

Appointment and Review Procedures for Youth Advocates

This Protocol replaces the first appointment Protocol issued in April 1999 as a result of an agreement between the New Zealand Law Society and the then Principal Youth Court Judge, His Honour Judge David Carruthers. This Protocol, which will come into force on 1 February 2007, has been developed, again after consultation during 2006 between the Principal Youth Court Judge, the Administrative Youth Court Judges and the Youth Justice sub-committee of the New Zealand Law Society. The Protocol is a guide and aid to assist the Youth Court to exercise its discretion under s323 Children, Young Persons, and Their Families Act 1989 to appoint suitably qualified and appropriate Youth Advocates. While it provides for a list of suitable Youth Advocates, it does not restrict the Youth Court's discretion to appoint any barrister or solicitor in any case when the Court considers it appropriate to do so.

1. Background

- 1.1 "Youth Advocate" means a barrister or solicitor appointed pursuant to s323 Children, Young Persons, and Their Families Act 1989 (the Act) to represent a child or young person.
- 1.2 Section 323 of the Act relevantly states:
 - (1) Where a child or young person appears before a Youth Court charged with an offence,... the Court shall appoint a barrister or solicitor to represent that child or young person in those proceedings.
 - (2) Where the Court appoints a barrister or solicitor under subsection (1) of this section, it shall, so far as practicable, appoint a barrister or solicitor who is, by reason of personality, cultural background, training, and experience, suitably qualified to represent the child or young person...
- 1.3 As a result of the first protocol for the appointment of Youth Advocates, described above, a practice has arisen whereby an appropriate list of barristers or solicitors is maintained by the Registrar of each Youth Court. From that list, counsel are assigned by the Court as a Youth Advocate in any particular case. The following guidelines are promulgated to establish fair and open procedures for the establishment of such a list from which Youth Advocates are assigned, the appointment of Youth Advocates to the list, a review of the list from time to time, and renewal or replacement of Youth Advocates on such a list.

- 1.4 There is a continuing need to have an appropriate number of Youth Advocates on the list for each Court, but to limit numbers to no more than are necessary to ensure a sufficient volume of work to allow for the development of specialist knowledge and to maintain familiarity with local programmes, practitioners, other participants within the youth justice system, and currency as to local Youth Court practices, and legal precedents.
- 1.5 There is also the need for regular review so that legal representation in the Youth Court does not become a “closed shop” and which permits other counsel with fresh ideas, energy and enthusiasm for this work being periodically introduced to it.
- 1.6 There is also a need to establish clear guidelines when additional Youth Advocates need to be appointed outside the regular reviews, and to establish a process to respond to any complaints that challenge a Youth Advocate’s continuing fitness to practice in the Youth Court.
- 1.7 The list of Youth Advocates established under these guidelines shall be used as a guide only to assist the Youth Court in identifying appropriate counsel to represent a child or young person. The Court’s focus is always on the appointment of a Youth Advocate who is suitably qualified to represent the young person in the particular case before the Youth Court. For avoidance of doubt, it is emphasised that the Youth Court will be free to appoint a Youth Advocate from outside the list, if the circumstances so require, in the exercise of the Court’s absolute discretion under s323 of the Act.

2. Number of Youth Advocates

- 2.1 In each Court there will be a list of the counsel available to accept appointment as Youth Advocates.
- 2.2 This list is to be maintained by the Registrar and should be available to be viewed upon request.
- 2.3 The size of the Youth Advocate list will necessarily be limited and is to be determined by the Regional Administrative Youth Court Judge or by his or her delegate, who should be a Youth Court Judge sitting in the Court to which the list relates. The size of the list will be determined after consultation with a nominee of the President of the relevant District Law Society, and after consultation with Youth Court staff, existing Youth Advocates, representatives of the Youth Aid Section of the New Zealand Police, and a representative from Child, Youth and Family with current experience in youth justice issues. If a vacancy arises in any Youth Advocate list in any Court, the procedure set out in these guidelines shall be used.

