces of legislation, including section 5 of the Charter of Human Rights and Freedoms, which provides that "every person has a right to respect for his private life," and section 35 of the Civil Code of Québec, which provides that "no one may invade the privacy of a person without the consent of the person unless authorized by law."

A special youth protection program for Native people must comply with all the legislative provisions concerning the protection of personal information.¹⁶ These provisions are contained in several statutes.

In Quebec, the *Act respecting Access to documents held by public bodies and the Protection of personal information* (ch. A-2.1) (hereinafter, "Access Act") establishes the general legal framework for the protection of personal information. As regards youth protection, this law essentially governs access to files other than user files, such as foster family files and correspondence with outside organizations.

In the area of youth protection, the principal applicable provisions are those of the ARHSSS and the YPA. The provisions of these two statutes prevail over those of the Access Act. The relevant provisions of the ARHSSS are those concerning access to a user's file (sections 17–28). As regards the YPA, it establishes a special regime governing confidentiality, whose provisions take precedence not only over those of the Access Act but also over those of the ARHSSS. The main aspects of this special confidentiality regime are covered by sections 11.2, 11.2.1, 35.1, 35.4, 36, 44, and 72.5–72.11 of the YPA.

As to the rules of confidentiality concerning young offenders, the YCJA contains several provisions covering the protection of adolescents' privacy, access to files, and communication of information contained in criminal case files. These provisions, found in sections 110–29 of the YCJA, take precedence over any provisions of the ARHSSS and the Access Act that may be incompatible with them.

Finally, the Civil Code of Québec contains a number of provisions concerning the confidentiality of adoption files. These provisions, contained in sections 582–4 of the Civil Code, establish specific rules allowing for the communication of confidential information contained in an adoption file in certain situations.

1.2.4 Complaint examination mechanism

Under chapter III of title II of the ARHSSS, any user or user's representative who is dissatisfied with the health services or social services the user received, ought to have received, is receiving, or requires is entitled to file a complaint and to receive assistance in doing so. A special youth protection program must therefore provide for a complaint examination mechanism that protects these user's rights and must adhere to the following principles:

- the confidentiality of the complaint;
- the complainant's right to be assisted in making the complaint;
- examination by an independent person or body;
- the opportunity for the user to challenge a decision and to take the complaint to a second level;
- follow-up on any ensuing recommendations.



¹⁶ For more details on the various legislative provisions concerning the protection of personal information, see Appendix 2.

1.2.5 Data exploitation system

Section 288 of the ARHSS provides that each institution must produce an annual statistical report on the resources and services of the institution. This is because the *Ministère de la Santé et des Services sociaux* must be in possession of reliable data in order for it to fulfill its responsibilities. More particularly concerning children and youth whose situation demands the application of the YPA or the YCJA, data provided on demand, periodically, or annually serve to create an overall picture of youth protection and young offender-related activities in Quebec. For one thing, such data yields a more accurate sense of the nature and evolution of the services provided and offers dependable guideposts to the application of the YPA and the YCJA. This knowledge, in turn, helps to set realistic targets in terms of outcomes and service quality, as well as to design relevant indicators for these targets.

In an agreement entered into under section 37.5 of the YPA, the commitment to provide data to the *Ministère de la Santé et des Services sociaux* is essentially designed to answer this need for information. Depending on the kinds of responsibilities accepted under such an agreement, various types of data will have to be provided to the *Ministère de la Santé et des Services sociaux* on a regular basis; these are listed in Appendix 3, broken down by the types of situations that may be covered in an agreement; namely, youth protection, adoption, and young offenders.

Communities wishing to enter into an agreement must set up a data exploitation system detailing the activities and interventions carried out for their users. At a minimum, such a system must contain the information listed in the appendix, but it may also contain more detailed information. The “*Projet intégration jeunesse*” (PIJ) system used in integrated centres could be a suitable option for communities. The *Ministère de la Santé et des Services sociaux*, the institutions of the health and social services system, and the FNQLHSSC can provide support and expertise on this issue to communities as necessary.

