

**Summary Report of
Consultation Sessions with Lawyers
held
January 30 and February 2, 2006**



INTRODUCTION

On April 1, 2006, the administrative process for appointing legal counsel for children and youth who receive services under the *Child, Youth and Family Enhancement Act* and the *Protection of Children Involved in Prostitution Act* will be transferred to the Office of the Child and Youth Advocate (OCYA). The transfer provides an opportunity to build on existing policies and practices for appointing legal counsel that work well.

Consultation with key stakeholders is seen as an important part of developing a good administrative process. To this end, the Legal Representation of Children and Youth (LRCY) Project Team scheduled and advertised four face-to-face consultation sessions for lawyers. Two sessions were held in Edmonton on January 30 and two sessions were held in Calgary on February 2.

This report summarizes the input provided at these sessions by the 46 lawyers who attended. A Stakeholder Consultation Guide given to session participants prior to and at the sessions is attached to this report as an appendix.

Note: Individuals who were unable to attend the sessions were invited to submit their comments, suggestions and questions in writing or by calling a member of the LRCY team. Input before or after the consultation sessions is not reflected in this summary report.

CONSULTATION SUMMARY

Communicating the Right to Legal Representation

Session participants stressed the importance of providing children and youth (who are capable of understanding) with information about their right to be represented by a lawyer. While it was acknowledged that caseworkers are required to explain this right at the time of apprehension, many suggested it was not always done in a clear, objective manner. Most believed current practice needs to be improved.

There was agreement that clear expectations coupled with good educational supports would achieve objectivity and consistency in most cases. Participants favoured a mandatory requirement with specific expectations as to how legal right to counsel information is provided. It was noted that contact information for OCYA's lawyer appointment team could be provided at this time.

Further, there was support for a child or youth to sign a form indicating they understood they had a right to their own legal counsel. This form should be witnessed by an independent third party, such as duty counsel.

There was some support for a person other than a caseworker to be tasked with the responsibility to provide information about the right to counsel. Suggested alternatives included duty counsel or a person from the Office of the Child and Youth Advocate. There wasn't consensus on this point but it was noted by several people that duty counsel should be available to speak to children and youth about legal representation in this area.

Most participants agreed a child or youth should have more than one source of information regarding this right. These sources may include other people such as school and youth counselors and group home staff, or resources like a toll free information line or the Internet.

Role of Counsel

There was agreement that a child or youth needs to know what they can expect from a lawyer but most participants felt this information should only come from the appointed lawyer. It was pointed out that it would be difficult to describe what a child or youth should expect since each case, child/youth, lawyer and legal approach is somewhat unique.

Participants recognized the need to respond to a child or youth's queries about what a lawyer can provide when the child or youth is considering asking for a lawyer. Most participants were comfortable with general statements being made about confidentiality, a lawyer's independence, a lawyer being able to provide a voice for a child or youth in proceedings and so on. However, it was suggested the child or youth be referred to duty counsel or a 24-hour legal help service hotline to respond to more specific questions or to provide in-depth information.

Choice of Counsel

There was considerable support for children or youth to have a choice in the selection of a lawyer. This presumed that a child or youth was capable of making such a decision, that a lawyer was already known to them, and that the lawyer was on the appointment roster. It was recommended that this option only be made available to children 12 years of age and older.

Many people noted that providing choice would help ensure continuity from court case to court case. A few people supported allowing a child or youth to choose from the roster even though the child or youth did not specifically name someone. However, the majority felt this would be inappropriate or would make the process overly complicated.

There was some support for allowing a child or youth to request a lawyer who had certain characteristics, if that request could be reasonably accommodated. Examples included requesting a lawyer of a specific gender or requesting a lawyer who had experience working with Aboriginal youth. It was noted that the roster would need a diversity of lawyers for this option to be viable.

There was some discussion about the right of a child or youth to dismiss a lawyer and request another one to be appointed. Although most people expressed support for this to be allowed in certain circumstances, a consensus was not reached on what those circumstances should be.

