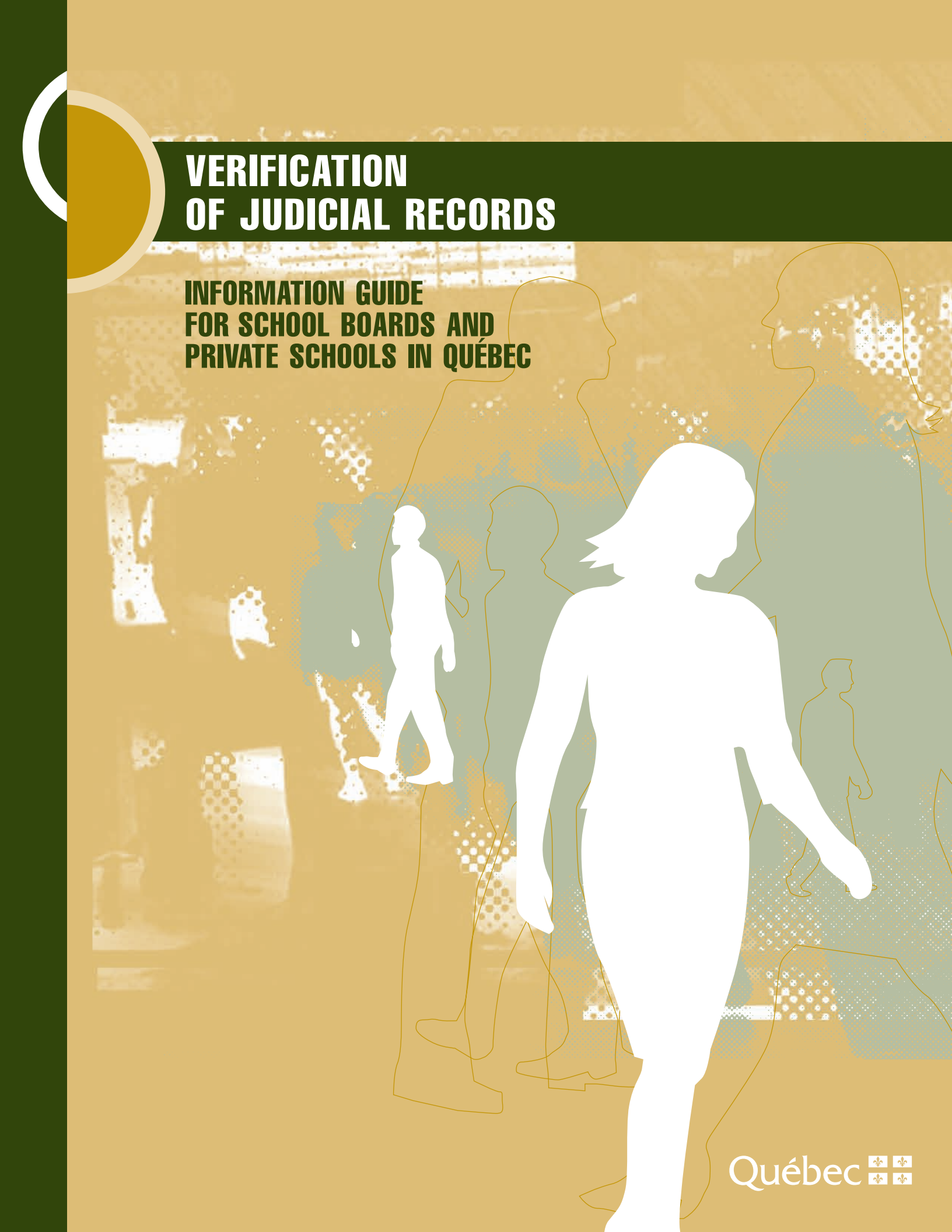




VERIFICATION OF JUDICIAL RECORDS

**INFORMATION GUIDE
FOR SCHOOL BOARDS AND
PRIVATE SCHOOLS IN QUÉBEC**





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TEXT

Mireille Godard-Dubois
Hilaire Rochefort
Direction générale des relations du travail - MELS

ASSISTANCE

Diane Arsenault, Fédération des établissements d'enseignement privés
Gina Bienjonetti, Direction des affaires juridiques - MELS
Jocelyne Godbout, Fédération des commissions scolaires du Québec
Bernard Huot, Quebec English School Boards Association
Nancy Thivierge, Fédération des commissions scolaires du Québec

SUPPORT

France Robert
Lucie Piché

ENGLISH VERSION

Direction de la production en langue anglaise
Services à la communauté anglophone
Ministère de l'Éducation, du Loisir et du Sport

LAYOUT

Ose Design

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INTRODUCTION

Public and private schools in Québec provide educational services to over one million students of minor age in elementary and secondary schools, adult education centres and vocational training centres. Each year, over 145 000 people are involved in delivering services to students, including 30 000 for the first time. In addition to teachers, most of the people employed in schools work alongside students, and the thousands of volunteers who work in schools each year also come into regular contact with students.

Verifying the judicial records of all these people is a major operation. Precautions must be taken to ensure that their fundamental rights are not infringed. Consultations with various parties have helped define the scope of the process and the best way to verify judicial records without violating the rights of any person.

NOTICE

This Guide is primarily intended as a tool for the people responsible for managing or supervising the judicial record verification process. It does not replace the Acts and regulations currently in force.

The Minister of Education, Recreation and Sports is aware that this guide does not answer all the questions concerning the verification of judicial records, or cover all the aspects of the verification process. This is why school boards and private schools are encouraged to enrich the process based on the comments of users and new criteria introduced by case law and legal doctrine.

The verification of judicial records is only one of the steps taken during the hiring process. It does not replace any of the other usual steps, such as the examination of references from previous employers.

GENERAL INFORMATION

1.1

HISTORICAL BACKGROUND

Although schools in Québec are generally considered to be safe for students, some unfortunate incidents involving threats to their physical integrity have come to light in recent years. In a report dated December 5, 2001, Québec's Auditor General deplored the fact that a number of school boards did not verify the judicial records of staff hired to work with students in school daycare centres.

These events led to discussions and a ministerial decision to take action to ensure a safer environment for students. The verification of judicial records was clearly a key step in this process. Although verification provides no guarantee as to whether or not a person will commit a reprehensible act, it makes it possible to identify people whose judicial record makes them unfit for duties involving students and to take action, where neces-

sary. In addition, the systematic verification of judicial records serves to dissuade unsuitable individuals from applying for a job that involves working directly with students. To launch the judicial record verification process, the Minister of Education released a plan of action in December 2001 that detailed various measures in this regard.

To provide more protection for the safety and well-being of students, the *Act to amend the Education Act and the Act respecting private education*¹ was passed on June 15, 2005. Its provisions gave the Minister of Education, Recreation and Sports new powers, and created new obligations for individuals applying for or holding a teaching licence and for school boards, private schools, and people working or coming into regular contact with minor-age students.

1. Referred to in this Guide as the "Act".

1.2

OBJECTIVE

The main objective of the legislation, and of this Guide, is to ensure that judicial records are systematically checked within the education system.

To achieve this, the Ministère de l'Éducation, du Loisir et du Sport will support school boards and private schools in the preparation or updating of their policies or procedures in the area of judicial record verification.

1.3

SCHOOL BOARDS AND PRIVATE SCHOOLS SUBJECT TO THE NEW LEGISLATION

Because of their responsibility to ensure the safety and well-being of the students entrusted to their care, school boards and private schools providing preschool, elementary or secondary school services, including vocational training or adult education, are required to implement various measures. These measures must not, however, infringe on the fundamental rights of the individuals whose judicial records are verified.

The Guide may also be used by parents and members of the education community who wish to learn more about the policies and procedures in force.

To ensure the transparency of the judicial record verification process, school boards and private schools should inform all local stakeholders of the policy and procedure they intend to implement, and publicize the policy and procedure among the people whose judicial record is likely to be verified.

This Guide is intended for use by:

- school board and private school administrators
- the members of school governing boards
- the principals of schools, vocational training centres and adult education centres who have responsibility for staff supervision
- people responsible for the verification of judicial records
- the members of review committees

1.4

PEOPLE WHOSE RECORD IS SUBJECT TO VERIFICATION

The new legislative provisions target people working with or likely to be working with minor-age students, or regularly in contact with or likely to be

regularly in contact with these students. Special provisions govern people who already hold a teaching licence.

1.5

TYPES OF JUDICIAL RECORD TARGETED

The Act targets the following elements of a judicial record:

- any conviction for a criminal or penal offence committed in Canada or elsewhere, unless a pardon has been obtained for that offence
- any charge still pending for a criminal or penal offence committed in Canada or elsewhere
- any court order subsisting against the applicant in Canada or elsewhere

2.1**LEGISLATIVE FRAMEWORK**

The provisions concerning the verification of the judicial records of people working in the education sector were passed on June 15, 2005, as part of the *Act to amend the Education Act and the Act respecting private education*.² They specify the new powers of the Minister of Education, Recreation and Sports with regard to the issue and renewal of teaching licences, and the obligations of people applying for the issue or renewal of a teaching licence. They also create new obligations for school boards and private schools, and for people working or coming into regular contact with minor-age students.

The Act to amend the Education Act and the Act respecting private education is available on the Publications du Québec Web site at <www.publicationsduquebec.gouv.qc.ca>.

