

Child Welfare Roster Panel Competencies

Representation of parents and guardians in child welfare cases is a mandated service pursuant to Legal Aid Alberta's Governance Agreement and is a priority area for Legal Aid Alberta (hereinafter referred to as "LAA") staff offices, where we have a specialized team of lawyers who have training and expertise in child protection matters.

Background:

Even though only 1-in-10 children in Alberta is of Indigenous heritage, these children make up almost 70% of those in the child welfare system. This overrepresentation of Indigenous children in care remains consistent, and Alberta's is among the highest in Canada.

Systemic issues and many socioeconomic factors including the legacy of the residential school system and the Sixties Scoop, differing worldviews about family and responsibility for children, and distrust between Indigenous people and government have had an impact. The result is that Indigenous families and children have not been effectively served by the system that is supposed to see to their safety and well-being.

In 2022, LAA established a Child Welfare Panel to ensure the lawyers taking child welfare certificates had experience, cultural competency and knowledge of relevant the child welfare legislation provincially, federally, and locally (where appropriate) and could provide quality representation to individuals involved in the child welfare system. An ever-changing legal landscape requires refinements by LAA to ensure roster lawyers possess the requisite knowledge and experience to competently conduct these matters. LAA has developed Quality Standards for LAA Certificates, (the "Child Welfare Standards").

Core Competencies:

Any LAA roster lawyer who has been practicing child welfare law for a minimum of three years with approximately 33% of their practice in Alberta being child protection work is eligible to apply to join the Child Welfare Panel. Lawyers practicing in rural locations where child welfare files are not as prevalent may be considered even if they do not meet the 33% requirement. To be considered for the panel, you must have been counsel on record for a parent on a child welfare matter in Alberta and have conducted at least ten LAA certificates or the equivalent number of private retainer child welfare files in the last three years to completion involving contested trials and/or contested hearings and have:

- i. conducted at least three contested initial custody or access hearings,
- ii. participated in at least three Judicial Dispute Resolutions (if utilized in your jurisdiction),
- iii. prepared for and/or conducted at least two temporary guardianship trials,
- iv. prepared for and/or conducted at least three permanent guardianship trials.

Applicants must also demonstrate the following competencies:

1. **Significant knowledge of and experience in child welfare proceedings under *Child, Youth and Family Enhancement Act* (hereinafter referred to as “CYFEA”), the CYFEA Regulations and Children Services Enhancement Act Policy Manual Manual including the case law in the reading list attached as Appendix A to the Child Welfare Standards. In addition, counsel must have an understanding of the interplay between CYFEA and the *Family Law Act* as it relates to private guardianship, guardianship, and other parenting arrangements. A strong knowledge the rules of evidence is necessary as they relate to running a child welfare trial. Counsel should have experience in conducting all aspects of a child welfare file from running initial custody hearings, negotiating resolutions to conducting a child welfare trial.** Some ways lawyers may demonstrate this competency include: (a) by describing how much of the lawyer’s practice is devoted to family law, (b) by describing how much of the lawyer’s practice is devoted to representing parents or children in child protection matters, (c) by summarizing how many child welfare files, including the number of trials the lawyer has conducted over the previous three years, and (d) by listing any educational seminars or other continuing professional development opportunities the lawyer has undertaken in relation to child welfare law.
2. **Specific education and experience in representation of Indigenous individuals in the child protection matters.** Applicants must demonstrate an appreciation of the challenges faced by Indigenous individuals in the child protection and criminal justice system. Lawyers must have a deep understanding of the issues faced by Indigenous peoples and the continuing impacts that colonialism plays in their family’s lives. ***An Act Respecting First Nations, Inuit and Métis Children, Youth and Families Manual including the caselaw in the reading list attached as Appendix A to the Child Welfare Standards, the United Nation Declaration on the Rights of Indigenous People, the Truth and Reconciliation Commission’s Recommendations, the Missing and Murdered Indigenous Women and Girls Inquiry’s Call to Justice and the Office of the Child and Youth Advocate Special Report on the Overrepresentation of Indigenous children in the Child welfare system in Alberta are required reading.*** Some ways lawyers may demonstrate this competency include: (a) by listing educational seminars or other continuing legal education the lawyer has undertaken in relation to cultural competency, (b) by estimating how many child welfare files they have handled over the past three years where their clients have been Indigenous and they have made arguments regarding these sources, (c) by describing some serious, interesting, or reported child welfare cases the lawyer has been involved in or (d) any other related work they have done to promote the Indigenous families interests in child protection proceedings.
3. **Strong communication, problem solving, conflict management, resolution focused and negotiation skills in working with families involved in the child welfare system.** This includes, for example, interest or experience working with families from Indigenous and marginalized communities, newcomers to Canada, families who are experiencing domestic violence, poverty,

