

A Guide to Appeal

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
Preparing and Presenting Your Case – Appellant – CYFE Act
Preparing and Presenting Your Case – Director – CYFE Act
Appeal Tip Sheet for Legal Counsel

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Purpose of the Guide

The Children and Youth Services Appeal Secretariat has prepared A Guide to Appeal – *Child, Youth and Family Enhancement* (CYFE Act) to assist parties to an appeal to the Child, Youth and Family Enhancement Appeal Panel (Appeal Panel):

- understand the appeal process;
- understand their 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 an appeal are:

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

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.

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 by the Minister of Children and Youth Services 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 (CFSA).
- **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.

The information that follows regarding who can appeal and what decisions can be appealed is a simplified version of a more detailed description in the CYFE Act. A copy of the *Child, Youth and Family Enhancement Act* is posted on the Children and Youth Services website at www.child.alberta.ca/appealpanels.

Who Can Appeal

If you are a person identified in section 120(1), (2), (4) or (5) of the CYFE Act, you may file an appeal to the Appeal Panel. The persons who may file an appeal are listed below.

- a child.
- a guardian of the child.
- a foster parent.
- a person who has had continuous care of the child for more than 6 months of the 12 months preceding the decision of the director.
- a person between the ages of 18 to 22 and am receiving or have been refused support and financial assistance under Section 57.3 of the Act.
- an adult person who has been refused financial assistance under the Financial Assistance Program administered under Section 105.8 of the Act.
- an applicant for a residential facility license.
- an applicant for a renewal of a residential facility licence.
- a person who has applied for a license to operate an adoption agency.
- a person who holds a license to operate an adoption agency.

Not all director's decisions are appealable. The decision must be stated as appealable in the CYFE Act.

What Decisions Can be Appealed

Under the CYFE Act and Regulations (Child, Youth and Family Enhancement Regulation, Residential Facilities Licencing Regulation and Adoption Regulation), decisions made by the director that may be appealed to the Appeal Panel are:

If you are a child, the following decisions of a director that have been administratively reviewed may be appealed:

- the removal from or placement in a residential facility, other than a secure services facility, of the child.
- permitting or refusing to permit a person who has a significant relationship with me to visit.
- the refusal or failure of a director to enter into a family enhancement agreement with me.
- the refusal or failure of a director to enter into a custody agreement with me.
- the refusal or failure of a director to apply to the Court for a supervision order.
- the refusal or failure of a director to apply to the Court for a temporary guardianship order.
- the refusal or failure of a director to apply to the Court for a permanent guardianship order.
- the refusal or failure of a director to apply to the Court for an apprehension order.
- the refusal or failure of a director to apply to the Court for an initial custody order.

If you are a guardian of a child, the following decisions of a director that have been administratively reviewed may be appealed:

- the removal from or placement in a residential facility, other than a secure services facility, of the child.
- the refusal or failure of a director to enter into a family enhancement agreement with me regarding the child.
- the refusal or failure of a director to enter into a custody agreement with me regarding the child.
- the refusal or failure of a director to enter into a permanent guardianship agreement with me regarding the child.
- the refusal or failure of a director to enter into access agreement with me regarding the child.
- the refusal or failure of a director to apply to the Court for a supervision order regarding the child.
- the refusal or failure of a director to apply to the Court for a temporary guardianship order regarding the child.
- the refusal or failure of a director to apply to the Court for a permanent guardianship order regarding the child.
- the refusal or failure of a director to apply to the Court for an apprehension order regarding the child.
- the refusal or failure of a director to apply to the Court for an initial custody order regarding the child.
- the refusal or failure of a director to provide financial assistance to me pursuant to section 56.1 of the Act regarding the child who was made the subject of a private guardianship order on _____.
Date
- the refusal or failure of a director to provide financial assistance to me pursuant to section 81 of the Act regarding the child who was made the subject of an adoption order on _____.
Date

If you are a person who has had continuous care of a child for more than six months of the 12 months preceding, the decision of the director that has been administratively reviewed may be appealed, is in relation to the removal of the child from, or the placement of the child in, a residential facility, other than a secure services facility.

If you are a person between the ages of 18 and 22 years and are receiving or have been refused support and financial assistance under Section 57.3 of the Act, the decision of a director that has been administratively reviewed may be appealed in relation to the refusal or failure of a director to provide me with support and financial assistance under section 57.3 of the Act.