The verification of judicial records raises several other legal questions, for example concerning the fundamental rights of people whose judicial records are verified, and the protection of personal information. Several other statutes may be relevant, depending on the circumstances, including the following:

- *Act respecting Access to documents held by public bodies and the Protection of personal information* (R.S.Q., c. A-2.1)
- *Criminal Records Act* (R.S.C., 1985, c. C-47)

2. S.Q., 2005, c. 16.

- *Charter of human rights and freedoms* (R.S.Q., c. C-12)
- *Civil Code of Québec* (S.Q., 1991, c. 64)
- *Executive Power Act* (R.S.Q., c. E-18)
- *Act respecting labour standards* (R.S.Q., c. N-1.1)
- *Act respecting the protection of personal information in the private sector* (R.S.Q., c. P-39.1)
- *Youth Criminal Justice Act* (S.C., 2002, c. 1)

Although the *Act to amend the Education Act and the Act respecting private education* contains specific provisions for the collection, conservation and disclosure of information concerning judicial records, the general rules concerning the collection, conserva-

tion and disclosure of personal information are contained in the *Act respecting Access to documents held by public bodies and the Protection of personal information*³ and the *Act respecting the protection of personal information in the private sector*.⁴

The relevant provisions of the *Charter of human rights and freedoms*, along with basic definitions of criminal record, pardon and discharge, are presented briefly below.

2.2

CHARTER OF HUMAN RIGHTS AND FREEDOMS

The *Charter of human rights and freedoms* guarantees the right of every human being to life, and to personal security, inviolability and freedom. The personal security and physical and mental inviolability of vulnerable people, including children, are the responsibility of any person or organization that has custody of them or assists in their development. The Charter also guarantees the right of all people to the safeguard of their dignity, honour and reputation, and to respect for their private life. However, it is important to note that fundamental rights and freedoms, such as the right to respect for one's private life and the safeguard of one's reputation, are

subordinated to democratic values, public order and the general well-being of the citizens of Québec. This is why the scope and exercise of some rights may be limited by law.

Lastly, the Charter expressly states that no one may dismiss, refuse to hire or otherwise penalize a person in his or her employment owing to the mere fact that the person was convicted of a penal or criminal offence, if the offence was in no way connected with the employment or if the person has obtained a pardon for the offence.

3. This Act applies to school boards and private educational institutions accredited for purposes of subsidies under the *Act respecting private education*.

4. This Act applies to private educational institutions that are not accredited for purposes of subsidies under the *Act respecting private education*.

CRIMINAL RECORD, PARDON AND DISCHARGE⁵

Criminal record

When a person is found guilty of an offence, information about the offence, the sentence and the offender, including his or her photograph and fingerprints, are automatically sent to the Royal Canadian Mounted Police (RCMP) and put on file: in other words, the person has a criminal record.

Criminal records are accessible through the RCMP and various police databases until the person has obtained a pardon.

If the original sentence was a discharge, the information is forwarded to the RCMP to be added to the databases, but this information is struck from the record and cannot be disclosed after one year in the case of an absolute discharge, or three years in the case of a conditional discharge. Nevertheless, the person's contact information may be forwarded to the police in the context of a criminal investigation, for example.

Pardon for a federal offence

When a pardon is granted for an offence under a federal law or regulation, the record of a person's conviction in this regard is kept separate and apart from other criminal records, and remains confidential.

Pardons are granted by the National Parole Board under the *Criminal Records Act*. The National Parole Board is under no obligation to grant a request for pardon.

Pardons may not be granted until the prescribed time has elapsed and the convicted person has completely served his or her sentence, has shown good conduct, and has not been convicted of another offence. The prescribed time is either three

or five years, depending on whether the offence was an offence punishable on summary conviction or an offence prosecuted by indictment.

A period of 12 to 18 months may elapse between the time when an application for pardon is made to the National Parole Board and the time when an answer is received, depending on the type of offence and the documents that must be submitted.

Note that once a person has been pardoned, and even acquitted, the information gathered during the police investigation and the legal proceedings may remain on file in the main databases at the courthouse or the police department. The person pardoned is responsible for contacting the authorities to have the information made confidential. In the case of an acquittal, it is even possible to request that the fingerprints and photographs held by the police be returned to that person or destroyed.

However, in spite of a pardon, a person's criminal record must contain an indication of whether he or she was convicted of a sexual offence. This information may be forwarded to an organization for the protection of children or of vulnerable people in order to verify whether a job applicant has a history of sexual offences. The job in question must place the applicant in a position of authority or confidence with respect to children or vulnerable people. The candidate must also give written consent to the verification, since an organization cannot disclose nominative information without the consent of the person concerned. However, the *Act respecting Access to documents held by public bodies and the Protection of personal information* and the *Act respecting the protection of personal information in the private sector* specify some exceptions to this general rule, in particular if the disclosure of the information is necessary under a statute in force in Québec.⁶

5. This section is based on the Éducaloi Web site, and provides legal information of a general nature. More information can be found at <www.educaloi.qc.ca/en>.

6. The *Act to amend the Education Act and the Act respecting private education* contains specific provisions in this area.

Discharge

If a person has been convicted of a criminal offence, the court hands down a sentence such as a fine or a term of imprisonment.

One of the sentences the judge may impose is a discharge. A “conditional” discharge comes with a probation order stipulating certain conditions (such as requiring that a person not consume alcohol or communicate with a victim, or requiring a person to make a donation to a charity); otherwise, the discharge is “absolute”.

When a court grants a discharge, no sanctions are imposed and the person is considered to have been found not guilty of the offence.

Pardon for a provincial offence

An application for a pardon for an offence under a provincial law or regulation may be made under the *Executive Power Act*, which is a Québec statute. However, this procedure is used only under exceptional circumstances.

3.1**TYPES OF VERIFICATION**

The most common ways to verify a judicial record are to ask for information from police forces in Québec, to obtain a certificate of good conduct or attestation of clean judicial record, or to consult the criminal and penal records held by the Ministère de la Justice du Québec.

3.1.1 Verification by a Québec police force

A request to have a judicial record verified by a Québec police force is the most reliable way to verify the type of judicial record targeted by the Act.

3.1.2 Certificate of good conduct or attestation of clean judicial record

A certificate or attestation certifies that a person has no judicial record. However, it does not meet the requirements of the Act, since pending charges are not noted.

3.1.3 Consultation of the criminal and penal records of the Ministère de la Justice du Québec

The criminal and penal databases may be consulted using the computer terminals located in Québec courthouses, or via the Société québécoise d'information juridique (SOQUIJ); they tabulate all cases arising from a criminal or penal offence committed in Québec.⁷ However, they do not show offences committed outside the province, and only record offences entered after the date on which the records of each courthouse were computerized (see Appendix 4).

7. Because they are not centralized, the decisions of municipal courts are not necessarily included in the records.

3.2

FRAMEWORK AGREEMENT WITH THE MINISTER OF PUBLIC SECURITY

To provide the best possible verification of judicial records and a standardized procedure, the Minister of Education, Recreation and Sports has signed a framework agreement with the Minister of Public Security, in collaboration with the police forces in Québec. The model agreements included in the schedules to the framework agreement⁸ establish the judicial record verification procedure that police forces in Québec may be asked to apply for school boards and private schools.

A school board or private school wishing to use the services of a Québec police force must have first signed an agreement with that police force, based on the applicable model agreement.

Because the framework agreement has now been signed, only the type of verification involving consultation with a Québec police force is described in this Guide.

(Appendix 1)

3.3

PRELIMINARY STAGES FOR THE VERIFICATION OF A JUDICIAL RECORD

3.3.1 Appointment of a person responsible for verification

A school board or private school and the police force that will carry out the verification must designate, in the agreement they sign, a person with responsibility for its application and a substitute if that person is unable to take action.

Any change in the identity of the person responsible or the substitute, or in their contact information, must be forwarded in writing to the police force as soon as possible.

Before the person responsible and the substitute can take up their duties, their judicial records must be verified.

3.3.2 Duties

The person responsible for enforcing the agreement must ensure that the relevant legal provisions are complied with and that the agreement on the verification of judicial records is applied.

More specifically, the person's duties are:

- to collect the information required from individuals subject to verification

- to check the identity of a person signing a declaration, and in particular the spelling of the person's first and last names and the person's date of birth
- to ensure that the information collected remains confidential
- to forward documents and information to the person designated by the police force to verify the information contained in each declaration concerning a judicial record
- to receive the results of the verification from the person designated by the police force
- to forward the file to the review committee at the request of the person subject to verification and after making the information contained in the person's file anonymous

The person responsible for the application of the agreement may also analyze the situation of a person with a judicial record. The analysis must be objective and impartial and not infringe the rights of the person concerned. Information on the analysis procedure is given in Chapter 4.

8. Found in Appendix 1.

3.3.3 Coming into force and term of the agreement

Provided the applicable legislative provisions are in force, an agreement between a school board or private school and a police force comes into effect on the date of its signature, for a period of two years.

Unless one of the parties advises the other of its intention to terminate the agreement at least three

months before it expires, it is renewed for the same term and on the same conditions. However, if the framework agreement between the Minister of Education, Recreation and Sports and the Minister of Public Security is amended, the renewed agreement will be subject to the new provisions of the framework agreement as applicable on the date of the renewal.

3.4

REVIEW COMMITTEE

The analysis of the situation of a person with a judicial record is an extremely delicate operation than can have major repercussions for the person concerned. This is why it is highly recommended that a review committee be set up to allow people subject to verification to submit their file for a second analysis.

3.4.1 Composition and role

The school board or private school is responsible for specifying:

- the membership of the review committee
- its duties
- its operating rules
- its procedure

It is suggested that the review committee have a small, odd number of members to facilitate discussions and decisions concerning the notices sent to the school board or private school. Ideally, the committee should have five members. If this is not possible, because of a shortage of staff, the committee should have at least three members.

