



NATIONAL ASSEMBLY OF QUÉBEC

SECOND SESSION

FORTY-SECOND LEGISLATURE

Bill 15

**An Act to amend the Youth
Protection Act and other legislative
provisions**

Introduction

**Introduced by
Mr. Lionel Carmant
Minister for Health and Social Services**

**Québec Official Publisher
2021**

EXPLANATORY NOTES

This bill makes various amendments to the Youth Protection Act.

First, the bill proposes various amendments to facilitate the interpretation and application of that Act by the various actors involved and introduces a preamble. It reaffirms that the interest of the child is a primary consideration in the application of that Act.

The bill also proposes to allow, in specified circumstances, the communication to the director of youth protection of certain confidential information held, in particular by bodies or professionals, at each stage of the intervention. It emphasizes that the conditions within an Act which must be met to communicate confidential information concerning the child or the child's parents must be construed so as to facilitate the communication where it is in the interest of the child or is intended to ensure the protection of another child.

Moreover, it is provided that the Minister of Health and Social Services is by virtue of office the Government's adviser on all issues relating to youth protection or to children in vulnerable situations and that the Minister must be consulted whenever a ministerial decision is made involving the interests of children or the respect of their rights in relation to youth protection.

The bill entrusts to the National Director of Youth Protection the responsibility of determining the policy directions and clinical practice standards applicable by the directors of youth protection, of exercising the controls required with respect to youth protection interventions and of supporting the action of the directors of youth protection. To that end, it establishes that the National Director of Youth Protection may give directives to the directors of youth protection, hold inquiries if he deems it expedient, require a director to implement corrective measures within a specified time, and, in certain cases, entrust the responsibilities of a director to another director or to a person he designates.

A directors forum is established, consisting of the National Director of Youth Protection and each of the directors of youth protection. The purpose of the forum is, in particular, to enable the members to ensure that policy directions and clinical practice

standards are implemented and complied with in all the regions of Québec. The procedure for appointing directors of youth protection is also amended.

The bill also extends the maximum term for consecutive agreements on voluntary measures as well as the time during which the records of children whose situation is taken in charge by a director of youth protection must be kept. Under the bill, an institution operating a child and youth protection centre must offer psychosocial support services to a person 14 years of age or over who accesses the information in his record. The bill also provides different measures supporting the child's transition to adulthood.

The bill introduces a chapter comprising the provisions applicable to Indigenous people and introduces new provisions to take into account their own historical, social and cultural factors. Particularly, it provides that every decision made under the Youth Protection Act must foster the cultural continuity of Indigenous children. It also sets out additional factors to be taken into account in determining the interest of those children, including the culture of their community as well as their relationships with their extended family and members of their community. The bill provides specific rules applicable to the term of consecutive agreements on voluntary measures and to judicial interventions in respect of Indigenous children. The bill also provides for the possibility, in certain cases, of forming a family council, in accordance with Indigenous custom or practice as well as the possibility for an Indigenous community or a group of communities to administer the financial assistance to promote tutorship, customary tutorship, adoption and customary adoption.

As regards judicial interventions, the bill establishes the systematic representation of children by an advocate. The time period for notifying the parties of the presentation of any application for certain measures to be taken during the proceedings is amended and the manner in which such notice is to be given as well as its content are provided for. It provides for the possibility of reaching a draft agreement or settlement with only one of the parents where the other parent is unable to express his will, cannot be found despite serious efforts to locate him, or where the latter, having not, in fact, assumed responsibility for the care, maintenance and education of the child, abstains from becoming involved owing to indifference. In addition, certain rules of evidence are amended and access to judgments and pleadings in a family matter that involves a child who is the subject of a report is granted to the actors involved.

Furthermore, the Act respecting the Ministère de la Santé et des Services sociaux is amended to specify that the Minister of Health and Social Services must promote the appropriate measures to meet the needs of children and families in vulnerable situations or to prevent the security or development of a child from being in danger. The bill also expressly provides for the appointment of a National Director of Youth Protection by the Government.

Lastly, the bill contains transitional and final provisions.

LEGISLATION AMENDED BY THIS BILL:

- Act respecting the Ministère de la Santé et des Services sociaux (chapter M-19.2);
- Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies (chapter O-7.2);
- Youth Protection Act (chapter P-34.1);
- Act respecting health services and social services (chapter S-4.2).

Bill 15

AN ACT TO AMEND THE YOUTH PROTECTION ACT AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

YOUTH PROTECTION ACT

L. The Youth Protection Act (chapter P-34.1) is amended by inserting the following after the title of the Act:

“AS Québec has declared itself bound by the Convention on the Rights of the Child by Order in Council 1676-1991 dated 9 December 1991;

AS the interest of the child is a primary consideration of any decision made in the child’s regard;

AS, under the Charter of human rights and freedoms and the Civil Code of Québec, every child has a right to the protection, security and attention that his parents or the persons acting in their stead are able to give to him;

AS the protection of children is a collective responsibility that requires the mobilization and collaboration of all the resources in the community in order to limit the State’s authority intervention in the lives of families under this Act to exceptional situations;

AS a child’s perception of time differs from that of adults because he is still developing;

AS the emotional stability and security of a child are major determinants in ensuring the child’s healthy development;

AS the participation of the child and his parents in decisions that concern them and the consideration of their opinion have the effect of further empowering them to act;

AS it is important to recognize the specificity of children who belong to minority groups, such as children belonging to an ethnocultural minority;

AS Indigenous persons are best suited to meet the needs of their children in the manner that is the most appropriate;

AS cultural safety is essential to the well-being of Indigenous children;

AS interventions in respect of an Indigenous child must be carried out taking into account the circumstances and characteristics of his community or of another environment in which he lives so as to respect his right to equality and foster cultural continuity;”.

