

Preparing and Presenting Your Case – Appellant

Child, Youth and Family Enhancement Act (CYFE Act)

Related Documents

Thinking About Filing an Appeal under the CYFE Act
CYFE Appeals – Preliminary Appeal Meeting and Jurisdiction Reference
A Guide to Appeal – CYFE Act
Preparing and Presenting Your Case – Director – CYFE Act
Appeal Tip Sheet for Legal Counsel – CYFE Act

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Introduction

The Children and Youth Services Appeal Secretariat has provided Presenting and Preparing Your Case – Appellant – (CYFE Act) to help you:

- understand the appeal process;
- understand your role in the appeal process; and
- prepare for the hearing.

The appeal process described in this guide and those listed below may be amended from time to time. The guides provide information about the general process for appeals and serve only as broad guidelines of what to expect.

Other guides available to assist you with your appeal are:

- Thinking About Filing an Appeal under the *Child, Youth and Family Enhancement Act*;
- A Guide to Appeal – *Child, Youth and Family Enhancement Act*;
- Preparing and Presenting Your Case – Director – *Child, Youth and Family Enhancement Act*;
- Appeal Tip Sheet for Legal Counsel;
- Child, Youth and Family Enhancement Appeals – Preliminary Appeal Meeting and Jurisdiction Reference.

Commonly used terms

In this document and the other documents listed above, the following terms are used:

- **Appellant** – this is the person who filed the Notice of Appeal (can be a child or youth or the Child and Youth Advocate on behalf of a child or youth).
- **Director** – this is the person (or representative) who made the decision that is being appealed. The director at the hearing can be a caseworker supervisor, manager or any other person designated as a director.
- **Child, Youth and Family Enhancement Appeal Panel (Appeal Panel)** – this is a panel of Albertans from the community appointed by the Children and Youth Services Minister and trained to hear appeals under the *Child, Youth and Family Enhancement Act* (CYFE Act). Three members of this panel will serve as the hearing panel for the appeal. It is important to note that the panel members are volunteers; they are not employees of Children and Youth Services and they are not a part of the Child and Family Services Authorities (CFSAs).
- **Appeal Secretariat** – this is an impartial government body that provides administrative support to the appeal process and the Appeal Panel. The Appeal Secretariat schedules hearings and provides information to all parties about the appeal process. In addition, the Appeal Secretariat maintains a website, www.child.alberta.ca/appealpanels, which contains information about the appeal process. The Appeal Secretariat operates at arm's length from all parties and focuses on providing support services.

As you use this guide to prepare for an appeal, please feel free to call the Appeal Secretariat office at 780-422-2775 (Edmonton and Area) or toll-free at 310-0000 then dial 780-422-2775 if you need assistance.

You may also consider contacting the Child and Youth Advocate who can provide advice regarding matters related to the welfare and interests of children receiving services under the CYFE Act. Please see Appendix 1 for contact information.

Notice of Appeal forms are available from the local CFSA or DFNA office, or directly from the Children and Youth Services Appeal Secretariat at 3rd Floor, Sterling Place, 9940 – 106 Street, Edmonton, Alberta, T5K 2N2.

If the appellant is unsure about how to complete the Notice of Appeal form, or who to send the form to, he/she should contact the office where your file is located or the Appeal Secretariat office at 780-422-2775 (Edmonton and Area) or toll-free at 310-0000 then dial 780-422-2775.

General summary of the appeal process

The appeal process starts with a Notice of Appeal that you file under the CYFE Act. You can ask for and fill out a Notice of Appeal form at your local Child and Family Services Authority (CFSA) or Delegated First Nations Agency (DFNA) office. The director acknowledges receipt of the Notice of Appeal by signing and dating the form, and sends a copy of it to the Appeal Secretariat. The director also provides the Appeal Secretariat with a copy of the director's decision, if it is available, and the Request for Administrative Review and Administrative Review decision, if this is required by the CYFE Act.

Upon receipt of the Notice of Appeal, the Appeal Secretariat contacts you and the director to schedule a preliminary appeal meeting which will be conducted by a manager from the Appeal Secretariat. At that meeting, the appeal process will be explained and a jurisdictional hearing (if required) and a hearing on the decision under appeal will be scheduled. The Appeal Secretariat manager will also provide instructions about exchanging documents and providing them to the Appeal Panel before the hearing takes place.

The appeal hearing is conducted by a three-member hearing panel consisting of a hearing chair and two members. In the majority of cases, hearings are held in your community or region. However, in some cases, the hearing panel may consider it appropriate to hold a hearing by teleconference or videoconference, with agreement from the parties.