To establish its credibility, the committee should combine the experience of members from various fields. For example, it could include:

- a person from the education community
- a lawyer
- a human behaviour specialist, such as a psychologist or social worker
- a teacher of ethics

This list is not exhaustive.

At the request of the person whose judicial record is being verified, the review committee carries out a second analysis of the judicial records containing elements that may have a bearing on duties involving minor-age students.

The duties of the review committee are detailed in Chapter 4.

3.5

LOCAL OR REGIONAL REVIEW COMMITTEE

School boards and private schools may decide to join together to set up a single local or regional review committee. Its duty is to analyze the judicial records submitted to it and issue notices concerning the existence of a connection between a given judicial record and the position held or applied for by the person subject to verification.

Under the new legislative provisions, the school boards or private schools involved would have to ensure that information on judicial records is accessible only to people qualified to have access to it by reason of their responsibilities, and to ensure that these people undertake, in writing, to make sure that this information is collected, used and conserved solely for the purposes stipulated in the Act.

3.6

CIRCUMSTANCES IN WHICH JUDICIAL RECORDS ARE VERIFIED

3.6.1 Prior to hiring

Before hiring applicants, school boards and private schools are required to ensure that any person who will be working or coming into regular contact with minor-age students has no judicial record containing elements that have a bearing on the duties they may be assigned.

For this purpose, the school board or private school must verify or have verified, in particular by a Québec police force, the declarations concerning the judicial record submitted by applicants.

3.6.2 Employees working or coming into regular contact with minor-age students

At the request of a school board or private school, any person working or coming into regular contact with minor-age students must submit a declaration concerning their judicial record to allow the school board or private school to ensure that he or she does not have a judicial record containing elements that have a bearing on his or her duties.

The employees concerned must be informed of the obligation to submit a declaration and of the time limit for doing so.

The school board or private school may rely on the declaration, or verify it or have it verified, in particular by a Québec police force.

3.6.3 Reasonable grounds

If a school board or private school has reasonable grounds to believe that a person working or coming into regular contact with minor-age students has a judicial record, it may ask the person to provide a declaration concerning his or her judicial record.

The person must be informed that he or she is required to submit a declaration within 10 days of the request.

The school board or private school must verify the declaration or have it verified, in particular by a Québec police force, and ensure that the person does not have a judicial record containing elements that have a bearing on his or her duties.

3.6.4 Following a change in a judicial record

People working or coming into regular contact with minor-age students must, within 10 days of being informed of any change in their judicial record, declare the change to their school board or private school, whether or not they have previously submitted a declaration concerning their judicial record.

The school board or private school must verify the declaration or have it verified, in particular by a Québec police force, and ensure that the person concerned does not have a judicial record containing elements that have a bearing on his or her duties.

3.6.5 Contracts with outside businesses

Contracts between a school board or private school and an outside business must contain a clause requiring the business to show that any people who

will be working or coming into regular contact with minor-age students do not have a judicial record that may place the safety or well-being of the students at risk.

3.7

DECLARATION CONCERNING A JUDICIAL RECORD

3.7.1 Content

The declaration form must contain a section in which the person concerned can declare the following elements of his or her judicial record, as defined in the Act:

- any conviction for a criminal or penal offence committed in Canada or elsewhere, unless a pardon has been obtained for that offence
- any charge still pending for a criminal or penal offence committed in Canada or elsewhere
- any court order subsisting against the applicant in Canada or elsewhere

The form must also contain the following statements:

- a statement that the school board or private school may verify the declaration or have it verified, in particular by a Québec police force, and may to that end communicate or receive any information needed for the purpose of the verification
- a statement that the school board or private school will inform the Minister of Education, Recreation and Sports in every case in which it concludes that the judicial record of a teaching licence holder contains elements that have a bearing on the duties that are, or may be, assigned to that person by the school board or private school

The form should also contain the following statements:

- a statement that all people working or coming into regular contact with minor-age students are required to report any change in their judicial record to the school board or private school within 10 days of the date on which they are themselves informed of the change
- a statement that any false declaration or refusal to complete the form used to make a declaration concerning a judicial record could lead to the rejection of the application or, as the case may be, to an administrative or disciplinary measure

(Appendix 2)

All the elements of a judicial record defined in the Act must be declared, since it is the responsibility of the school board or private school to decide whether an element of the judicial record has a bearing on the duties that are or may be assigned to the person in question by the school board or private school.

3.7.2 Verification

Where applicable, the school board or private school may or must have a declaration concerning a judicial record verified by a Québec police force and may or must to that end communicate or receive any information needed for the purpose of the verification.

The information concerning a person's judicial record may be collected, used and conserved solely for the purposes specified in the Act. The school board or private school must ensure that this information is accessible only to people qualified to have access to it by reason of their responsibilities, and obtain a written undertaking from them in this regard.

3.8

LACK OF COOPERATION BY A PERSON WHOSE JUDICIAL RECORD IS BEING VERIFIED

Any person who . . .

- fails to complete a declaration concerning his or her judicial record at the request of a school board or private school
- fails to forward the declaration to the school board or private school
- fails to report any change in his or her judicial record to the school board or private school whether or not the person has previously submitted a declaration in this regard
- refuses to comply with any legal obligation mentioned above

. . . does not meet the conditions set out in the Act.

Since the declaration concerning a judicial record is compulsory at the time of hiring, no school board or private school may consider an application from a person who refuses to provide or complete a declaration. In the case of current employees, the school board or private school is justified in taking appropriate administrative or disciplinary measures against a person who refuses to provide or complete a declaration.

A table showing the steps in the judicial record verification process is found in Appendix 3.

ANALYSIS OF THE RESULTS OF A JUDICIAL RECORD VERIFICATION

4.1

CLEAN JUDICIAL RECORD

A school board or private school may hire or retain the services of any person whose judicial record has been verified and is found to contain no offences.

4.2

JUDICIAL RECORD WITH OFFENCES

When a school board or private verifies a person's judicial record and finds that it contains one or more offences, a preliminary analysis must be carried out to determine if the relevant elements of the judicial record have any bearing on the person's duties. If they do not, the procedure in Point 4.1 is followed.

If they do, the person responsible must analyze this matter, taking the following points into account.

4.3

NOTICE TO A PERSON WHOSE JUDICIAL RECORD CONTAINS ELEMENTS THAT MAY HAVE A BEARING ON HIS OR HER DUTIES

If some elements in a person's judicial record may be considered to have a bearing on his or her duties, the person responsible must advise this person, in writing, that this matter will be analyzed and that the person subject to verification may provide

additional relevant information before a recommendation is made. The person must be given a reasonable amount of time within which to submit this information.

4.4

OFFENCES LIABLE TO ATTRACT ATTENTION

The Act does not list the offences that would prevent a person from working or coming into regular contact with minor-age students. The following offences are liable to attract attention, but this list is provided as a source of information only and is not all-inclusive; other offences may also be considered.

Offences involving any form of violence, especially:

- homicide
- robbery
- assault
- abduction
- detention of a young person
- uttering threats
- intimidation
- criminal harassment

Sexual offences, especially:

- sexual assault
- indecent acts
- soliciting or inducing prostitution
- child pornography

Offences that by their nature constitute theft or fraud, especially:

- breaking and entering
- theft
- fraud
- corruption
- personation

Offences that involve driving a motor vehicle, especially:

- impaired driving
- hit-and-run
- dangerous driving

Offences relating to drugs and other illegal substances, especially:

- possession
- trafficking
- importing, exporting
- cultivation

Offences posing a risk for the safety and well-being of minor-age students, especially:

- failure to provide the necessities of life
- criminal negligence
- criminal organization offence
- offence carried out for a terrorist group

GENERAL PRINCIPLES

Analyzing the connection between a judicial record and an employee's duties is a delicate operation. This analysis must be based on the absolute necessity to reconcile the protection of minor-age students with respect for the fundamental rights of the people who work with these students. The specific circumstances of each case must also be examined, taking into account the nature of the offence noted in the judicial record and whether it has any bearing on the employee's duties.⁹

Several criteria, including the nature of each duty and each offence, must be considered before concluding whether or not an offence on a judicial record has any bearing on the person's duties.

Depending on the nature and gravity of the offence, a single criterion may lead to the conclusion that this offence makes a person unfit to carry out certain duties. In other cases, it is not the nature of the offence but rather the nature of the duties or a set of other elements that lead to the same conclusion.

A thorough analysis of the situation also includes consideration of other elements brought forward by the person subject to verification, such as his or her conduct since the commission of the offence, statements of good conduct, commitment to society, or application to obtain a pardon. It is up to the person to provide this type of information, of course, but he or she must be given an opportunity to do so. Once disclosed, the information becomes an integral part of the analysis.

Type of employment duties

This analysis criterion is used to establish the connection between the judicial record and the intrinsic nature of the employment duties involved. Teaching duties are in a separate category from other types of employment. The Supreme Court of Canada¹⁰ has established that "teachers are very

properly expected to maintain a higher standard of conduct than other employees because they occupy such an extremely important position in society." Teachers play a strategic role in society. They hold a position of trust, and have a high degree of responsibility because of the duties they perform, the model they represent and the values they convey. Not all staff members have the same degree of responsibility and trust. It is important not to establish a direct link between a given offence on a judicial record and all types of employment at a school board or private school. Only by analyzing the duties that are, or may be, performed by the person concerned can the existence of a connection be determined and considered crucial.

The following list, although non-exhaustive, shows some of the elements that may be used to ascertain the existence of a connection:

- direct, frequent contacts with students
- moral authority over students
- level of responsibility
- the influence and authority of the person over the students
- the extent to which the person serves as a social role model when carrying out the duties in question
- possible harm to students

Type of offence

Not all offences on a judicial record are equivalent. The more serious the offence, the more reprehensible it is and the more weight it will have in establishing whether a person is unfit for specific duties. To assess the seriousness of an offence, the school board or private school should consult the relevant documents (the judgment leading to the conviction, the sentence imposed, pending charges or court orders).