2. Section 1 of the Act is amended

(1) in the first paragraph,

(a) by replacing subparagraph *d* by the following subparagraph:

“(d) “body” means any Indigenous organization, any educational body and any childcare establishment, as well as any other group of persons or assets, whatever its legal form, which is child-related or whose function is to offer services to children and their family, particularly in the areas of support for victims, assistance to children and their parents, placement, rights advocacy, recreation and sports or whose mission is to promote the interests of children or to improve their living conditions;”;

(b) by replacing subparagraph *e* by the following subparagraph:

“(e) “parents” means the father and the mother who are not deprived of parental authority and any other tutor;”;

(2) by striking out the fifth paragraph.

3. Section 2 of the Act is amended

(1) by adding the following sentence at the end of the first paragraph: “The Act also aims to put an end to and prevent the recurrence of situations in which the security or the development of a child is in danger.”;

(2) by adding the following paragraph at the end:

“Lastly, in these matters, this Act sets out, in Chapter V.1, provisions specific to Indigenous people, which add to or depart from its other provisions.”

4. Chapter II of the Act is amended by replacing the portion before section 3 by the following:

“CHAPTER II

“GENERAL PRINCIPLES, RIGHTS OF THE CHILD AND OF HIS PARENTS AND PARENTS’ RESPONSIBILITIES

“DIVISION I

“GENERAL PRINCIPLES”.

5. Section 3 of the Act is amended

(1) by replacing “Decisions made under this Act” in the first paragraph by “The interest of the child is a primary consideration in the application of this Act. Decisions made under this Act”;

(2) by striking out the last sentence of the second paragraph.

6. Section 4 of the Act is replaced by the following:

“4. Every decision made under this Act must aim at ensuring continuity of care as well as the stability of the child’s relationships and of living conditions appropriate to his needs and age. Therefore, keeping the child in his family environment should be favoured, provided it is in the child’s interest.

If, in the interest of the child, it is not possible to keep the child in his family environment, the decision must seek to entrust the child to the persons most important to him, in particular the grandparents or other members of the extended family.

If, in the interest of the child, it is not possible to entrust the child to such persons, the decision must then seek to entrust the child to a living environment most closely resembling a family environment.

If, in the interest of the child, it is not possible to return the child to his family environment, the decision must, on a permanent basis, ensure continuity of care and the stability of his relationships and of living conditions appropriate to his needs and age.

“4.1. Where the child is removed from his family environment, the parents’ involvement must always be fostered, with a view to encouraging or helping them to exercise their parental responsibilities.

In such circumstances, the director must, in addition to planning the child’s return to that environment, make plans for an alternative project aimed at ensuring, without delay, continuity of care and the stability of the child’s relationships and of his living conditions on a permanent basis in the event that a return to his family environment would not be in the interest of the child.

“4.2. Any intervention in respect of a child and the child’s parents under this Act must, if the circumstances are appropriate, favour means that allow the child and his parents to take an active part in making the decisions and choosing the measures that concern them.

“4.3. Persons having responsibilities towards a child under this Act and persons called upon to make decisions with respect to a child under this Act shall, in their interventions,

(a) treat the child and the child's parents with courtesy, fairness and understanding, and in a manner that respects their dignity and autonomy;

(b) act diligently to ensure the child's protection, given that a child's perception of time differs from that of adults;

(c) take into consideration the proximity of the chosen resource; and

(d) take into account the characteristics of ethnocultural minorities.

“4.4. Institutions, bodies and persons having responsibilities towards a child under this Act and persons called upon to make decisions with respect to a child under this Act shall

(a) encourage the participation of the child and the parents, and the involvement of the community; and

(b) cooperate with each other and see to obtaining the cooperation of resources in the community; they act in concert with those resources willing to cooperate with them, to ensure that their interventions are coordinated.

“4.5. The conditions prescribed by law that must be met to communicate confidential information concerning the child or the child's parents must be construed so as to facilitate the communication of that information where it is in the interest of the child or is intended to ensure the protection of another child.

“DIVISION II

“RIGHTS OF THE CHILD AND OF HIS PARENTS”.

7. Section 5 of the Act is amended by inserting “and persons called upon to make decisions with respect to a child under this Act” after “child under this Act” in the first paragraph.

8. The Act is amended by inserting the following sections after section 6:

“6.1. Persons having responsibilities towards a child under this Act and persons called upon to make decisions with respect to a child under this Act shall, in their interventions, take into account the necessity

(a) of ensuring that any information or explanation that must be given to a child within the context of this Act is given in terms that are adapted to his age and his capacity of understanding;

(b) of ensuring that the parents have understood the information or explanations that must be given to them within the framework of this Act; and

(c) of giving 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.

“6.2. The child and the child’s parents are entitled to be accompanied and assisted by a person of their choice when they wish to obtain information or when meeting the director or any person the director authorizes.”

9. Section 8 of the Act is amended

(1) by replacing “and in a personalized manner” in the first paragraph by “, in a personalized manner and of the required intensity”;

(2) by striking out the second and third paragraphs.

10. The Act is amended by inserting the following section after section 8:

“8.1. The child is entitled to receive, on the conditions prescribed in section 8, appropriate educational services from an educational body.

