

# Preparing and Presenting Your Case – Director

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 – Appellant – CYFE Act

Appeal Tip Sheet for Legal Counsel – CYFE Act

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Children and Youth Services

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# Introduction

The Children and Youth Services Appeal Secretariat has provided Presenting and Preparing Your Case – Director – Child, Youth and Family Enhancement Act (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 the 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 – Appellant – Child, Youth and Family Enhancement Act;
- Appeal Tip Sheet for Legal Counsel; and
- 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.
- **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](http://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.

## General summary of the appeal process

The appeal process starts with a Notice of Appeal filed by the appellant under the CYFE Act. In most cases, the Notice of Appeal is brought into the local Child and Family Services Authority (CFSA) office or the Delegated First Nations Agency handling the appellant's case. The director will acknowledge receipt of the Notice of Appeal on the bottom of the applicable page on the form, date stamp it and immediately fax it to the Appeal Secretariat. The Appeal Panel must also receive a signed copy of the director's decision and, if applicable, a copy of the Administrative Review decision. Please provide these documents, if available, to the Appeal Secretariat with the Notice of Appeal. Also include the name of the director's representative and his or her contact information.

Upon receipt of the Notice of Appeal, the Appeal Secretariat contacts you and the appellant 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) as well as a hearing on the issue 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 the community or region where the appellant lives. 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 may only make a decision using the information presented to it during the hearing (verbally or in writing) by you, the appellant, 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 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 appeal 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 appellant 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 any written information you believe supports your position, to the hearing panel;
- explain to the hearing panel why the decision was made and the rationale behind the decision in the context of legislation; and
- bring witnesses, if you choose, to support your case.

## Legal counsel

Legal counsel for the director is provided by Alberta Justice Family Law. If you believe that legal counsel need to be consulted, forward a copy of the Notice of Appeal and any pertinent supplemental information to their office as early as possible for an initial review and discussion of the case.

# Preparing for the Hearing

## Introduction

The hearing is your opportunity to tell the hearing panel what the circumstances of the situation are and how and/or why you believe the decision of the director is valid or 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 prepare for the hearing by:

- writing an appeal summary detailing the information considered in making the decision that has been made;
- reading the documents submitted by the appellant and, other parties, if applicable, (i.e. Child and Youth Advocate);
- planning to explain how the director acted in accordance with the CYFE Act and/or Regulation;
- planning to support your position through witnesses; and
- providing documents (e.g. home assessments, medical reports, psychological reports) supporting the decision made.

If you are referencing past history, 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 the appellant and 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 meeting include:

- 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, the date the review decision was communicated to the appellant; 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 and the appellant 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.

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 jurisdictional issue 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 your appeal summary, 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 appellant, 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 appellant will be required to exchange this information between yourselves and other parties to the appeal (i.e. Child and Youth Advocate), and to submit the information to the Appeal Secretariat for distribution to the hearing panel approximately **21 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 the director's 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 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 what information you need from them;
- understand that the appellant and hearing panel may ask them questions; and
- 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).

## Plan for the appellant's case

Be prepared to respond to what the appellant submits to support his/her position by:

- reviewing the submissions the appellant made;
- understanding the “why” of the appellant’s case (e.g. “Does it make sense?”);
- being prepared to clarify or rebut the appellant’s case by referring to the CYFE Act and/or Regulation and other documents, and through verbal submissions;
- preparing questions to ask the appellant and the appellant’s witnesses; and
- arranging to bring your own witnesses, if you choose, to present information to support your case.

## Prepare to question and be questioned

You will have a chance to ask questions of the appellant and his/her witnesses at the hearing. Think about what you would like to ask and whether the answers will help your case and be 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 you (e.g. “Didn’t you state that...?”).

Be aware that the appellant 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 appellant 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 the 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 hearing 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 appellant 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

As the director, you will be called on to make your submissions first, in exactly the same way as the appellant will be later. You are asked to go first so that the appellant may hear what you have to say about how and why the decision being appealed was made and may prepare questions to ask to clarify or rebut the information that you present.

When presenting your case, it is important to:

- explain your case in a clear and logical way to the hearing panel, noting how the decision 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 appellant and hearing panel have received copies of your documents); and
- speak slowly and clearly so the panel members can take their own notes.

The appellant and, if applicable, the Child and Youth Advocate will be given the opportunity to ask you questions after you have finished your submission and to ask questions of each of your witnesses after each one has finished making submissions. The hearing panel will also ask you questions about your case and the submissions you have made for clarification.

- 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.

### 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 next present information in the same way as you have just done. He/she will make submissions and then be questioned by you, the appellant and hearing panel.

## The appellant's case

The appellant will be called to make his/her case. The appellant will:

- demonstrate to the hearing panel his/her position;
- present evidence witness by witness; and
- refer to documents supporting his/her position.

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

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

You, and then the Child and Youth Advocate if applicable, will have the opportunity to ask questions about the submissions made by the appellant. The hearing panel will also ask the appellant questions about the submissions that he/she provided in order to clarify information or points that were made.

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

## Adjournment

You may request an adjournment from the hearing panel if new material is brought to the hearing by the appellant that you need to review or if you need to consult with legal counsel or a supervisor regarding the new material. You will be expected to give reasons to show the hearing panel that an adjournment is necessary.

## Resolution

You and the appellant are free to talk about resolving the matter being 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 appellant 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 appellant agree to a settlement, the appellant will be requested to withdraw his/her 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 and provide the hearing panel with arguments. 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 of 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. You may want to contact Alberta Justice Family Law for advice. Contact information for the Court of Queen's Bench locations around Alberta can be found online at [www.albertacourts.ab.ca/qb/](http://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 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](http://www.ombudsman.ab.ca).

## Contact Us

If you have any questions or would like more information about appeals 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](http://www.child.alberta.ca/appealpanels)