9. Association des pompiers de Laval et Ville de Laval [1985] T.A., 446. See also the comments in T. J. SINGLETON, "La discrimination fondée sur le motif des antécédents judiciaires et les instruments anti-discriminatoires canadiens", (1993) 72 Can. Bar Rev. 456.

10. Toronto (City) Board of Education v. O.S.S.T.F., District 15, [1997] 1 S.C.R. 487, par. 52.

Particular nature of each situation

Every situation must be assessed separately by examining the specific circumstances in which an offence was committed before reaching a conclusion. Two cases may be similar without being identical.

Automatic connections

The analysis must not include any automatic connections. No charge, conviction or court order, even in the most serious cases, should be considered to have an automatic bearing on the duties that are, or may be, assigned to a person. The particularities of every case must be examined, among other things to determine if there are any mitigating circumstances.

Priority given to the protection of minor-age students

The principal objective of the decision made by a school board or private school concerning a person with a judicial record is to ensure the protection of minor-age students. They must assess the risk the person poses for the safety and well-being of their minor-age students.

4.6

ANALYSIS CRITERIA

The elements that may be considered include acts that contradict the educational mission, educational project, rules of conduct or policies of the school board or private school.

Depending on the circumstances, the following elements may also constitute aggravating or mitigating factors:

- the time elapsed since the offence on the judicial record was disclosed
- the time elapsed since the offence was committed
- the particular circumstances of the offence, and whether or not it was an isolated occurrence

Pending charges: a special case

When the analysis of a person's judicial record reveals the existence of a pending charge, special care must be taken since, in this particular case, there is no conviction to prove that the person is guilty of the offence.

If a pending charge is considered to have some bearing on the person's duties, the school board or private school could be justified in suspending the person concerned or in imposing an administrative measure, depending on the conditions of employment applicable to that person.¹¹

- the risk of a repeat offence
- whether or not the offence was committed while working with children
- the impact of the offence on the person's relationship with the school board or private school
- the values of the school board or private school
- the person's eligibility for pardon
- the file of the person concerned
- the behaviour of the person concerned

This list may be adapted and new items may be added, depending on the case under examination.

11. See St-Jean c. Commission scolaire régionale de l'Outaouais, J.E. 89-189 (C.A.).

Time elapsed since the offence was disclosed

When a school board or private school learns of the existence of an offence on a person's judicial record, it must act promptly. In some cases, the time elapsed between the disclosure of the offence and the application of a measure by a school board or private school has been seen as an admission by the employer that a relationship of trust continued to exist and that there was no danger in continuing to employ the person.

Time elapsed since the offence was committed

If a conviction was recorded several years earlier, this factor must be taken into account.

Particular circumstances of the offence, and whether or not it was an isolated occurrence

A person may have a judicial record without having a delinquent lifestyle. The offence on the judicial record may have been committed without premeditation or for an isolated reason such as fear, anger or depression. The fact that the person's record contains no other offences and that the offence may be partially "explained" by particular circumstances could be considered a mitigating factor.

Risk of a repeat offence

Consideration should be given not only to the seriousness of the offences on a person's criminal record, but also to the risk of a repeat offence. If the risk is considerable, the safety and well-being of the minor-age students in the school board or private school could be endangered.

Several elements indicate that a person may re-offend, for example, if the person has been convicted of various offences in the past or of similar offences on different occasions (repetition of the same type of offence).

Offences committed while working with children

If a person has committed an offence posing a risk for the safety or well-being of children while working for another employer (early childhood centre, daycare, etc.) or during various activities (sports or cultural activities), this factor must be taken into account.

Impact of the offence on the person's relationship with the school board or private school

Public trust in a school board or private school is such a fundamental part of its educational mission that any event that undermines public trust must be taken into account. This essential feeling of trust must be developed among parents, students, employees and the general public.

It is necessary to examine whether, and to what extent, the public trust needed for the pursuit of the educational mission of a school board or private school may be affected by the offence noted in a person's judicial record.

A breach of trust must, however, be corroborated by fact. In no case should it constitute the sole basis for a decision concerning a judicial record. Assessment of this factor is closely linked to the seriousness of the offence and the related publicity. For example, a school board or private school cannot claim that an offence committed several years previously, but not disclosed to the general public, can cause a breach of trust unless warranted by the seriousness of the offence. On the other hand, a serious offence with a bearing on the person's duties and disclosed to the school board or private school will probably, even if it has not been publicized, cause a breach of trust if the events are disclosed.

Values of the school board or private school

The values of the school board or private school are a determining factor in the decision. The school board or private school should set its own moral standards or criteria, since it is generally recognized that the courts will respect them. For example, an anti-drug policy or policy to counter violence against children clearly demonstrates the firm commitment of the school board or private school to combat this type of behaviour.

Eligibility for pardon

Eligibility for pardon may constitute a mitigating factor.

Some people omit to apply for a pardon, even if they are eligible, for several reasons: the length of time needed to obtain a pardon, the multitude of administrative steps involved, lack of knowledge about the existence or utility of the pardon process, or oversight.

File of the person concerned

When applying an administrative measure against an employee, a school board or private school could consult the person's file to verify if it contains any aggravating or mitigating factors. The school board or private school could also take into account the age, seniority, disciplinary record and personal situation of the employee at the time of the event.

Behaviour of the person concerned

- False declaration

A school board or private school may take into account the fact that a person has attempted to hide his or her judicial record.

- Minimization of judicial record

In an interview, or in written comments submitted to the school board or private school, a person may attempt to minimize the offences in his or her judicial record. This fact should be analyzed in light of the seriousness of the offences concerned.

- Omission to disclose offences

Although an omission is regrettable, the prime criterion remains the connection between the offence and the person's duties.

The factors listed above should only be considered where relevant.

FILE ANALYSIS

The analysis of each file involves taking a series of elements into consideration and answering the following questions:

- What position is held or may be held by the person at the school board or private school?
- Does the person's judicial record have any bearing on the position that he or she occupies or will occupy?

To answer these questions, the person responsible may use the analysis criteria outlined above, or the criteria defined by the school board or private school. The person responsible may use an analysis grid containing the various criteria on which the recommendation will be based.

However, it is recommended that the person responsible use the same criteria to analyze similar cases in compliance with the principles of equity that are especially applicable in the area of labour relations. These principles are set out in this Guide in the section entitled "Principles of equity."

4.7.1 Notice indicating that the person's judicial record has no bearing on his or her duties

Once the analysis is complete, the person responsible issues a notice. If the person concerned receives a positive recommendation, this notice is sent directly to the school board or private school for a final decision.

4.7.2 Notice indicating that the person's judicial record has a bearing on his or her duties

If the person responsible issues a notice indicating that the judicial record of the person concerned has a bearing on the duties in question, the person concerned is informed immediately. The notice sets out the elements considered in the analysis and the possibility of requesting a second analysis by the review committee. The person must also be informed that he or she may, within a specified time frame, provide the review committee with additional relevant information.

If the person concerned fails to reply to the notice within the prescribed time, the person responsible sends the notice to the person in charge of making a final decision.

REQUEST FOR REVIEW

If a person requests a second analysis of his or her file by the review committee, the person responsible must forward the file to the committee after removing any information allowing the person concerned to be identified.

The file must include the document indicating that the person concerned has a judicial record, the written observations of the person responsible and, where applicable, the analysis grid used and the additional relevant information submitted by the person concerned.

4.8.1 Function of the review committee

In light of the information in the file of the person concerned and after giving that person an opportunity to provide additional relevant information, the review committee must analyze the situation to determine whether the person's judicial record has any bearing on the duties that are, or may be, assigned to him or her. The analysis criteria outlined above may be applied a second time, but other criteria may also be used. To ensure equity, similar situations must be analyzed using the same criteria.

Although the person responsible does not take part in the discussions of the review committee, he or she may be asked to answer the committee's questions, and must act as a liaison between the committee and the person concerned.

4.8.2 Notice to school board or private school

Once the analysis is complete, the review committee sends a notice to the school board or private school, indicating a positive or negative result.

The notice sets out the elements on which the review committee has based its decision. If the committee considers that the person concerned requires special supervision in carrying out his or her duties, conditions in this regard must be mentioned in the notice.

The person responsible and the review committee play an advisory role by issuing notices that indicate whether or not a person's judicial record has any bearing on the duties that are, or may be, assigned to that person. It is up to the school board or private school to make the final decision concerning staff management, in compliance with their by-laws on the delegation of powers and the conditions of employment of the employees concerned.

A table showing the judicial record verification process is found in Appendix 3.

DECISION

5.1

EXAMINATION OF THE NOTICE FROM THE PERSON RESPONSIBLE AND THE REVIEW COMMITTEE, IF APPLICABLE

After a notice has been received from the person responsible and the review committee, if applicable, the person responsible for making the decision at the school board or private school examines the notice and must decide whether to:

- accept the candidate's application and authorize a job offer, with or without conditions
- reject the candidate's application
- retain the services of the person concerned, with or without conditions
- temporarily suspend the person concerned until a trial takes place
- terminate the employment of the person concerned

Although the existence of a judicial record containing offences that have a bearing on a person's duties may justify the school board or private school in applying an administrative measure against the person, it must be proportional.

5.2

DECISION BY THE SCHOOL BOARD OR PRIVATE SCHOOL

If the person responsible for making the decision regarding the file of a person with a judicial record considers that this person's judicial record has no bearing on his or her duties, the person responsible must ensure that the person concerned is informed of the decision.