Every educational body must ensure the continuity of those services for a child entrusted to an alternative living environment.”

11. Section 9 of the Act is amended by adding the following paragraph at the end:

“The child’s contacts with persons who are important to him must be encouraged by taking his wishes into account, provided such contacts are in the interest of the child.”

12. The Act is amended by inserting the following sections after section 9:

“9.1. The child and the child’s parents have the right to have any information that concerns them and allows them to be identified, if collected under this Act, to be handled in a confidential manner and disclosed only in accordance with the provisions of this Act.

“9.2. No one may, under this Act, publish or broadcast information allowing a child or the child’s parents to be identified, unless the tribunal so orders or so authorizes on the conditions it determines or unless the publication or broadcast is necessary for the purposes of this Act or a regulation made under it.

Furthermore, the tribunal may, in a specific case, prohibit or restrict, on the conditions it prescribes, the publication or broadcast of information relating to a hearing of the tribunal.”

13. Sections 11.2 and 11.2.1 of the Act are repealed.

14. Section 11.3 of the Act is amended by replacing “7 to 10” by “6.2, 7 to 9 and 10”.

15. The Act is amended by inserting the following division after section 11.3:

“DIVISION III

“PARENTS’ RESPONSIBILITIES

“11.4. An intervention made in respect of a child under this Act does not deprive his parents of the rights conferred on them and does not relieve them of their obligations under the Civil Code as the persons having parental authority, unless a provision of this Act provides otherwise.

Consequently, the parents, in particular,

(a) have the rights and duties of custody, supervision and education of their children;

(b) shall maintain their children; and

(c) exercise parental authority together.

“11.5. The parents must, whenever possible, take an active part in implementing the measures designed to put an end to and prevent the recurrence of the situation in which the security or development of their child is in danger.”

16. Section 26 of the Act is amended

(1) by striking out “Notwithstanding section 19 of the Act respecting health services and social services (chapter S-4.2) and section 7 of the Act respecting health services and social services for Cree Native persons (chapter S-5),” in the first paragraph;

(2) by adding the following paragraph at the end:

“In addition, every person and every body that treats or has treated a child who is or has been the subject of an intervention under this Act or whose parents are or have been the subject of such an intervention or that provides or has provided services to such a child or to his parents must give the member of the Commission or the person in its employment, on request, a copy of any information from a record relating to the case of a child and that is necessary for the conduct of an investigation under paragraph *b* of section 23.”

17. The Act is amended by inserting the following divisions after section 27:

“DIVISION I.1

“MINISTER OF HEALTH AND SOCIAL SERVICES

“28. The Minister of Health and Social Services is by virtue of office the Government’s adviser on all issues relating to youth protection or to children and families in vulnerable situations; the Minister may, for such purpose, provide the other ministers with any advice the Minister considers appropriate.

The Minister must be consulted whenever a ministerial decision is made involving the interests of children or the respect of their rights in relation to youth protection.

“DIVISION 1.2

“NATIONAL DIRECTOR OF YOUTH PROTECTION

“§1.—*Responsibilities*

“**29.** The National Director of Youth Protection, appointed under section 5.1.1 of the Act respecting the Ministère de la Santé et des Services sociaux (chapter M-19.2), exercises, in addition to the responsibilities assigned to him under that section, the following responsibilities:

(a) ensuring the follow-up of care and service trajectories of children whose situation is taken in charge by a director and measuring the effects of the interventions;

(b) determining the policy directions and the clinical practice and management standards applicable to youth protection;

(c) exercising the controls required to ensure that youth protection interventions follow generally accepted standards and that they are adequate from a scientific, human and social standpoint;

(d) exercising leadership and supporting the action of directors in the exercise of their responsibilities; and

(e) coordinating, where he considers it necessary and to the extent he deems appropriate, any intervention involving the intervention of more than one director or of another competent authority.

A director of youth protection is required to comply with the directives given to him by the National Director of Youth Protection in the exercise of his responsibilities.

“**30.** In exercising the responsibilities set out in section 29, the National Director of Youth Protection may, in particular, whenever he deems it necessary,

(a) call on outside experts to report on one or more specific points he determines;

(b) conduct or commission studies, research or surveys to obtain background on a matter on which he must provide an opinion or produce a report; and

(c) request the collaboration of institutions or bodies by asking them to provide any expertise they have and that is necessary to him or to produce an analysis, advisory report or opinion on an issue on which the National Director must himself provide an opinion or produce a report.

“30.1. Government departments, public bodies or institutions must provide the National Director of Youth Protection with the information and documents he requires and that are necessary to the exercise of his responsibilities under section 29.

They must allow the National Director to examine and make copies of the information or documents they have, whatever their form.

“30.2. The National Director of Youth Protection may, if he deems it expedient, hold an inquiry as part of the exercise of his responsibilities.

For the purposes of an inquiry, the National Director or any other person designated by him to conduct the inquiry is vested with the powers and immunity provided for in the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.

“30.3. Where the National Director of Youth Protection finds that a director of youth protection is not applying the directives, policy directions, clinical practice and management standards or the standards referred to in section 29, the National Director may, as he considers appropriate,

(1) require that corrective measures he determines be taken within the time he specifies;

(2) require that the institution operating a child and youth protection centre concerned submit an action plan to him, within the period he determines, in response to the recommendations he has made.

“30.4. The National Director of Youth Protection may, if a director of youth protection is unable to act, commits a serious fault or tolerates a situation which could endanger the security or development of a child, entrust the functions and powers vested in that director of youth protection to another director of youth protection or a person the National Director designates, for the time and on the conditions he considers appropriate. He shall immediately notify the president and executive director and the board of directors of the institution concerned of the decision.