If you are an applicant for an international adoption. The decisions of a director that may be appealed are:

- the refusal by a director to approve a home study report or an addendum to a home study report with respect to an international adoption.
- the refusal by a director to approve an adoption placement with respect to an international adoption that involves a child whose country of origin requires the director's approval of that adoption placement.

If you are a residential facility licence holder, the decision of a director that may be appealed are in relation to:

- terms and conditions imposed on a renewal of a licence for a residential facility.
- a refusal to renew a licence for a residential facility.
- an order after inspection with respect to a licence for a residential facility.
- the variation, suspension or cancellation of a licence for a residential facility

If you are an applicant for a licence to operate an adoption agency, the decision of a director that may be appealed is in relation to a refusal to issue a licence to operate an adoption agency.

If you are a person who operates an adoption agency, the decision of a director that can be appealed are in relation to:

terms and conditions imposed on a conditional licence to operate an adoption agency.

a refusal to renew a licence to operate an adoption agency.

the suspension of a licence to operate an adoption agency.

the cancellation of a licence to operate an adoption agency.

Time Limits

A copy of the Request for Administrative Review form may be obtained from the local Child and Family Services Authority (CFSA) or DFNA office.

Administrative Reviews

An Administrative Review is a review of the director's decision that the appellant wishes to appeal. The review is done by two senior staff members of the Child and Family Services Authority or Delegated First Nations Agency (DFNA) who were not involved in the original decision.

The following decisions must be subject to an administrative review (under section 117.1 of the *Enhancement Act*) before there can be an appeal to the Appeal Panel. (*Enhancement Act*, Section 120(2))

- the removal from or placement in a residential facility of a child who is the subject of a temporary guardianship order or a permanent guardianship agreement or order;
- terms and conditions imposed on a renewal of, but not on the original issuance of, a residential facility licence under section 105.3;
- a refusal to renew a residential facility licence under section 105.3;
- an order made under section 105.6;
- the variation, suspension or cancellation of a residential facility licence under section 105.7;
- the permitting or refusing to permit any person who has a relationship with the child to visit a child who is the subject of a permanent guardianship agreement;
- the refusal or failure of a director to enter into an agreement under Part 1, Division 2 or 6 or to apply to the Court under Part 1, Division 3 in respect of a child who, in the opinion of that director, is in need of intervention;
- the refusal to provide financial assistance pursuant to section 56.1 or 81;
- the refusal to provide support or financial assistance pursuant to section 57.3;
- a matter prescribed in the regulations as being:
 - subject to an appeal to an Appeal Panel, and
 - a matter in respect of which the Appeal Panel may only make a decision referred to in section 119(2)
- any other matter prescribed in the regulations as being subject to an appeal to an Appeal Panel

Section 120(1.1) defines "residential facility as defined in Part 3 other than a secure services facility.

Section 120(2.1) provides that a child who is receiving treatment in a residential

treatment facility may not appeal a decision of a director to place the child in that residential facility.

The Process for Administrative Reviews

An administrative review can be requested under section 117.1 of the *Enhancement Act* by one of the following persons directly affected by a decision of a director:

- a child;
- a guardian;
- a foster parent;
- an individual who has had continuous care of a child for more than 6 of the 12 months preceding the decision of the director;
- a person who is receiving or may be eligible to receive support and financial assistance pursuant to section 57.3.

An administrative review must be requested within 30 days of the director's decision. The request for an administrative review must be set out the decision in sufficient detail for the director to be able to identify it and must set out the grounds for seeking the review.

During the administrative review, the decision is reviewed by two Senior staff members. The director has the power to confirm, vary or rescind the decision that has been received.

Within 15 days of receiving the request for a review, a director must provide the person who requested the review with a copy of the decision on administrative review, including the reasons for the decision.

If you decide to file an appeal following the Administrative Review decision and you qualify to appeal under Section 120 of the *Child, Youth and Family enhancement Act*, fill out a Notice of Appeal form. You must give the director the Notice of Appeal form not more than 30 calendar days after the copy of the Administrative Review Decision is given to you. If you did not receive a copy of the Administrative Review decision, give the director the Notice of Appeal form within 45 calendar days from the date when **you submitted your request for an Administrative Review**.

