
GUIDELINES FOR THE INVOLVEMENT OF CHILD'S COUNSEL IN THE FAMILY GROUP CONFERENCING PROCESS

**Developed by the FGC Ontario Provincial Resource
and the Office of the Children's Lawyer (OCL),
in consultation with CAS counsel
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HOW THE OCL BECOMES INVOLVED IN FAMILY GROUP CONFERENCING

Under section 20.2(1) of the *Child and Family Services Act (CFSA)*, if a child is or may be in need of protection, a children's aid society must consider whether alternative dispute resolution could assist in resolving any issue relating to the child or a plan for the child's care. As this section references both children who have been found to be in need of protection and children who *may* be in need of protection, ADR can take place either before or after a protection application has been initiated. (As well, under sections 145.2 and 156.1 of the *CFSA*, ADR may also be used to resolve issues relating to the variation or termination of openness orders.) Family Group Conferencing (FGC) or Family Group Decision-Making (FGDM) is one of the prescribed methods of ADR under the *CFSA*.

Section 20.2(3) of the *CFSA* states that if a society or a person (including a child) who is receiving child welfare services proposes that ADR should be undertaken, the Children's Lawyer may provide legal representation to the child, if in the opinion of the Children's Lawyer such representation is appropriate. To give effect to this provision, the Ministry of Children and Youth Services requires that children's aid societies notify the OCL whenever ADR will be undertaken. The Children's Aid Society is responsible for notifying the OCL of an ADR referral.

When ADR takes place in a case that is already before the court, child's counsel is often already appointed for the child under section 38 of the *CFSA*. In such cases, the OCL is notified of the ADR through the lawyer who has been appointed to represent the child.

When ADR takes place in a case that has not yet been brought to court, societies must notify the OCL using a Notice Form prescribed by the Ministry of Children and Youth Services. This procedure must also be used in cases that are before the court, but where no counsel has been appointed for the child in the proceedings. The Notice Form is reviewed by one of the the ADR Intake Coordinators (currently Carolyn Leach and Linda Feldman), who will determine whether or not it is appropriate to appoint counsel for the child.

INTAKE PHASE

The Children's Aid Society is responsible for notifying the OCL of a referral to Family Group Conferencing or Family Group Decision-Making.

At intake, the FGC/FGDM Coordinator will clarify the issue of OCL involvement with the referring CAS. If FGC/FGDM is proposed after a court proceeding has been started and child's counsel is already appointed for the child, the FGC/FGDM coordinator will confirm that the CAS has informed child's counsel of the proposed ADR. If the OCL is not involved (either because FGC/FGDM is proposed while the CAS is working voluntarily with a family – "pre-court" – or because the OCL has not been appointed in the court proceedings), the FGC/FGDM coordinator will confirm that the CAS has submitted the Notice Form to the OCL. The FGC/FGDM referral will only be activated once the OCL has been notified of the ADR referral. In those cases where the OCL is not already involved, the CAS should advise the family of the need to notify the OCL, of the possibility that counsel may be appointed for the child, and of the role that the OCL will play in the FGC/FGDM.

The ADR Intake Coordinator at the OCL will make best efforts to process Notice Forms within 7 days of receipt. The referring child protection worker will be advised by telephone whether the OCL intends to appoint counsel for the child in the FGC/FGDM process. If the FGC/FGDM coordinator is identified on the Notice Form, that person will also be contacted by the OCL ADR Intake Coordinator to advise of the decision whether to appoint child's counsel. The referring child protection worker will receive a letter confirming the OCL intake decision. FGC/FGDM coordinators who wish to be routinely copied with these letters should contact one of the OCL ADR Intake Coordinator (currently Carolyn Leach at (416) 314-8062 and Linda Feldman at (416) 314-8096).

At intake, the FGC/FGDM coordinator must also clarify the child's legal status (any orders for custody of or access to the child, orders placing the child in someone's care, or orders for society or Crown wardship), the status of any child welfare or other family court proceedings, and the existence of any other court orders (such as restraining orders or orders for no access) that might have implications for the FGC/FGDM process.

PREPARATION PHASE

Roles and Responsibilities

It is the responsibility of both the FGC/FGDM Coordinator and child's counsel to work in conjunction with each other, complementing each other's roles from the onset of the FGC/FGDM process.

The FGC/FGDM Coordinator's role is to coordinate the FGC/FGDM process throughout its various stages. This includes supporting and guiding the family throughout the process; ensuring and guiding service providers' collaborative and complementary participation in the process; and, above all, supporting the enhancement of the family's voice in every decision-making process. The family's voice entails both the collective voice of the family and the individual voices of each member. (See the FGC/FGDM Coordinator's Manual for more detail.)

