



Conferencing Guidelines

for use in conjunction with the

Youth Criminal Justice Act

Effective April 1, 2003

This publication was developed by the Youth Criminal Justice Act Steering Committee, which includes representatives of the Legal Services Board and the Department of Justice, Government of the Northwest Territories.

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YOUTH CRIMINAL JUSTICE ACT (YCJA) CONFERENCING GUIDELINES

This document was prepared as a tool for guiding how conferences, as defined in the YCJA (ss. 18(e), 19, 41), might operate. The “YCJA Conferencing Guidelines” apply to GNWT Justice staff and may be used by Justice Canada Criminal Prosecutions (Crown) and RCMP.

Background:

The *Youth Criminal Justice Act* provides in s. 19(1) that a conference may be convened “for the purpose of making a decision required to be made under this Act” by:

- a Youth Justice Court Judge or Justice of the Peace
- the Territorial Director or a Youth Worker
- a RCMP Officer
- a Crown Prosecutor

Application:

The guidelines proposed in this document apply to conferences convened by the territorial director or a youth worker.

The Crown and the RCMP may wish to adopt these guidelines. In any case, the guidelines indicate the expectations and understandings of GNWT Justice staff regarding their role.

Procedure and participation in conferences convened by a Youth Justice Court Judge or a Justice of the Peace fall within the jurisdiction of the Court. In the absence of Youth Justice Court Rules governing conferencing, it is anticipated that direction will be provided by the presiding Judge or Justice of the Peace. In such circumstances, a presiding Judge or Justice of the Peace may find these GNWT Justice guidelines to be useful.

Rules vs. Guidelines:

Under s. 19(3), the Attorney General of a Province/Territory can establish rules for conducting conferences. These rules would only apply to conferences that are not convened by or in a youth justice court. If rules are established, conferences must always be convened and conducted according to those rules. (s. 19(4))

Given the novelty of conferencing provisions, GNWT Justice has taken the position that it would be preferable to create guidelines that govern conferences called by GNWT Justice employees or involving designated programs (i.e. Justice Committees). These

guidelines generally clarify the duties of departmental staff while regulating practice and procedures and creating reporting forms. The Crown and the RCMP may also use these guidelines.

These guidelines are consistent with the general principles and specific provisions of the Act that govern conferencing.

While offering flexible guidance as we develop knowledge of the potential problems of conferences, these policies can be amended to reflect that knowledge once obtained. Further, it is possible to create rules later if experience shows rules to be more appropriate. It is more difficult to eliminate rules and replace them with policies.

Youth Justice Court Rules

Under s.17 of the YCJA, the Youth Criminal Justice Court may create rules governing conferences convened by a Youth Justice Court Judge or Justice of the Peace. The Territorial Court has indicated it does not anticipate the creation of such rules at this time.

General

Conferences can be categorized by function:

1. pre-charge – regarding the use of extrajudicial measures and sanctions or providing the RCMP or the Crown with assistance in determining issues related to pre-trial detention;
2. advisory to a court; and
3. post-sentencing case management (corrections) – as called by a youth worker or the provincial / territorial director.

YCJA CONFERENCING GUIDELINES

1. Purpose and Application

- 1.1 The YCJA is intended to encourage, among other priorities, multi-disciplinary and restorative justice approaches in the youth justice system. One of the mechanisms for doing so is the “conference”.
- 1.2 These guidelines shall apply to all conferences convened by GNWT Justice staff. This does not include GNWT Justice employees who, being assigned to work in the Courts, are operationally part of the Courts and not departmental staff.
- 1.3 These guidelines may apply to Justice Canada Criminal Prosecutions (Crown) and RCMP.