What can be appealed without an Administrative Review

The following do not require an administrative review before the appellant can file a Notice of Appeal (Enhancement Act, section 120(5) and Adoption Regulation, sections 28 and 30):

- if an application to be licenced as an adoption agency or the renewal of a licence is refused;
- if terms and conditions are imposed by the director with respect to a conditional license of an adoption agency;

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 whom to send the form to, he/she should contact the CFSA or DFNA office where his/her file is or the Appeal Secretariat office at 780-422-2775 (Edmonton and Area) or toll-free at 310-0000 then dial 780-422-2775.

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

- if an adoption agency licence has been suspended or cancelled;
- if an agency refuses or rescinds approval of an applicant for an adoption placement;
- if a director refuses a home study report or addendum to a home study report for an international adoption.
- if a director refuses to approve an adoption placement for an international adoption.

Filing an Appeal

The person appealing a decision of the director fills out the Notice of Appeal form, signs and dates it. A sample copy of the Notice of Appeal form is included as Appendix 1.

After completing the Notice of Appeal form, the appellant must send or deliver it to a CFSA or DFNA office. Although it is preferred that the appellant deliver the completed Notice of Appeal to the office handling the file, any CFSA or DFNA office will accept it and then forward it to the appropriate location.

The Child and Youth Advocate may be able to provide information and/or support to youth and children throughout the appeal process. The Child and Youth Advocate can be reached at 1-800-661-3446. Additionally, the Foster Allegation Support Team (FAST) may provide information and assistance to foster parents. FAST representatives can be reached toll-free in Alberta at 1-800-667-2372.

Processing the Appeal

When a Notice of Appeal is filed, the Appeal Secretariat opens a file and handles all the steps necessary to:

- confirm your Notice of Appeal was received by the Appeal Secretariat
- schedule a preliminary appeal meeting;
- schedule the hearing;
- arrange the hearing location;
- send out hearing confirmation letters which include information about where and when the hearing will be held and who must submit and exchange information, and the date by which the information must be exchanged;
- notify the office of the Child and Youth Advocate when a child is involved; and
- receive and distribute submitted information to the hearing panel before the hearing.

After the hearing is completed, the Appeal Secretariat will send out the hearing panel's written decision to all parties involved.

Preliminary Appeal Meeting

After a Notice of Appeal under the CYFE Act has been filed, the parties will be asked to attend a preliminary appeal meeting. The purpose of the preliminary appeal meeting is to assist those involved in the appeal to have 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 the appellant and director. No documents will be exchanged and no witnesses will attend this meeting.

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(s) of the CYFE Act that the issue(s) fall(s) under;
 - confirm the date the Administrative Review was requested (if applicable), the date it was completed, and the date the decision was communicated to the appellant;
- 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 numbers 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 the appellant and director must exchange documents with each other and provide them to the Appeal Secretariat;
- determine whether the parties will be bringing a lawyer to the hearing;
- discuss how to prepare for the hearing;
- discuss what to expect at the hearing; and
- answer any questions the parties may have.

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 a party advises the Appeal Secretariat and the other party that they will be raising an objection regarding the jurisdiction of the Appeal Panel, a hearing on the jurisdiction issue is scheduled and both parties prepare written submissions on their arguments. These submissions must be provided to the Appeal Secretariat, to be forwarded to the Appeal Panel, and exchanged between the parties on a date determined by the Appeal Secretariat.

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 authority to hear and decide the issue being appealed, a hearing on the issue under appeal will be held.

The Appeal Panel

The minister appoints not fewer than three persons to one or more Child, Youth and Family Enhancement Appeal Panels to hear appeals under the CYFE Act. These individuals have a variety of backgrounds and come from different parts of the province. They are not employed by Children and Youth Services. They are volunteers who are not paid for their work, but receive honoraria and reimbursement for their expenses relating to Appeal Panel duties.

The Appeal Panel operates at arm's length from the Ministry of Children and Youth Services. The ministry manages and operates the programs under the CYFE legislation. The Appeal Panel only hears appeals from persons who disagree with decisions made by a director and have filed a Notice of Appeal. The Appeal Panel is bound by the CYFE Act and Regulation; but is not bound by ministry policy.

The members of the Appeal Panel participate in ongoing training on all aspects of the appeal process. A comprehensive training plan has been developed which includes sessions focusing on understanding and interpreting legislation, decision making, decision writing and conducting a fair and impartial hearing.

The Appeal Panel is responsible for its own procedures and has control over hearings.

To view information about members of the Appeal Panel online, please visit www.child.alberta.ca/appealpanels.

The hearing panel

For each hearing, three of the Appeal Panel members will form the hearing panel. The selection of panel members is done by the Appeal Panel's Chair.

