



Conseil Crie de la santé et des services sociaux de la Baie James
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Cree Board of Health and Social Services of James Bay

BOARD OF DIRECTORS BY-LAW No. 12

By-Law on youth protection and on the application of the
Youth Protection Act (Section 37)

PRESENTED TO THE BOARD OF DIRECTORS OF THE
CREE BOARD OF HEALTH AND SOCIAL SERVICES ON

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Resolution No. 01-157-17

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1. GENERAL PROVISIONS

1.1 Rationale

The present by-law is adopted by virtue of the *Youth Protection Act* which provides for the obligation for an institution operating a child and youth protection centre to adopt an internal by-law regarding the protection of youth and the application of the *Youth Protection Act*.

1.2 Purpose

The present by-law establishes the general application framework of the guiding principles as set out in the *Youth Protection Act*. The purpose of the present by-law is to specify the principles to which the institution adheres to regarding youth protection. Since the Director of Youth Protection also assumes powers and duties in other matters, such as in the case of young persons under the *Youth Criminal Justice Act* and adoption, the elements relevant thereto must be considered.

The present by-law also specifies the responsibilities and duties arising from the *Youth Protection Act* and the *Youth Criminal Justice Act*, as well as their application by the various departments of the institutions, as well as their interactions with each other. The by-law further clarifies the conditions for the exercise of such responsibilities and duties, as well as the accountability mechanisms applicable to the institution.

Finally, the present by-law is intended to inform the beneficiaries of the Cree Board of Health and Social Services of James Bay on the application of the *Youth Protection Act*.

1.3 Definitions

In the present by-law, unless the context requires otherwise,

- (a) “**Act**” means the *Youth Protection Act*¹;
- (b) “**Authorized Person**” means a person authorized by the Director of Youth Protection by virtue of sections 32 and 33 of the Act;
- (c) “**beneficiary**” means every person to whom health services or social services are furnished by the CBHSSJB. The term “beneficiary” also includes the term “child” defined as a person under 18 years of age and the term “young person” within the meaning of the YCJA;
- (d) “**Board of Directors**” means the Board of Directors of the CBHSSJB;
- (e) “**CBHSSJB**” means the Cree Board of Health and Social Services of James Bay;
- (f) “**Commission**” means the *Commission des droits de la personne et des droits de la jeunesse* established by the *Charter of human rights and Freedoms*²;

¹ CQLR, chapter P-34.1.

- (g) “**Director**” means the Director of Youth Protection of the CBHSSJB and provincial director within the meaning of the YCJA;
- (h) “**Executive Director**” means the Executive Director of the CBHSSJB;
- (i) “**individualized service plan**” means the document of the CBHSSJB identifying the needs, objectives pursued, means to use and foreseeable duration during which the services will be provided to the beneficiary and his family by more than one department within an institution;
- (j) “**institution**” means a local community service centre, a hospital centre, a social service centre or a reception centre, as defined in the *An Act respecting health services and social services for Cree Native persons*³;
- (k) “**intervention plan**” means the document developed with the beneficiary to identify the needs, pursued objectives, means to use and foreseeable duration during which the services shall be provided to the beneficiary and his family and that must be handed to them;
- (l) “**Minister**” means the Minister of Health and Social Services;
- (m) “**MSSS**” means the *Ministère de la Santé et des Services sociaux*;
- (n) “**protection plan**” means the set of voluntary or court ordered measures aiming to ensure the protection of a child;
- (o) “**Territory**” means Region 18;
- (p) “**YCJA**” means the Youth Criminal Justice Act⁴.

1.4 Legislative, Regulatory and Policy Framework

- *Charter of Human Rights and Freedoms*⁵;
- *Civil Code of Québec*⁶;
- *Youth Protection Act* and the regulations adopted by virtue thereof;
- *Youth Criminal Justice Act*;

² CQLR, chapter C-12.

³ CQLR, chapter S-5.

⁴ S.C. 2002, c. 1.