2. Definitions

- 2.1. A “conference” is defined as “a group of persons who are convened to give advice in accordance with section 19”. (s. 2)
- 2.2. A conference may be convened “for the purpose of making a decision required to be made under this Act” by (s. 19(1)):
 - a Youth Justice Court Judge or Justice of the Peace
 - the Provincial/Territorial Director, and a Youth Worker
 - a Police Officer
 - a Crown Prosecutor
- 2.3 The “Territorial Director” is the person so appointed by the Minister of Justice (NWT) and is also known as the Director of Corrections. Under s. 22 of the Act, the Territorial Director may authorize a person to perform the functions of that position. For the purposes of conferences, this will include the Managers of Young Offender Facilities, Program Coordinators, Case Managers, Community Corrections Supervisors, and Community Corrections Workers.
- 2.4 A “police officer” for the purpose of calling a conference may include a member of the RCMP.
- 2.5 A “decision maker” is the person who makes a decision based upon the information derived from the conference. The “decision maker” may be the “Territorial Director” (or designate), a Youth Worker, a Police Officer, or a Crown Prosecutor. The decision maker may or may not be a participant in the conference.
- 2.6 A “youth justice committee” as defined under the Act may act as a conference (s. 18(2)(e)); however, it does not have the authority to call a conference. (s. 19(1)).

- 2.7 Judicially ordered conferences are convened either by a Youth Justice Court Judge or a Justice of the Peace. These types of conferences are not governed by these guidelines.¹

3. Principles

- 3.1 A conference shall be designed to provide information and assistance at any stage of proceedings to a person working with a youth who is subject to the *Youth Criminal Justice Act*. (s. 19(1))
- 3.2 “The mandate of a conference may be, among other things, to give advice on appropriate extrajudicial measures, conditions for judicial interim release, sentences (including the review of sentences) and reintegration plans.” (s. 19(2))
- 3.3 Community input can provide valuable assistance to people who are responsible for making decisions about youth involved with the justice system.
- 3.4 A conference must be conducted in a manner and place that will not cause harm or trauma to the young person or the victim of the crime.
- 3.5 A conference provides opportunities for participation in a process that is voluntary, safe and respectful of all participants.
- 3.6 All participants of a conference will be provided with the information they need to understand why the conference is being held and what their role might be during a conference.
- 3.7 Efforts will be made to ensure that all participants of a conference can contribute fully and freely. If a person who has been invited to participate in a conference has concerns about the involvement of other conference members, the decision maker or facilitator shall decide how to proceed.
- 3.8 Advice derived from a conference shall be considered by the decision maker and shall be applied at their discretion where it is not contrary to the law.

4. When a conference can be called

- 4.1. Holding a conference shall not unreasonably delay the making of any decision or any court proceeding involving a youth.

¹ The Youth Justice Court will provide direction on the type of conference, participants and expected results. The Court will appoint a person to fulfill the role of conference facilitator.

- 4.2. Further to 2.1 and 2.2 above, a conference may be called to gather information on the following:
- community programs, individuals or other supports that exist to assist a youth;
 - specific needs of a youth and ways to respond more effectively to those needs;
 - requirements to ensure the that a victim of crime is safe and that their needs are met;
 - what can be done to repair the harm done;
 - how to maximize rehabilitative programming within an open or secure custody facility;
 - ways to reintegrate a youth back into his or her community; and
 - ways to keep a youth out of trouble.

For more information, see Appendix B attached.

5. Participants

- 5.1 As a general rule, people who are directly affected by decisions arising from a conference or who may have information that would assist a decision maker should be asked to participate. Those affected may include professionals (teachers, social workers, court workers) community justice committees, victim(s), family members or other members of the community and the young person.
- 5.2 It may not be appropriate for a young person to participate where:
- the anticipated discussion is likely to reveal matters of a personal nature with respect to another person (i.e. the victim) which would constitute an unreasonable violation of that person's privacy, or that is likely to put that person's safety at risk;
 - a youth's participation would undermine a participant's sense of safety and this concern cannot be accommodated in any other way; or
 - the anticipated discussion is likely to place the youth at risk.
- 5.3 Alternate forms of "participation" may be appropriate where a party is unable to attend in person, is uncomfortable participating, or is not within the community. Alternatives might include allowing a participant to provide written materials, identifying someone to attend in their place, or participating through a telephone-conference call.
- 5.4 Who should participate in a conference will be determined by answering the following questions:
- What is the purpose of the conference?
 - Who will be directly affected by the decision made as a result of the conference?