The Appeal Panel members will have no contact with any party before or after the appeal hearing.

The hearing panel will review all of the submitted documents, hear all of the evidence and arguments at the appeal hearing and make the decision about the appeal. Although they do not follow court procedures, they do follow the rules of natural justice and the duty of fairness. The principles of natural justice and fairness include the right to adequate notice, the right to be heard, the right to an unbiased decision maker, and the opportunity for both parties to inform the hearing panel about any fact or argument related to the issue under appeal that they would need in order to make a fair decision.

The decisions of the Appeal Panel do not set precedent (serve as an example or justification for a later decision).

The Appeal Panel has independent (not government) legal counsel. The legal counsel does not usually attend the hearing, but the hearing panel can access their advice prior to the hearing, during the hearing and when writing the decision. Legal counsel will not tell the hearing panel how to decide an issue during an appeal, but they may provide advice on administrative law and the interpretation of legislation. The Appeal Panel's legal counsel may also review draft decisions made by the hearing panel.

All attending Appeal Panel members will be present throughout the entire hearing and decision making process.

Adjournments

Once an appeal hearing is scheduled, unexpected circumstances or events, such as an illness or other emergency, may arise that require the hearing to be adjourned (postponed). Any party to an appeal can ask for an adjournment of the hearing. The request must be made in writing by completing the Adjournment Request form (Appendix 2) and sending it to the Appeal Secretariat **as soon as the need for an adjournment is realized**. The request must include:

- how much of a delay is required (e.g. number of days, weeks or months); and
- reason(s) for the delay (please be specific and give as much detail as possible).

The party asking for an adjournment must send copies of the written request to the other parties involved in the appeal (e.g. the appellant, director and Child and Youth Advocate). The other parties will be required to respond by sending their written position to the party requesting the adjournment, the Appeal Secretariat and any other parties involved in the appeal. They may indicate they are in agreement with the adjournment request or they may provide arguments against the adjournment request.

The hearing panel will meet privately or contact each other to consider the request using the written submissions from all parties, and may grant or deny the requested adjournment. The hearing panel will then notify the Appeal Secretariat to advise all parties whether the adjournment is allowed. If the hearing is adjourned, the Appeal Secretariat will schedule a new hearing date (if applicable) and send a new hearing confirmation letter to all of the parties. If the hearing panel does not adjourn the hearing, as requested, all parties attend the hearing and present their case as originally scheduled.

Withdrawing an Appeal

Appellants may withdraw their appeal at any time. After filing a Notice of Appeal, the matter(s) under appeal may be able to be resolved before an appeal hearing takes place, or the appellant may change his/her mind and decide not to continue with an appeal. If an appeal is withdrawn or abandoned, the file will be closed.

The appellant must contact the Appeal Secretariat as soon as he/she decides not to continue with the appeal. The appellant will be sent a Withdrawal Form (Appendix 3). After completing the form, the appellant must send a copy to the Appeal Secretariat and a copy to the other parties involved in the appeal (e.g. caseworker, Child and Youth Advocate). The other parties may also be advised of the intention to withdraw an appeal via a letter from the appellant or the appellant's legal counsel, if legal counsel has been involved with the appeal.

For assistance with asking for an adjournment or to obtain an Adjournment Request form, please contact the Appeal Secretariat at 780-422-2775 (Edmonton and Area) or toll-free by dialing 310-0000 then dialing 780-422-2775.

For assistance with withdrawing an appeal or to obtain a Withdrawal Form, please contact the Appeal Secretariat.

Where and When Appeal Hearings are Held

Hearings are generally held in the region or community where the appellant resides and where the Child and Family Services Authority office is located. Hearing room arrangements are made using government meeting facilities within the region, though hearings may also take place by teleconference or videoconference. Hearings are generally held from 9:00 a.m. to 4:30 p.m. each day of the hearing. Normally the hearing panel will discuss break, lunch and closing times with the parties at the hearing. The Appeal Secretariat will advise the parties by letter of the date, time and location of the hearing.

Who May be in Attendance at a Hearing

The three members of the hearing panel, the appellant and the director must attend the appeal hearing.

In addition to the parties listed above, the following persons may attend a hearing:

- other CFSA or DFNA staff;
- witnesses;
- the Child and Youth Advocate;
- the child or youth involved;
- representatives (including legal counsel) for the appellant, director and/or child/youth;
- support persons;
- a note taker for the appeal panel's use only; and/or
- a court reporter (the party bringing a court reporter does so at his/her own expense).