⁵ CQLR, chapter C-12.

⁶ CQLR, chapter CCQ-1991.

- *An Act Respecting Health Services and Social Services for Cree Native Persons*⁷ and the regulations adopted by virtue thereof;
- MSSS, *Manuel de référence sur la protection de la jeunesse*;
- MSSS, *Manuel de référence sur l'application de la Loi sur le système de justice pénale pour les adolescents*.

1.5 Main Stakeholders

- The Board of Directors;
- The Executive Director;
- The Director.

1.6 Role of the Director

The Director, under the authority of the Executive Director (section 31 of the Act) exercises his responsibilities entrusted by the Act and the YCJA. He ensures the application of these laws within the Territory.

The CBHSSJB has several departments exercising their own distinct roles. However, they are continuously interacting with the youth protection department of the CBHSSJB. The psychosocial departments intervene at all stages of the application of the Act and the other departments contribute to the administrative and clinical activities necessary to the proper operation of all the CBHSSJB administrations. They serve all the children, youth and families served by the CBHSSJB.

2. THE CONCEPT OF PROTECTION

2.1 Youth Protection: a Collective Responsibility

A child's well-being is primarily a responsibility bestowed on parents, but also to the entire community. The youth protection system set out in the Act is framed in continuity and complementarity with the system of the other stakeholders, whether it be a parent, a significant other (e.g. grand-parents and other members of the immediate and extended family), a person working in an institution, a school organization, a daycare facility, a community resource, a police force or the judicial network.

2.2 Scope of the Act

The Act is a law of specific application aimed at exceptional cases: situations in which the security or the development of the child is in danger and where the child's parents or the person having custody of the child cannot or are unable to protect them.

The Act personalizes the interventions in the lives of families by designating in each region a person, namely a director of youth protection who, on behalf of the province, assumes certain responsibilities set out in the Act. The critical period in the life of a child where the

⁷ CQLR, chapter S-5.

presence of the Director is essential must be limited to what is necessary to stop the situation compromising the child's security or development and to make sure it never reoccurs.

Therefore, the Act is not intended to meet all of the children's needs. The situations where a child's security or development is not compromised within the meaning of the Act, but where families are in need of services, and if the child and parents or the person having custody of the child agree to it, must be referred towards organizations or persons able to assist them.

2.3 Compromised Security and Development

"The YPA is aimed at situations where the security of a child is compromised. These situations generally arise out of unacceptable behaviour on the parents' part or a third party's part, and when the parents do not take the appropriate steps to protect their child. The child, through his own actions or conduct, can also undermine his security or that of others. The YPA is also aimed at conducts which create for a child a danger, real or potential, present or imminent. Most situations where a child's security is compromised, implies that his development is also compromised."⁸

Section 38 of the Act states that the child's security or development 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.

The Act defines these notions in the following terms:

- (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

⁸ Unofficial translation of the *Manuel de référence sur la protection de la jeunesse*, p. 361.

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, excessive control, 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

(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 of the Act describes situations in which the child's security or development may be considered to be in danger where, for example:

(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.

The Director must review, as set out in the present by-law, the situation of any child placed pursuant to *An Act respecting health services and social services for Cree Native persons*, whose situation he has not taken in charge and who, for one year, has been entrusted to a foster family or to an institution operating a rehabilitation centre without a decision having been made as to the possibility of his being returned to his parents (section 57.1 of the Act). The Director must then decide if the security or development of the child is in danger within the meaning of sections 38 or 38.1 of the Act.

3. DECLARATION OF PRINCIPLES

3.1 The Child is a Subject of Law

The Act recognizes the child as a subject of law. The scope of this first principle is in no way diminished by the fact that the child cannot always exercise his rights by himself because of his age or the state of his development.

3.2 Child's Best Interest

All decisions made under the Act must be made in the interest of the child and respect his rights (see also article 33 of the *Civil Code of Québec*). The decisions made under the Act must take into account the moral, intellectual, emotional and material needs of the child, his age, health, personality and family environment and the other aspects of his situation.