“§2. — Directors forum

“30.5. A directors forum is established under the name “Forum des directeurs”, consisting of the National Director of Youth Protection and each of the directors of youth protection.

Each member of the forum must designate a person to represent them when they are unable to participate.

“30.6. The purpose of the directors forum is to enable its members

(a) to develop and harmonize clinical practices in youth protection; and

(b) to ensure that policy directions and clinical practice standards are implemented and complied with in all the regions of Québec.

The forum also aims to enable its members to take up any issue submitted to them by the National Director of Youth Protection.

“30.7. The National Director of Youth Protection presides at meetings of the directors forum and determines its mode of operation.”

18. Section 31 of the Act is replaced by the following sections:

“31. A director of youth protection shall be appointed for each institution operating a child and youth protection centre; the director shall act under the direct authority of the president and executive director of the institution.

“31.0.1. The director shall be appointed by the institution’s board of directors from a list of candidates submitted to it by a selection committee.

The Minister shall, by a directive, prescribe the procedure for recruiting and selecting persons qualified for appointment as directors, in particular the composition of the selection committee.”

19. The Act is amended by inserting the following section after section 31.2:

“31.3. The director must see to it that, within the institution operating a child and youth protection centre, practices are maintained and resources are allocated so as to enable the director to properly exercise his responsibilities.

The board of directors of an institution shall, on a quarterly basis, hear the director on the exercise of his responsibilities and the operation of the child and youth protection centre.”

20. Section 32 of the Act is amended, in the first paragraph,

(1) by replacing “71.3.2” in subparagraph *h.1* by “131.18”;

(2) by striking out “or to disclose information under the second or third paragraph of section 72.6 or under section 72.7” in subparagraph *i*.

21. Sections 35.4 and 36 of the Act are replaced by the following sections:

“35.4. A person referred to in section 35.1 may require an institution, body or professional to disclose to him information concerning the child, either of the child’s parents or another person involved in a report if any of the following conditions is met:

(a) such information reveals or confirms the existence of a situation related to the grounds alleged by the director to the effect that the security or development of the child is in danger, the knowledge of which could justify, as applicable,

- (1) accepting the report for evaluation,
 - (2) deciding whether the security or development of the child is in danger or remains so, or
 - (3) deciding as to the directing of the child, or
- (b) such information makes it possible to confirm or deny the existence of a situation that, if proven, would justify reviewing the child's situation, where events that have occurred since the decision made regarding whether the security or development of the child is in danger, and of which the person has become aware, constitute grounds to believe that the situation exists.

A person referred to in section 35.1 may also,

- (a) if the person considers it necessary to ensure the protection of a child with regard to whom that person has accepted a report, enter, at any reasonable time or at any time during an emergency, a facility maintained by an institution or premises kept by a body or in which a professional practises their profession to examine on-site the record of the child and make copies of it;
- (b) if so authorized by the tribunal, examine on-site, in a facility maintained by an institution or in premises kept by a body or in which a professional practises their profession, the record of a parent or of another person involved in a report that is necessary to ensure the protection of a child; and
- (c) require from a person who has knowledge of any information or record referred to in this section the explanations needed to understand that information or the information contained in the record.

Any person having custody, possession or control of a record or knowledge of information referred to in this section shall make them available to the person referred to in section 35.1 and facilitate that person's examination of the record or information.

The first, second and third paragraphs apply even to persons who are bound by professional secrecy, except advocates and notaries.

“36. A person referred to in section 35.1 may obtain from the office of the Superior Court a copy of a judgment or a pleading in a family matter that concerns a child who is the subject of a report.”

22. Section 36.1 of the Act is amended by inserting “, 35.4” after “35.3”.

23. Sections 37.4 and 37.4.1 of the Act are replaced by the following sections:

“37.4. If the director or the tribunal decides that the security or development of the child is in danger, the director must keep the information contained in the child’s record until he has reached 43 years of age, even if the director or the tribunal subsequently decides that the security or development of the child is no longer in danger.

“37.4.1. When the tribunal appoints a tutor to the child and the director puts an end to his intervention in respect of that child in accordance with section 70.2, the director must keep the information in the child’s record until the child has reached 43 years of age.”

24. Section 37.4.2 of the Act is amended by striking out “the first paragraph of”.

25. Section 37.4.3 of the Act is amended

(1) in the first paragraph,

(a) by inserting “before the child reaches 18 years of age,” after “may,”;

(b) by replacing “the child’s” by “that child’s”;

(2) by striking out the second paragraph.

26. The Act is amended by inserting the following sections after section 37.4.3:

“37.4.4. Psychosocial support services are to be offered to the person 14 years of age or over who accesses the information in his record.

These services are to be offered by an institution operating a child and youth protection centre.

“37.4.5. The child may, from the moment he reaches 25 years of age and subject to the application of section 37.4.3, request an institution operating a child and youth protection centre to destroy the information contained in his record.”

27. Division III of Chapter III of the Act, comprising sections 37.5 to 37.7, is repealed.

28. Section 39 of the Act is amended by striking out the fourth and fifth paragraphs.

29. The Act is amended by inserting the following sections after section 39.1:

“40. The person who reported a child’s situation under section 39 may communicate to the director any relevant information relating to the report about the child’s situation, with a view to ensuring the child’s protection.