5.2.1 Hiring or retention, with conditions

If the school board or private school sets conditions, the person concerned must consent to them and undertake, in writing, to comply with them. The main objective of the conditions must be to protect the safety and well-being of minor-age students. The conditions may be of various types, and vary from one case to another. Failure to respect a commitment in this regard may lead to other measures, and in some cases to dismissal.

5.2.2 Negative decision

Where the decision is negative, the letter informing the person concerned must mention the reasons for which the person's application is rejected or the measures that the school board or private school intends to take, if the person is currently an employee. In the latter case, the employer must ensure that the person's conditions of employment are respected.

In all cases, the school board or private school must ensure compliance with the applicable legislative provisions.

The Act requires school boards and private schools to inform the Minister of Education, Recreation and Sports of each case in which it concludes that the judicial record of a teaching licence holder has a bearing on the duties that are, or may be, assigned to him or her at the school board or private school.

PRINCIPLES OF EQUITY

Principles of equity to be respected in verifying a judicial record

School boards and private schools must comply with various principles of equity when verifying judicial records. The principles must be used to guide the people who have responsibility for deciding whether or not a person with a judicial record can work or come into regular contact with minor-age students at a school board or private school. The basic principles of equity that must be respected are as follows:

Transparency

To act with transparency, employers must make their policy and procedures in the area of judicial record verification known to all people whose record may be verified.

Right to present relevant additional information

Every person has a right to present relevant additional information before a decision is made in his or her regard.

Impartiality and objectivity

Every person with a judicial record is entitled to an impartial, objective analysis of his or her case by the people responsible for issuing a notice or making a decision in his or her regard.

Confidentiality

Every person is entitled to the respect of his or her private life and reputation. The *Act to amend the Education Act and the Act respecting private education* includes specific provisions in this area.

Compliance with law

At all times, school boards and private schools must act in compliance with Acts, regulations, ethical standards and the rules of natural justice.

RESOURCES

Barreau du Québec

Maison du Barreau
445, boulevard Saint-Laurent
Montréal (Québec) H2Y 3T8
Phone: (514) 954-3400
Toll-free: 1-800-361-8495
www.barreau.qc.ca
information@barreau.qc.ca

Commission d'accès à l'information du Québec

480, boulevard Saint-Laurent
Bureau 501
Montréal (Québec) H2Y 3Y7
Phone: (514) 873-4196
Fax: (514) 844-6170
www.cai.gouv.qc.ca
cai.communications@cai.gouv.qc.ca

(Head office)

575, rue Saint-Amable, bureau 1.10
Québec (Québec) G1R 2G4
Phone: (418) 528-7741
Toll-free: 1-888-528-7741
Fax: (418) 529-3102
www.cai.gouv.qc.ca
cai.communications@cai.gouv.qc.ca

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

360, rue Saint-Jacques, 2^e étage
Montréal (Québec) H2Y 1P5
Phone: (514) 873-5146
Toll-free: 1-800-361-6477
Fax: (514) 873-6032
www.cdpcj.qc.ca

Commission des normes du travail

400, boulevard Jean-Lesage
Hall Est, 7^e étage
Québec (Québec) G1K 8W1
Phone: (514) 873-7061
Toll-free: 1-800-265-1414
Fax: (418) 643-5132
www.cnt.gouv.qc.ca

Éducaloi

www.educaloi.qc.ca

Ministère de l'Éducation, du Loisir et du Sport

Direction de la formation et de la titularisation du personnel scolaire
1035, rue De La Chevrotière, 28^e étage
Québec (Québec) G1R 5A5
Phone: (418) 646-6581
Fax: (418) 643-2149
www.mels.gouv.qc.ca/dftps
louise.beaudoin@mels.gouv.qc.ca

Ministère de la Sécurité publique

Renseignements généraux et plaintes
Direction des communications
2525, boulevard Laurier, 5^e étage
Tour du Saint-Laurent
Sainte-Foy (Québec) G1V 2L2
Phone: (418) 644-6826
Toll-free: 1-866-644-6826
Fax: (418) 643-3194
www.msp.gouv.qc.ca
infocom@msp.gouv.qc.ca

Ministère du Travail

Service d'aide à la clientèle
200, chemin Sainte-Foy, 6^e étage
Québec (Québec) G1R 5S1
Phone: (418) 643-4817
Toll-free: 1-800-643-4817
Fax: (418) 528-0559
www.travail.gouv.qc.ca
service_clientèle@travail.gouv.qc.ca

Ministère de la Justice

Édifce Louis-Philippe-Pigeon
1200, route de l'Église
Sainte-Foy (Québec) G1V 4M1
Phone: (418) 643-5140
Toll-free: 1-866-536-5140
Fax: (418) 646-4449
www.justice.gouv.qc.ca

National Parole Board

Québec Regional Office
200, boulevard René-Lévesque Ouest
West Tower, 10th Floor, Bureau 1001
Montréal, Québec H2Z 1X4
Phone: (514) 283-4584
Toll-free: 1-800-874-2652
Fax: (514) 283-5484

National Parole Board Pardon Section

Clemency and Investigations Division
410 Laurier Avenue West
Ottawa, Ontario K1A 0R1
Phone: (613) 954-7474
Toll-free: 1-800-874-2652
Fax: (613) 995-4380
www.npb-cncl.gc.ca
info@npb-cncl.gc.ca

Tribunal administratif du Québec

Région de Montréal
500, boulevard René-Lévesque Ouest
21^e étage
Montréal (Québec) H2Z 1W7
Phone: (514) 873-7154
Toll-free: 1-800-567-0278
Fax: (514) 873-8288

Tribunal administratif du Québec

Région de Québec
575, rue Saint-Amable
Québec (Québec) G1R 5R4
Phone: (418) 643-3418
Toll-free: 1-800-567-0278
Fax: (418) 643-5335
www.taqq.gouv.qc.ca
tribunal.administratif@taqq.gouv.qc.ca

FREQUENTLY ASKED QUESTIONS

Which elements of a judicial record are targeted by the Act?

The *Act to amend the Education Act and the Act respecting private education* refers to the following elements:

- any conviction for a criminal or penal offence committed in Canada or elsewhere, unless a pardon has been obtained for that offence
- any charge still pending for a criminal or penal offence committed in Canada or elsewhere
- any court order subsisting against the applicant in Canada or elsewhere

Are volunteers and other unpaid people who work or come into regular contact with minor-age students required to complete the declaration form?

Yes, if asked to do so by the school board or private school concerned, these people must complete a declaration concerning their judicial record.

What happens to people who refuse to complete or submit a declaration concerning their judicial record, as required by the Act, despite being asked to do so by a school board or private school?

If the person is applying for a position, the school board or private school should reject their application, since this is a condition of hiring prescribed by the Act.

The school board or private school may take appropriate administrative or disciplinary measures against an existing employee who refuses to complete or submit the declaration.

Do people have to declare an offence for which they have obtained a pardon?

No, an offence for which a pardon has been obtained need not be declared (see section 2 of the declaration form).

What are the conditions for obtaining a pardon?

Information on applications for a pardon can be obtained from the National Parole Board Web site at <<http://www.npb-cncl.gc.ca>>.

In which cases will a review committee carry out an analysis to determine whether a person's judicial record has any bearing on his or her duties?

At the request of the person concerned, review committees re-examine files when the person responsible has sent a notice indicating that a person's judicial record has a bearing on his or her duties.

Are school boards and private schools required to comply with a notice issued by the person responsible or the review committee?

No, school boards and private schools make the final decision, and can either accept or reject a notice from the person responsible or the review committee, which play only an advisory role.

When a school board or private school decides to reject a candidate's application, or to dismiss or take any other measure against a person because it considers that the person's judicial record has a bearing on his or her duties, is it required to give the reasons for its decision?

Yes, when a school board or private school renders a negative decision, the letter informing the person concerned of the decision must give the reason for rejecting his or her application, or for dismissing or taking any other measure against him or her.

Does the National Parole Board automatically grant a pardon when a request is made?

No, the National Parole Board does not grant pardons automatically, but only after it has examined each file.

FRAMEWORK AGREEMENT

TO ESTABLISH THE PROCEDURE FOR THE VERIFICATION
OF JUDICIAL RECORDS BY A QUÉBEC POLICE
FORCE AT THE REQUEST OF A SCHOOL BOARD OR
PRIVATE EDUCATIONAL INSTITUTION

BETWEEN

THE MINISTER OF EDUCATION, RECREATION AND SPORTS,
represented for the purposes of this agreement by Michel Boivin, Deputy
Minister

AND

THE MINISTER OF PUBLIC SECURITY, represented for the purposes of
this agreement by Louis Dionne, Deputy Minister

Initials of parties _____

Initials of parties _____

PREAMBLE

WHEREAS the *Act to amend the Education Act and the Act respecting private education* (2005, chapter 16) provides that, to ensure the safety and well-being of minor-age students, school boards and private educational institutions may verify or have verified, in particular by a Québec police force, the declarations concerning judicial records required under that Act;

WHEREAS the said Act requires the Minister of Education, Recreation and Sports and the Minister of Public Security to make a framework agreement for establishing the procedures to be followed by Québec police forces in verifying judicial records for school boards and private educational institutions;

WHEREAS the Minister of Public Security confirms that Québec police forces have agreed to collaborate in the verification process;

THE PARTIES AGREE AS FOLLOWS:

1. OBJECT

The object of this framework agreement is to establish the procedures (including related costs) to be followed by Québec police forces in verifying judicial records for school boards or private educational institutions.