3. **Procedure for Appointment of New Youth Advocates to the Youth Advocate List**

- 3.1 Counsel should apply in writing to the Registrar for appointment to the List of Youth Advocates in a particular Court. If the size of the Youth Advocate list is already appropriate and full, the applicant shall be advised that his/her application will be considered when a vacancy arises or at the next three-yearly review set out at paragraph 4, following.
- 3.2 The application will be forwarded to an Appointment Panel for that Youth Court for consideration, either immediately, or when a vacancy in the Youth Advocate list arises, or at the regular three-yearly review set out at paragraph 4, following.
- 3.3 The Panel is to consist of:
- a senior Youth Advocate from the local Youth Court (who shall be appointed by the existing Youth Advocates by agreement;
 - if practicable, a senior Youth Advocate not from the Youth Court to which the appointments are to be made;
 - a nominee of the President of the relevant local District Law Society;
 - wherever practicable, a community representative from an agency or organisation from within the area, dealing with young offenders. This person is to be appointed by the Administrative Youth Court Judge, (or his/her delegate, who should be a Youth Court Judge sitting in the Court to which the list relates) after consultation with Youth Court staff, existing Youth Advocates, representative of the Youth Aid section of the New Zealand Police, the representative of Child, Youth and Family Services with current experience in youth justice issues;
 - the Registrar of the Court (also as Secretary).

The Panel will consult closely with:

- a local senior representative of Child, Youth and Family with current experience in youth justice issues appointed by the Regional Manager for Child, Youth and Family;
 - a local representative from the Youth Aid section of the New Zealand Police.
- 3.4 The role of the Panel is to recommend names of counsel for inclusion on the list of Youth Advocates to be kept at the Youth Court from whom Youth Advocates are appointed to represent young persons in proceedings in the Youth Court. The recommendation shall be made to the relevant Administrative Youth Court Judge or to his or her delegate, who should be a Youth Court Judge sitting in the Court to which the list relates, who shall approve or modify the list as appropriate. If necessary, the Administrative Youth Court Judge or

his/her delegate shall consult with the Panel before making his/her final decision.

- 3.5 The Panel, in making its recommendation, will have regard to the criteria in s323(2) of the Act, above, and in its consideration of those criteria, the following further factors are to be taken into account:
- Knowledge of the objects, principles and provisions of the Children, Young Persons, and Their Families Act 1989, including a knowledge of the procedures under s14(1)(e) of the Act, relating to child offenders;
 - Knowledge of, and experience in, criminal law;
 - Knowledge of specialist Police practice as it applies to young offenders;
 - Knowledge of the roles of the various participants in the youth justice system;
 - Ability to relate to and communicate with young persons and their families;
 - Awareness of community groups and resources available;
 - Knowledge of education and training facilities available in local areas;
 - Evidence of knowledge and experience of local cultural organisations;
 - Knowledge of restorative justice principles and practice;
 - Relevant qualifications, and training and whether there is a commitment after appointment by the applicant to attend all relevant training and education programmes that may be offered by the New Zealand Law Society at a local, regional or national level;
 - Any other evidence, including references; and
 - Where there is a secure Youth Justice Residential facility close to the Court to which the person has applied to be listed as a Youth Advocate, a demonstrated knowledge of the secure care provisions of the Children, Young Persons, and Their Families Act 1989.

Counsel whose names are included on the list of Youth Advocates will be required to undergo, as directed by the Panel, such training and mentoring programmes as may be made available by the New Zealand Law Society for first time inclusions on a Youth Advocates list.

- 3.6 The Administrative Youth Court Judge, or his/her delegate, may approve an appointment of counsel to the list as a Youth Advocate with or without specified conditions, for instance, whether a Youth Advocate may be assigned in respect of purely indictable charges.
- 3.7 In its procedures, the Panel shall observe the principles of natural justice.
- 3.8 In the event of an applicant being refused inclusion on the Youth Advocate list, the applicant may apply to the Principal Youth Court Judge for the matter to be reconsidered. In such a case the Principal

Youth Court Judge will advise the Panel and the Regional Administrative Youth Court Judge of the request for reconsideration. The Panel or the Regional Administrative Youth Court Judge shall forward a written report to the Principal Youth Court Judge explaining the declination. Such report must be served on the applicant seeking reconsideration, and he or she shall have a right of reply in writing.

The Principal Youth Court Judge will review and reconsider the decision made and advise the applicant, the Regional Administrative Youth Court Judge and the relevant Appointment Panel of his/her final decision in writing.