Please let the Appeal Secretariat know the number of witnesses and support people who will be attending. This will assist in the booking of appropriate facilities and an adequate number of days needed to hear the appeal.

Legal counsel is not required for an appeal hearing; however, it is each party's option to have legal representation. If a party chooses to have legal representation, all other parties must be told. For further information, an Appeal Tip Sheet for Legal Counsel is available.

The Parties and Their Roles

All persons involved in an appeal must take steps to ensure that the confidentiality of information provided through the appeal process is protected.

- **An Appellant** is the party affected by a decision of a director for a CFSA or DFNA who has filed a Notice of Appeal under the CYFE Act. A child or youth may be an appellant.
- **The Director** is the party that has made the decision under the appeal that is directly affecting the appellant. (Persons designated by the Minister of Children and Youth Services as directors include CFSA or DFNA, supervisors or managers.)
- **The Child and Youth Advocate** represents the child-in-care's rights, interests and viewpoint, hears testimony of all parties to the appeal, and has the opportunity to ask questions, as well as make oral and written submissions to the hearing panel. The Advocate plays a variety of roles depending upon whether the child or youth needs help expressing his/her view or has another representative, and ensures the interests of the child are being considered. Where appropriate, the Advocate may recommend the appointment of legal counsel for a child or youth.
- **Representatives** (including legal counsel) are not required, although the appellant or the director may choose to have representation. When a child or youth is the appellant or is another party involved in an appeal, he/she may also choose to have representation. A representative assumes the responsibility of presenting the case for the party and is subject to the rules of the appeal hearing as instructed by the hearing panel. Although a representative will represent his/her client by asking witnesses questions, the appellant or director will be able to explain his/her viewpoint, describe the impact of, or reasons for, the director's decision, etc., by answering questions posed by their representative. However, the hearing panel may allow both the representative and the party to present the case and ask questions.

Legal counsel must be made aware that this is a less formal process than court proceedings and does not follow the Rules of Court. For further information see the Appeal Tip Sheet for Legal Counsel. The hearing panel is bound by the *Administrative Procedures and Jurisdiction Act*, and therefore can set its own procedure (e.g. hearsay evidence may be admitted).

- **A Support Person** is someone (a family member, friend or other interested person) that a party may choose to bring for support during the hearing. A support person should be able to attend the full hearing; however, he/she does not provide evidence, does not participate in the verbal presentation of a party's case and does not ask questions. A support person attends the hearing to give moral support and help with staying organized. The appellant, director, or any other party to the appeal may bring one or more support persons to the hearing.
- **Witnesses** are individuals, including children or youth, who have first-hand knowledge of events or information related to the matter under appeal. Each party may bring witnesses who can provide any information believed important and relevant for the hearing panel to know in deciding on the appeal. Witnesses are excluded from the hearing until they are called in to make submissions. A party can ask any person believed relevant to the appeal to be a witness, but if the witness is not able to attend, for any reason, the hearing panel cannot compel him/her to do so.

- **Other Parties** are persons interested in the appeal that may wish to participate in the appeal hearing. They may include:
 - an agency representative;
 - a new placement foster parent;
 - a prospective adoptive parent; or
 - a person, other than the appellant, who may also be affected by a decision of the director (e.g. a sibling, biological parent).

When one of these persons believes they have been affected by a decision of the director and request party status, they must contact the Appeal Secretariat prior to the hearing date being scheduled. The hearing panel will decide what role, if any, they will have in the hearing (e.g. observer, support person, witness or a party to the appeal.).

Preparing for the Hearing

The following is a general overview for both parties about preparing for the hearing. For more detailed information please refer to the following:

- Preparing and Presenting Your Case – Appellant – *Child, Youth and Family Enhancement Act*;
- Preparing and Presenting Your Case – Director – *Child, Youth and Family Enhancement Act*; or
- Appeal Tip Sheet for Legal Counsel.

These preparation guides are available from the Appeal Secretariat or on the Alberta Children and Youth Services website: www.child.alberta.ca/appealpanels

In order to ensure parties are prepared for the hearing, parties must exchange information and documents with each other and provide this same information to the Appeal Secretariat for distribution to the hearing panel by a date prior to the appeal hearing. The document submission date, usually three weeks before the hearing date, is identified and confirmed by the Appeal Secretariat. The information that each party must provide includes:

- name of legal counsel or representative, if applicable;
- any objections or rebuttal to the Appeal Panel's jurisdiction to hear and decide the issue under appeal;
- the names of witnesses who will present information at the hearing, if any;
- the number of support people who will be attending; and
- the documents that are being submitted to the hearing panel as information to be considered in the appeal.