Initials of parties _____

Initials of parties _____

2. PROCEDURES FOR VERIFYING JUDICIAL RECORDS

The procedures to be followed by police forces in verifying judicial records for school boards are those prescribed in the model agreement in Schedule 1.

The procedures to be followed by police forces in verifying judicial records for private educational institutions are those prescribed in the model agreement in Schedule 2.

3. PREAMBLE AND SCHEDULES

The preamble and schedules form an integral part of this framework agreement.

4. COMING INTO FORCE OF THE FRAMEWORK AGREEMENT

Subject to the coming into force of the relevant legislative provisions, this framework agreement takes effect on the date on which it is signed by the parties.

“AGREEMENT SIGNED ON MAY 25, 2006”

SCHEDULE 1

**MODEL AGREEMENT CONCERNING THE VERIFICATION
OF JUDICIAL RECORDS BY A QUÉBEC POLICE FORCE
AT THE REQUEST OF A SCHOOL BOARD**

BETWEEN _____,
(Name and address of school board)

represented by _____,
*(Name and position of the person authorized to sign on behalf
of the school board)*

hereinafter referred to as the "School Board"

AND _____,
(Name of police force)

represented by _____,
*(Name and position of the person authorized to sign on behalf of
the police force)*

hereinafter referred to as the "Police Force"

PREAMBLE

WHEREAS the *Education Act* (R.S.Q., c. I-13.3), as amended by the *Act to amend the Education Act and the Act respecting private education* (2005, chapter 16), provides that persons who will be required to work with or be regularly in contact with the minor-age students of a school board must, before they are hired, send a declaration concerning their judicial record to the school board;

Initials of parties _____

Initials of parties _____

WHEREAS, pursuant to the said Act, persons who already work or are regularly in contact with the minor-age students of a school board must, at the request of the school board, send a declaration concerning their judicial record to the school board;

WHEREAS, pursuant to the said Act, a school board may, if it has reasonable grounds to believe that a person who works with minor-age students of the school board or is regularly in contact with them has a judicial record, require that person to send it a declaration concerning his or her judicial record;

WHEREAS the said Act provides that a school board may verify a declaration concerning a person's judicial record received under the provisions of the said Act or have it verified, in particular by a Québec police force;

WHEREAS the said Act provides that a school board may communicate or receive any information for the purposes of this verification;

WHEREAS, under section 67 of the *Act respecting Access to documents held by public bodies and the Protection of personal information* (R.S.Q., c. A-2.1), a public body may, without the consent of the person concerned, release nominative information to any person or body if the information is necessary for the carrying out of an Act in Québec;

WHEREAS, in compliance with the *Education Act*, the Minister of Education, Recreation and Sports and the Minister of Public Security have signed a framework agreement to establish the procedure for the verification of judicial records by a Québec police force at the request of a school board;

WHEREAS the School Board has requested that the Police Force verify declarations concerning judicial records on its behalf;

Initials of parties _____

Initials of parties _____

WHEREAS the Police Force has agreed to carry out these verifications;

THE PARTIES AGREE AS FOLLOWS:

1. OBJECT

The object of this agreement is to define the roles and responsibilities of the School Board and the Police Force when the Police Force verifies declarations concerning judicial records received by the School Board pursuant to the provisions of the *Education Act*.

The elements of a judicial record taken into consideration under the first paragraph are: any conviction for a criminal or penal offence committed in Canada or elsewhere, unless a pardon has been obtained for that offence; any charge still pending for a criminal or penal offence committed in Canada or elsewhere; any court order outstanding against the applicant in Canada or elsewhere.

2. RESPONSIBILITIES OF THE SCHOOL BOARD

2.1 Designation as the person responsible

The School Board hereby designates _____

(Name and contact information of the person designated), as the person responsible for the application of this agreement, and

(Name and contact information of the person designated), as a substitute if that person is unable to act.

Initials of parties _____

Initials of parties _____

The School Board must advise the Police Force as soon as possible if the name or contact information of either person changes.

2.2 Identification of the person whose judicial record is being verified

The person responsible for the application of the agreement on behalf of the School Board must check the accuracy of the information concerning the identity of a person signing a declaration, and in particular the spelling of the person's first and last names and the person's date of birth.

The person must then forward, to the person responsible for the application of the agreement on behalf of the Police Force, the declaration and any other document or information agreed on by the parties, to allow that person to carry out the verification requested.

The School Board recognizes that only a person's fingerprints allow that person to be linked without any possible doubt to his or her criminal record.

3. RESPONSIBILITIES OF THE POLICE FORCE

3.1 Designation as the person responsible

The Police Force hereby designates _____

(Name and contact information of the person designated), and

(Name and contact information of the person designated) as a substitute if that person is unable to act.

The Police Force must advise the School Board as soon as possible if the name or contact information of either person changes.

Initials of parties _____

Initials of parties _____

3.2 Verification of judicial records

On receiving the documents or information requested, the person responsible for the application of the agreement on behalf of the Police Force will verify the judicial record of the person concerned in accordance with the applicable procedures and policies in force, using the files available.

3.3 Communication of the results of a verification

Unless otherwise agreed upon by the parties, the Police Force will communicate the results of the requested verification to the School Board as follows:

- If the verification confirms that the person concerned has a clean judicial record, the Police Force will send the form in Schedule 1-A.
- If the verification confirms the existence of one or more offences, the Police Force will send the form in Schedule 1-B.

3.4 Time limit for communicating a result

The result of the verification of a person's judicial record will be communicated by the Police Force to the School Board within no more than ____ days after the relevant documents or information are received, in the following cases:

- before hiring
- if the School Board has reasonable grounds to believe that a person has a judicial record
- if a person has informed the School Board of a change in his or her judicial record

Initials of parties _____

Initials of parties _____

In all other cases, the result of the verification of a person's judicial record will be communicated by the Police Force to the School Board within no more than ____ days after the relevant documents or information are received.

3.5 Note

The Police Force cannot be held responsible for any damage that results from the forwarding or use of inaccurate or incomplete information, provided the applicable procedure has been complied with.

4. FEES AND PAYMENT

4.1 Fees

The School Board agrees to pay the Police Force the amount of \$60 for each verification of a judicial record.

However, no fee will be paid to the Police Force if the verification concerns a person to whom the School Board does not or will not pay any remuneration or honorarium, such as a trainee or volunteer.

4.2 Indexation of fees

The fee specified in clause 4.1 will be increased each year on the date on which this agreement comes into force, to reflect the increase in the consumer price index for Québec as published by Statistics Canada for the twelve-month period ending December 31 of the preceding year.

Initials of parties _____

Initials of parties _____

4.3 Payment

The parties agree that the amounts owed for the verification of judicial records will be paid as follows:

5. NOTICE

Any notice given under this agreement must be in writing and be delivered by hand or registered mail to the address of the other party, as indicated below:

SCHOOL BOARD

For the attention of: _____

POLICE FORCE

For the attention of: _____

6. PREAMBLE AND SCHEDULES

The preamble and schedules form an integral part of this framework agreement.

Initials of parties _____

Initials of parties _____

7. TERM AND RENEWAL OF AGREEMENT

7.1 Term of agreement

The term of this agreement is two (2) years following the date on which it is signed by the parties.

7.2 Renewal of agreement

This agreement will be renewed automatically, unless one party advises the other of its intention to terminate the agreement at least three (3) months before the date of renewal.

If the framework agreement signed by the ministers is amended, the renewed agreement will be subject to the new provisions of the framework agreement as applicable on the date of the renewal.

IN WITNESS WHEREOF THE PARTIES HAVE SIGNED DUPLICATE COPIES,

at _____ at _____

on _____ on _____

For the School Board

For the Police Force

Initials of parties _____

Initials of parties _____

SCHEDULE 1-A

VERIFICATION BY POLICE FORCE

RESULT OF VERIFICATION

CLEAN JUDICIAL RECORD			
Person whose judicial record has been verified			
Last name:	First name:	Date of birth:	Sex M () F ()
Address: (Number, street, city, postal code)		Phone: ()	
<input type="checkbox"/> Clean judicial record			
Verification valid as of _____, in light of the facts known to the Police Force on that date.			
Name of the person responsible on behalf of the Police Force: _____			
Signature: _____			
Phone number: _____			

Initials of parties _____

Initials of parties _____

SCHEDULE 1-B

VERIFICATION BY POLICE FORCE

RESULT OF VERIFICATION

JUDICIAL RECORD WITH OFFENCES			
Person whose judicial record has been verified			
Last name:	First name:	Date of birth:	Sex M () F ()
Address: (Number, street, city, postal code)		Phone: ()	
Verification valid as of _____, in light of the facts known to the Police Force on that date.			
<i>Offence(s) on judicial record</i>			
<i>Offence(s)</i>			
<i>Conviction(s)</i>			<i>Date</i>
_____			_____
_____			_____
<i>Charge(s) still pending</i>			<i>Date</i>
_____			_____
_____			_____
<i>Court order(s) outstanding</i>			<i>Date</i>
_____			_____
_____			_____
Name of the person responsible on behalf of the Police Force: _____			
Signature: _____			
Phone number: _____			

Initials of parties _____

Initials of parties _____

SCHEDULE 2

MODEL AGREEMENT CONCERNING THE VERIFICATION OF JUDICIAL RECORDS BY A QUÉBEC POLICE FORCE AT THE REQUEST OF A PRIVATE EDUCATIONAL INSTITUTION

BETWEEN _____,
(Name and address of private educational institution)
represented by _____,
*(Name and position of the person authorized to sign on behalf of
the private educational institution)*

hereinafter referred to as the “Private Educational Institution”

AND _____,
(Name of police force)
represented by _____,
*(Name and position of the person authorized to
sign on behalf of the police force)*

hereinafter referred to as the “Police Force”