4 Procedure for Review of Youth Advocate Lists

- 4.1 Every three years there will be a review of existing Youth Advocates lists. The Registrar is to administer and organise the review. Among other things, the Registrar will request that the local District Law Society advertise the review in its newsletter or otherwise as appropriate.
- 4.2 The Registrar shall send a letter to all Youth Advocates currently on the Youth Advocate list, asking them to indicate whether or not they wish to remain on the list.
- 4.3 The list shall be reviewed by a Review Panel. The Review Panel shall be comprised in the same manner as the appointment Panel in paragraph 3.3 above. In all its procedures, the Review Panel shall observe the principles of natural justice.
- 4.4 The role of the Review Panel is to recommend to the Regional Administrative Youth Court Judge who should be included, or continue to be included, in the list of Youth Advocates for the Court in question, and if any existing Youth Advocate should be removed from the list. The Administrative Youth Court Judge will consider the recommendation and will approve or modify the list of Youth Advocates as appropriate. If necessary, the Administrative Youth Court Judge shall consult with the Panel, before making his/her final decision.
- 4.5 The Panel should consider the following:
 - The recent performance of the Youth Advocate;
 - The regularity of appearances by the Youth Advocate in the Youth Court;
 - Any complaints that have been received about the Youth Advocate;
 - The extent to which the Youth Advocate has attended and participated in local, regional, national Youth Advocate training seminars/workshops;
 - The views of a representative from Child, Youth and Family with current experience in youth justice issues, and of a representative from the Youth Aid Section of the New Zealand Police;
 - Where new Youth Advocates are required to be appointed, all the matters in paragraph 3.5, before;

- Any other matters that it may consider to be relevant.
- 4.6 If the review identifies any concerns relating to a Youth Advocate included in the current list of Youth Advocates, the Youth Advocate must be given an opportunity to respond, in person and with representation if the Youth Advocate so requires.
- 4.7 The Review Panel will then make its recommendation to the Regional Administrative Youth Court Judge in writing as to who should be included or continue to be included in the list of Youth Advocates for the Court in question.
- 4.8 In respect of any such decision there will be a right of review of that decision to the Principal Youth Court Judge. In such a case, the Principal Youth Court Judge will advise the Panel and the Regional Administrative Youth Court Judge of the request for reconsideration. The Panel or the Regional Administrative Youth Court Judge shall forward a written report to the Principal Youth Court Judge, explaining the decision. Such report must be served on the applicant seeking reconsideration, and he or she shall have a right of reply in writing.

The Principal Youth Court Judge will review and reconsider the decision and advise the applicant, the Administrative Youth Court Judge and the Review Panel of his/her final decision in writing.

- 4.9 In considering its review of the Youth Advocates list, the Review Panel is not to be bound by any presumption of reappointment of current Youth Advocates to the reviewed list. Over time, the composition of the list will change so that the most suitable applicants or re-applicants at that time are included or re-included. On review, the Panel is to balance the need for continuing experience and demonstrated suitability against the applications of other counsel fresh to the list but nonetheless with s323(2) criteria and the more specific prescriptive talents and abilities enumerated in paragraph 3.5 above.

5 **Procedure for Appointment of Additional Youth Advocates Between Three-Yearly Reviews**

- 5.1 It may be that between the three-yearly reviews of Youth Advocates, the number of available Youth Advocates falls below the minimum number of Youth Advocates determined by the Regional Administrative Youth Court Judge or his/her delegate, as in paragraph 2.3 above. Alternatively, the size of the list may need to be increased. As set out in paragraph 1.7 above, the Youth Court will always be free to appoint a Youth Advocate from outside the list, if the circumstance so require.
- 5.2 In such event, the vacancy in the Youth Advocate list for that Court and the need for written applications shall be advertised in the local Law Society newsletter or as appropriate and additional Youth Advocates shall be appointed by an Appointment Panel on the same basis as in paragraph 3 above.

- 5.3 Interim appointments to the Youth Advocate list may be made by the Regional Administrative Youth Court Judge to ensure that suitable representation is always available to children or young persons appearing in the Youth Court. Existing applicants for appointments to the list of Youth Advocates, as in paragraph 3.1 above, shall be considered for interim appointment to the list but not on an exclusive basis. These interim appointments should be considered and confirmed for recommendation as additions to the Youth Advocate list to the Regional Administrative Youth Court Judge by an Appointment Panel as soon as is reasonably practicable, on the same basis and using the same process as in paragraph 3 above.