If the appellant or director is bringing legal counsel, the Appeal Secretariat must be informed as soon as possible so the other party can be notified and then decide if they wish to also bring legal counsel. This helps to avoid delays in scheduling the hearing.

The hearing panel does not have any information about the situation that has led to the appeal other than the documents submitted to the Appeal Secretariat and exchanged between the parties. The hearing panel relies on verbal and written information presented during the hearing by all parties. The hearing panel does not conduct its own investigation about a case, so the parties must present the information that they want considered at the hearing.

It is your responsibility to organize and send copies of your document submissions to the other parties (e.g. the appellant, director, Child and Youth Advocate) and four copies must be sent to the Appeal Secretariat for the hearing panel, by a date determined by the Appeal Secretariat. Only those documents received by the Appeal Secretariat will be given to the hearing panel prior to the hearing. This allows the hearing panel some time for review in advance.

If documents are submitted at the hearing, it will likely cause a delay in the process because both the hearing panel and other

party may need the opportunity to review and consider this additional information. In some cases, the other party may also ask for time to prepare rebuttal evidence, which could result in an adjournment of the hearing to another date days or weeks away.

Information Presented at the Hearing

The hearing panel can accept any information (verbal or written) that it believes will assist it in making a decision. A key factor for the panel is whether the information relates to the matter under appeal. The best evidence is from persons (witnesses) who have first-hand knowledge of events or have first-hand information related to what they are speaking about. The hearing panel must consider any evidence that is, in its opinion, reliable and relevant to the matter being heard and weigh it accordingly.

Recording of Hearings

No person will make a written transcript, audio recording or video recording of any appeal hearing. If a party wishes to bring a court reporter to the hearing, the party must call the Appeal Secretariat as early as possible. The Appeal Secretariat will inform the hearing panel chair and the other parties. When a party brings a court reporter to a hearing, the expense is the responsibility of that party. All other parties will be able to purchase copies of the transcript at their own expense.

The Order of Proceeding at the Hearing

Introductions

All of the parties will be asked if everyone expected to be present at the beginning of the hearing has arrived. All persons will enter the hearing room together and will take their seats. The hearing will be called to order by the hearing chair. Introductions of all persons in attendance at the hearing will be completed, including:

- hearing panel members;
- appellant(s) and their legal counsel or representative;
- director and their legal counsel;
- Child and Youth Advocate and/or legal counsel for the child or youth; and
- other parties to the appeal.

Housekeeping matters

The hearing chair will provide information to the parties that will assist with the smooth running of the hearing, such as a reminder to turn cell phones and Blackberries off throughout the hearing, the location of restrooms and the timing of breaks. When breaks are taken, the parties will always leave and re-enter the room at the same time.

Prior to the start of the hearing, after lunch and during breaks, the parties are to wait outside the hearing room until the hearing panel calls them to return. Panel members will not speak privately with any of the parties at any time.

Roles

The hearing chair will confirm or explain the role of each party in attendance at the hearing (a detailed summary of these roles was previously provided on pages 10-11).

Confidentiality

The hearing panel does not share any personal or confidential information that it learns before, during, or after the hearing, with anyone other than those involved with the case, unless allowed by the *Freedom of Information and Protection of Privacy Act* (FOIP Act) or the CYFE Act. All persons involved in an appeal must take steps to ensure that the confidentiality of information provided through the appeal process is protected.

Confirm the issue and documents submitted

Prior to hearing opening statements from the parties:

- the hearing chair will confirm the issue or matter being appealed; and
- the hearing chair will provide a list of all documents the hearing panel has received.

Confirm the jurisdiction of the Appeal Panel

If the Appeal Secretariat is not advised of an objection regarding jurisdiction at the preliminary appeal meeting, the hearing chair will ask the parties at the beginning of the hearing of the issue under appeal if there is any objection regarding the jurisdiction of the Appeal Panel. If an objection is not raised, the hearing chair will proceed with the hearing of the issue under appeal.

