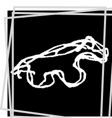
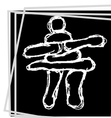
Guidelines for Establishing a

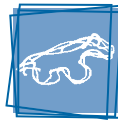
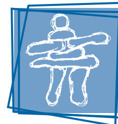
SPECIAL YOUTH PROTECTION PROGRAM for Native Peoples

Québec

Guidelines for Establishing a

SPECIAL YOUTH PROTECTION PROGRAM for Natives Peoples

Santé
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FOREWORD

In the spirit of the government approach to Native affairs described in the 1998 document *Partnership, Development, Achievement*, and in response to demands by many first nations and Native communities, the Québec government has agreed to be flexible in legislative and regulatory matters, to acknowledge Native peoples' right to greater autonomy in carrying out their responsibilities.

Accordingly, on December 1, 2000, the Québec government introduced a bill to amend the Youth Protection Act (R.S.Q., c. P-34.1) and thereby allow the government to enter into an agreement establishing a special youth protection program with a first nation, a Native community, a group of communities or with any other Native group. This bill was assented to on June 21, 2001. It introduces a new section in the Youth Protection Act (section 37.5), which establishes the framework in which the government can enter into such agreements.

This document presents guidelines for the content and implementation of these agreements to which communities wishing to submit a draft agreement to the government may refer. Even if the development and implementation of special youth protection programs is incumbent on the communities themselves, it is the duty of the ministère de la Santé et des Services sociaux to reiterate the conditions conducive to exercising responsibilities in respect of the development and security of all children. In this way, partners of the network of services for young people in difficulty, Native communities and all parties concerned will gain a better understanding of the context in which an agreement on a special program may be reached.

As they constitute agreements between the government and a first nation, agreements entered into under section 37.5 of the Youth Protection Act must be approved by the government and signed by the Minister for Native Affairs, under the Act respecting the ministère du Conseil exécutif (R.S.Q., c. M-30, ss. 3.48 and 3.49). The minister(s) responsible for the provisions of the Youth Protection Act concerned by such an agreement must also sign it.

Not all of the first nations have developed an organization of services allowing them to assume all responsibilities relating to youth protection; these guidelines should help them to gradually advance in that direction.

INTRODUCTION

The youth protection system is established by the Youth Protection Act (hereinafter the Act). The Act sets out an intervention process whose application is determined and defined in order to properly protect children, while respecting their rights and the rights of their parents. This precise and complex process bears witness to the exceptional character of interventions by State authorities in respect of children and their family. The object of the Act is to put an end to and prevent the recurrence of a situation in which the security or development of the child is in danger. The scope of the Act is therefore limited to children in need of protection. Its framework is complementary to that of the network of basic social services offered under the Act respecting health services and social services (R.S.Q., c. S-4.2) to respond to the needs of young people and their family.

The application of the Act falls within the community's sphere of responsibility, which presupposes the mobilization and participation of the population, institutions and bodies concerned. Native children and their family are faced with different circumstances than other Québec children. They live in communities that have their own values and family systems. Their way of life and their culture require the application and organization of services better adapted to their needs. These needs are shaped by a range of geographic, economic, sociocultural and political factors that vary from one community to the next. In this regard, the Act stipulates that the characteristics of Native communities must be taken into consideration.

The cooperative mechanisms currently set up between the communities, youth centres and courts of law sometimes have difficulty responding to the needs of young Native people and their family. Native peoples generally favour a community approach centred on discussing and sharing points of view, consensus, conciliation, community support and, ultimately, healing.

This is the backdrop for the process to grant first nations greater autonomy in the application of the Act and, consequently, in the application of the Youth Criminal Justice Act [Statutes of Canada (2002), c. 1], given that the duties entrusted to the "provincial director" under that act are assumed in Québec by the director of youth protection.

Aware of the responsibility incumbent on him for child protection, the Ministère believes it is important to develop guidelines defining the responsibilities with which the government would be entrusting the Native communities. These guidelines cover:

- the parameters, arising from the principles of the Act, that determine the policies to follow;
- the basic conditions for implementing a special youth protection program;
- the content of the agreement.

PARAMETERS AND BASIC CONDITIONS

PARAMETERS

The Minister remains responsible for the application of the Act throughout the entire Québec territory, including areas inhabited by Native communities. It is his duty and obligation to ensure that all Québec children receive the necessary services if their security or development is or may be in danger. Therefore, he must set up support and control mechanisms that guarantee the judicious application of the Act.