1.2.6 Training and clinical support

Services offered to children and their families must meet rigorous quality criteria. In the particular field of sociojudicial intervention, meeting these quality criteria necessarily means ensuring that the professionals involved have the requisite skills. To acquire and maintain these skills, professionals must have access to clinical tools and appropriate professional development programs to support them in carrying out their work. In addition, given the seriousness and complexity of the situations with which these professionals will be dealing, there is an unquestionable need for structured, professional clinical supervision, which will improve the quality and effectiveness of their interventions.

In a proposed special youth protection program, the communities involved must indicate what they intend to do to provide the necessary training and clinical support (clinical supervision, practice guides, clinical tools, training activities). A priority is to be placed on clinical supervision provided by skilled professionals. As well, communities must make sure that those professionals given responsibility for enforcing the YPA and the YCJA are fully acquainted with these laws. In this regard, the *Ministère de la Santé et des Services sociaux* and the health and social services institutions play an important role, in particular by offering access to training sessions given by the health and social services system.



2. STAGES IN THE IMPLEMENTATION OF A SPECIAL YOUTH PROTECTION PROGRAM

In light of the foregoing, the implementation of a special youth protection program may seem like a complex and arduous task for interested Native communities. Where to start? What are the first decisions to be made, the first steps to take? Naturally, each program is unique and is contingent upon a range of factors specific to each community. Nevertheless, there are a certain number of stages common to all such programs. We proceed now to review these as a guide to Native communities wishing to embark on this process as well as the integrated centres and other partners concerned.

The following sections explain some of the stages to be completed before and during the development of an agreement to establish a special youth protection program. Certain communities may already be well along in the development of their project before they commit formally to a special program, while others may need to be assisted over a longer period of time in order to establish a situation conducive to the signing of an agreement under section 37.5. It is important to stress that this process is fundamentally intended to accommodate the pace of each community. It takes account of the gains that each community has made and its respective path towards self-determination.

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2.1 Preliminaries

2.1.1 Taking charge of basic social services

Prior to undertaking the work leading to the development of an agreement under section 37.5 of the YPA, an interested community must first have reached a preliminary stage where it has taken charge of basic social services and, more particularly, preventive services offered under the First Nations Child and Family Services Program within the community. Given its status as an instrument applicable in exceptional cases, the YPA cannot be made to stand in for basic social services where these are otherwise lacking; it cannot be the avenue of first resort for solving problems. It is essential that these services be available and accessible, not only so as to prevent situations from deteriorating so much that they require the intervention of the authorities, but also because proper prevention and intervention have the potential to keep problems from arising in the first place. In addition, when a community takes charge of basic social services, it will be in a better position to ensure continuity between these services and the youth protection services to be implemented as part of an agreement under section 37.5 of the YPA.

Consequently, in communities not under agreement, prior to entering into an agreement to establish a special youth protection program, a Native community, a group of communities, or an aboriginal nation must take charge of basic social services in the context of a funding agreement with Indigenous and Northern Affairs Canada.



2.1.2 Development of a preliminary project

Once the community has successfully taken charge of basic social services, it may embark on a process leading to the implementation of a special youth protection program. It must first develop a preliminary project laying out the broad outlines of the projected special program, along with a work plan detailing the steps to be taken in order to meet the applicable requirements.

In particular, the community must demonstrate its capacity to take charge of the DYP responsibilities that it wishes to take on. For this purpose, it may draw upon the agreement reached between the community and the integrated centre concerning the application of the YPA.

The integrated centre should support the community's project to the best of its capacity. Indeed, such support is essential to the implementation of a special youth protection program.