3.3 Respect of the Rights of All Parties

All parties concerned by the application of the Act benefit from the rights recognized by law, and these rights must be constantly considered in the practices of the CBHSSJB.

3.4 Intervention of the Director

The parents are generally able to meet the needs of their children; however, when the child's security or development is or may be considered to be in danger, the Director intervenes and ensures that the conditions which lead to the situation of danger are resolved. Once the well-being and security of a child is no longer in danger, the Director must close the file.

The conclusion that the security or the development of child is in danger only qualifies a situation and must not, as a result, lead to the stigmatization of the child.

3.5 The Child Has a Right to an Environment Conducive to his Well-Being and Development

The child has the right to live in a secure environment, attentive to his needs. For most of the children whose safety or development is in danger, the solution is found in the development of the family setting. Every decision made under the Act must aim at keeping the child in the family environment.

As set out in section 4 of the Act:

“4. Every decision made under this Act must aim at keeping the child in the family environment.

If, in the interest of the child, it is not possible to keep the child in the family environment, the decision must aim at ensuring that the child benefits, insofar as possible with the persons most important to the child, in particular the grandparents or other members of the extended family, from continuity of care, stable relationships and stable living conditions corresponding to the child's needs and age and as nearly similar to those of a normal family environment as possible. Moreover, the parents' involvement must always be fostered, with a view to encouraging and helping them to exercise their parental responsibilities.

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.”

3.6 Preservation of Families

The Director and all workers who intervene in a child's situation do not intend to substitute themselves completely or permanently with the parental authority. They must work with the child's parents and with local resources to re-establish as fast as possible the parents' capacity to exercise competently their responsibilities and parental authority by giving priority, in appropriate circumstances, to means which allow the child and his parents to participate actively to the decision-making process and to the choice of measures concerning them. The adequate support to the family or the reinsertion of the child into the family setting, in a context absent of conditions which led to the decision that the security or the development of child is in danger, constitutes one of the determining objectives of the intervention within the framework of the Act. Within the context of youth protection, it is also possible that a court may grant certain or all attributes of parental authority to the Director. In such cases, the Director becomes responsible for those aspects of the child's life.

3.7 Appropriate and Least Intrusive Approach

The Director and the members of his personnel that he authorizes to act on his behalf exercise expanded powers which must be used with discernment. Effective measures must be taken to protect the child whose security or development is in danger. In doing so, the Director ensures that his action is limited, both in terms of scope and duration, to what is required to eliminate or curtail the conditions that lead to the situation of danger and to avoid its reoccurrence.

3.8 Network of Services

The Director and the members of his personnel that he authorizes to act on his behalf cannot alone weave the safety net of a protection system. At all stages of the process, they need the support of all the CBHSSJB departments and other organizations and entities such as the Justice Department of the Cree Nation Government, the Cree School Board, the Eeyou Eeenu Police Force, etc. Therefore, the Director is part of a larger network of services. The Director establishes operational ties with various partners in the community,

notably those who are most able to support him in the implementation of corrective measures provided by the intervention plan or in the child's individualized service plan.

3.9 Access to Information

Upon the evaluation of a report, the Director or the persons that he authorizes can be called upon to examine the records held by another department or another institution in order to take a decision, which is provided for in section 35.4 of the Act:

“Notwithstanding section 19 of the *Act respecting health services and social services* (chapter 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.”

Once a report is accepted, these persons can examine the relevant records of another department or institution, as set out in section 36 of the Act:

“Notwithstanding section 19 of the *Act respecting health services and social services* (chapter 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.”

4. MANAGEMENT PRINCIPLES

4.1 Hierarchical Structure

The Director shall act under the direct authority of the Executive Director.