The same applies to the person who, in the practice of a profession or the performance of a duty referred to in the first paragraph of that section, was involved in making such a report.

“41. The first and second paragraphs of section 39 and section 40 apply even to persons who are bound by professional secrecy, except advocates and notaries who, in the practice of their profession, receive information concerning a situation described in section 38 or 38.1.”

30. Section 43 of the Act is amended by inserting “, 40” after “section 39”.

31. Section 44 of the Act is amended by inserting “, 40” after “section 39”.

32. Section 45.1 of the Act is replaced by the following section:

“45.1. The director must inform the person who reported the situation of his decision to accept the report or not for evaluation.”

33. Section 53 of the Act is amended by replacing “two” in the first paragraph by “three”.

34. The Act is amended by inserting the following section after section 57.2.1:

“57.2.2. With a view to a child’s transition to adulthood, the director who intervenes in respect of that child must, in the year before the child reaches 18 years of age, inform him of the support services offered by persons, institutions or bodies.

The director must meet with the child and the staff of the service provider concerned if the child consents to it.”

35. Section 62.1 of the Act is amended by adding the following paragraph at the end:

“With a view to preparing the child for the transition to adulthood, the director or the person so authorized may, in the last six months of such an order ending when the child reaches the age of majority, authorize the child to stay for extended periods in an environment referred to in the second paragraph or in another environment provided for in the intervention plan.”

36. Division V of Chapter IV of the Act, comprising section 65, is repealed.

37. Division VII.1 of Chapter IV of the Act, comprising sections 71.3.1 to 71.3.3, is repealed.

38. Section 72.6 of the Act is amended

(1) in the first paragraph,

(a) by inserting “including a foster family, or to any” after “any person,”;

(b) by inserting “or well-being” after “protection”;

(2) by inserting the following subparagraph after subparagraph 2 of the second paragraph:

“(2.1) to a police force, where the disclosure is necessary to ensure the safety of a child present on the scene of a police intervention, other than that relating to the application of this Act;”.

39. Section 72.6.0.1 of the Act is repealed.

40. Section 72.6.1 of the Act is amended by replacing “71.3.2” in the first paragraph by “131.18”.

41. Section 72.7 of the Act is amended by replacing “exercising a responsibility in respect of the child concerned” in the first paragraph by “called on to cooperate with the director, including an institution or body that ensures the coordination of the concerted intervention with regard to the reported situation”.

42. Section 72.9 of the Act is amended by replacing the fourth paragraph by the following paragraph:

“Subject to the time periods prescribed in sections 37.1 to 37.3 and 37.4.3, the information entered in the register must be kept until the child has reached 18 years of age.”

43. Section 76 of the Act is amended

(1) by inserting “originating” before “application” in the introductory clause of the first paragraph;

(2) by striking out “However,” in the second paragraph.

44. The Act is amended by inserting the following section after section 76.1:

“76.2. Every application for an order under section 76.1 must be notified to the parties or their advocate, as the case may be, at least one day before it is to be presented.

In addition to stating the date, time and place the application will be presented, the notice states the facts justifying the intervention of the tribunal and any conclusions sought.

The notice is submitted in person or by way of any appropriate technological means that ensures its confidentiality.

The tribunal may shorten the time prescribed in the first paragraph where the application seeks to change the living environment of a child in accordance with subparagraphs *e*, *e.1*, *g* or *j* of the first paragraph of section 91.”

45. Section 76.3 of the Act is replaced by the following section:

“76.3. At any time, including after a settlement conference, the parties to the proceedings may submit a draft agreement or a settlement to the tribunal or to the judge who presided over the settlement conference.

The draft agreement or settlement submitted under the first paragraph may have been reached with only one of the parents where the other parent is unable to express his will, cannot be found despite serious efforts to locate him, or where the latter, having not, in fact, assumed responsibility for the care, maintenance and education of the child, abstains from becoming involved owing to indifference.

The tribunal may order the parties to put any draft agreement or settlement in writing and to file it.”

46. Section 78 of the Act is amended by adding the following paragraphs at the end:

“In addition, it must see to it that an advocate is specifically assigned to represent and counsel only the child.

The parties are required to cooperate so that the child’s advocate may have access to his client, in compliance with the advocate’s right to professional secrecy.

The tribunal may order any measure aimed at ensuring compliance with this section.”

47. Sections 80 and 81.1 of the Act are repealed.

48. Section 84.2 of the Act is amended

(1) by replacing “three working days” in the first paragraph by “five days”;

(2) by inserting the following paragraph after the first paragraph:

“The first paragraph applies to the filing of a psychosocial report referred to in section 86, except as regards the time period which is to be 10 days.”

49. Section 86 of the Act is amended

(1) by replacing “of the director’s analysis of the child’s social situation” in the first paragraph by “of the director’s psychosocial report relating to the child’s situation”;

(2) by replacing the second and third paragraphs by the following paragraph:

“The report describes the elements that are necessary or relevant to assist the tribunal in assessing the child’s situation and in determining whether or not the security or development of the child is in danger or remains in danger.”

50. Section 87 of the Act is replaced by the following section:

“87. The director may, at his discretion, or must, if the tribunal so requires, attach to the psychosocial report referred to in section 86 a psychological or medical assessment of the child or a member of his family or any other relevant expert evaluation.

The parents of the child or the child himself, if he is 14 years of age or over, may refuse to undergo any assessment or expert evaluation. The parents of a child under 14 years of age may refuse for the child. Any refusal shall be recorded in a notice sent to the tribunal.