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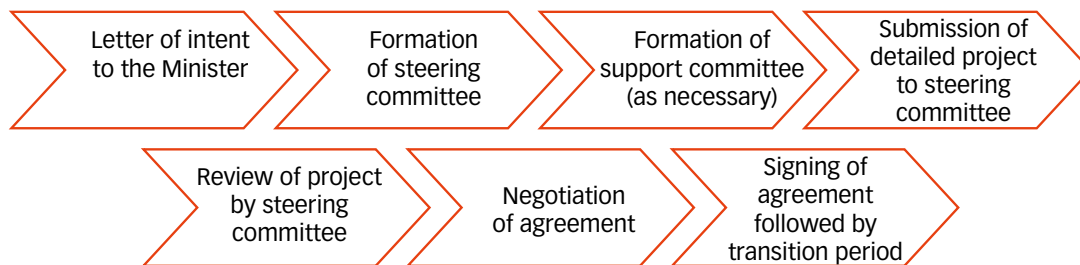
2.2 Stages in the Development of an Agreement

2.2.1 Filing of a letter of intent with the Minister

The next step for the Native authorities is to send a letter of intent to the Minister of Health and Social Services expressing an interest in beginning the work leading to the signing of an agreement under section 37.5 of the YPA. This letter must be accompanied by supporting documents providing a preliminary description of the special youth protection program that the community intends to put in place, as well as the band council or northern village council resolution authorizing negotiations to begin. The resolution must also contain an undertaking to consult the population and to work in collaboration with the various partners concerned for the implementation of the special youth protection program.

It is strongly recommended that the letter of intent be accompanied by a letter from the president-executive director or from the president-deputy executive director of the integrated centre. In this letter, the executive director of the youth centre could mention collaborative work that has taken place, the fact that the institution supports the project, and the manner in which it intends to offer its support to the Native entities with a view to reaching an agreement and implementing a special youth protection program. Letters of support from other key partners in the project could also be attached to the letter of intent.

Receipt of the letter of intent with its supporting documents marks the formal beginning of the process leading to the signing of an agreement. This process comprises several stages whose purpose is to support communities as they put their youth protection services in place. The diagram below presents the continuum of stages leading to the signing of an agreement.



2.2.2 Formation of a steering committee

Following receipt of the letter of intent, a preliminary review of the situation is carried out by the *Ministère de la Santé et des Services sociaux*, in particular to ensure that the community or communities concerned have in fact completed the prior stage of taking charge of basic social services.

If the outcome of this review is favourable, a steering committee is formed. This committee includes representatives of the Native authorities and the representatives of the integrated centres concerned.

At this stage, the steering committee is tasked with reviewing the communities' progress towards taking charge of youth protection services.

2.2.3 Formation of a support committee

In their letter of intent, communities may request that a support committee be formed to assist them in developing the project for a special youth protection program. The steering committee may also propose the formation of such a committee, as needed. This support committee may be made up of representatives from the communities of the integrated centres concerned and from the *Ministère de la Santé et des Services sociaux*. The work of this committee can last for varying periods depending on the state of development of the project.

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2.2.4 Submission of detailed project to steering committee

The detailed project for a special youth protection program is submitted to the steering committee. It must conform to the provisions of section 37.5 of the YPA as well as meeting the various requirements arising from the general youth protection system.

The project may comprise a variety of documents, such as regulations governing the proposed special youth protection program, practice manuals, a description of the proposed complaint handling mechanism, collaboration protocols, etc.

2.2.5 Steering committee review of the project

The steering committee determines the procedure they will use to conduct a more in-depth analysis of the various clinical and legal aspects of the project submitted. It may conduct this review itself or mandate a subcommittee to do so and then submit its recommendations to the steering committee.

At the completion of the review, the steering committee determines whether it is possible to begin the work of negotiating an agreement. If not, the file is returned to the communities or, as applicable, to the support committee for reworking so that it can be resubmitted for review by the steering committee.



2.2.6 Negotiation of the agreement

It is incumbent on the Native party to submit an initial draft agreement to the steering committee members; this marks the beginning of negotiations in regard to the content of the draft agreement.