4.2 Distinct Character

The youth protection department differs from any other CBHSSJB department by the fact that the Act grants exclusive responsibilities to the Director for which he is accountable and which cannot be delegated. The Act also provides for a rigorous process which regulates and limits the framework of his exclusive responsibilities. The Director is responsible from a clinical and legal perspective for the application of the Act and the YCJA.

4.3 Responsibilities of Other Departments

All employees of the other CBHSSJB departments contribute to the realization of the mission of youth protection by supporting the Director during all stages of the application processes set out in the Act.

5. ACCOUNTABILITY

5.1 Annual Report

The Director reports on his activities in the context of the annual report, which is a public document made available on the website of the CBHSSJB.

5.2 Accountability of the Board of Directors and Executive Director

The Board of Directors and the Executive Director are accountable for their functions set out in the Act.

5.3 Delegation of Powers to Authorized Persons

Pursuant to section 32 of the Act, the Director may, if he considers that the situation warrants it, authorize, in writing and to the extent he specifies, a person who is not a member of the Director's staff to assess a child's situation and living conditions as provided for in subparagraph (b) of the first paragraph of section 32 of the Act if the person is

- (a) a member of the personnel of an institution operating a child and youth protection centre;
- (b) a member of the personnel of an institution operating a rehabilitation centre for young persons with adjustment problems; or
- (c) a member of a Native community designated by the Director within the scope of an agreement between an institution operating a child and youth protection centre and the Native community. The person authorized by the Director under sections 32 or 33 of the Act must be accountable to the Director in the execution of the authorization he is entrusted with under the Act. For all other matters, the person is accountable in accordance to the expectations set out by his immediate supervisor.

Authorization granted to a person who is not a member of the Director's staff is valid only for the purposes of the assessment and not for the purpose of deciding whether the child's security or development is in danger.

The authorization granted by the Director under sections 32 or 33 of the Act is given in writing and may be withdrawn at any time.

The person authorized by the Director under sections 32 or 33 of the Act and the youth worker under section 90 of the YCJA must render accounts to the Director on the exercise of the authorization entrusted by virtue of these laws.

5.4 Role of the Immediate Supervisor

The immediate supervisor of the person authorized by the Director ensures that the person is provided with the appropriate support and supervision. He verifies that the person

masters the application standards set out the Act, he controls the quality of the professional practice and makes the appropriate recommendations to the Director.

6. RESPONSIBILITIES AND DUTIES OF THE BOARD OF DIRECTORS

6.1 Organizational Structure and Exclusive Responsibilities

The Board of Directors ensures that the organizational structure allows only the personnel directly under the supervision of the Director to execute the exclusive responsibilities set out in section 32 of the Act. These exclusive responsibilities are:

- (a) to receive reports regarding children, analyze them briefly and decide whether they must be evaluated further;
- (b) to assess a child's situation and living conditions and decide whether the child's security or development is in danger;
- (c) to decide on the direction of a child;
- (d) to review the situation of a child;
- (e) to put an end to the intervention if a child's security or development is not or is no longer in danger;
- (f) to exercise tutorship or, in the cases provided for in the Act, apply to the tribunal for the appointment or replacement of a tutor;
- (g) to receive the general consents required for adoption;
- (h) to apply to the tribunal for a declaration of eligibility for adoption;
- (i) to decide to file an application for an order for the disclosure of information under the second paragraph of section 72.5 or to disclose information under the second or third paragraph of section 72.6 or under section 72.7.

6.2 Nomination of Director

Before appointing a Director, the Board of Directors ensures that a consultation plan has been carried out with the authorities referred to in section 31 of the Act. The Board of Directors must ensure to designate a person to replace the Director if he is absent or unable to act (section 31.1 of the Act). In addition, the Board of Directors cannot dismiss the 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 (section 31.2 of the Act).