It is therefore essential to set parameters or boundaries for the interventions if we are to ensure the protection of children in vulnerable situations. The community's acceptance of these parameters and ability to observe them are *sine qua non* conditions for entering into any agreement.

These parameters are based on:

- section 37.5 of the Act;
- chapter II of the Act, titled "General principles and children's rights";
- sections 38 and 38.1 of the Act, concerning situations where the security or development of a child is or may be endangered;
- sections 23 to 27 of the Act, concerning the duties and powers of the Commission des droits de la personne et des droits de la jeunesse;
- section 3 of the Youth Criminal Justice Act, titled "Declaration of principle".

SECTION 37.5 OF THE ACT

Section 37.5 of the Act authorizes the government 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 the Act.

The program established by such an agreement must be compatible with the general principles stated in the Act and is subject to the provisions concerning the powers and responsibilities of the Commission des droits de la personne et des droits de la jeunesse.

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.

GENERAL PRINCIPLES AND CHILDREN'S RIGHTS UNDER THE ACT

A child has rights in his own right and, given his age and vulnerability, he is entitled to receive special attention and protection. 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. He must be protected from cruelty, abuse, ill-treatment and gross negligence. For that purpose, any person who has reasonable grounds to believe that a child is subject to such a situation, must in certain cases report the situation. This obligation is incumbent upon the entire population, but specifically on any professional or employee of the health care, education and public security networks who deals with children.

The Act sets forth a number of general principles, which include the following elements:

- decisions involving a child must be made in the interest of the child and respect his rights;
- parental authority prevails; in other words, the primary responsibility for the care, maintenance and education of a child and for ensuring his supervision rests with his parents;
- decisions made under the Act must contemplate the child's remaining with his family;
- the participation of the community and need for prevention are recognized as being important;
- any intervention by authorities must be respectful of persons and their rights;
- the measures provided for must be applied diligently, considering a child's perception of time;
- the intervention must take into consideration the characteristics of cultural communities and of Native communities.

Lastly, the rights of children and parents recognized under the Act are coupled with those set out in other legislation. Of special mention are the right to be informed, the right to be heard, the right to be represented by counsel, the right to refuse to abide by certain decisions made on their behalf, the right to appropriate services and numerous rights applicable to placement, including the right to be placed in appropriate premises and the right to communicate in complete confidentiality. We should point out that the Youth Protection Act is of an exceptional nature; it must be applied rigorously in order to meet the child's need for protection in the interest of the child and with respect for his rights and to ensure that situations where the child is in danger do not recur. However, it is not intended to compensate for the absence of basic social services offered under the Act respecting health services and social services.

SECURITY OR DEVELOPMENT ENDANGERED (SECTIONS 38 AND 38.1 OF THE ACT)

Although the exercise of the entrusted responsibilities may be different from those provided for in the Act, to be more in line with the needs of Native communities, the agreement must contain provisions for taking into account the various grounds provided for in the Act in order to ensure the appropriate protection of children. These grounds are as follows:

<u>Section 38</u>

For the purposes of this Act, the security or development of a child is considered to be in danger where

a) his parents are deceased or do not, in fact, assume responsibility for his care, maintenance or education;

b) his mental or affective development is threatened by the lack of appropriate care or by the isolation in which he is maintained or by serious and continuous emotional rejection by his parents;

c) his physical health is threatened by the lack of appropriate care;

d) he is deprived of the material conditions of life appropriate to his needs and to the resources of his parents or of the persons having custody of him;

e) he is in the custody of a person whose behaviour or way of life creates a risk of moral or physical danger for the child;

f) he is forced or induced to beg, to do work disproportionate to his capacity or to perform for the public in a manner that is unacceptable for his age;

g) he is the victim of sexual abuse or he is subject to physical ill-treatment through violence or neglect;

h) he has serious behavioural disturbances and his parents fail to take the measures necessary to put an end to the situation in which the development or security of their child is in danger or the remedial measures taken by them fail.

However, the security or development of a child whose parents are deceased is not considered to be in danger if a person standing *in loco parentis* has, in fact, assumed responsibility for the child's care, maintenance and education, taking the child's needs into account.

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.

COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE (SECTIONS 23 TO 27 OF THE ACT)

The Commission des droits de la personne et des droits de la jeunesse has the mandate to ensure the promotion and protection of the rights of children which are recognized by the Act and the Youth Criminal Justice Act. Upon an application or of its own motion, it may investigate any situation where it has reason to believe that the rights of a child or of a group of children have been encroached upon and take legal means to remedy the situation. It may also carry out or cause to be carried out studies and research on any question related to its competence. Its primary role is a supervisory role, and any person who considers that the rights of a child are not being respected may call on it.

A member of the Commission may enter premises in which he has reasonable cause to believe there is a child whose security or development is or may be considered to be in danger, as indicated in the Act. He may also 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. The Commission takes the legal means it considers necessary to remedy any situation where the rights of a child are being encroached upon.

The Commission may also, at all times, make recommendations to the various authorities concerned, in particular to the Minister of Health and Social Services, the Minister of Justice and to the Minister of Education.

DECLARATION OF PRINCIPLE OF THE YOUTH CRIMINAL JUSTICE ACT

The youth criminal justice system is intended to prevent crime by addressing the circumstances underlying a young person's offending behaviour, rehabilitate young persons who commit offences and reintegrate them into society, and ensure that a young person is subject to meaningful consequences for his or her offences in order to promote the long-term protection of the public.

This system must be separate from that of adults and emphasize the following:

- rehabilitation and reintegration;
- fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity;
- enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected;
- timely intervention that reinforces the link between the offending behaviour and its consequences;
- the speed with which persons must act.

Within the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should reinforce respect for societal values, encourage the repair of harm done to victims and the community and, where appropriate, involve the parents in the young person's rehabilitation and reintegration. The measures should 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 a right to be heard in the course of and to participate in the processes that affect them.

Victims should be treated with courtesy, compassion and respect for their dignity and privacy and should suffer the minimum degree of inconvenience as a result of their involvement with the youth criminal justice system, and they should be provided with information about the proceedings and given an opportunity to participate and be heard.

Lastly, parents should be informed of measures or proceedings involving their children and encouraged to support them in addressing their offending behaviour.

BASIC CONDITIONS

Native communities wishing to enter into an agreement that would transfer to them all or part of the responsibilities normally assigned to the director of youth protection must satisfy certain basic conditions to implementing a special youth protection program. These conditions are listed below.

PRIOR TAKING IN CHARGE OF BASIC SOCIAL SERVICES

Before any draft agreement is possible, the organization and delivery of basic social services must be taken in charge by the Native communities in question. A community's ability to assume the basic services attests to its ability to assume specialized, more complex services required for the application of the Act.

The availability and accessibility of basic social services in the communities allow the needs of the child or young person and his parents to be met. These services are essential, notably to prevent the situation from deteriorating and requiring intervention by the authorities. The fact that basic social services are already taken in charge by the communities helps to ensure better continuity between such services and specialized social services.

SUPPORT OF COMMUNITIES FOR THE PROJECT

The implementation of a special youth protection program must be supported by the people in the communities. The project proposed by their leaders must incite adherence and consensus within the communities concerned. The leaders must demonstrate that it does.

SPECIAL PROGRAM PROTECTED FROM INTERFERENCE

The special youth protection program must be separate and, in this regard, sheltered from any interference by political, financial or administrative authorities.

The person or authority that will be entrusted with exercising, with full authority and independence, all or part of the responsibilities assigned to the director of youth protection and the provincial director must be able to have full autonomy in clinical matters. Such person or authority shall be able to make decisions concerning children under no influence of any kind.

Their primary responsibilities are still, first and foremost, to protect the child and offer him the necessary services to put an end to and prevent the recurrence of a situation in which his security or development are in danger.

COOPERATIVE MECHANISMS DEVELOPED WITH OUTSIDE BODIES

Just as we recognize that the protection of children is not the exclusive domain of the director of youth protection, it is clear that a community cannot always respond on its own, in all circumstances, to the needs of all children. Communities wishing to establish a special youth protection program must open up to a larger community and forge alliances with partners that could support them in certain situations.

The most common situations or those most likely to occur must be defined (for example, a young person moves out of his community, a conflict of interest, specialized services required, etc.). The communities must demonstrate that alliances have already been developed and must have agreed on cooperative mechanisms with the outside bodies (youth centres, police officers, etc.).

To ensure the agreement's success, a provision must be made for a transition period before the agreement comes into force. The initial agreement will have a limited term, which must be stipulated. Lastly, file transfer procedures in the event of cases being taken back in charge by the general youth protection system must be set forth and be consistent with the legislation in force.