The role of child's counsel is to ensure that the child's voice is heard in the decision-making process, and that issues that are important to the child and relevant to his or her interests are addressed by the plan. In cases where the OCL represents a minor parent, the role is similarly to ensure that the minor parent's voice is heard and his or her legal interests are protected.

It is important to note that when the OCL is also appointed in the court proceedings, child's counsel will be taking a position in court with respect to any proposed plan that is put forward. For this reason, the involvement of child's counsel in the FGC/FGDM process is often essential, as it helps to avoid a situation where time is spent developing a plan that is later disputed in court. As well, where child's counsel has been involved with a child and family for some time, he or she will likely have a valuable perspective on the issues. This in turn can enhance the value of the plan developed by the family. Finally, in such cases, child's counsel often has a long-standing and trusting relationship with the child in question. This allows child's counsel to ensure that participants in the FGC/FGDM process have a complete and nuanced understanding of the child's perspective on his or her family situation. Counsel is also well-positioned to support the child in making his or her views known to family members in a powerful and sensitive manner.

Contact with the Child

The FGC/FGDM Coordinator and child's counsel will consult with one another at an early stage about the best way for the child's voice to be heard in the FGC/FGDM process. This will include some discussion about the child's views (if these are already known to child's counsel), the child's attendance at the FGC/FGDM, whether the child will be asked to prepare a written statement, and who will act as a support person for the child if he or she actively participates in the family private time.

In every case in which the OCL is involved, the FGC/FGDM Coordinator's first contact with the child will be collaboratively orchestrated with child's counsel. The coordinator will speak with child's counsel before making arrangements to meet with the child, so that counsel will have the option of attending this meeting as well. In most cases, child's counsel will want to attend. An initial joint meeting

can serve to minimize role confusion for the child and ensure that the child receives the same information from both their lawyer and the Coordinator about what will be happening. This process should also be followed in cases where the OCL acts for a minor parent.

The purpose of the Coordinator's contact with the child will be to prepare for and discuss the FGC/FGDM process. As a general rule, issues pertaining to the child's voice and discussions about the child's views and preferences will take place between the child and his or her counsel. Where applicable, the OCL and FGC/FGDM Coordinator will discuss who will help the child prepare a written statement for use at the conference. Any written statement prepared by the child for use at the family meeting will usually be prepared with his or her counsel. Should the Coordinator have a discussion with the child in which the child raises issues relating to his or her voice in the process, the Coordinator will consult with child's counsel as to the appropriate response. This practice guideline will ensure that there is a consistent understanding of the child's voice, and that the child is not interviewed unnecessarily on multiple occasions by different professionals about the same issues.

Consent Form

The consent form signed by the parents (or alternative) should give the FGC Coordinator permission to share information necessary for the successful completion of the FGC/FGDM process with child's counsel. The information shared with child's counsel will include:

- The identity of the participants involved in the process
- Any information regarding safety or that might otherwise impact the child's involvement in the FGC/FGDM process (for example, any concerns that a child may be triangulated between two significant adult family members)
- Any information deemed significant to the OCL's role and responsibilities
- The summary that is prepared by the Coordinator and CAS and shared with all potential participants

Where counsel is assigned for a child prior to the commencement of a court application, the CAS should also ensure that the parents have consented to the release of CAS information to child's counsel. As noted elsewhere, it is important that child's counsel have access to the CAS file in order to properly understand the family's issues and the child's needs. Obtaining this consent in advance will avoid delay after the appointment of child's counsel.

Confidentiality Agreement

The OCL will sign the Confidentiality Agreement, along with the other participants in the FGC/FGDM process.

Scheduling of Conference

Child's counsel is to be included in discussions related to scheduling of the conference. The OCL recognizes how challenging it can be to schedule a conference involving a large number of family members and that conferences often take place on weekends and/or after work hours. As such, child's counsel will be aware of the need to be flexible around scheduling these meetings and will not insist that the FGC/FGDM be scheduled to accommodate normal working hours. OCL counsel will do their best to make themselves available at dates and times that will maximize the attendance of family members, in the spirit of supporting the family's preferences and empowerment. However, if OCL counsel has determined (in consultation with the Coordinator) that it is important for him/her to attend the conference, consideration must be given to his/her availability when scheduling.

It is also important to note that child's counsel requires a reasonable amount of time to prepare for the conference, particularly if child's counsel has not previously been involved with the child or family. In addition to meeting with the child (at least two or three times), counsel will need to review the CAS file, speak with significant family members, and obtain information from important collateral sources. In cases where child's counsel has already been involved in the court proceedings, this preparatory work will already have been completed by the time the matter proceeds to FGC/FGDM. This work is necessary for child's counsel to have an understanding of the child's needs and the elements that will be critical to the success of a plan. However, if the OCL is notified of the proposed FGC/FGDM at the time that the referral is made, the time required should not be overly problematic as it will coincide with the preparatory work that the FGC/FGDM Coordinator is doing with the family. Child's counsel will ensure that the Coordinator is advised in advance of the conference of both the child's views and of child's counsel's perspective on the concerns that should be addressed by the plan.