However, neither the parents or the child shall refuse to undergo an assessment or expert evaluation ordered by the tribunal and relating to a situation involving psychological ill-treatment, sexual abuse or physical abuse or the risk of such ill-treatment or abuse within the meaning of subparagraphs *c*, *d* or *e* of the second paragraph of section 38.

A child 14 years of age or over may give his consent alone to undergo an assessment or expert evaluation.

The cost of the assessment or expert evaluation shall be at the expense of the institution operating the child and youth protection centre.

Where the assessment or expert evaluation is disputed, the tribunal may require the director to produce a new one and determine who is to pay the related costs.”

51. Section 88 of the Act is amended

(1) by replacing “of a study, assessment or expert opinion contemplated in section 86” and “such study, assessment or expert opinion” in the first paragraph by “of a psychosocial report referred to in section 86 or of a psychological or medical assessment referred to in section 87” and “such report or assesment”, respectively;

(2) by replacing the second and third paragraphs by the following paragraphs:

“However, where the director is of the opinion that the contents should not be communicated to the child, the tribunal may, by exception, prohibit the transmission of it.

The tribunal must ensure that the advocate representing the child is given the opportunity to examine the report or assessment and to ultimately dispute it.”

52. Section 94.1 of the Act is amended by replacing “11.2 and 11.2.1” by “9.1 and 9.2”.

53. Section 95.0.1 of the Act is amended by striking out the third paragraph.

54. The Act is amended by inserting the following chapter after section 131:

“CHAPTER V.1

“PROVISIONS SPECIFIC TO INDIGENOUS PEOPLE

“DIVISION I

“INTRODUCTORY PROVISIONS AND GENERAL PRINCIPLES

“**131.1.** The provisions of this chapter are aimed at adapting the other provisions of this Act to the Indigenous people, taking into account historical, social and cultural factors that are specific to them. They also aim to foster

(a) a holistic approach;

(b) cultural continuity;

(c) the responsibility of each community in respect of its children and families;

(d) the priority intervention of providers offering health services and social services to the community to prevent the situation of an Indigenous child from being taken in charge by the director; and

(e) the relationships of the child with multiple persons who are important to him.

“**131.2.** For the purposes of this chapter, an Indigenous organization in an urban environment that is present in the territory served by the institution operating a child and youth protection centre for which the director works is considered a provider offering health services and social services to the community.

“131.3. Every decision made under this Act in respect of an Indigenous child and any other intervention concerning him made under this Act must foster the cultural continuity of that child.

Institutions, bodies and persons having responsibilities towards a child under this Act and persons called upon to make such decisions shall consider, as one of the possible interventions to be made in respect of the child and his parents, having recourse to the available customary and traditional care, if made aware of it.

“131.4. In determining the interest of an Indigenous child, in addition to the factors listed in the second paragraph of section 3, the following factors must be taken into consideration:

(a) the culture of the child’s Indigenous community, including the language, customs, traditions and spirituality;

(b) the child’s relationships with his extended family and members of that community;

(c) the child’s access to the territory surrounding that community and other places that its members frequent; and

(d) the sociohistorical traumas of Indigenous people and their socioeconomic conditions.

“131.5. Where an Indigenous child must, under this Act, be entrusted to an alternative living environment, the living environment chosen must be the one that, considering the interest of that child, is suitable for him in the following order of priority:

(a) the child’s extended family;

(b) members of his community;

(c) members of a different community of the same nation as the child’s nation;

(d) members of a nation other than the child’s nation; or

(e) any other environment.

The director must enter in the child’s record the reasons justifying the decision made under the first paragraph.

“DIVISION II

“SOCIAL AND JUDICIAL INTERVENTION

“§1.—*Security and development of a child*

“**131.6.** For the purposes of section 38.2, any decision concerning a report for a situation of neglect or a serious risk of neglect in respect of an Indigenous child must take into consideration, in particular, the following factors:

(a) the measures taken by the parents to meet the child’s fundamental needs and the cooperation offered to the providers offering health services and social services to the community, and

(b) the service providers’ ability to support the parents in the exercise of their responsibilities and to help meet those needs.

“§2.—*Cooperation*

“**131.7.** From the time an Indigenous child becomes the subject of a report and at each stage of the director’s intervention concerning him, the director shall reach out to the providers offering health and social services to the community for information regarding

(a) the situation of the child, of his parents and of the other members of his family, and

(b) the services that those providers are able to provide to them.

The director shall see to obtaining the providers’ cooperation; he acts in concert with those providers willing to cooperate with him, to ensure that their services are coordinated.

“**131.8.** Despite section 72.5, as soon as an Indigenous child must be removed from his family environment to be entrusted to an alternative living environment, the director must inform the person responsible for youth protection services in the community of the child’s situation. In the absence of such a person, the director shall inform the person who assumes a role in matters of child and family services within the community. The director shall then solicit the cooperation of the person informed of the child’s situation in order to foster the cultural continuity of that child and, as far as possible, ensure that the child is entrusted to a member of his extended family or to a person belonging to his community or nation.

“§3.—*Family council*

“**131.9.** In the following cases, the director shall inform the parents of an Indigenous child, and the child if he is 14 years of age or over, of the possibility of forming a family council:

(a) a provisional agreement set out in Division II.1 of Chapter IV has been reached;

(b) it has been decided by the director, in accordance with section 51, that the security or development of the child is in danger; and

(c) prior to the review of the child’s situation in accordance with section 57 or 57.1.