Matching a Child or Youth with a Lawyer

A number of options for matching a child or youth with a lawyer were discussed. There was majority support for simply taking the next person on the roster list if a child or youth does not ask for a specific lawyer. It was foreseen that some circumstances may prevent a lawyer from accepting the appointment. These circumstances may include:

- Language, cultural or other special needs of a child or youth
- Location
- Age of the child or youth
- Conflict of interest (a lawyer may already represent the Director or someone else in the case)
- Availability

It was suggested lawyers be asked, at the time they are put on the roster, if they wish to place any self-imposed restrictions on being matched with a child or youth. Also, information should be collected regarding any special abilities or expertise a lawyer may have, such as speaking other languages. It was suggested the self-imposed restrictions be checked before making an approach to a lawyer.

A number of participants noted that there can often be delays between a court order for legal representation and appointment of counsel. They emphasized appointment of counsel needs to happen as quickly as possible and preferably before the first court hearing. This requires children and youth or those acting as their guardian to know a child or youth has a right to counsel before entering court.

Several people mentioned that the speed with which a child or youth connects with his or her lawyer after an appointment is made is important. The process should be as streamlined as possible. There was considerable support for setting a response time standard (48 hours was the most common suggestion) for a lawyer to connect with a child or youth following acceptance of an appointment but there was no consensus.

The majority of participants recommended that, at the time of appointment, information to the child or youth about their appointed lawyer be restricted to the lawyer's name and telephone number. The child or youth should be told they are free to call their appointed lawyer.

In turn, lawyers at the sessions said they would expect to be provided with certain details regarding the child or youth at the time of appointment. In addition to contact information, they said they would like information about the child or youth's location, age, siblings, next court date and the names of other people involved in the case (parents, social worker and other lawyers).

It was suggested that a card or booklet with key information concerning the appointment process, their lawyer, court dates, etc. be given to the child or youth as a reference and reminder support.

Appointment Roster Criteria

Eligibility criteria for getting and staying on the appointment roster generated considerable debate. There was general support for individuals on the roster to have some education or training in working with children and youth.

Some participants felt that only those who attended the educational workshops in April 2005 should be on the initial roster. Others believed any lawyer with experience in working with children and youth should be eligible. Some said being a member of the Alberta Bar and expressing an interest in working with children and youth was sufficient.

Regardless of who may be allowed on the initial roster, the vast majority of participants supported some orientation or training be required of those who wish to get on the roster after April 1, 2006. It was noted that the April 2005 educational workshops could serve as a template for a training curriculum or be offered again. Many supported the suggestion that lawyers be required to take continuing education related to working with children and youth in order to stay on the roster.

Other factors mentioned as possible eligibility criteria were:

- Years of experience working with children or youth receiving services under the *Child, Youth and Family Enhancement Act* and the *Protection of Children Involved in Prostitution Act*.
- Years as a member of the Alberta Law Society.
- A conflict of interest check.
- A formal code of conduct commitment.

No consensus was reached on any of these. Mentoring was suggested and supported by many as a useful tool that would help lawyers overcome inexperience and apply best practices in working with children and youth.

A few participants referenced the Ontario Law Society, which has some recommended criteria for lawyers wanting to work with children and youth.

Awareness of the Process

Participants supported LRCY's intention to raise broad awareness of the change in appointment responsibility and of the new appointment process. The Project Team was reminded that content and materials for children and youth need to be simple, clear and appealing. Posters, brochures and the Internet were all suggested tools. The content needs to be age appropriate and sensitive to literacy and language limitations.

It was noted that awareness needs to be widespread among adult stakeholders as well and reach foster parents, parents, social workers, court workers, the judiciary, Band Offices, group homes, Native Counselling Centres, school counselors, police officers and others who are likely to have contact with children and youth.

Some participants suggested LRCY produce an information handout for children that lawyers can use as well.

Transparency of the Process

Participants agreed implementation of the process should be as open and transparent as possible. Information should be easily accessible and produced in electronic and print formats. Participants supported publishing criteria, standards, policies, procedures, dispute resolution mechanisms, the roster list and other information as a method of making LRCY's administrative process transparent. They stressed the importance of setting and communicating clear parameters for core issues like roster appointments and billing rules.

While some advocated a detailed accounting of appointments, the majority favoured providing global numbers only. It was noted that the *Freedom of Information and Protection of Privacy Act* and other confidentiality restrictions would limit what could be published. Regardless, participants supported an annual reporting of LRCY activity, number of cases and appointments, and other core statistics.