Goals, Concerns, and "Bottom Lines"

The CAS goals, concerns, and "bottom lines" to be addressed in the conference are developed by the CAS, in consultation with the Coordinator, early in the preparation stage. These will be made known to child's counsel at the earliest possible opportunity so that any issues relating to bottom lines can be addressed early in the process – ideally, before finalized bottom lines are presented to the

family. This is critical in order to avoid a situation where child's counsel is unable to endorse a plan developed by the family because he or she believes that the bottom lines do not adequately protect the child's interests.

If child's counsel is of the view that clarifications, refinements, alterations or deletions should be made to the bottom lines, these will be addressed directly with the child protection worker as soon as possible. Any resulting changes that are made to the bottom lines must be discussed immediately with the Coordinator.

Once finalized bottom lines are presented to the family, only serious circumstances, imminent changes, or new information relating to the child's safety and wellbeing, would justify bottom line changes.

If the CAS and child's counsel cannot reach an agreement about the bottom lines, it may become necessary to delay, postpone, or cancel the family meeting.

Coordinator's Role in supporting family in designating "support persons"

The FGC/FGDM Coordinator is responsible for ensuring that the child has sufficient supports during the Private Time, and will identify an appropriate support person for the child if necessary. This will be done collaboratively with the family, the child, and child's counsel.

If child's counsel has concerns about a child's participation in the Private Time, or attendance at the conference, these must be conveyed to the Coordinator as soon as possible. This would also apply to a situation where child's counsel acts for a minor parent, and is concerned about the minor's vulnerability.

FAMILY MEETING/CONFERENCE PHASE

The OCL does not anticipate that counsel for the child will attend at the conference in every case. Child's counsel may elect not to participate if counsel deems that their active participation in the conference is not necessary for the child's perspective to be represented, given the issues to be addressed (ie housekeeping or hygiene issues, building in supports for a kin caregiver, or identifying services and resources to address concerns about a parent). The extent to which child's counsel participates in the conference is determined on a case-by-case basis and is a decision that will ultimately be made by child's counsel.

Opening of Conference

All family members, service providers, the CAS, and child's counsel (where counsel has decided to attend the conference) participate in this first phase. Goals, concerns and bottom lines to be addressed are reviewed and clarified in order to ensure that they are understood by all participants.

If the child is in attendance, child's counsel will either support the child in sharing his or her hopes for the conference with the group, or will provide an outline of the child's views on his or her behalf. If the child is not present, child's counsel will ensure that the child's views are made known to the group. Child's counsel may also identify issues that, from the child's perspective, will be critical elements of any plan.

When the OCL is representing a minor parent, it is possible that counsel may wish to attend the opening of the conference. This is an issue that will be addressed on a case-by-case basis between the FGC/FGDM Coordinator, the CAS, and the OCL.

Private Time

The CAS, the OCL and service providers do not participate in the family's private time. Child's counsel may choose to be available to the child during this time, in the event the child wishes to canvass an issue with his or her counsel or develops concerns about something that is happening in the family's private time.

Accepting of plan

In the final phase of the meeting, the family presents their plan. The CAS, child's counsel, and any service providers present will have an opportunity to clarify and request that any goals, concerns or bottom lines be addressed more fully. The family may be able to address these items on the spot, or may opt to re-caucus in Private Time to refine the plan.

If there is no agreement with parts of the plan, the rest of the plan may still be accepted. The family may decide to come back for a follow-up FGC/FGDM to address specific parts of the plan.

If the plan adequately addresses all concerns and bottom lines, it will be accepted. However, it is conceivable that child's counsel and the CAS worker may disagree about whether the plan adequately addresses the bottom line concerns. As well, child's counsel may be unable to accept a plan that is inconsistent with the child's stated views. If child's counsel cannot endorse the family plan, he or she may request that further information be obtained (e.g. assessment, home study, drug/alcohol testing) or may propose that further deliberation take place around the contentious aspect of the proposed plan. If no

agreement can be reached, child's counsel may request that the matter return to court. If no court application has been commenced, child's counsel will consider whether the matter should be brought before the court for determination.

If deemed appropriate, child's counsel may meet with the child privately during this time to ascertain whether the child's voice has been adequately heard. Any concerns can be brought back to the last part of the meeting with all participants.

When the OCL is representing a minor parent, it is possible that counsel may wish to attend the final phase of the conference. Alternatively, counsel may wish to be available to the minor parent by telephone for consultation at this and other stages of the conference. This is an issue that will be addressed on a case-by-case basis between the FGC/FGDM Coordinator, the CAS, and the OCL.

Copies of the plan are made available to all participants after the conference. They will also be provided to any OCL counsel who may not have attended.