The steering committee is responsible for the entire process related to the negotiation of the agreement up until the time it is signed and in particular the process of consultation with partners,¹⁷ the various procedures necessary to have the draft agreement approved by the political authorities, and the planning of the procedures surrounding the signing of the agreement and its publicization to all the partners concerned.

2.2.7 Term of agreement and renewal conditions

As part of the negotiation of the agreement, the parties must agree upon the term of the agreement and, as applicable, on the conditions of its renewal. When the term of the agreement expires, the agreement may be renewed under the conditions stipulated by the parties. For example, the term of an initial agreement could be limited to five years and the agreement could be renewed subject to a favourable recommendation from the monitoring committee created by the parties.

2.2.8 Signing of the agreement

With the completion of consultations over the draft agreement, and once the political green light is given, the work moves on to the signing of the agreement. For the Government of Quebec, the Ministers responsible for Health and Social Services, Aboriginal Affairs, and Canadian Intergovernmental Affairs are signatories to the agreement.

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2.2.9 Transition period

When an agreement is reached for the first time with a Native entity, the agreement must provide for a transition period in order to ensure that a successful switch is made from the general system to the special youth protection program. The purpose of this period is, among other things, to prepare for the transfer of the various files from the integrated centres to the competent Native entities in the communities without loss of continuity, to sign collaboration agreements with various partners guaranteeing the continuity and complementarity of services, to provide for the training and hiring of human resources, and to publicize the agreement to all persons and entities concerned, particularly within the health and social services system and the justice system.



¹⁷ For the Ministère de la Santé et des Services sociaux more particularly, a consultation process, potentially causing delays in the work surrounding the negotiations, must be carried out with various partners, and in particular with the Ministère de la Justice, the Secrétariat aux affaires autochtones, the Secrétariat aux affaires intergouvernementales canadiennes, and the Commission des droits de la personne et des droits de la jeunesse. As to Native communities, they are responsible for undertaking a similar consultation with their political authorities.

3. ROLES AND RESPONSIBILITIES OF THE ENTITIES CONCERNED

A number of different entities take part in the development and monitoring of an agreement reached under section 37.5 of the YPA. This section identifies the key partners and briefly describes their roles and responsibilities with respect to the implementation of a special youth protection program.

3.1 The Native Party

As set out in section 37.5 of the YPA, a community, a group of communities, a nation represented by all of its councils or, in the absence of such councils, any other Native group, may enter into an agreement establishing a special youth protection program. However, much work must be done before an agreement is ready to be signed, beginning with the taking in charge and the organization of basic social services, since these are the portal to child and youth services in general. The next step is to mobilize the stakeholders and organizations concerned around the development of a special youth protection program that will be acceptable to the local population and to the partners, both inside and outside the community.

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Once these steps are completed, the Native party plays a critical role throughout the process of developing and negotiating an agreement. It is the Native party who has the initiative of beginning negotiations by submitting a preliminary special youth protection program and a draft agreement to the *Ministère de la Santé et des Services sociaux*. The Native entities also have primary responsibility for implementing the special youth protection program that emerges from the agreement. For this purpose, they may draw upon the support of partners in the health and social services system, if desired. Finally, it goes without saying that the participation of Native entities in publicizing and monitoring the agreement and evaluating the special youth protection program is indispensable.

3.2 The *Ministère de la Santé et des Services sociaux*

The *Ministère de la Santé et des Services sociaux* is the ministry responsible for negotiating agreements under section 37.5 of the YPA; therefore, it is involved at every stage of the process, from development to signing to follow-up. It is also responsible for securing the participation of the relevant health and social services institutions in the development and monitoring of these agreements.

The *Ministère de la Santé et des Services sociaux* is also in charge of coordinating consultation on the draft agreement with its governmental and nongovernmental partners and for steering the draft agreement through the process leading to its approval by the political authorities. Finally, once the agreements are signed, the *Ministère de la Santé et des Services sociaux*, with the Native party, plays a vital role in publicizing these agreements to the persons and entities concerned.