It is important to understand that the hearing panel is not conducting an investigation. The hearing panel can only make a decision using the information presented to it during the hearing (verbally or in writing) by you, the director, the Child and Youth Advocate (if applicable), and through witnesses.

After the appeal hearing is complete, the hearing panel will review all of the information that was presented and make a decision. The panel will issue a written decision to the parties that include the finding of the facts and the reasons for its decision.

Before the Hearing

Understanding your role

An appeal hearing will be scheduled by the Appeal Secretariat. Your role prior to the hearing is to:

- Prepare a written summary of your case;
- gather information/documents supporting your case; and
- send copies of the documents to the Appeal Secretariat (who distributes them to the hearing panel) and exchange documents with the director by a date set by the Appeal Secretariat. The date is usually three weeks before the hearing is to take place.

Your role at the hearing is to:

- present your case, including written information that you believe supports your position, to the hearing panel;
- explain to the hearing panel why it should decide in your favour; and
- bring witnesses, if you choose, to support your case.

Legal counsel

Although having a lawyer is not required, you have the right to hire a lawyer if you feel you need legal advice for your appeal. If you do hire a lawyer, he or she will be responsible for presenting your case to the hearing panel.

You may already know a lawyer or know how to select one, but if not, you can get advice from the Lawyer Referral Service, which is operated by the Law Society of Alberta (1-800-661-1095), or from Legal Aid Alberta (1-866-845-3425).

Preparing for the Hearing

Introduction

This hearing is your opportunity to tell the hearing panel, in your own words, what the circumstances of your situation are and how and/or why you believe the decision of the director is not valid or not correctly made.

When preparing your case, make sure your arguments fit under the CYFE Act and/or Regulation. The hearing panel is not required to comply with Children and Youth Services' policies, such as those found in the Enhancement Policy Manual, though the panel will consider all information presented by the parties when making its decision.

You can view the *Child, Youth and Family Enhancement Act* and Regulations by visiting the website at www.child.alberta.ca/appealpanels.

You can prepare for the hearing by:

- writing an appeal summary detailing the history leading up to the decision that is being appealed and your reasons for disagreement with the director's decision;
- reading the documents submitted by the director and other parties, if applicable. (i.e. Child and Youth Advocate);
- planning to explain how the director did not act in accordance with the CYFE Act and Regulation;
- planning to support your position through witnesses (factual, character or expert); and
- providing documents (e.g. home assessments, medical reports, psychological reports) supporting your case.

If you are referencing past history, plan to show or tell the hearing panel how and why that information is relevant to the decision under appeal.

Preliminary appeal meeting

The Appeal Secretariat conducts a preliminary appeal meeting with the parties to assist the hearing panel and the parties in achieving an effective and efficient hearing process by clarifying information ahead of time.

This is not the hearing; therefore, the hearing panel will not be in attendance. The meeting is led by a manager from the Appeal Secretariat and is attended by you and the director. No documents will be exchanged and no witnesses will attend this meeting, however you may bring a support person.

Matters that may be addressed at the preliminary appeal meeting include the following:

- identify or confirm all of the parties to the appeal;
- clarify the issue(s) being appealed;
 - identify the section of the CYFE Act that the director's decision comes under;
 - confirm the date the Administrative Review was requested (if applicable), the date it was completed, and the date the Review decision was communicated to you; and
 - the date the Notice of Appeal was filed.
- identify if there will be any objections to the panel's authority to hear and decide the matter (jurisdiction), and if so, what process will be used by the hearing panel to have the objection heard (see the Child, Youth and Family Enhancement Appeals - Preliminary Appeal Meeting and Jurisdiction Reference sheet);
 - confirm jurisdiction argument submission dates and the jurisdiction hearing date (if applicable);
- establish if witnesses will be attending and, if so, identify the approximate number of witnesses each party will call and their roles;
- determine the number of days required for the hearing;
- schedule the hearing date(s);
- set the date by which you, the director and any other parties must exchange documents and provide them to the Appeal Secretariat;
- determine whether the parties will be bringing a lawyer;
- discuss how to prepare for the hearing;
- discuss what to expect at the hearing; and
- answer any questions the parties may have.

For information about the processing of an appeal, please contact the Appeal Secretariat.

The preliminary appeal meeting may be held via videoconference or teleconference when the appellant lives in a region outside of Edmonton.

Jurisdiction

Jurisdiction means the Appeal Panel's authority to hear and decide the issue being appealed. The Appeal Panel's jurisdiction is set out in section 120 of the CYFE Act. If the issue being appealed and/or the person appealing does not fall under section 120 of the CYFE Act, the Appeal Panel will not have jurisdiction to hear or make a decision on the matter.