6.3 Adoption of Rules, Procedures, Policies and Protocols by the Board of Directors

The Board of Directors must adopt and put in place:

- (a) internal rules regarding disciplinary measures taken in respect of a child placed in a rehabilitation centre, a copy of which must be given to the child, if he is capable of

understanding, and to the child's parents (section 10 of the Act). A copy of these internal rules must also be sent to the Commission and to the Minister. The Board of Directors must also ensure that these internal rules, once adopted, are posted in a conspicuous place in the facilities of the institution. The institution must ensure that the rules are explained to the child and to the child's parents;

- (b) a procedure on the application of exception measures, as set out in section 150.1 of *An Act respecting health services and social services for Cree Native persons*, consistent with ministerial orientations and made known to the users of the institution;
- (c) a protocol for placement in an intensive supervision unit, in accordance with section 4 of the *Regulation respecting the conditions of placement in an intensive supervision unit*;
- (d) a policy regarding the right to confidential communications by children placed in a rehabilitation centre (section 9 of the Act).

6.4 Necessary Resources

The Board of Directors must ensure that the necessary resources are available for the Director to fulfil his obligations under the Act and the YCJA.

6.5 Application Standards

The Board of Directors recognizes the obligation to apply the Act and the YCJA with coherence and clarity within the institution and within the Territory it serves.

6.6 Complaint Procedure

The Board of Directors adopts a complaint procedure, which takes into account the special considerations of the Act and the YCJA.

This procedure must allow the beneficiaries to distinguish properly between the various recourses available to them. In addition, the Board of Directors must ensure that this procedure is easily accessible to the CBHSSJB beneficiaries.

6.7 Monitoring Role

The Board of Directors exercises general monitoring of the application of the Act, the adequate use of the resources and the results obtained by the CBHSSJB in the bearing of its responsibilities under the Act. It regularly receives reports from the Executive Director, allowing it to exercise such monitoring, and it undertakes any steps under its jurisdiction in order to improve the services offered to children in need of protection and to the young persons, within the meaning of the YCJA, in its territory.

7. RESPONSIBILITIES AND DUTIES OF THE EXECUTIVE DIRECTOR

7.1 Restrictions to Confidential Communications

The Executive Director may take certain measures relating to the right of a child to communicate with any person, as set out in section 9 of the Act:

“Any child placed in a foster family or by an institution which operates a rehabilitation centre or a hospital centre has the right to communicate in all confidentiality with his advocate, the director who has taken charge of his situations, the Commission and the judges and clerks of the tribunal.

He may also communicate in all confidentiality with his parents, brothers and sisters, unless the tribunal decides otherwise.

He may also communicate in all confidentiality with any other person unless the tribunal decides otherwise or the executive director of the institution operating the rehabilitation centre, the hospital centre or the person he authorizes in writing considers it to be in the best interests of the child to prevent him from communicating with that person. The decision of the executive director must give reasons, be rendered in writing and be given to the child and, whenever possible, to the child’s parents.

The child or his parents may refer to the tribunal any decision of the executive director preventing him from communicating with any person. The application is heard and decided by preference.

The tribunal shall confirm or quash the decision of the executive director. It may, in addition, order the executive director to take certain measures relating to the right of the child to communicate thenceforth with the person contemplated in the decision of the executive director or with any other person.”

7.2 Intensive Supervision Unit

The Executive Director, or the person he designates in writing for such purpose, is the only person who can decide to resort to an intensive supervision unit. However, if a child is under 14 years of age, the Director must also authorize this type of foster care. The decision-making process to resort to an intensive supervision unit must comply with the parameters of section 11.1.1 of the Act and the *Regulation respecting the conditions of placement in an intensive supervision unit*⁹. The Executive Director must ensure the adoption of a protocol and the compliance therewith.

8. RESPONSIBILITIES AND DUTIES OF THE DIRECTOR OF YOUTH PROTECTION

8.1 Protection of the Children

The primary responsibility of the Director is to ensure the protection of any child whose security or development is in danger and whose situation is reported to him. He exercises his judgement on the whole situation in the interest of the child, supported by the networks of services to meet the child’s needs, and he takes all necessary and appropriate means so that the child’s needs are met.