Moreover, the *Ministère de la Santé et des Services sociaux* provides support to communities so desiring in order to facilitate the transfer of the knowledge necessary to implement the proposed special youth protection program.

4. SUMMARY: CONTENTS OF A DRAFT AGREEMENT TO ESTABLISH A SPECIAL YOUTH PROTECTION PROGRAM

Contents of a draft agreement to establish a special youth protection program

Under section 37.5 of the YPA, the draft agreement must indicate that the special youth protection program:

- conforms to the general principles of the YPA and respects the rights of children and parents set out therein; and, if the special program covers responsibilities of the DP, that it conforms to the decoration of principle of the YCJA;
- covers all situations in which the security or development of a child is or may be considered to be in danger in the sense of sections 38 and 38.1 of the YPA;
- is subject to sections 23–27 of the YPA, which concern the responsibilities and powers of the *Commission des droits de la personne et des droits de la jeunesse*.

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Under section 37.5 of the YPA, as well as the general youth protection program, the draft agreement must specify the following:

- the parties to the agreement;
- the territorial scope of the agreement and the population covered;
- the responsibilities of the DYP and the DP which the concerned communities intend to entrust to a Native Person or entity;
- the procedures for the exercise of these responsibilities;
- the persons or entities to whom these responsibilities will be entrusted, as well as the roles and responsibilities;
- the provisions governing the taking back in charge of the case of a child by the general youth protection system;
- the cases, conditions, and circumstances in which the provisions of the agreement cease to apply) termination clause);
- the mechanism that will be implemented to protect the special program from interference;
- collaborations established with the partners;
- the provisions concerning the protection of personal information;
- the complaint handling mechanism;
- the data exploitation system;
- the system for evaluation and monitoring of the agreement;
- training and clinical support for professionals.

Depending on what is agreed upon by the parties, the draft agreement must also specify:

- the term of the agreement;
- any applicable transitory provisions.

CONCLUSION

The YPA recognizes the importance of taking into account the specific characteristics of Native communities. Section 37.5, providing for the establishment of a special youth protection program for Native people, offers a genuine opportunity for communities to adapt this system to their own realities in order to guarantee the well-being and protection of their children.

The guidelines presented in this paper are intended to provide for a smooth transition from the general system to a special youth protection program, one in which children's and their parents' rights are respected. The overall process may seem demanding, but where children's protection is at stake, whether it be in the general system or a special program, the services offered have to conform to high standards of quality.

In conclusion, this paper is produced in a spirit of support and assistance. The *Ministère de la Santé et des Services sociaux* and the institutions of the health and social services system wish to support, to the best of their ability, those Native entities choosing to undertake a process leading to the signing of an agreement under section 37.5 and the implementation of a special youth protection program. This support is intended to be respectful of the pace of each community and the degree of self-determination it has achieved.



APPENDIX 1A – ACTIVITIES RESERVED TO MEMBERS OF A PROFESSIONAL ORDER¹⁹

Field of assessment activity	Nature of assessment activity	Professional authorized to carry out the assessment activity
Assess a person further to a decision of the DYP or of a tribunal made under the YPA	Intake and processing of youth protection reports	Social worker, psychoeducator, criminologist, ¹⁹ or social work technician
	Assessment of a child's situation and living conditions	Social worker, psychoeducator, or criminologist ²⁰
	Orientation of a child	
Assess an adolescent further to a decision of a tribunal made under the YCJA	Review of a child's situation	
	Assessment leading to a predisposition report	Social worker, psychologist, psychoeducator, criminologist, or sexologist ²⁰
Assess a person who wishes to adopt a child born in Quebec or outside Quebec	Review of breach of measures imposed	Social worker, psychologist, or psychoeducator
	Psychosocial assessment of persons seeking to adopt a child	Social worker, psychologist, or marital and family therapist