- Who has information that will be beneficial for the purposes of the conference?
- Will participants be able to speak fully, freely, and safely? Do additional participants need to be added to ensure this is possible?

5.5 The Territorial Director or others who can convene a conference² may create separate operational directives to identify individuals or groups who should or will participate in specific types of conferences (i.e. a reintegration conference to assist in making plans for release from custody). Should directives of that nature be created, they shall make specific reference to the role of the victim (or lack thereof) in each type of conference.

5.6 Where operational directives are created in response to these guidelines, a copy shall be forwarded to GNWT, Department of Justice, Policy & Planning. This copy will be available for distribution upon request.

6. Conference Facilitator

6.1 It is expected that different people will act as facilitators during different types of conferences.

6.2 As a general rule, the person who has called the conference (the decision maker) will be the facilitator. See Appendix B, attached for details.

7. Roles of Participants

7.1 Role of the Decision Maker

When a conference is to be held, the decision maker shall:

- identify the specific question(s) for which advice or input is sought;
- determine who will facilitate the conference (by type of conference). This may be the decision maker or the decision maker may delegate this responsibility to someone else; and
- suggest who should participate.

7.2 Role of Facilitator

7.2.1. Pre-conference

Prior to the conference being held, a facilitator shall:

- Find a suitable location if participants are all within the same community.
- Make arrangements for alternate means of participation when necessary participants are unable to attend, do not feel safe or are uncomfortable participating, or are not within the community (referred to in 5.3 above).

² This is intended to specifically exclude youth workers.

Prior to a conference being held, a facilitator shall also contact the identified participants. During that contact, the facilitator shall:

- determine if participants are willing to participate;
- identify any concerns participants have about participating (i.e. about safety) and attempt to address those concerns or re-examine whether a conference is possible;
- when necessary, consult all parties on who should attend;
- explain why the conference will be held – which should include providing the specific question(s) for which advice is being sought;
- provide any necessary background information to assist the participants in their task; and
- identify the time and place for the conference.

7.2.2 At a conference

During a conference, a facilitator shall provide the following information:

- why a conference was called (i.e. for what purpose does the decision maker of the conference seek advice);
- what will be done with the information or decision coming from the conference (i.e. the decision maker will consider the advice of the group);
- that what is said in the conference is private information and should be shared only with the person who convened the conference, not with anyone outside the group³; and
- that they must not “publish”⁴ the name of a person under 18 – whether the young offender or a victim.

A facilitator is also responsible to ensure that participants:

- Have sufficient time to provide advice.
- Each have an opportunity to provide their views (this may require significant preparation to understand the underlying reasons that might stop a participant from active participation, and creating mechanisms to overcome this);

A facilitator shall also participate as appropriate to ensure participants have all the necessary information.

³ Department of Justice staff and Corrections contractors already sign oaths of confidentiality. Community Justice will soon provide their volunteers with similar oaths for signature. Signature of these will become a contingency for receipt of funding. Feedback has been requested on whether it would be appropriate to create a standard warning which a facilitator/convenor should use at each conference or if there is value to requiring non-Justice related people (i.e. volunteers, citizens) to sign an oath noting that there would be no recourse should that oath be broken.

⁴ Section 110(1) of the YCJA provides that “no person shall publish the name of a young person, or any information related to a young person, if it would identify the young person as a young person dealt with under this Act.” Section 111(1) provides similar protections for a child or young person who is a victim or accessible to the general public defined by the YCJA as “the communication of information by making it known or accessible to the general public through any means, including print, radio or television broadcast, or telecommunication or electronic means.” Section 138 makes contravention of s. 110(1) or s. 111(1) a hybrid offence subject to a maximum of 2 years jail if proceeded by indictment or the general penalties provided for summary conviction offences.