⁹ CQLR, chapter P-34.1, r. 6.

The Director assesses the situation of the child and his family and he takes the appropriate decisions. He implements the required protection measures and he verifies if they are appropriate through the periodical review of the situation. He ensures that the services required to correct the situation are actually rendered.

8.2 Personalized Intervention

The Director's intervention in the child's situation must be personalized and continuous so that he may receive the required services.

Each child whose security or development is in danger must be the subject of a protection plan, an intervention plan and, when needed, a personalized services plan.

When the child's security or development is not in danger and the situation requires it, the Director must inform the child and his parents, if they consent to it, about the services and resources that can meet their needs.

8.3 Partnership

The Director establishes functional ties with the local resources most able to meet the child and the family's range of needs for which an intervention is required. He confers with the individuals, organizations and institutions in the Territory. He also ensures that his personnel refers to the appropriate local resources.

When the required action exceeds a child's situation and involves an institution or organization or requires the intervention of an institution, the Executive Director is involved jointly with the Director.

8.4 Authorization

The Director does not exercise alone the responsibilities he is entrusted with under the Act. He entrusts persons with the execution of some responsibilities.

The Director can authorize members of his personnel (or other persons, if the Act allows for such an authorization) to exercise the responsibilities mentioned in section 32 of the Act.

In accordance with section 33 of the Act, the Director can also authorize any other person to exercise other responsibilities, not otherwise set out in section 32 of the Act.

The Director has to ensure that the person he authorizes:

- (a) has the necessary competencies and qualifications to achieve the exercise the responsibilities entrusted to him;
- (b) understands the protocols, standards, criteria, reference frameworks and guidelines, allowing for the exercise of the responsibilities entrusted to him;
- (c) complies with the application processes of the Act, receives the supervision for an adequate control of the decisions made by him and complies with such decisions.

The authorization is given in writing and is revocable at any time if the Director has reasons to believe that the Authorized Person is no longer able to fulfill the obligations for which he was authorized.

8.5 Guardianship, Adoption and Antecedent Search

The Act provides for the Director also assuming also the responsibilities in matters of guardianship, national and international adoption as well as summaries of family antecedents.

In matters of guardianship, the Director may ask the court to be appointed as tutor or to have a person he recommends appointed to act as tutor, if the situation of the child allows for such appointment and it is in the child's best interest. When the court proceed to the appointment of a tutor, the Director puts an end to the intervention, in accordance with the modalities set out in the Act (section 57.2 of the Act).

If the situation so requires, the Director has the responsibility to evaluate the social situation of the child and to recommend to the court the nomination of a new tutor.

Amongst the responsibilities regarding national adoption, the Director receives the general required consents, for which he ensures that they are given in a free and enlightened manner, or he proceeds with the motion to have a child declared eligible for adoption. He pays special attention to the rigorous evaluation of the adopting persons and for the quality of pairing between the child and them.

In matters of international adoption, the Director can be called upon to perform psychosocial evaluations of the person applying for adoption, in accordance with the parameters set out in sections 71.7 and 71.8 of the Act.

The Director must ensure to apply the provincial protocols in matters of reunions and research into family and medical antecedents.

8.6 Acting with Diligence

In light of the time periods set out in the Act, the Director must, in the exercise of his functions, act diligently.

8.7 Social Role of the Director

The Director is an important witness of children's situation in the Territory. He shares this knowledge with other people, organizations or institutions concerned with the welfare of children, speaks up to assert the needs of youth at risk and he promotes the means to meet the needs of the youth at risk and their families.