PREAMBLE

WHEREAS the *Act respecting private education* (R.S.Q., c. E-9.1), as amended by the *Act to amend the Education Act and the Act respecting private education* (2005, chapter 16), provides that persons who will be required to work with or be regularly in contact with the minor-age students of a private educational institution must, before they are hired, send a declaration concerning their judicial record to the private educational institution;

Initials of parties _____

Initials of parties _____

WHEREAS, pursuant to the said Act, persons who already work or are regularly in contact with the minor-age students of a private educational institution must, at the request of the private educational institution, send a declaration concerning their judicial record to the private educational institution;

WHEREAS, pursuant to the said Act, a private educational institution may, if it has reasonable grounds to believe that a person who works with minor-age students in the institution or is regularly in contact with them has a judicial record, require that person to send it a declaration concerning his or her judicial record;

WHEREAS the said Act provides that a private educational institution may verify a declaration concerning a person's judicial record received under the provisions of the said Act or have it verified, in particular by a Québec police force;

WHEREAS the said Act provides that a private educational institution may communicate or receive any information for the purposes of this verification;

WHEREAS, under section 67 of the *Act respecting Access to documents held by public bodies and the Protection of personal information* (R.S.Q., c. A-2.1), a public body may, without the consent of the person concerned, release nominative information to any person or body if the information is necessary for the carrying out of an Act in Québec;

WHEREAS, under section 18 of the *Act respecting the protection of personal information in the private sector* (R.S.Q., c. P-39.1), a person carrying on an enterprise may, without the consent of the person concerned, communicate personal information contained in a file he holds on that person to a person to whom it is necessary to communicate the information under the law; [include this clause only if the private educational institution party to the agreement is not accredited for purposes of subsidies under the *Act respecting private education*]

Initials of parties _____

Initials of parties _____

WHEREAS, in compliance with the *Act respecting private education*, the Minister of Education, Recreation and Sports and the Minister of Public Security have signed a framework agreement to establish the procedure for the verification of judicial records by a Québec police force at the request of a private educational institution;

WHEREAS the Private Educational Institution has requested that the Police Force verify declarations concerning judicial records on its behalf;

WHEREAS the Police Force has agreed to carry out these verifications;

THE PARTIES AGREE AS FOLLOWS:

1. OBJECT

The object of this agreement is to define the roles and responsibilities of the Private Educational Institution and the Police Force when the Police Force verifies declarations concerning judicial records received by the Private Educational Institution pursuant to the provisions of the *Act respecting private education*.

The elements of a judicial record taken into consideration under the first paragraph are: any conviction for a criminal or penal offence committed in Canada or elsewhere, unless a pardon has been obtained for that offence; any charge still pending for a criminal or penal offence committed in Canada or elsewhere; any court order outstanding against the applicant in Canada or elsewhere.

Initials of parties _____

Initials of parties _____

2. RESPONSIBILITIES OF THE PRIVATE EDUCATIONAL INSTITUTION

2.1 Designation as the person responsible

The Private Educational Institution hereby designates _____

(Name and contact information of the person designated), as
the person responsible for the application of this agreement, and

(Name and contact information of the person designated), as a
substitute if that person is unable to act.

The Private Educational Institution must advise the Police Force as soon as possible if the name or contact information of either person changes.

2.2 Identification of the person whose judicial record is being verified

The person responsible for the application of the agreement on behalf of the Private Educational Institution must check the accuracy of the information concerning the identity of a person signing a declaration, and in particular the spelling of the person's first and last names and the person's date of birth.

The person must then forward, to the person responsible for the application of the agreement on behalf of the Police Force, the declaration and any other document or information agreed on by the parties, to allow that person to carry out the verification requested.

The Private Educational Institution recognizes that only a person's fingerprints allow that person to be linked without any possible doubt to his or her criminal record.

Initials of parties _____

Initials of parties _____

3. RESPONSIBILITIES OF THE POLICE FORCE

3.1 Designation as the person responsible

The Police Force hereby designates _____

(Name and contact information of the person designated), and

(Name and contact information of the person designated) as a substitute if that person is unable to act.

The Police Force must advise the Private Educational Institution as soon as possible if the name or contact information of either person changes.

3.2 Verification of judicial records

On receiving the documents or information requested, the person responsible for the application of the agreement on behalf of the Police Force will verify the judicial record of the person concerned in accordance with the applicable procedures and policies in force, using the files available.

3.3 Communication of the results of a verification

Unless otherwise agreed upon by the parties, the Police Force will communicate the results of the requested verification to the Private Educational Institution as follows:

- If the verification confirms that the person concerned has a clean judicial record, the Police Force will send the form in Schedule 2-A;
- If the verification confirms the existence of one or more offences, the Police Force will send the form in Schedule 2-B.

Initials of parties _____

Initials of parties _____

3.4 Time limit for communicating a result

The result of the verification of a person's judicial record will be communicated by the Police Force to the Private Educational Institution within no more than ____ days after the relevant documents or information are received, in the following cases:

- before hiring
- if the Private Educational Institution has reasonable grounds to believe that a person has a judicial record
- if a person has informed the Private Educational Institution of a change in his or her judicial record

In all other cases, the result of the verification of a person's judicial record will be communicated by the Police Force to the Private Educational Institution within no more than ____ days after the relevant documents or information are received.

3.5 Note

The Police Force cannot be held responsible for any damage that results from the forwarding or use of inaccurate or incomplete information, provided the applicable procedure has been complied with.

4. FEES AND PAYMENT

4.1 Fees

The Private Educational Institution agrees to pay the Police Force the amount of \$60 for each verification of a judicial record.

However, no fee will be paid to the Police Force if the verification concerns a person to whom the Private Educational Institution does not or will not pay any remuneration or honorarium, such as a trainee or volunteer.

Initials of parties _____

Initials of parties _____

4.2 Indexation of fees

The fee specified in clause 4.1 will be increased each year on the date on which this agreement comes into force, to reflect the increase in the consumer price index for Québec as published by Statistics Canada for the twelve-month period ending December 31 of the preceding year.

4.3 Payment

The parties agree that the amounts owed for the verification of judicial records will be paid as follows:

5. NOTICE

Any notice given under this agreement must be in writing and be delivered by hand or registered mail to the address of the other party, as indicated below:

PRIVATE EDUCATIONAL INSTITUTION

For the attention of: _____

POLICE FORCE

For the attention of: _____

Initials of parties _____

Initials of parties _____

6. PREAMBLE AND SCHEDULES

The preamble and schedules form an integral part of this framework agreement.

7. TERM AND RENEWAL OF AGREEMENT

7.1 Term of agreement

The term of this agreement is two (2) years following the date on which it is signed by the parties.

7.2 Renewal of agreement

This agreement will be renewed automatically, unless one party advises the other of its intention to terminate the agreement at least three (3) months before the date of renewal.

If the framework agreement signed by the ministers is amended, the renewed agreement will be subject to the new provisions of the framework agreement as applicable on the date of the renewal.

IN WITNESS WHEREOF THE PARTIES HAVE SIGNED DUPLICATE COPIES,

at _____ at _____

on _____ on _____

For the Private
Educational Institution

For the Police Force

SCHEDULE 2-A

VERIFICATION BY POLICE FORCE

RESULT OF VERIFICATION

CLEAN JUDICIAL RECORD			
Person whose judicial record has been verified			
Last name:	First name:	Date of birth:	Sex M () F ()
Address: (Number, street, city, postal code)		Phone: ()	
<input type="checkbox"/> Clean judicial record			
Verification valid as of _____, in light of the facts known to the Police Force on that date.			
Name of the person responsible on behalf of the Police Force: _____			
Signature: _____			
Phone number: _____			

Initials of parties _____

Initials of parties _____

SCHEDULE 2-B

VERIFICATION BY POLICE FORCE

RESULT OF VERIFICATION

JUDICIAL RECORD WITH OFFENCES			
Person whose judicial record has been verified			
Last name:	First name:	Date of birth:	Sex M () F ()
Address: (Number, street, city, postal code)		Phone: ()	
Verification valid as of _____, in light of the facts known to the Police Force on that date.			
<i>Offence(s) on judicial record</i>			
<i>Offence(s)</i>			
<i>Conviction(s)</i>		<i>Date</i>	
_____		_____	
_____		_____	
<i>Charge(s) still pending</i>		<i>Date</i>	
_____		_____	
_____		_____	
<i>Court order(s) outstanding</i>		<i>Date</i>	
_____		_____	
_____		_____	
Name of the person responsible on behalf of the Police Force: _____			
Signature: _____			
Phone number: _____			

Initials of parties _____

Initials of parties _____

DECLARATION CONCERNING A JUDICIAL RECORD

The legislative provisions concerning judicial records in the *Education Act* and the *Act respecting private education* [introduced into those acts by the *Act to amend the Education Act and the Act respecting private education* (Statutes of Québec, 2005, chapter 16)] refer to the following elements of a judicial record:

- any conviction for a criminal or penal offence committed in Canada or elsewhere, unless a pardon has been obtained for that offence
- any charge still pending for a criminal or penal offence committed in Canada or elsewhere
- any court order outstanding against the applicant in Canada or elsewhere

DEFINITIONS AND INFORMATION

Criminal offence

An offence created by a federal law to impose a sanction for grave misconduct that infringes the fundamental values of society. Laws that define criminal offences include the *Criminal Code*, and the *Controlled Drugs and Substances Act*.

Penal offence

An offence created by a federal or provincial law to impose a sanction for a particular type of conduct. For example, the *Employment Insurance Act* and the *Canadian Environmental Protection Act* include penal offences created by a federal law; the *Highway Safety Code* and the *Youth Protection Act* include penal offences created by a provincial law. A penal offence may also lead to a sanction imposed by municipal authorities (e.g. for an offence covered by a city by-law).