TRAINING AND CLINICAL SUPPORT FOR INTERVENERS

The services offered to vulnerable young people and their family must meet rigid quality criteria. In the special and specific field of sociojudicial intervention, interveners satisfying such quality criteria must inevitably hold the necessary skills.

To acquire such skills, they must have access to orientation, continuous and adapted training programs to assist them with tedious and complex duties. Furthermore, given the seriousness and complexity of the situations the interveners face, there is no doubt that high-quality, structured and systematic professional supervision is essential to support them in their work and thereby contribute to enhancing the quality and effectiveness of their interventions.

In the submitted project, the communities in question must indicate by what means they intend to ensure training and clinical support for the interveners. Practical guides should be made available to the interveners to define the interventions, and the communities should demonstrate that any intervener called upon to apply the Act has sufficient knowledge of it.

CONTENT OF AGREEMENT

Any agreement entered into under section 37.5 of the Act shall contain the following information:

TERRITORY AND POPULATION AFFECTED

The agreement shall specify the persons to whom it applies and define the territory to be covered. The status of persons and the territorial boundaries must be included.

RESPONSIBILITIES NORMALLY ENTRUSTED TO THE DIRECTOR OF YOUTH PROTECTION AND THE PROVINCIAL DIRECTOR THAT THE COMMUNITIES CONCERNED INTEND TO ENTRUST TO A PERSON OR AUTHORITY

Section 37.5 authorizes communities to enter into an agreement for all or only part of the responsibilities normally assigned to the director of youth protection and to the provincial director where young offenders are involved. The communities must specify exactly which responsibilities they intend to assume under the Act or the Youth Criminal Justice Act.

Generally, the duties assigned to a director of youth protection under the Act can be summarized as follows:

- to receive reported information and handle it;
- to apply urgent measures if necessary;
- to assess situations brought to his attention;
- to decide on the direction of a child, to determine the program, with the option of resorting to the Youth Court of the Court of Québec, and to decide on measures;
- to ensure that the agreement or order is carried out;
- to review the situation of a child;
- to decide to close the record;
- to receive the general consents required for adoption;
- to apply to the tribunal for a declaration of eligibility for adoption;
- to file an application for the disclosure of information under the provisions of section 72.5 or to disclose information under the provisions of sections 72.6 and 72.7;
- to have a child sought after and brought in.

The duties assigned to a provincial director under the Youth Criminal Justice Act are as follows:

- to authorize temporary detention;
- to decide on and apply an extrajudicial sanction;
- to obtain for the court the reports required for its decisions;
- to follow up on certain court orders;
- to request the examination of legal rulings;
- to make known his opinion on the availability, relevance and timeliness of certain programs;
- to manage legal rulings involving detention (place, transfer, release);
- to manage breaches by young people of any conditions imposed on them.

PROPOSED ORGANIZATIONAL STRUCTURE AND ROLES AND RESPONSIBILITIES OF THE PERSONS OR AUTHORITIES INVOLVED

Section 37.5 states that the agreement shall identify the person or groups of persons that will be entrusted with exercising, with full authority and independence, all or part of the responsibilities assigned to the director of youth protection and the provincial director. It may also provide procedures different from those provided for in the Act.

The agreement must contain information on the organizational structures of the services, the way in which duties will be distributed among the various persons concerned, etc

PROVISIONS DETERMINING THE TAKING BACK IN CHARGE OF A CHILD'S CASE BY THE GENERAL YOUTH PROTECTION SYSTEM

In certain circumstances, cases may be taken back in charge by the general youth protection system, and therefore transferred to the director of youth protection of the region in question. In the agreement, these cases must be listed and provisions must be made for taking them back in charge.

For information purposes, here are just a few examples of situations that may require a case to be returned to the general system:

- conflict of interest involving the persons entrusted with the responsibilities of director or their staff;
- a young person or his parents moves out of the community
- recommendation to this effect by the Commission des droits de la personne et des droits de la jeunesse.

As the Act is applied in a context of authority, disagreements are very likely to arise with the users. If he does not wish to be involved in the special program, a user age fourteen or older, or his parent, shall be entitled to make this decision before the intervention begins. To ensure the coherence and continuity of the intervention, which allows for the appropriate protection of children, a member of a community, if he has chosen to be included in the special program, may not decide on his own and without any of the grounds provided for in the agreement, to withdraw from it during the course of the process and to be subject instead to the general system.