Evaluation of the Process

Participants agreed evaluation of the process was important but the majority cautioned that reviewing a lawyer's performance would be inappropriate. Some disagreed with this view, suggesting it would be valuable for a lawyer to receive feedback about whether his or her involvement was helpful, particularly from a child or youth.

A number of people suggested that evaluation of the process should not be restricted to children/youth and lawyers but include other stakeholders such as social workers, secure facility staff, judges and foster parents.

One person suggested an evaluation panel of stakeholders be created while another suggested an annual town hall discussion with lawyers to review the effectiveness of

the appointment process. It was noted that developing an evaluation framework needs to have the input of a variety of key stakeholders and would benefit from the involvement of key groups such as the Family Law Subsection of the Alberta Law Society.

Fees and Billing

Many participants expressed concern with the financial constraints placed upon them when asked to represent a child or youth. It was noted that the 25 hour maximum currently applied by Legal Aid is often insufficient to provide a child or youth with adequate legal counsel and support. While hours can be extended, a few individuals related that it is an arduous process. A number of participants cautioned that this artificial ceiling, coupled with low hourly rates and insufficient compensation for travel and other expenses, may result in a number of capable lawyers electing not to go on the LRCY roster.

A number of participants noted administration requirements of appointed lawyers including the accounting of time and expenses needs to be streamlined to avoid confusion, frustration, unnecessary paperwork and delays in payment.

APPENDIX

Stakeholder Consultation Guide



Legal Representation for Children and Youth Project

Stakeholder Consultation Guide

February 2006

About this Guide

This consultation guide provides background and information that will help stakeholders provide input to the Legal Representation for Children and Youth (LRCY) Project. Several aspects of the LRCY Project are highlighted in this guide. These are areas under development where it would be particularly helpful to have stakeholder opinions and comments.

Questions in this guide are designed to help stakeholders focus their thoughts and responses. Of course, stakeholders are welcome to comment and make suggestions regarding any aspect of the LRCY Project.

Individuals and organizations that wish to provide written input are asked to forward their comments to the Office of the Child and Youth Advocate, Legal Representation for Children and Youth Project. This can be done in several ways:

- By e-mail to:
lrcy.information@gov.ab.ca
- By regular mail to:
LRCY Project
#430, 9942-108 Street
Edmonton, AB T5K 2J5
- By fax to: 780.644.7227

This consultation guide is available on-line at www.gov.ab.ca/LRCY or by calling 780.644.6951 or 1.888.890.2020.

About the LRCY Project

MANDATE

In March 2005 a joint decision was made by the Ministers of Alberta Justice and Alberta Children's Services to transfer the administrative process of appointing legal counsel for children and youth under the *Child, Youth and Family Enhancement Act (Enhancement Act)* to the Office of the Child and Youth Advocate (OCYA). At a later date, the scope of the project was expanded to include children and youth receiving services under the *Protection of Children Involved in Prostitution Act (PChIP Act)*.

The [OCYA](#) was considered a logical place to house the service because it has a legal mandate to represent the rights, interests and viewpoints of young people who receive services under the two *Acts*. The Child and Youth Advocate operates at arm's length from the Ministry of Alberta Children's Services.

This transfer of responsibility does not affect the process for appointing lawyers for children and youth involved in criminal, civil or custody/access cases. The current process will remain unchanged.

CURRENT APPROACH

The *Enhancement Act* and the *PChIP Act*

describe situations in which a child or youth has a right to, or would benefit from, legal representation. In these situations, a request may be made for legal representation. In addition, under section 112 of the *Enhancement Act*, the Court may direct that a lawyer be appointed to represent a child if the Court is satisfied that the child's interests would otherwise not be well represented.

Alberta Justice's Family Law Branch assigns lawyers for children and youth 11 years of age and younger. This service is paid for by Child and Family Services Authorities. The process is different for children and youth who are receiving services from Delegated First Nation Agencies.

For children and youth 12 years of age and older, the Legal Aid Society of Alberta assigns and pays lawyers to provide representation. Lawyers are selected on a rotating basis from an established roster. Legal Aid receives funding from Alberta Justice to provide these and other services.