9. APPLICATION OF THE ACT

9.1 Obligations of the Persons Authorized

The Director and the persons who exercise responsibilities on his behalf must:

- (a) treat the child and parents with courtesy, fairness and understanding, and in a manner that respects their dignity and autonomy;
- (b) ensure that any information or explanation that must be furnished to a child under the Act is presented in language appropriate to the child's age and understanding;
- (c) ensure that the parents have understood the information or explanations that must be furnished to them under the Act;
- (d) give the child and the child's parents an opportunity to present their points of view, express their concerns and be heard at the appropriate time during the intervention;
- (e) opt for measures, in respect of the child and the child's parents, which allow action to be taken diligently to ensure the child's protection, considering that a child's perception of time differs from that of adults, and which take into consideration the following factors:
 - the proximity of the chosen resource;
 - the characteristics of cultural communities;
 - the characteristics of native communities.
- (f) if the circumstances are appropriate, favour the means that allow the child and the child's parents to take an active part in making decisions and choosing measures that concern them.

9.2 Immunity of the Director and Persons Authorized

In no case may the director or any person acting under section 32 or 33 of the Act be prosecuted for acts done in good faith in the performance of his functions.

9.3 Receipt and Retention of Report

Any report can be done verbally or in writing and the information related thereto must be recorded.

The Director receives the report and analyzes it briefly and decide whether it is to be accepted for evaluation.

The facts alleged in the report must be entered in writing and placed in the child's file.

If the director decides not to accept a report, he must notify the person who reported the situation (section 45.1 of the Act).

The identity of the person who reports a situation remains confidential unless such person accepts to disclose this information (section 44 of the Act).

9.4 Evaluation of a Report

When a report is accepted, the Director assesses a child's situation and living conditions and decide whether the child's security or development is in danger.

In so doing, he must notably take into consideration the factors set out in section 38.2 of the Act:

- (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.

9.5 Immediate Protective Measures and Temporary Agreements

If the Director accepts the report, he may take immediate protective measures to ensure the security of the child for a maximum period of 48 hours even before making an assessment to determine if the security or development of the child is in danger (section 46 of the Act).

If a child 14 years of age or over and the child's parents do not object to the extension of immediate protective measures, the director may propose to the child and his parents the application of a provisional agreement for a maximum period of thirty days. If the Director proposes that immediate protective measures be extended and a child 14 years of age or over or the child's parents object, the Director must submit the case to the tribunal to obtain an order attesting that the extension is necessary. Such an order may be issued by the clerk if the judge is absent or unable to act and if a delay could cause serious harm to the child. The decision of the tribunal or the clerk may not have effect for more than five (5) working days.

9.6 Right to Be Informed and Right to Be Accompanied

The child and his parents must be informed of the means and stages planned to achieve the evaluation/orientation and be offered the necessary assistance and support throughout this process. They must be informed of their right to consult a lawyer (section 5 of the Act).

In addition, the child and parents have the right to be accompanied and, if they want, they have the right to be assisted by a person of their choice (section 8 of the Act).

9.7 Security or Development

Where the Director establishes that the security or development of the child is not in danger, he must inform the child and his parents and notify the person who had brought the situation to his attention. Furthermore, where the director establishes that the security or development of the child is not in danger, but the director is of the opinion that the child or one or both of the child's parents require assistance, the Director must inform them of the services and resources available in their community.

Where the director is of the opinion that the security or development of a child is in danger, he shall take charge of the situation of the child and decide where he is to be directed (section 51 of the Act).

The results of the Director's evaluation, as well as the decision stemming from it, must be entered into a written report, entered in the child's file and shared with the child and his parents.

9.8 Orientation

"When the Director of Youth Protection is of the opinion that the security and development of the child is in danger, he takes charge of the child's situation and decides on the direction of the child. The child's direction includes choosing the plan and the measures necessary to put an end to the situation of danger and avoiding that such situation reoccurs".¹⁰

The decision regarding the direction of the child must be entered in a written report, entered in the child's file and shared with the child and his parents.

Finally, the Director informs the professional who made the report mentioned in section 39 of the Act that the Director has taken charge of the child's situation (section 39 of the Act).

9.9 Application of Measures

The taking in charge of a child's situation by the Director for the purposes of applying measures must be done without delay, and in such a manner as to allow a continuous and personalized intervention for the child and his parents.