PRIVACY PROVISIONS

The agreement must include provisions to ensure privacy under the Act respecting health services and social services, the Youth Protection Act, the Youth Criminal Justice Act, the Act respecting access to documents held by public bodies and the protection of personal information (R.S.Q., c. A-2.1) and the provisions of the Civil Code applicable to adoptions.

More specifically, the agreement must include provisions to ensure compliance with sections 11.2, 36, 44 as well as sections 72.5, 72.6 and 72.7 of the Youth Protection Act.

COMPLAINT EXAMINATION PROCEDURE

Under Chapter III of Title II of the Act respecting health services and social services, a user, or his representative, who is dissatisfied with services he received, ought to have received, is receiving or requires, is entitled to formulate a complaint and to receive assistance with the process. The agreement must therefore provide for a complaint examination procedure that guarantees the same user rights.

DATA COMPILATION SYSTEM

In monitoring the duties assigned to it, the Ministère must have access to reliable data on the children and young people whose situation requires recourse to the Act. As provided for in section 288 of the Act respecting health services and social services, each institution must produce a statistical report and present it to the Minister. In addition, under section 33 of the same act, the Minister may require an institution to furnish to him, at the time and in the form he determines, the information concerning needs for and utilization of services. Listing such elements in the agreement is intended to satisfy this need for information.

Data must be furnished annually to contribute to the overall picture of youth protection activities in Québec. This data fosters a better understanding of the nature of services offered and the progress of services delivered, and offers rigorous cues on the application of the Act. It makes it possible to set realistic objectives in terms of results and quality of the services dispensed to children and families and to create relevant indicators associated with them.

THE STATISTICS FURNISHED MUST INCLUDED FOR EVERY YEAR:

the number of reports received per problem;

the number of reports retained, according to the grounds;

the number of reports retained, according to the user's age and gender;

the number of assessments performed;

the number of assessments concluding that the security or development are endangered, according to the grounds;

the number of new cases taken in charge decided on during the year, according to the primary reason and the program (voluntary or judicial);

the number of new cases taken in charge involving a placement measure;

the number of children taken in charge during the year;

the number of reviews carried out according to the decision (pursue intervention or close the record) and the program (voluntary or judicial);

the average duration of the takings in charge that ceased during the year (in months);

the average waiting period between the retention of a report and the first contact for assessment (in calendar days);

the average duration of assessments (in calendar days) from the first contact to the end of the assessment process;

the delay between the end of the evaluation and the start of application of measures.

THE NUMBER OF REPORTS RETAINED, ACCORDING TO THE USER'S AGE AND GENDER;

the number of users subject to an intervention by the community under the Youth Criminal Justice Act;

the number of young offenders placed in placement facilities under this act;

the number of days/presence of young offenders placed in placement facilities, according to the users' age;

the number of alternatives to custody or extrajudicial measures that were the subject of agreements with young people, by type of measure;

the number of pre-sentence reports produced;

the average duration for producing the pre-sentence reports;

the number of court orders, according to their nature;

the number of temporary detentions, according to type;

the number of committals to custody, according to the type and place of the committal;

the average delay before the assessment-directing of cases of young offenders;

the average delay before the application of extrajudicial sanctions and legal measures;

the average delay between the committing of the crime and the start of the taking in charge;

the average delay between the request for substitution of the Attorney General and the start of the application of the measures;

the number of reviews of court orders, according to their outcome;

the number of re-evaluations of extrajudicial sanctions according to their outcome;

the number of young offenders who re-offended during the year;

the number of times young offenders were transported.

Based on the placement facilities they possess, the communities in question must also furnish data on the number, type and days the facilities were occupied.

A summary of the data broken down by act must also be furnished, in particular the number of users subject to an intervention under the Act or the Youth Criminal Justice Act and the total number of users detained under both of these acts.

To this effect, communities wishing to enter into an agreement must keep a detailed record of the activities and interventions made with every child for whom their services are solicited. This record must contain a minimum amount of the information listed above and must be appended to the agreement.

MEASURES FOR EVALUATING AND FOLLOWING UP THE AGREEMENT

The agreement concerning the taking in charge by Native authorities of responsibilities assigned to the director of youth protection must provide for a transition period agreed on with the regional bodies (regional boards and director of youth protection of the region in question). Through an appropriate procedure, the Ministère will ensure follow-up of the introduction of the agreement and, if necessary, require that corrective measures be taken. To ensure that the protection of children is adequate, the first agreement will have a limited term and may be renewed depending on the results of the evaluation.