One example of a situation when the Appeal Panel would not have jurisdiction to hear an appeal, regardless of the nature of the issue, is when the hearing panel has determined that the Notice of Appeal was filed too late. The required number of days to file a Notice of Appeal is set out in section 120 of the CYFE Act.

Jurisdiction is discussed at the preliminary appeal meeting (see previous section). When the director advises the other party and the Appeal Secretariat that they will be raising an objection regarding the jurisdiction of the Appeal Panel, a hearing on the jurisdiction issue may be scheduled and both parties prepare written submissions on their arguments on the jurisdiction argument only. (See the Child, Youth and Family Enhancement Appeals - Preliminary Appeal Meeting and Jurisdiction Reference sheet for more details.)

At the jurisdiction hearing, the hearing panel will make a decision either verbally or send the parties a decision in writing. If the decision is that the Appeal Panel has jurisdiction (authority to hear and decide the issue being appealed), a hearing on the issue under appeal will be held.

Documentation submission

Documentation submission, also referred to as disclosure, is the exchange of documents and information between the parties and is necessary to ensure that each party has knowledge of the case of the other party.

Parties must disclose their case by following these steps:

- gather the summary you prepared, a copy of the director's written decision, and all your supporting documents, statements and letters together;
- make a list of these documents (title, date, description);
- list the names of your witnesses;
- list the names of other persons who may be attending as a support person or representative; and
- make copies of all these documents (one for the director, four for the hearing panel, and one for other parties to the hearing, if applicable) and organize the documents in packages with the document list on the top of each package.

You and the director will be required to exchange this information between yourselves and other parties to the appeal (i.e. the Child and Youth Advocate) and to submit the information to the Appeal Secretariat for distribution to the hearing panel approximately **21 calendar days prior to the hearing**. The date will set by the Appeal Secretariat.

When documents are submitted at the hearing, it will likely cause a delay, as the hearing chair may adjourn the hearing to allow the other party to review the documents and prepare a rebuttal, and to give the hearing panel time to review the new documents.

Use of witnesses

Witnesses are people that you may want to have present information at the hearing to help you support your case. These people can be expert witnesses, such as doctors, counsellors, therapists, or factual witnesses who have first-hand knowledge about your case. When witnesses come to the hearing, it gives them a chance to explain their evidence and answer any questions that the parties to the appeal and the hearing panel members ask them. Witnesses are not allowed into the hearing boardroom until they are called to present their evidence at the appeal hearing.

When preparing for the hearing, contact your witnesses to be sure they:

- can attend the hearing at the scheduled time and place to give their submission;
- know that they do not sit in the hearing except for when they are giving their evidence and answering questions;
- know they will not need to come to the start of the hearing (your witnesses will not

be called to give their evidence until after the director's witnesses are finished. After the hearing has started, you will be able to advise each of your witnesses of an estimated time to arrive at the hearing);

- know what information you need from them;
- understand that the director and hearing panel may ask them questions; and
- know they should dress and act appropriately at the hearing (witnesses should be aware that dress is business casual and that they are expected to behave in a courteous and respectful manner to all parties attending the hearing).

Your caseworker will most likely be providing information in support of the director's decision at the hearing, by acting as a witness for the director. If you would like your caseworker to provide certain information to the hearing panel which is not included in the director's presentation, you can ask him/her questions during the hearing to bring out this information. The hearing panel will advise you when it is the appropriate time for your questions.

Plan for the director's case

Be prepared to respond to what the director submits to support the decision that you have appealed by:

- reviewing the director's original decision, the Administrative Review decision (if applicable), and the documentation the director submits in response to your Notice of Appeal;
- understanding the "why" of the director's case (e.g. "Does it make sense?");
- being prepared to explain to the hearing panel why you disagree with the director's decision using the CYFE Act and/or Regulation and other relevant documents;
- preparing questions to ask the director and the director's witnesses; and
- arranging to bring your own witnesses, if you choose, to present information to support why you disagree with the director's case.

Prepare to question and be questioned

You will have a chance to ask questions of the director and his/her witnesses at the hearing. You may find it helpful to write down some questions before the hearing begins. Your questions should focus on bringing out what is relevant to your case and important for the hearing panel to hear and understand. You may want to ask:

- questions for clarification (e.g. "What did you mean by...?");
- questions to challenge (e.g. "How could you comment on that when you weren't present?"); and
- questions to obtain admissions that help your case (e.g. "Didn't you state that...?").

Be aware that the director will have the same chance to question you and your witnesses. Preparation is important. Try to anticipate those questions and prepare the answers that you will give when you are questioned. You may also wish to talk with your witnesses about the questions the director may ask them. Ask them to prepare answers for the questions they may be asked so their information can be clearly told.