This intervention must be done in partnership and complementarily with the various local resources and with the health and social services network departments and institutions. It must also be carried out in conformity with the orientations of the MSSS.

The Director must provide to the child and his parents a description of the means and stages of protection and rehabilitation envisaged towards ending the intervention. The Director must 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.

The person authorized by the Director must prepare a written report according to the parameters set out in the Act and in the *Regulation respecting the review of the situation of a child*¹¹, share the report with the child and his parents and enter it in the child's record.

9.10 Review

The review allows the Director to evaluate periodically, or as needed, if the measures or the Director's intervention plan are still justified or appropriate and if the protection measures applied still correspond to the child's needs.

The review complies with the Act and the *Regulation respecting the review of the situation of a child*.

¹⁰ Unofficial translation of the *Manuel de référence sur la protection de la jeunesse*, Section 5, Fiche 5.7: *L'orientation*, p.1.

¹¹ CQLR, chapter P-34.1, r. 8.

9.11 End of Intervention

When the Director decides to end the intervention, he must inform the child and his parents and, if they consent, the Director must, in a personalized manner, advise them and direct them to the institutions, bodies or persons best suited to assist them.

9.12 Retention of Information

It is the responsibility of the Director to keep the information contained in the child's file for the periods set out in sections 37.1 to 37.4 of the Act. At the end of these periods, the Director must destroy this information, unless he obtains an authorization from the tribunal, on exceptional grounds, extend the period for which the information in the record must be kept.

9.13 Registry of Reported Children

Each Director is required to enter in the registry instituted by the Government of Québec the nominative information set out in the *Regulation establishing the Register of Reported Children*¹², the whole in accordance with sections 72.9 and 72.10 of the Act and with the regulation.

10. RESPONSIBILITIES AND DUTIES OF PROVINCIAL DIRECTOR

10.1 Powers of the Director under the Youth Criminal Justice Act

The Act provides that the Director has the powers of a "provincial director" under the YCJA. In that role, the Director exercises responsibilities and executes powers entrusted by the YCJA throughout the execution of the sentences ordered by the Court and ensures there are adequate measures to meet that objective. These sentences aim for the social rehabilitation and reinsertion of YCJA clients in view to ensure the durable protection of the public.

The Act recognizes that a child who has committed an offence under an Act or a regulation in force in Québec has rights recognized by the YCJA.

10.2 Exclusive Responsibilities

The Provincial Director executes personally the following exclusive responsibilities:

- (a) the designation of a youth worker;
- (b) the power to authorize a person to exercise the powers or perform the duties or functions;
- (c) the power to approve certain programs, as set out in the YCJA.

The Provincial Director takes:

- (a) the decision regarding a recommendation on making a young person liable to an adult sentence;

¹² CQLR, chapter P-34.1, r. 7.

- (b) the decision to apply to the youth justice court, at any time after a young person attains the age of eighteen years, after giving the young person an opportunity to be heard, to direct that a young person be temporarily detained in a provincial correctional facility for adults, if the court considers it to be in the best interests of the young person or in the public interest.

10.3 Authorizations and Delegations

The Provincial Director may authorize any person to exercise the powers or perform the duties or functions of the provincial director under the YCJA, in which case the powers, duties or functions are deemed to have been exercised or performed by the Provincial Director. He must ensure that the person he authorizes:

- (a) has the necessary competencies and qualifications to achieve the exercise of the responsibilities entrusted to him;
- (b) understands the protocols, standards, criteria, reference frameworks and guidelines, allowing for the exercise of the responsibilities entrusted to him;
- (c) complies with the application processes of the YCJA, receives the supervision for an adequate control of the decisions made by him and complies with such decisions.

11. FINAL PROVISIONS

11.1 Copies

Copies of the present by-law must be forwarded to the Commission, the MSSS and, upon request, to a child and his parents.

11.2 Coming Into Force

The present by-law comes into effect on the day its adoption by the Board of Directors.