¹⁹ At the time when the Act to amend the Professional Code and other legislative provisions in the field of mental health and human relations (2009, chapter 28) came into force, criminologists and sexologists in Quebec did not have a professional order. At the request of the Office des professions du Québec, the Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec drafted a regulation concerning the professional activities that may be carried out by these two groups. This regulation will be in force until criminologists and sexologists are integrated into the professional system through the creation of their respective professional orders. In addition, a register of criminologists and a register of sexologists were created. The persons listed in these registers, including new graduates in criminology and sexology, may exercise the authorized professional activities without regard to a reference period.

²⁰ It should be noted that acquired rights were recognized for persons not eligible for a professional order who, on 20 September 2012, were performing the activities reserved to professionals. Professionals enjoying acquired rights are authorized to continue their prior activities, while being subjected to the conditions and modalities determined by the professional orders. A register of persons enjoying acquired rights has been created for each of the orders: i.e., the Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec, the Ordre des psychoéducateurs et psychoéducatrices du Québec, and the Ordre des conseillers et conseillères d'orientation du Québec.

APPENDIX 1B – ACTIVITIES NOT RESERVED TO MEMBERS OF A PROFESSIONAL ORDER

Field of activity	Nature of activities
Youth protection	<p>Activities carried out in connection with the application of measures, and in particular the determination, updating, and review of the intervention plan (with the exception of determination of the intervention plan for a person suffering from a mental disorder or exhibiting a risk of suicide who is placed in a rehabilitation centre for young persons with adjustment problems)</p> <p>Activities carried out by the professional responsible for the application of measures with a view to producing the review report</p> <p>Assessment of a foster family</p>
Young offenders	<p>Assessment of the possibility of the adolescent's participation in the extrajudicial sanctions program</p> <p>Monitoring of extrajudicial sanctions</p> <p>Monitoring of sentences</p>
Adoption	All adoption-related activities, with the exception of psychosocial assessment of persons seeking to adopt a child



APPENDIX 2 – PROVISIONS CONCERNING THE PROTECTION OF PERSONAL INFORMATION

For purposes of information, here is a summary of the main provisions concerning the protection of personal information as they apply to youth protection and young offenders. These provisions must, however, be interpreted with reference to all the other provisions of the various laws governing the protection of personal information.

Charter of Human Rights and Freedoms (ch. C-12)

Section 5: Every person has a right to respect for his private life.

Civil Code of Québec (ch. 64)

Section 35: Every person has a right to the respect of his reputation and privacy.

No one may invade the privacy of a person without the consent of the person unless authorized by law.

Act respecting Access to documents held by public bodies and the Protection of personal information (ch. A-2.1)

Section 9: Every person has a right of access, on request, to the documents held by a public body.

The right does not extend to personal notes written on a document or to sketches, outlines, drafts, preliminary notes or other documents of the same nature.

Note: However, the Access Act, in sections 18–41.3, establishes a number of restrictions on this right of access.

Section 54: In any document, information concerning a natural person which allows the person to be identified is personal information.

Section 59: A public body shall not release personal information without the consent of the person concerned.

Note: However, section 59 as well as sections 59.1, 61, and 62 specify several situations in which a public body may release personal information without the person's consent.

Act respecting health services and social services (ch. S-4.2)

Section 17: Every user 14 years of age or over has right of access to his record. However, the institution may deny him access to it temporarily if, on the advice of his attending physician or the physician designated by the executive director of the institution, communication of the record or any part thereof would likely be seriously prejudicial to the user's health. In that case, the institution, on the recommendation of the physician, shall determine the time at which the record or the part thereof to which access has been denied can be communicated to the user, and notify him thereof.

Section 19: The record of a user is confidential and no person may have access to it except with the consent of the user or the person qualified to give consent on his behalf..

Note: Consent may be verbal or written, but it is always preferable to obtain written consent. This said, section 19 lists twelve situations in which information contained in a user's file may be released without his consent.