The council is formed in accordance with Indigenous custom or practice. Where such a council is not formed, the director forms it if the parents and the child, if applicable, request it; he then solicits the cooperation of the community or of an Indigenous organization in an urban environment.

The director is not bound by the obligations set out in the first and second paragraphs in the cases where a family council has already been formed.

For the purposes of this chapter, a family council also includes any other similar authority.

“**131.10.** The role of the family council is, in particular, to submit observations to the director in respect of a modification or extension of the provisional agreement beyond 30 days and to make proposals concerning

(a) the measures to put an end to a situation in which the security or development of a child is in danger;

(b) the measures aimed at ensuring continuity of care and the stability of the child’s relationships and of his living conditions; and

(c) the customary or traditional care appropriate to the child’s situation.

“**131.11.** Before modifying or extending a provisional agreement beyond 30 days and before deciding whereto the Indigenous child is to be directed or if his situation is to be revised, the director shall solicit the observations of the family council or its proposals, as the case may be, unless he has already received them.

The director is not bound to do so if he considers that the time necessary to obtain the observations or the proposals may result in danger to the security or development of the child.

“131.12. The total period for which an Indigenous child may be entrusted to an alternative living environment is not limited by sections 53.0.1 and 91.1 if a family council has been formed.

“131.13. Where a family council has been formed, the director may review the case of the child at any time other than the time at which he is required to conduct such a review under section 57, if he considers it appropriate or if the council so requests.

“§4. — *Consecutive agreements on voluntary measures*

“131.14. Subject to section 131.12, consecutive agreements on voluntary measures referred to in subdivision 3 of Division III of Chapter IV may exceed the three-year term provided for in section 53 if they concern an Indigenous child.

“§5. — *Judicial intervention*

“131.15. A person responsible for the youth protection services of an Indigenous community or, in the absence of such a person, the person who assumes a role in matters of child and family services within an Indigenous community or the representative designated by such a community may, in the course of a proceeding concerning an Indigenous child belonging to that community, testify or submit observations, including in writing, before the tribunal, and may, for those purposes, be assisted by an advocate.

The observations mentioned in the first paragraph may cover, in particular the culture, history and traditions of the community, the characteristics of the Indigenous child’s living environment and the various services available to the child and his family.

Except in the case of an application under section 47, the director must, as soon as possible, inform the person responsible for the youth protection services of an Indigenous community or, in the absence of such a person, the person who assumes a role in matters of child and family services within an Indigenous community or the designated representative of the Indigenous community, of the date, time and place of the hearing of any application concerning an Indigenous child belonging to that community, of the subject of such an application and of the person’s right to participate in the hearing to the extent provided for in this section.

“DIVISION III

“INDIGENOUS CUSTOMARY ADOPTION AND TUTORSHIP

“131.16. The director shall consider Indigenous customary tutorship or adoption contemplated in article 199.10 or 543.1, as applicable, of the Civil Code if he considers that either of those measures is likely to ensure the interest of the child and the respect of his rights.

“131.17. In the case of an Indigenous customary adoption for which a new act of birth has been drawn up by the registrar of civil status under article 132 of the Civil Code, any inconsistent conclusions of an order aimed at protecting the child become inoperative on a decision of the tribunal following an application by the director, and the director shall act under section 95 on receiving a copy of the new act of birth from the registrar of civil status.

“131.18. From the time the child becomes the subject of a report and until the end of the director’s intervention, no Indigenous customary tutorship or adoption certificate may be issued in accordance with article 199.10 or 543.1, as applicable, of the Civil Code without the opinion of the director regarding the interest of the child and the respect of his rights.

To that end, the director and the competent authority shall exchange the information needed to enable the director to give an opinion. The director must disclose the information in accordance with section 72.6.1.

The director’s opinion must be in writing and give reasons.

“131.19. Financial assistance may, in the cases and on the terms and conditions prescribed by regulation, be granted by an institution operating a child and youth protection centre to facilitate Indigenous customary tutorship to or adoption of a child whose situation is taken in charge by a director.

“DIVISION IV

“AGREEMENTS IN INDIGENOUS MATTERS

“131.20. In order to better adapt the application of this Act to Indigenous realities, the Government is authorized, subject to the applicable legislative provisions, to enter into an agreement with an Indigenous nation represented by all the band councils or the councils of northern villages of the communities making up that nation, with the Makivik Corporation, with the Cree Nation Government, with an Indigenous 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 Indigenous 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 comply with the provisions of Chapter II and of Division I of Chapter V.1 of this Act 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 comply 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 (chapter S-4.2) or of the Act respecting health services and social services for Cree Native persons (chapter S-5).

The Cree Board of Health and Social Services of James Bay covered by the Act respecting health services and social services for Cree Native persons must be a party to the agreement entered into with the Cree Nation Government.

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 sitting, within 15 days of resumption. It shall also be published in the *Gazette officielle du Québec*.

“131.21. For the purposes of this Act, the person or the authority referred to in the third paragraph of section 131.20 that is entrusted with all or part of the responsibilities assigned to the director is, where exercising those responsibilities, considered that director unless the agreement entered into under that section provides otherwise.

“131.22. When the director intervenes in a living environment to which an Indigenous child covered by an agreement entered into under section 131.20 is entrusted, he shall notify the persons or authorities of that child’s Indigenous community who are entrusted, if applicable, with all or part of the responsibilities assigned to the director within the framework of that agreement.

The person or authority thus notified of the director’s intervention may require that the director send him the information specified by that person or authority, provided such information is necessary for the exercise of his duties. If the director holds any such information, he sends it as soon as possible, despite section 72.5.