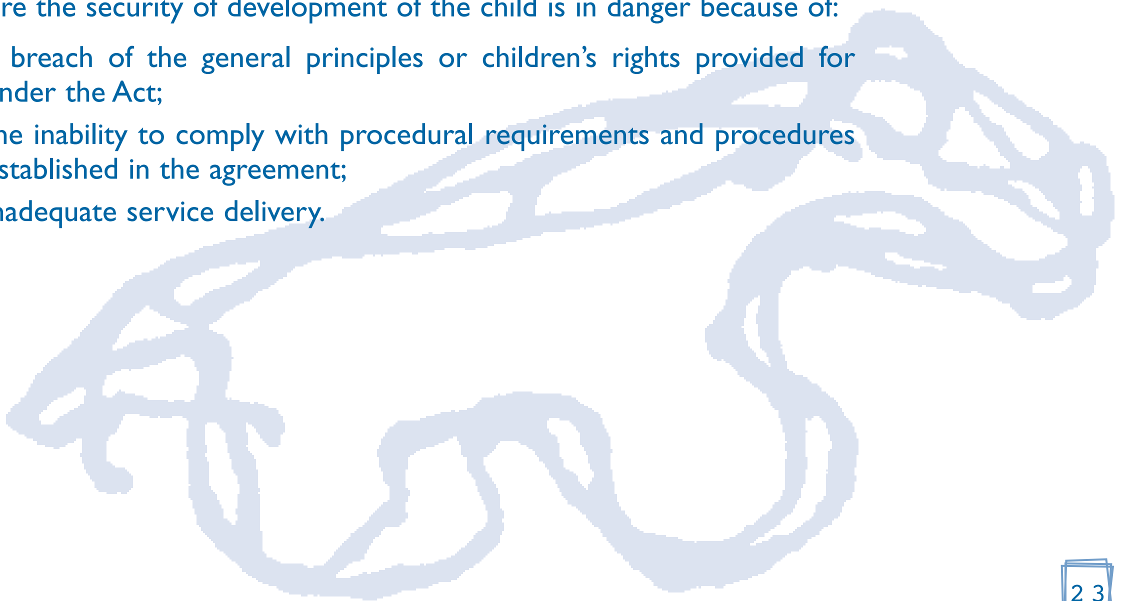
To ensure conformity between interventions and the agreement signed between the parties, the agreement shall provide measures to evaluate its implementation and contain the operational data listed in the section above. For instance, this evaluation will include information on:

- user satisfaction;
- complaints received;
- cooperative agreements tabled;
- training offered to staff;
- the procedure used to evaluate the service quality offered.

CASES, CONDITIONS AND CIRCUMSTANCES IN WHICH THE PROVISIONS OF THE AGREEMENT CEASE TO HAVE EFFECT (CANCELLATION CLAUSE)

A cancellation clause indicating the cases, conditions and circumstances in which the provisions of the agreement cease to have effect, at the request of either party, must be provided for in the agreement, notably for cases where the security of development of the child is in danger because of:

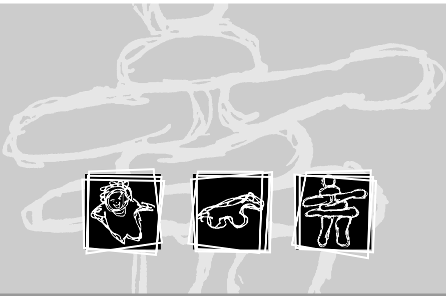
- a breach of the general principles or children's rights provided for under the Act;
- the inability to comply with procedural requirements and procedures established in the agreement;
- inadequate service delivery.



CONCLUSION

The Youth Protection Act recognizes the importance of taking the values and family systems of native communities into consideration. The passing of the bill enabling them to establish a special youth protection program is a clear indication of the government's determination to help native communities adapt this system to the reality of their lives. We believe that the Native communities are in the best position to develop and implement the most appropriate means for ensuring the protection and development of their children, while respecting the principles and rights of children and their parents recognized under the Act.

This approval process must however contemplate the established privileges of the communities and their progress toward becoming autonomous. The position taken in this document favours support and guidance. Given the complexity of such a procedure, an adjustment period, including supervisory and follow-up measures, is essential.



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