Youth Protection Act (ch. P-34.1)

Section 11.2: Any information collected under this Act concerning a child or his parents that would allow their identification is confidential and may not be disclosed by anyone except to the extent provided for in Chapter IV.1.

Section 11.2.1: Within the framework of this Act, no person may publish or broadcast information allowing a child or the child's parents to be identified, unless the tribunal so orders or the publication or broadcast is necessary for the purposes of this Act or a regulation made under it.

Furthermore, in special cases, the tribunal may prohibit or restrict the publication or broadcast of information on a hearing of the tribunal, on the conditions it prescribes.

Section 35.1: The director or any person acting under section 32 or 33 may inquire into any matter within the competence of the director.

Note: By virtue of this general power of inquiry, the DYP can require private or public bodies to disclose information concerning a child in regard to a report that has been made, or concerning the child's parents. The director may use his power of inquiry at every stage of the youth protection intervention process, and any person is obligated to cooperate with the director, under penalty of law.

Section 35.4: Notwithstanding section 19 of the Act respecting health services and social services (ch. S-4.2), at the request of the director or a person acting under section 32 of this Act, an institution must disclose information contained in the record of the child, either of the child's parents or a person implicated in a report, if the information contained in the record reveals or confirms a situation related to the grounds alleged by the director which could justify accepting the report for evaluation or make it possible to decide whether the security or development of the child is in danger.

Section 36: Notwithstanding section 19 of the Act respecting health services and social services (ch. S-4.2), if the director decides to act on a report regarding a child and if he deems it necessary to ensure the protection of the child, the director or any person acting under section 32 of this Act may, at any reasonable time or at any time during an emergency, enter a facility maintained by an institution to examine the record kept on the child and make copies of it.

The institution must forward a copy of the record to the director, on request.

The director or any person acting under section 32 may also, with the authorization of the tribunal, examine on the premises the record kept on the parents or a person implicated in a report and that is necessary to assess the situation of the child.

Section 44: No person shall reveal or be compelled to reveal the identity of a person who has acted in accordance with section 39 or 42, without his consent.

Note: In essence, what this section states is that no person shall reveal the identity of a person who has made a report or helped a child make a report without the consent of that person.

Section 72.5: Notwithstanding subparagraph 1 of the first paragraph of section 53 of the Act respecting Access to documents held by public bodies and the Protection of personal information (ch. A-2.1), no information collected under this Act in respect of a child or his parents that would allow the identification of the child or parents may be disclosed except with the authorization of the child himself if he is 14 years of age or over, where the information relates to him, or with the authorization of one of his parents where the information relates to a child under 14 years of age. However, where the information relates solely to the parents, it may not be disclosed except with the authorization of the parent to whom it relates.

Such information may, on application, be disclosed by order of the tribunal where the disclosure is intended to ensure the protection of the child to whom the information relates or the protection of another child. Only the director or the Commission, according to their respective powers, may apply to the tribunal for an order for the disclosure of such information.

This section shall not be construed as limiting the power of a court to order of its own motion or on application the disclosure of such information in the exercise of its powers and functions.

Note: Sections 72.6–72.11 enumerate different situations in which personal information concerning a child or his parents that was collected in the course of enforcing the YPA may, in specific cases, be disclosed without the consent of the persons concerned or by order of the tribunal.

Youth Criminal Justice Act (L.C. 2002, c. 1)

Section 110. (1): Subject to this section, no person shall publish the name of a young person, or any other information related to a young person, if it would identify the young person as a young person dealt with under this Act.

Note: Section 110 goes on to enumerate situations in which this provision does not apply.

Section 111. (1): Subject to this section, no person shall publish the name of a child or young person, or any other information related to a child or a young person, if it would identify the child or young person as having been a victim of, or as having appeared as a witness in connection with, an offence committed or alleged to have been committed by a young person.