7.2.3 After a conference

At the conclusion of a conference, the facilitator shall:

- Complete a report of the conference process and result (Appendix A).
- Add a copy of the completed report to any file created by the decision maker. If a justice committee was convened to participate in the conference, the Regional Justice Coordinator shall keep a record of the conference.
- If a facilitator is not the same person as the decision maker, the facilitator will provide a copy of the report to the decision maker.
- Where the results of a conference are, by agreement or court order, to be shared with another agency (i.e. GNWT Community Justice or GNWT Community Corrections), a copy of this report shall be provided to that agency.

7.3 Participants (community, volunteer and professional)

The role of other participants in a conference is restricted to providing information and advice, which will help the decision maker reach a decision.

7.4 Experts

On occasion, a decision maker may require the services of an “expert” to assist the conference in making recommendations. An expert may include a medical or psychological professional, or a person with traditional knowledge.

8. Right to counsel

8.1 Section 10(2)(d) provides that a youth must be advised of his or her right to a lawyer and be given a reasonable opportunity to consult with a lawyer before consenting to be subject to an extrajudicial sanction. This remains the responsibility of the RCMP.

8.2 Section 25 of the YCJA provides:

“A young person has the right to retain and instruct counsel without delay, and to exercise that right personally, at any stage of proceedings against the young person and before and during any consideration of whether, instead of starting or continuing judicial proceedings against the young person under this Act, to use an extrajudicial sanction to deal with the young person.”

8.3 There is no ongoing role for defence or crown counsel that requires their participation at a conference unless a conference is to be held within a court proceeding other than that outlined in 8.4.

8.4 When a youth is involved in a conference the purpose of which is to advise an RCMP officer or Crown prosecutor whether to use an extrajudicial sanction rather than start or continue judicial proceedings against the youth, the youth has a right

to consult counsel. Section 25 does not include a “right” which would require counsel to participate in a conference. However, a youth may ask for counsel to be present during any conference in which the youth participates. Should a youth make such a request, a conference will not be held in the absence of counsel.

9. Costs

9.1 Costs of a conference might include:

- Room rental.
- Coffee service.
- Expenses of an expert witness⁵.
- Long distance telephone costs.
- In exceptional circumstances (see 10.7 below), travel costs for a participant.

9.2 Costs of a conference are the responsibility of the decision maker.

9.3 If a Youth Justice Court Judge or a Justice of the Peace convenes a conference outside of court proceedings, all costs associated with that conference shall be paid by the Corrections Service and charged back to the Court Services Division, GNWT Department of Justice.

9.4 Every effort should be taken to find the most cost-effective means of facilitating participation in a conference.

9.5 A participant will not be considered by the Department of Justice as a “witness” of the court for the purposes of travel or expenses.

9.6 Before any travel arrangements may be made for a participant to attend a conference, a facilitator must be able to indicate why the travel is necessary and that no suitable alternative to in-person participation is possible.

9.7 If a conference is convened by a youth worker, any travel arrangements must be pre-approved by the Territorial Director.

⁵ Participants who offer expert advice within the conference (whether medical, psychological or traditional knowledge) will not be paid if they have a personal interest in the conference (i.e. a victim, the offender or family support persons) or those already under salary or receiving another form of compensation (including community justice committee honoraria) for their participation in the conference.

**APPENDIX A
CONFERENCE REPORT**

Name of Youth: _____

Charge(s) Laid: _____ Charge(s) being Considered: _____

Conference Convened by: RCMP ? Crown ?
 Youth Court ? TD/Youth Worker ?