What to expect at your appeal hearing

Reading all of the documents submitted to the hearing panel, and contacting the Appeal Secretariat if you have any questions about the process, will help you know what you can expect at the hearing.

You can expect a certain level of formality and a pattern to appeal hearings. The panel will follow specific procedures to keep the hearing running smoothly and to ensure that all parties have adequate time to give their evidence. Please note that all hearings are not identical, but the procedures followed by the hearing panel will always be similar.

At the Hearing

Introduction

All persons will enter the hearing boardroom together so there is no private contact with the hearing panel. Upon entering the hearing boardroom, the hearing panel will advise you and the appellant on where to sit. They will try to create the most comfortable arrangement possible. After the parties have all taken their seats, the hearing chair will call the hearing to order, make introductions, explain the hearing procedures, explain the objective of the panel, and confirm the roles of the parties, witnesses, and other persons that may attend the hearing.

Confirming the issue(s) under appeal

The hearing chair will ask both you and the director for clarification or confirmation of the director's decision being appealed.

Presenting Your Case

The jurisdiction of the appeal panel

Jurisdiction means the Appeal Panel's authority to hear and decide the issue under appeal. The Appeal Panel's jurisdiction is set out in section 120 of the CYFE Act. If the issue being appealed and/or the person appealing does not fall within section 120 of the CYFE Act, the Appeal Panel will not have jurisdiction to continue with the hearing.

The time for a party to raise an objection to the Appeal Panel's jurisdiction is at the preliminary appeal meeting. A jurisdictional hearing may be scheduled to allow the parties to present arguments on the objection. (See the Child Youth and Family Enhancement Appeals - Preliminary Appeal Meeting and Jurisdiction Reference sheet for more details.)

If an objection to jurisdiction is not raised until the hearing of the issue under appeal, the hearing will be delayed because the jurisdiction issue must be heard first.

Identify the outcome you are requesting

Once the issue or matter under appeal and the jurisdiction of the hearing panel have been confirmed, the parties, starting with the director, will be given the opportunity to make a brief opening statement on the decision that was made and what outcome each party is requesting from the hearing panel.

Presentations

The director's case

The director will be called on first to make his/her submissions in exactly the same way as you will later. The director is asked to go first so that you may hear what he/she has to say about how and why the decision was made. This process allows you the opportunity to note any questions that you will want to ask to clarify or rebut the information presented.

When the director is presenting his/her case, it is important to:

- listen carefully and follow the presentations of the director and his/her witnesses; and
- write down the questions you want to ask each presenter.

The hearing panel will give you the opportunity to ask the director questions about the submissions he/she made. The hearing panel will then ask the director questions in order to clarify information or points that were made.

The same process will be followed for each witness that the director has brought to support his/her case.

The child or youth's case

If the Child and Youth Advocate or legal counsel is representing a child at the appeal, he/she will now present information in the same way as the director. He/she will make submissions and then be questioned, first by the director, then by you and finally by the hearing panel.

The appellant's case

You will be called to present your case after the director and, if applicable, the Child and Youth Advocate have finished presenting their cases, including all of his/her witnesses.

When presenting your case, it is important to:

- explain your case in a clear and logical way to the hearing panel, noting how your case is supported by the CYFE Act and/or Regulation;
- present your evidence witness by witness;
- refer to the documents you have submitted to the hearing panel by identifying a specific document and page number (remember, that the director and hearing panel have received copies of your documents); and
- speak slowly and clearly so the panel members can take their own notes.

After your submission, the director, Child and Youth Advocate (if applicable) and hearing panel will ask you questions about your case and the submissions that were provided.

- Answer clearly, concisely and honestly.
- If you are unclear about the question asked or did not hear it, ask to have the question repeated.

The same process will be followed for all of the witnesses that you have brought to support your case.

Adjournment

You may ask the hearing panel for an adjournment if the director brings new material to the hearing that you need to review or if you need to consult with your legal counsel about the new material. You will be expected to give reasons to show the hearing panel that an adjournment is necessary.

Resolution

You and the director are free to talk about resolving the matter you have appealed at any time during the appeal process. The hearing panel will not participate in discussions about resolutions and will not be influenced by them. If, during the hearing dates, you and the director agree to engage in resolution discussions, indicate this to the hearing panel and ask for an adjournment to do so. An adjournment may be granted to allow the parties to determine if there is a chance for resolution. If you and the director agree to a settlement, you will be asked to withdraw your appeal in writing.