If an objection concerning jurisdiction is raised, the hearing panel will either:

- adjourn the hearing to another date to allow the parties to prepare written submissions on jurisdiction; or
- hear each party's position on jurisdiction, then adjourn the hearing and provide a written decision on jurisdiction at a later date; or
- hear each party's position on jurisdiction, then call a break to allow the hearing panel time to make a decision on jurisdiction and provide a verbal decision on jurisdiction after the break. If the hearing panel decides it has jurisdiction, the hearing panel may:
 - proceed to the issue under appeal; or
 - schedule a hearing date for the issue under appeal; or
- hear each party's position on jurisdiction, reserve their decision on jurisdiction to a later date and directly proceed to hear the issue under appeal, with the parties understanding that if the hearing panel decides it does not have jurisdiction, they will not make a decision on the issue under appeal.

Brief opening statements

The director, followed by the appellant, will make brief opening statements on the decision that is being appealed, specifying the outcome each is seeking from the hearing panel on the matter.

Order of presentations

Each person who will be providing evidence at the hearing will have the opportunity to present his/her information without interruption and then be questioned by the other parties. The order of presentations is outlined at the beginning of the hearing by the hearing chair and is generally as follows:

- the director and witnesses for the director;
- other parties to the appeal, if applicable (e.g. Child and Youth Advocate) and witnesses; and
- the appellant and witnesses for the appellant.

The director is asked to present first so that the appellant can hear what the director has to say about how and why the decision was made. Once the director has finished his/her presentation, the hearing panel will provide the appellant and other parties to the appeal the opportunity to ask questions. The hearing panel will then ask their questions. Next, the director's witnesses will present, one at a time, answering questions from the director or the director's legal counsel. They will then be questioned by the appellant or the appellant's representative, the other parties to the appeal and the hearing panel members.

If there are other parties to the appeal, such as the Child and Youth Advocate, he/she will present his/her case and be questioned by the director, the appellant and the hearing panel.

The appellant will present information to the hearing panel in the same way as the director. After the appellant's submission, the director, other parties to the appeal and the hearing panel will each ask questions. The same process will be followed for each of the appellant's witnesses.

If more than one appellant has appealed a decision of the director (e.g. spouses), and they are not represented by legal counsel or an advocate, one appellant should take the lead in making their presentation. The other appellant may add information to the presentation if desired. Both appellants may participate in questioning and answering questions.

Although the appeal hearing does not follow the formalities of a court proceeding, all persons in attendance are expected to conduct themselves appropriately and show respect and courtesy to all participants in the process. All persons should refrain from making distracting comments and gestures while another person is presenting information to the hearing panel.

Summary of presentations before the close of a hearing

Just before the conclusion of the hearing, the hearing chair will invite the parties to provide a brief summary of the information presented in their case.

- The director summarizes the information already provided to support the position that the decision was correct and should be upheld (confirmed) by the hearing panel.
- The Child and Youth Advocate or child's legal counsel (if applicable) summarizes the information he/she has already provided and tells the hearing panel what action or result he/she, or the child or youth for whom he/she is advocating, is seeking.
- The appellant summarizes the information already provided to support the position that the director's decision should be overturned (reversed) or varied by the hearing panel.

No further questioning or new information is permitted during or after the giving of summaries.

Closing remarks by the hearing panel chair

The hearing panel chair will make closing remarks and advise the parties about the timeline for issuing the hearing panel's decision. The parties are to exit the hearing room at the same time.

After the Appeal Hearing

The hearing panel meets privately after the conclusion of the hearing and reviews all the evidence presented by the parties. The hearing panel determines which evidence is reliable, relevant and important, reviews the relevant legislation and then reaches a decision. The hearing panel will prepare a written decision which includes:

- a statement of the issue considered;
- the findings of fact on which it based its decision;
- the decision; and
- the reason(s) for the decision.

Findings of fact are information presented by the parties that the hearing panel found to be relevant, important and credible. Reasons explain why the hearing panel decided to confirm, vary or reverse the decision of the director.

The hearing panel's decision will normally be sent to the parties by the Appeal Secretariat within 45 calendar days of the appeal hearing. In some instances, it may take longer than 45 calendar days to issue a decision.

Power of The Appeal Panel to Make A Decision

If an appeal is made from a director's decision referred to in section 120(2)(a) to (a.4) or (f3), the Appeal Panel may, subject to this Act and the regulations, confirm the decision or refer to 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), the Appeal Panel may, subject to this Act and the regulations, confirm, reverse or vary the decision, a decision of a director that was made after the matter was referred back to the director for further consideration under section 119(2) may not be appealed to the Appeal Panel under subsection (2).