Purpose of Conference: _____

Date Conference held: _____

Community: _____

Conference Coordinator: _____

Conference participants (by name and interest/position):

Approximate duration of conference: _____

Result of Conference:

Completed Conference Report provided to:

Court ? Crown ? Territorial Director ?
Parent ? Defense ? Regional Justice Coordinator ?
Youth ? Victim ? Other: _____

Conference Coordinator (signature)

Date

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APPENDIX B – CONFERENCE COORDINATOR & POTENTIAL PARTICIPANT LIST

Who May Convene a Conference	Purpose	Facilitator	Who might participate
RCMP	<ul style="list-style-type: none"> • To advise on whether warning, caution or referral should be made, matter sent to Justice Committee or a charge laid. • To advise if EXJ sanction should be used and if so advise of different programs available. 	RCMP	<ul style="list-style-type: none"> • Justice Committee • Parents/victim • Youth • Child protection worker • Teacher
RCMP	<ul style="list-style-type: none"> • To determine on whether sanction was complied with and if not, seek advice on whether a charge should be laid. 	RCMP	<ul style="list-style-type: none"> • Justice Committee other group or body that dealt with youth
RCMP/Crown / Justice of the Peace / Judge	<ul style="list-style-type: none"> • To advise on whether there are alternatives to seeking pre-trial custody. 	Pre-court = RCMP or Crown Within JP Court = RCMP Within other court = As directed by Judiciary	<ul style="list-style-type: none"> • Justice Committee • Crown • Child protection worker • Youth /family • Youth worker • Other responsible person
Judge	<ul style="list-style-type: none"> • To advise on terms of judicial interim release • To advise on referral to “Child Welfare” (s. 35) • To recommend sentence (s.41) • To advise on level of custody • To advise on appropriate conditions including prohibition order • To advise on decision for continued custody 	As directed by Judiciary	<ul style="list-style-type: none"> • Justice Committee • Elders • Youth worker • Child protection worker • Victim • Others as may be affected by the decision

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Who May Convene a Conference	Purpose	Facilitator	Who might participate
Youth worker	<ul style="list-style-type: none"> • To provide information for PSR. 	Community Corrections worker	<ul style="list-style-type: none"> • Parent • Youth • Victim • Teacher • Child protection worker • Justice Committee/elders
Judge	To advise on various reviews: <ul style="list-style-type: none"> • Month/annual reviews • Prohibition order • Placement of youth 	As directed by Judiciary	<ul style="list-style-type: none"> • Any relevant person (probably corrections staff)
Territorial Director or youth worker	To advise on: <ul style="list-style-type: none"> • Contents of progress reports • Reintegration leave or community supervision • Release conditions • Continuation of custody • Cancellation of conditional supervision (unlikely) 	TD or designate	<ul style="list-style-type: none"> • Any person involved in supervision/education/Counseling • Community members (?) • Others affected by decisions (i.e. victim)

COMMUNITY CORRECTIONS CONTACT LIST

**Department of Justice, HQ
Yellowknife, NT
Coordinator, Community Corrections**

**Ph: (867) 920-8922
Fax: (867) 873-0299**

**YELLOWKNIFE Regional Office:
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4903 49th Street
Box 1320
Yellowknife, NT X1A 2L9**

**Ph: (867) 873-7747
Fax: (867) 873-0406**

* Supervision provided to Rae Edzo, Wha Ti, Gameti, Wekweti, Dettah, N'dilo, Norman Wells, Fort Good Hope, Colville Lake, Lutsel k'e, Deline and Tulita.

**HAY RIVER Regional Office:
Corrections Service
Dept of Justice, GNWT
Greenway Building
105 31 Capital Drive
Hay River, NT X0E 1G2**

**Ph: (867) 874-6284
Fax: (867) 874-6248**

* Supervision provided to Hay River Reserve, Enterprise, Kakisa, Fort Providence, Fort Smith, Fort Resolution, Fort Liard, Fort Simpson, Trout Lake, Jean Marie River, Nahanni Butte and Wrigley.

**INUVIK Regional Office:
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Dept of Justice, GNWT
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Bag Service 1
Inuvik, NT X0E 0T0**

**Ph: (867) 777-7335
Fax: (867) 777-4934**

* Supervision provided to Tuktoyaktuk, Fort MacPherson, Holman, Paulatuk, Sachs Harbour, Tsiigehtchic and Aklavik.

As at: March 2003