Closing the hearing

At the end of the hearing, each party has an opportunity to summarize all of the relevant points made during the hearing. No new evidence is allowed at this point in the appeal hearing. After the summaries have concluded, the hearing chair will close the hearing.

After the Hearing

The hearing panel's decision

If an appeal is made from a director's decision referred to in section 120(2)(a) to (a.4) or (f.3) of the CYFE Act, the Appeal Panel may, subject to this Act and the regulations, confirm the decision or refer the matter back to the director for further consideration.

If an appeal is made from a director's decision referred to in section 120(2)(b) to (f.2), (g) or (5) of the CYFE Act, the Appeal Panel may, subject to this Act and the regulations, confirm, reverse or vary the decision.

After the hearing is concluded, the hearing panel reviews all of the verbal and written information provided by the parties to the appeal and makes its decision.

The hearing panel then prepares its written decision and issues it to the appeal parties within approximately 45 calendar days of the hearing. Given the complexity of some cases, however, the hearing panel may require more than 45 calendar days to issue the decision.

The written decision will contain the issue under appeal, the hearing panel's finding of facts, the decision and the reasons for the decision. The written decision that is issued on this appeal is the Appeal Panel's final decision.

In making decisions on issues under appeal, the Appeal Panel must comply with the CYFE Act and Regulation. However, the Appeal Panel is independent from Children and Youth Services and is not required to comply with Children and Youth Services' policies, such as those found in the Enhancement Policy Manual. The Appeal Panel will, however, consider any and all evidence submitted as part of the appeal, including policy documents. Also, Appeal Panel decisions are not precedent setting in the same way as case law is precedent setting in the courts. Each appeal is heard on its own merits.

If you are dissatisfied with the hearing or the panel's decision

A party who is not satisfied with the decision of the Appeal Panel under 119(2.1) of the CYFE Act which are director's decision referred to in section 120(2)(b) to (f.2), (g) or (5) of the CYFE Act may appeal to the Court of Queen's Bench under section 120.1 the CYFE Act. The time limit for this kind of appeal is **45 days from the date of the hearing panel's decision**. The Court of Queen's Bench will determine the appeal on the material filed with or forwarded to the Court and any further evidence that the Court may require or permit to be given. The Court of Queen's Bench may confirm, reverse or vary the decision of the Appeal Panel.

If the Appeal Panel's decision is made from a director's decision referred to in section 120(2)(b) to (f.2), (g) or (5) of the CYFE Act, the Appeal Panel's decision cannot be appealed to the Court of Queen's Bench. A party to the appeal may request a judicial review of a decision of an Appeal Panel.

If you believe you want to have the hearing panel's decision referred to the Court, you will likely need the assistance of a lawyer. Contact information for legal assistance can be found in Appendix 1 of this guide. Contact information for the Court of Queen's Bench locations around Alberta can be found online at www.albertacourts.ab.ca/qb/

If you believe your hearing was unfair, you may file a complaint with the Office of the Ombudsman. The Office of the Ombudsman cannot change a decision of the hearing panel; however, it can review the process. The Ombudsman's office number is 780-427-2756 in Edmonton or 403-297-6185 in Calgary. Additional information is available online at www.ombudsman.ab.ca.

Contact Us

If you have any questions or would like more information about filing an appeal under the *Child, Youth and Family Enhancement Act* or the appeal hearing process, please contact the Children and Youth Services Appeal Secretariat by:

Phone:

780-422-2775 (Edmonton and Area)
or toll-free at 310-0000 then dial 780-422-2775

Mail or in person:

Alberta Children and Youth Services Appeal Secretariat
3rd Floor, Sterling Place
9940 – 106 Street NW
Edmonton, Alberta T5K 2N2

Information is also provided on the Alberta Children and Youth Services' website:

www.child.alberta.ca/appealpanels

Appendix 1 – Resources

Agency	Phone Number	Website
Alberta Foster Parent Association	1-800-667-2372	www.afpaonline.com
Child and Youth Advocate <ul style="list-style-type: none">• Legal Representation for Children and Youth	1-800-661-3446 1-888-890-2020	www.advocate.gov.ab.ca
Alberta Children and Youth Services Appeal Secretariat	780-422-2775	www.child.alberta.ca/appealpanels
Court of Queen's Bench	310-0000 (and ask for location nearest you)	www.albertacourts.ab.ca/qb/
Law Society of Alberta <ul style="list-style-type: none">• Lawyer Referral Service	1-800-661-1095	
Legal Aid Alberta <ul style="list-style-type: none">• Law Line	1-866-845-3425	www.legalaid.ab.ca
Office of the Ombudsman	780-427-2756 Edmonton 403-297-6185 Calgary	www.ombudsman.ab.ca