Charge still pending

A charge that has been laid in a case where the judicial or administrative court has not yet rendered a decision.

Court order

A decision by a judge requiring a person to respect certain conditions, such as a surety under section 810 of the *Criminal Code*, a probation order, an order of prohibition to drive or to possess firearms, a restitution order or an order prohibiting a person from

contacting persons under age 14 or being in a place where such persons are likely to be encountered. This list is not comprehensive. Under the *Criminal Code*, a discharge is considered a court order.

Conviction for an offence for which a pardon has been obtained

An offence for which a pardon has been obtained need not be mentioned. Information on applications for a pardon can be obtained from the National Parole Board Web site at <<http://www.npb-cnrc.gc.ca>>.

Other information

The *Act to amend the Education Act and the Act respecting private education* (Statutes of Québec, 2005, chapter 16), which, among other things, makes the declaration concerning a judicial record compulsory, can be viewed on the Publications du Québec Web site at <<http://www.publicationsduquebec.gouv.qc.ca>>.

For more information:

(name, address and phone number of the school board or private school)

DECLARATION CONCERNING A JUDICIAL RECORD

PLEASE COMPLETE THIS DECLARATION
LEGIBLY USING BLOCK LETTERS

SECTION 1 PERSONAL INFORMATION

LAST NAME (if you have more than one last name, please enter them in the usual order)

FIRST NAME	MIDDLE NAME
------------	-------------

DATE OF BIRTH	SEX <input type="checkbox"/> Male <input type="checkbox"/> Female	PHONE NUMBER
---------------	--	--------------

CURRENT ADDRESS (number, street, apartment)

CITY	PROVINCE	POSTAL CODE
------	----------	-------------

PREVIOUS ADDRESS (number, street, apartment) (if you have been at your current address for less than five years)

CITY	PROVINCE	POSTAL CODE
------	----------	-------------

Check the appropriate boxes in each of the following sections. If you need more space to provide all the information requested, continue on a separate sheet and enclose it with this form. Enter your name at the top of any additional sheet.

SECTION 2 CONVICTION(S)

A – CRIMINAL OFFENCE(S)

I have not been convicted of a criminal offence in Canada or elsewhere or, if I have been convicted of a criminal offence, I have obtained a pardon.

or

I have been convicted, in Canada or elsewhere, of the following criminal offence(s):

OFFENCE	DATE	LOCATION OF COURT

B – PENAL OFFENCE(S)

I have not been convicted of a penal offence in Canada or elsewhere or, if I have been convicted of a penal offence, I have obtained a pardon.

or

I have been convicted, in Canada or elsewhere, of the following penal offence(s):

OFFENCE	DATE	LOCATION OF OFFENCE AND, WHERE APPLICABLE, OF COURT

SECTION 3 CHARGE(S) STILL PENDING

A – CRIMINAL OFFENCE(S)

- I am not subject to any pending charges for a criminal offence in Canada or elsewhere.
- or**
- I am subject to one or more pending charges, in Canada or elsewhere, for the following criminal offence(s):

OFFENCE	DATE	LOCATION OF COURT

B – PENAL OFFENCE(S)

- I am not subject to any pending charges for a penal offence in Canada or elsewhere.
- or**
- I am subject to one or more pending charges, in Canada or elsewhere, for the following penal offence(s):

OFFENCE	DATE	LOCATION OF OFFENCE AND, WHERE APPLICABLE, OF COURT

SECTION 4 COURT ORDER(S)

- I am not subject to any court order made against me in Canada or elsewhere.
- or**
- I am subject to the following court order(s) made against me in Canada or elsewhere:

ORDER	DATE	PLACE OF ORDER

The *Education Act* and the *Act respecting private education* specify that:

- this form must be sent to the school board or private school concerned
- any person working or coming into regular contact with minor-age students must, within 10 days of being notified of a change in his or her judicial record, inform the school board or private school concerned of this change, regardless of whether the person has already filed a declaration concerning his or her judicial record
- a teaching licence holder must, within 10 days of being notified of a change in his or her judicial record, inform the Minister of Education, Recreation and Sports of this change, regardless of whether the person has already filed a declaration concerning the person's judicial record
- a school board or private school must inform the Minister of Education, Recreation and Sports in each case in which it concludes that the judicial record of a teaching licence holder has a bearing on the duties that are, or may be, assigned to the teaching licence holder by the school board or private school
- a school board or private school may verify this declaration or have it verified, in particular by a Québec police force, and may communicate or receive any information for the purposes of this verification

NOTE

- A declaration form will be considered incomplete and will be returned to the sender if: it is not signed, or if one or more questions remain unanswered.
- A false declaration may lead to the rejection of an application or to administrative or disciplinary measures.
- The full judicial record must be declared. However, only the offences that, in the opinion of the school board or private school, have a bearing on the person's duties will be considered.

I certify that all the information provided in this declaration form is accurate and complete.

Signature

Date

TABLE SHOWING THE JUDICIAL RECORD VERIFICATION PROCESS

Person responsible (or substitute) designated by the school board or private school

- Collects the information required from the individuals concerned
- Checks the identity of a person signing a declaration, and in particular the spelling of the person's first and last names and the person's date of birth
- Ensures that the information collected remains confidential
- Forwards the required documents and information to the person designated by the police force to verify the information contained in each declaration concerning a judicial record
- Receives the results of this verification from the person designated by the police force
- Carries out an initial analysis of the file
- If an individual's judicial record may have some bearing on his or her duties, notifies the individual in writing that his or her file will be analyzed and that the individual may provide additional relevant information within the time specified
- Issues a notice showing that:
 - the individual's judicial record has no bearing on his or her duties
 - the individual's judicial record has a bearing on his or her duties
- Forwards the file to the review committee at the request of the individual concerned and after making the information contained in the individual's file anonymous.

Review committee, or local or regional review committee

- Carries out a second analysis of the individual's file
- Receives additional relevant information from the individual, if any
- Issues a notice to the school board or private school

Person responsible (or substitute) designated by the police force

- Receives judicial record declaration forms
- Looks for the required information in police files and databases
- Forwards the result of the verification to the school board or private school

School board or private school

- Receives the notice from the person responsible or, if necessary, the review committee
- Makes a decision
- Informs the Minister of Education, Recreation and Sports in each case in which it concludes that the judicial record of a teaching licence holder has a bearing on the duties that are, or may be, assigned to the teaching licence holder by the school board or private school
- Informs the individual concerned of its decision

End of process

**LIST OF JUDICIAL DISTRICTS – RECORD OFFICES
DATE OF COMPUTERIZATION***

District No.	District	Chief-Place	Date of Computerization
605	Abitibi	Amos	1985 (Oct.)
615	Abitibi	Val-d'Or	1985 (Oct.)
160	Alma	Alma	1985 (Nov.)
415	Arthabaska	Arthabaska	1985 (Sept.)
655	Baie-Comeau	Baie-Comeau	1985 (Nov.)
350	Beauce	Saint-Joseph-de-Beauce	1985 (Oct.)
760	Beauharnois	Salaberry-de-Valleyfield	1985 (Nov.)
210	Beauport		
455	Bedford	Cowansville	1985 (Sept.)
460	Bedford	Granby	1985 (Nov.)
685	Blanc-Sablon		
105	Bonaventure	New Carlisle	1985 (Sept.)
255	Cabano		
240	Charlevoix	La Malbaie	1985 (Nov.)
150	Chicoutimi	Chicoutimi	1983
652	Côte-Nord		
405	Drummond	Drummondville	1985 (Nov.)
695	Fermont		
235	Frontenac	Thetford Mines	1985 (Nov.)
690	Gagnon		
110	Gaspé	Percé	1985 (Sept.)
640	Grand-Nord		
675	Havre-Saint-Pierre		
550	Hull	Hull	1983
755	Iberville	Saint-Jean	1985 (Aug.)
705	Joliette	Joliette	1982
250	Kamouraska	Rivière-du-Loup	1982
520	Kirkland		
260	La Pocatière		
560	Labelle	Mont-Laurier	1985 (Oct.)

* Source: Société québécoise d'information juridique (SOQUIJ)
The date is indicated solely for information purposes.

**LIST OF JUDICIAL DISTRICTS – RECORD OFFICES
DATE OF COMPUTERIZATION* (continued)**

District No.	District	Chief-Place	Date of Computerization
775	La Prairie		
540	Laval	Laval	1981
635	LG-2		
505	Longueuil	Longueuil	1978
630	Matagami		
650	Mingan	Sept-Îles	1983
300	Montmagny	Montmagny	1985 (Nov.)
500	Montréal	Montréal	1975
510	Montréal-Nord		
680	Natashquan		
670	Port-Cartier		
200	Québec	Québec	1978, except for the Court of Appeal 1985
730	Repentigny		
765	Richelieu	Sorel	1985 (Oct.)
125	Rimouski	Matane	1985 (Nov.)
100	Rimouski	Rimouski	1983
155	Roberval	Roberval	1985 (Nov.)
600	Rouyn-Noranda	Rouyn-Noranda	1985 (Oct.)
720	Saint-Eustache		
750	Saint-Hyacinthe	Saint-Hyacinthe	1983
530	Saint-Laurent		
410	Saint-Maurice	Shawinigan	1985 (Nov.)
450	Saint-François	Sherbrooke	1983
625	Senneterre-Obedjwan		
660	Schefferville		
700	Terrebonne	Saint-Jérôme	1975
400	Trois-Rivière	Trois-Rivières	1983
515	Verdun		

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