Note: Section 111 goes on to enumerate situations in which this provision does not apply. Sections 112–129 set out rules restricting access to or communication of information contained in the court files of young offenders.

APPENDIX 3 – DATA TO BE PROVIDED TO THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

The data to be provided to the *Ministère de la Santé et des Services sociaux* by communities in regard to situations concerning youth protection include the following:

- ⊙ number of reports received and processed;
- ⊙ number of reports accepted for evaluation, by reason for report;
- ⊙ number of reports accepted for evaluation, by user age and sex;
- ⊙ number of assessments to be performed;
- ⊙ percentage of children who were the subject of repeat reports;
- ⊙ percentage of children who were the subject of a new intervention by the DYP following a repeat report;
- ⊙ number of assessments performed;
- ⊙ number of assessments concluding that the child's security or development was in danger, by grounds for this conclusion;
- ⊙ number of new children given protection (*prise en charge*) during the year, broken down by main reason and by whether voluntary or court-ordered measures were involved;
- ⊙ number of new children given protection who were subject to a placement measure;
- ⊙ total number of children given protection during the year;
- ⊙ percentage of children who were subject to a placement measure;
- ⊙ number of children by duration of placement measure;
- ⊙ average number of interventions for application of measures;
- ⊙ number of judicial reviews performed, by decision (continuation or end of intervention) and by type of measures (voluntary or court-ordered);
- ⊙ average duration of cases given DYP protection that were completed during the year (in months);
- ⊙ average waiting time between a report being retained and first assessment contact (in calendar days);
- ⊙ average length of assessments (in calendar days) from first contact to end of evaluation process;
- ⊙ time period between end of assessment and beginning of application of measures;
- ⊙ number of children awaiting assessment and application of measures;
- ⊙ number of children who were the subject of an intervention under the YPA;
- ⊙ number of children under tutorship for whom financial aid was granted.

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For adoption situations, the required statistics include:

- ⊙ number of users adopted with regard to adoption in Quebec;
- ⊙ number of users adopted with regard to adoption outside Quebec;
- ⊙ number of applicant families assessed during the year.

For situations concerning young offenders, the required statistics include:

- ⊙ number of users who were the subject of an intervention by the community under the YCJA;
- ⊙ number of young offenders placed in residential resources under the YCJA;
- ⊙ number of person/days of young offenders placed in residential resources, by user age and sex;
- ⊙ number of assessments/referrals to be performed;
- ⊙ number of assessments/referrals performed, by conclusion thereof;
- ⊙ average waiting time before assessment/referrals;
- ⊙ number of extrajudicial sanctions that were the subject of agreements with adolescents, by type of measure and number of adolescents concerned;
- ⊙ number of predisposition reports requested and produced;
- ⊙ average time for production of predisposition reports;
- ⊙ number of court orders, by nature and by number of youth concerned;
- ⊙ number of temporary detentions, by type;
- ⊙ number of committals to custody, by type and site of placement;
- ⊙ average time before assessment/referrals of young offender cases;
- ⊙ average time before application of extrajudicial sanctions and court-ordered measures;
- ⊙ average time between commission of offence and determination that action is required;
- ⊙ average time between prosecutor motion and beginning of application of measures;
- ⊙ average time between order and first significant contact;
- ⊙ average length of application of court-ordered sanctions, by type;
- ⊙ number of reviews of court orders, by conclusion thereof;
- ⊙ number of re-assessments of extrajudicial sanctions, by conclusion thereof;
- ⊙ number of young offenders who reoffended during the year;
- ⊙ number of transportation events for young offenders.

In terms of the residential resources available in each community, the communities must also provide data on the number and type of resources used as well as the number of person-days of usage of these residential resources under the YPA and the YCJA. They must also provide information on the movement of youths within these resources.

Finally, a summary of data distributed by law must be provided, particularly concerning the number of users who were the subject of an intervention under the YPA or the YCJA as well as the total number of users housed under these two statutes.





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