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**Legal
Brief***

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Sexual Abuse Within the Meaning of the *Youth Protection Act*

The role of the Director of Youth Protection is to protect children whose security or development is in danger.

Section 38 of the [Youth Protection Act](#) sets out the grounds on which the security and development of a child is considered to be in danger:

“38. For the purposes of this Act, the security or development of a child is considered to be in danger if the child is in a situation of abandonment, neglect, psychological ill-treatment, exposure to domestic violence or sexual or physical abuse, or if the child has serious behavioural disturbances.”

This legal brief will deal more specifically with the notion of sexual abuse within the meaning of the *Youth Protection Act*.

The *Youth Protection Act* sets out the following regarding this ground:

“In this Act:

[...]

(d) ‘sexual abuse’ refers to

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

[...]”

The notion of sexual abuse therefore necessarily implies the following elements:

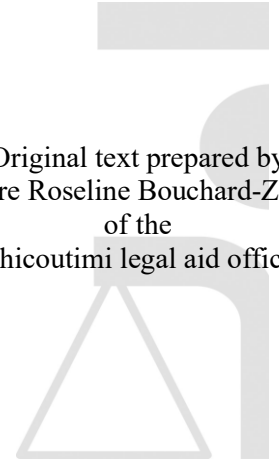
- One or more gestures of a sexual nature;
- With or without physical contact;
- Carried out by one of the child’s parents or another person.

As the *Act* does not define the notion of sexual abuse or gesture of a sexual nature, we must turn to court decisions on the subject.

Courts have stated that one must determine if the gesture in question was inappropriate in light of the child’s age or development. The entire situation must be assessed based on generally accepted social values.

The analysis is both subjective, since it has to take the child into account, and objective, since it must also consider what an independent third party would consider socially acceptable.

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* The information set out in this document is not a legal interpretation.

The masculine gender is used to designate persons solely in order to simplify the text.



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Furthermore, the state of mind or intention of the person alleged to have committed the abuse is irrelevant for the purpose of determining whether or not sexual abuse has occurred. It is therefore not necessary to prove any form of malicious or wrongful intent.

For example, sexual abuse was found to have occurred where a father had engaged in sexual intercourse in a room separated from his 13-year-old daughter's bedroom only by a curtain, even though he had had no intention of exposing her to his activities. The judge determined that this involved recklessness, negligence or indifference with respect to the teenager's needs.

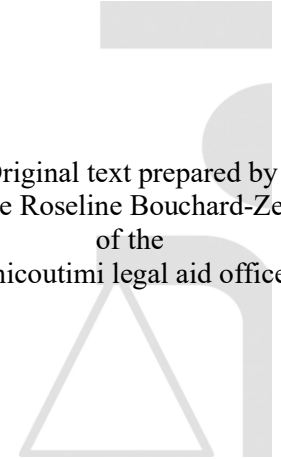
A danger to the security or development of a child exists when the consequences of the abuse are still present at the time the case is heard by the court.

Lastly, it should be noted that the notion of sexual abuse in child protection matters is very different from that in criminal matters. Consequently, even if the alleged gestures did not give rise to criminal charges or are not criminal in and of themselves, there may still be a danger to the child's security or development within the meaning of the *Youth Protection Act*.

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