“131.23. In order to foster the cultural continuity of Indigenous children and the involvement of Indigenous communities in the decision-making and choice of measures concerning those children, an institution operating a child and youth protection centre may enter into an agreement with an Indigenous community represented by its band council or by the northern village council or with a group of communities so represented, which stipulates that such a community or such a group is to recruit and evaluate, in keeping with the general criteria determined by the Minister, persons able to take in one or more children who are members of the community and who are entrusted to them under this Act.

Such an agreement may also stipulate any other responsibility of the community or group in relation to these persons’ activities, in accordance with ministerial policy directions.

“131.24. Whenever this Act provides that a child may be entrusted to a foster family, the child who is Indigenous may also be entrusted to a person or persons whose activities are under the responsibility of an Indigenous community or a group of communities with whom an institution operating a child and youth protection centre has entered into an agreement under section 131.23 in respect of such activities or with whom the Government has entered into an agreement under section 131.20 which includes such activities.

Those persons are then considered to be foster families for the purposes of this Act.

“131.25. An institution operating a child and youth protection centre may, for the same purposes as those mentioned in section 131.23, enter into an agreement with an Indigenous community represented by its band council or by the northern village council or with a group of communities so represented that specifies the terms applicable to the authorizations granted by the director for the exercise of one or more of the director’s exclusive responsibilities provided for in the following paragraph.

The director may, within the framework of such an agreement, authorize a person who is a staff member of the Indigenous community or group of communities, in writing and to the extent the director specifies:

(a) to carry out the assessment of a child’s situation and living conditions as provided for in subparagraph *b* of the first paragraph of section 32, without, however, allowing that person to decide whether the security or development of the child is in danger; and

(b) to exercise, under the director’s authority as regards clinical matters or under the authority of the person the director authorizes in writing, one or more of the responsibilities provided for in subparagraphs *b* to *e* and *h.1* of the first paragraph of section 32.

Section 35 and any other section that applies to a person acting under section 32 apply to a person authorized to exercise a responsibility under this section. The director may, at any time, terminate an authorization.

“131.26. An institution may enter into an agreement with an Indigenous community represented by its band council or by the northern village council or with a group of communities so represented that specifies the responsibilities assigned to that community or that group relating to the granting of the financial assistance provided for in any of sections 70.3, 71.3 and 131.19.”

55. Section 134 of the Act is amended, in the first paragraph,

(1) by replacing “37.5” in subparagraph *b* by “131.20”;

(2) by inserting the following subparagraph after subparagraph *b*:

“(b.1) refuse or neglect to communicate information or a record or to give explanations required under section 35.4;”;

(3) by replacing “37.5” in subparagraph *d* by “131.20”.

56. Section 156 of the Act is amended

(1) by inserting “131.15,” after “131,”;

(2) by inserting “or 131.17” after “section 95.0.1”.

ACT RESPECTING THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

57. Section 3 of the Act respecting the Ministère de la Santé et des Services sociaux (chapter M-19.2) is amended by adding the following paragraph at the end:

“(p) promote the appropriate measures to meet the needs of children and families in vulnerable situations or to prevent the security or development of a child from being in danger.”

58. The Act is amended by inserting the following section after section 5.1:

“5.1.1. The Government shall appoint the National Director of Youth Protection, who shall hold a position of assistant deputy minister, to advise and assist the Minister and the Deputy Minister in the exercise of their responsibilities with regard to youth protection.”

ACT TO MODIFY THE ORGANIZATION AND GOVERNANCE OF THE HEALTH AND SOCIAL SERVICES NETWORK, IN PARTICULAR BY ABOLISHING THE REGIONAL AGENCIES

59. Section 50 of the Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies (chapter O-7.2) is amended, in the second paragraph,

(1) by striking out “or section 31 of the Youth Protection Act (chapter P-34.1)”;

(2) by replacing “, midwifery services coordinator or director of youth protection” by “or midwifery services coordinator, as the case may be”.

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES

60. Section 19 of the Act respecting health services and social services (chapter S-4.2) is amended by replacing paragraph 19 by the following paragraph:

“(19) for the purposes of the Youth Protection Act (chapter P-34.1).”

61. Section 104 of the Act is amended by adding the following paragraph at the end:

“Furthermore, those plans must, as the case may be, mention the objectives and means aimed at fostering the cultural continuity of the Indigenous child who is entrusted to an alternative living environment under the Youth Protection Act (chapter P-34.1).”

TRANSITIONAL AND FINAL PROVISIONS

62. An agreement entered into under sections 37.5, 37.6 or 37.7 of the Youth Protection Act (chapter P-34.1) before (*insert the date of assent to this Act*) is deemed entered into, respectively, under sections 131.20, 131.23 and 131.25 of that Act, as enacted by section 54 of this Act.

63. Sections 84.2, 86, 87 and 88 of the Youth Protection Act, as amended, respectively, by sections 48, 49, 50 and 51 of this Act, do not apply to a case pending before the tribunal on (*insert the date of assent to this Act*).

64. The provisions of this Act come into force on (*insert the date of assent to this Act*), except

(1) the provisions of paragraph 2 of section 20, sections 21, 22, 32, 34, 35 and 38 and paragraph 2 of section 55, which come into force on (*insert the date that is one year after the date of assent to this Act*);

(2) the provisions of section 54, insofar as it enacts sections 131.6, 131.7 and 131.9 to 131.13 of the Youth Protection Act, which come into force on the date determined by the Government.