If a Party is Dissatisfied with the Hearing or the Panel's Decision

Appeals of Appeal Panel Decisions to Court of Queen's Bench

A decision of an Appeal Panel under section 119(2.1) may be appealed to the Court of Queen's Bench by a party to the appeal before the Appeal Panel or by the Minister.

In order to appeal a decision of the Appeal Panel to the Court of Queen's Bench, the assistance of a lawyer will likely be required. Contact information for legal assistance can be found in Appendix 4 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 a party believes the hearing was unfair, he/she 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 and make recommendations. 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

For 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 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 2 - Sample Adjournment Request Form

Adjournment Request

For convenience, this form is being provided in the event that a party to the appeal needs to request an adjournment. Please ensure that a copy is provided to the other parties as well as to the Appeal Secretariat. The hearing panel will review the request and make a decision to grant or deny adjournment. Please note adjournments are only granted in exceptional circumstances.

(Individual Requesting Adjournment)	
Mailing Address:	(Town or City)
(Province)	(Postal Code)
(Home Phone #)	(Work Phone #)
(Cell Phone #)	(Fax Number)
(Appellant Name)	
I am requesting to adjourn (postpone) the hearing for the following reasons:	
Have you notified the other parties of your request to adjourn?	Yes _____ No _____
_____	_____
(Signature of Party Making Request)	(Date)
Approved by:	
_____	_____
(Hearing Chair)	(Date)
Not approved:	
_____	_____
(Hearing Chair)	(Date)
Reasons not approved:	

Please return a copy of this form to:

Alberta Children and Youth Services Appeal Secretariat
 3rd Floor, Sterling Place
 9940 – 106 St. NW
 Edmonton, Alberta T5K 2N2
 Fax: 780-644-6880

Name of Director Representative
Address of Director Representative
Fax Number of Director Representative

Appendix 3 - Sample Withdrawal Form

Withdrawal Form

Only the appellant(s) or their legal counsel may withdraw an appeal. Once the Appeal Secretariat office has been notified of your intent to withdraw your appeal, please confirm your intention to withdraw your appeal by completing this form. Please ensure that copies are provided to the other parties as well as to the Appeal Secretariat.

(Appellant First and Last Name)	
(Appellant Mailing Address)	(Town or City)
(Province)	(Postal Code)
(Home Phone #)	(Work Phone #)
(Cell Phone #)	(Fax Number)
Have you notified the other parties of your request to withdraw?	
	Yes _____
	No _____
If you no longer want to continue with the appeal (are withdrawing the appeal) please tell us why:	
_____	_____
(Signature)	(Date)

Please return a copy of this form to:

Alberta Children and Youth Services Appeal Secretariat
 3rd Floor, Sterling Place
 9940 – 106 St. NW
 Edmonton, Alberta T5K 2N2
 Fax: 780-644-6880

Name of Director Representative
 Address of Director Representative
 Fax Number of Director Representative

Appendix 4 – Resources

Agency	Phone Number	Website
<p>Alberta Foster Parent Association</p> <ul style="list-style-type: none"> Foster Allegation Support Team 	<p>1-800-667-2372</p> <p>1-800-667-2372 (toll free in AB) 780-429-9923 (Edmonton)</p>	<p>www.afpaonline.com</p> <p>www.afpaonline.com/programs_fast.htm</p>
<p>Child and Youth Advocate</p> <ul style="list-style-type: none"> Legal Representation for Children and Youth 	<p>1-800-661-3446</p> <p>1-888-890-2020</p>	<p>www.advocate.gov.ab.ca</p>
<p>Alberta Children and Youth Services Appeal Secretariat</p>	<p>780-422-2775</p>	<p>www.child.alberta.ca/appealpanels</p>
<p>Court of Queen's Bench</p>	<p>310-0000 (and ask for location nearest you)</p>	<p>www.albertacourts.ab.ca/qb/</p>
<p>Law Society of Alberta</p> <ul style="list-style-type: none"> Lawyer Referral Service 	<p>1-800-661-1095</p>	
<p>Legal Aid Alberta</p> <ul style="list-style-type: none"> Law Line 	<p>1-866-845-3425</p>	<p>www.legalaid.ab.ca</p>
<p>Office of the Ombudsman</p>	<p>780-427-2756 Edmonton</p> <p>403-297-6185 Calgary</p>	<p>www.ombudsman.ab.ca</p>