GOAL

The goal of the new process is to provide a youth friendly, consistent service that can be accessed from anywhere in Alberta. While LRCY will appoint lawyers for children and youth, it will not be involved in providing legal advice or counsel.

TIMING

Transfer of administrative responsibility for appointing legal counsel for children and youth who fall under the *Child, Youth and Family Enhancement Act* and *Protection of Children Involved in Prostitution Act* will take place on April 1, 2006.

CONSULTATION PROCESS

The transfer to the OCYA provides an opportunity to build on current policies and practices that work well. Information gathering activities such as youth focus groups and a recent project completed in October 2005 by Calgary legal consultant Jonathan Carlzon have helped identify where new or modified policies and procedures may add value to LRCY's administrative process. Mr. Carlzon's report can be accessed on-line at www.gov.ab.ca/LRCY

As part of developing an optimum process that is in the best interests of children and youth, the LRCY Project Team is consulting with lawyers, young people and other stakeholders. Meetings, presentations, consultation sessions, direct mail and the Internet are being used to provide stakeholder organizations and individuals with input opportunities.

The LRCY Project Team has approached the Legal Aid Society of Alberta and Alberta Justice to learn from their experiences, note best practices and work collaboratively toward a smooth transition.

The consultation process will not address the decision to move administrative responsibility to the OCYA. It will also not address amendments to legislation.

Decisions about amending legislation are beyond the scope of the LRCY Project.

Alberta Children's Services will amend Section 112 of the *Child, Youth and Family Enhancement Act* when the legislation is opened for other amendments. The *Protection of Children Involved in Prostitution Act* will also be changed when other amendments are being considered.

POINTS FOR DISCUSSION

Reports and stakeholder input and feedback to date suggest there are certain areas under development where it would be particularly helpful to have stakeholder opinions and comments.

The following section provides a brief outline of these points for discussion and poses some questions. Readers are asked to consider these when providing input and comments.

Points for Discussion

1. EXPECTATIONS OF CHILDREN AND YOUTH

Children and youth may have little experience in client-lawyer relationships. Young people have told us that the court process can be very confusing and frightening. Many have told us that it is not easy for them to contact a lawyer and that they don't know what to expect when they do have a lawyer. They have told us that in some situations they have little or no opportunity to talk to their lawyer before or after court.

LRCY is committed to making information available to children and youth to deal with the concerns they have raised.

Questions to consider:

- 1.1. What can a child or youth expect from a lawyer?
- 1.2. What do they need to know at the time legal counsel is appointed?

2. SERVICE DELIVERY

The appointment of lawyers to represent children and youth respects their right under the *Acts* to have legal representation. The goal of LRCY's administrative process is to provide province wide access to this service in a youth friendly, consistent manner.

The process should be clear and transparent to all. The level of service should be equitable and responsive to the needs of stakeholders and, as much as possible, not limited by geography, process or compensation.

Questions to consider:

- 2.1. Can service delivery regarding the appointment of legal counsel for children and youth be improved? If so, what are the priority areas for improvement?
- 2.2. How can the appointment process developed by LRCY demonstrate transparency, equity and responsiveness?
- 2.3. How can the request for a lawyer be made simple and easy?

3. APPOINTMENT ROSTER

In April 2005, Child Representation Workshops were held in Edmonton and Calgary for lawyers interested in representing children and youth. Approximately 200 lawyers attended. This group will form the first roster from which LRCY will appoint lawyers for children and youth in need of legal representation.

Individuals who attended the April 2005 session but do not want to be on the LRCY appointment roster can opt out. Similarly, lawyers who did not attend the session but would like to be on the roster will be added upon request.

This process is an interim measure until more specific eligibility criteria can be established in consultation with the legal community.

Questions to consider:

- 3.1. What criteria should there be for a lawyer wanting to be on the appointment roster?
- 3.2. How should lawyers be appointed from the roster? (i.e. rotation, best match for the child, location, other criteria?)

4. EVALUATION FRAMEWORK

An evaluation framework is being developed at the same time as the administrative process.

We will use this framework to assess the achievement of specific outcomes and whether implementation of the administrative process is effective.

Specific outcomes will be developed in consultation with stakeholders.

Questions to consider:

- 4.1. Who should be involved in developing the evaluation framework?