6 Specific Complaints about a Youth Advocate and Removal of a Youth Advocate from the Youth Advocate list

- 6.1 If a complaint is received about the performance of a Youth Advocate and it raises issues about his/her continuing fitness to be included as a member of the Youth Advocate list, then the matter should be referred to a specially convened Complaint Panel (as set out at paragraph 6.3) for consideration and the Regional Administrative Youth Court Judge shall be notified.
- 6.2 If, in the opinion of the Regional Administrative Youth Court Judge, a complaint raises issues of sufficient seriousness regarding the suitability of a Youth Advocate to continue in the role, the Regional Administrative Youth Court Judge may suspend a Youth Advocate from the List, pending further investigation and resolution of the complaint. In such a case, that process shall be completed within one calendar month.
- 6.3 That Panel will be comprised in the same way as an Appointment Panel and a Review Panel in Parts 3 and 4 above. The Complaint Panel shall follow the rules of natural justice, and among other things, shall ensure that the Youth Advocate is informed of the nature and detail of the complaint, is given the opportunity of being represented, and is able to be heard before the Panel.
- 6.4 The role of the Complaint Panel is to make a recommendation to the Regional Administrative Youth Court Judge in respect of the complaint received about the Youth Advocate. It may recommend to the Regional Administrative Youth Court Judge that the name of the Youth Advocate be:
- a. removed; or
 - b. suspended for a specified time and for a specified reason from the Youth Advocate list; or
 - c. retained on the Youth Advocate list but subject to reasonable conditions for a reasonable period of time.

- 6.5 Grounds upon which a Youth Advocate can be so removed or suspended from the list of Youth Advocates or retained on the list but subject to reasonable conditions for a reasonable period of time, shall be as follows:
- Removal or suspension of the Youth Advocate from the roll of legal practitioners by the New Zealand Practitioners Disciplinary Tribunal under the Law Practitioners Act 1982 or the Lawyers and Conveyancers Act 2006;
 - Professional misconduct in carrying out duties as a Youth Advocate;
 - Failure to carry out duties of a Youth Advocate responsibly and competently;
 - Conduct unbecoming of a Youth Advocate or inconsistent with this role and rendering him or her unsuitable for continued inclusion on the Youth Advocate list.
- 6.6 Upon receipt of a complaint the Registrar, on behalf of the Panel, shall advise the Youth Advocate in writing that the complaint has been received and will be considered by the Panel and that consideration may be given to the removal of his or her name from the list of Youth Advocates. The Registrar shall also notify the Regional Administrative Youth Court Judge and shall advise the Youth Advocate of such notification.
- 6.7 Such a notice from the Panel to the Youth Advocate shall:
- Specify the reasons why the Panel may consider the removal of the Advocate's name, or suspension, from the list
 - State the right of the Advocate to make submissions and representations in writing within 21 days from the date of service of the notice
 - Set out the intention of the Panel to consider removing counsel from the list at the expiration of 21 days unless counsel has indicated in writing that he or she opposes removal
- 6.8 Upon the expiration of the 21-day time period, the Panel shall convene to consider whether or not the Youth Advocate should remain on the list. In the event that the Youth Advocate has made submissions or representations opposing the removal, a hearing shall be convened by the Registrar.

At any opposed hearing, the Youth Advocate shall be entitled to be represented and shall be entitled to call witnesses in support.

The Panel may, after hearing the complaint, recommend to the Regional Administrative Youth Court Judge the removal or suspension of the Youth Advocate from the list.

In all its processes, the Panel shall observe the principles of natural justice

- 6.9 The Regional Administrative Youth Court Judge shall consider any recommendation made by the Panel and shall make a final decision and will advise the Youth Advocate accordingly.
- 6.10 In respect of any decision of the Regional Administrative Youth Court Judge to remove or suspend a name from the list of Youth Advocates, there will be a right of review of such decision to the Principal Youth Court Judge. This review will be on the same basis as the review set out at paragraphs 3.8 and 4.8 before.
- 6.11 These guidelines will not limit the right of the appropriate District Law Society or other statutory authority to consider any complaint about a Youth Advocate.

7 TRANSFER OF A YOUTH ADVOCATE TO A NEW REGION OR A NEW COURT

- 7.1 In the case of Youth Advocates who are listed on a Youth Advocate list in one Youth Court who move to another part of New Zealand and/or who wish to practise in another Youth Court, the following processes shall apply:
 - 7.1.1 There shall be no presumption that the Youth Advocate in question will automatically be appointed to the list for the Court in the area in which the Youth Advocate wishes to work. The Youth Advocate will notify the relevant Regional Administrative Youth Court Judge of his or her intention to seek inclusion in the Youth Advocate list in the new Court.
 - 7.1.2 If there is an existing vacancy in the Youth Advocate list, or a need for a new Youth Advocate to be appointed, the transferring Youth Advocate will be considered according to the procedures set out in paragraph 5. However, the transferring Youth Advocate will not have to satisfy the Panel of the matters set out in paragraph 3.5, other than those matters requiring knowledge of local facilities and resources, although the Panel may have regard to the matters listed in paragraph 4.5.

8 REVIEW OF THESE GUIDELINES

- 8.1 The Principal Youth Court Judge, the Administrative Youth Court Judges and the New Zealand Law Society will review this Protocol/set of guidelines within three years of its promulgation.

Dated at Wellington, 1 December 2006