addiction, in addition to family breakdown. Experience in working with and managing the expectations of parents with mental health and addictions is required. In addition, familiarity with the agencies and programs that serve families involved in the child welfare system would be an asset. Some ways lawyers may demonstrate this competency include: (a) by listing educational seminars or other continuing legal education the lawyer has undertaken in relation to negotiations, child welfare mediation, or healing circles or restorative justice initiatives or any of the issues listed above that may cause parents to come into contact with Children's Services, and (b) by demonstrating your knowledge of the key resources available to assist child welfare families in your geographic area of practice.

Conditions of Panel Members:

A commitment to continuing legal education in the specific area of child protection is required of all panel members. Child Welfare Panel lawyers are expected to seek out continuing legal education opportunities relevant to the competencies listed above and complete at least six hours per year of professional continuing education in the area of child protection. **Failure to complete the six hours of Continuing Legal Education in the area of child welfare and provide proof thereof may result in your removal from the Child Welfare Panel.**

This may include a combination of:

- Attending educational sessions, seminars, or webinars offered by LAA's staff or roster lawyers or others in the area of child protection.
- Attending educational sessions on child protection offered by a recognized organization or associations including but not limited to Legal Education Society of Alberta ("LESA"), Legal Representation of Children and Youth ("LRCY"), Association of Family and Conciliation Courts ("AFCC"), Canadian Bar Association ("CBA"), National Family Law Conference Wahkohtowin Lodge, University of Alberta Faculty of Law or other private educational opportunities that may be offered from time to time.
- Reading treatises, academic papers and caselaw relevant to child protection.
- Undertaking cultural competency awareness sessions or other educational opportunities that helps the lawyer gain a greater understanding of the challenges facing Indigenous children and families.

Lawyers on the Child Welfare Panel will be counsel on record for the clients for whom they accept LAA certificates. **They must attend all substantive court dates and cannot delegate substantive court appearances such as initial custody hearings, JDR's trials, access hearings or trials to an agent, a student-at-law or to a non-child welfare panel member.**

LAA reserves the right to limit the number of child welfare certificates a panel member can have at any given time to ensure clients receive the appropriate attention and level of service.

Lawyers require direct or extensive experience in the areas listed above, but if a lawyer lacks directly requisite relevant experience in an area, the lawyer must work with a mentor for one year prior to becoming a member of the panel. In addition, the lawyer must be committed to attend any educational sessions on child welfare offered by LAA and be prepared to participate in mentorship opportunities and/or file reviews.

Lawyers who do not have three years of experience with approximately 33% of their practice in child welfare must find a child welfare mentor lawyer who is on the Child Welfare Panel. The junior lawyer must work with that mentor for at least one year prior to applying for the panel to gain hands-on experience in child welfare matters prior to their application for the panel being considered. The junior lawyer and the child welfare mentor must formalize the mentorship arrangement in writing. Mentorship must at a minimum include:

- a) shadowing on at least five client interviews,
- b) shadowing or speaking to at least 10 matters in child welfare docket,
- c) shadow at least two initial custody or access hearings,
- d) shadow attend at least one JDR's (if utilized in your jurisdiction),
- e) shadow and attend at least one TGO trials,
- f) shadow and attend at least one PGO trial.

The lawyer with less than three years of active practice in child welfare must keep track of their mentoring hours with specific time records regarding what they have done or observed with the mentor and must submit that information, co-signed by the mentor, to verify the mentorship hours and experiences have been completed and attach same to their Child Welfare Panel application. The time sheets should follow the requirements for time records that are set out in the LAA Administrative Policies and Guidelines.