

Community Legal  
Education Association



L'Association d'éducation  
juridique communautaire

205 – 414 Graham Avenue, Winnipeg, Manitoba R3C 0L8

Phone: (204) 943-2382 Fax: (204) 943-3600

E-mail: [info@communitylegal.mb.ca](mailto:info@communitylegal.mb.ca) Web: [www.communitylegal.mb.ca](http://www.communitylegal.mb.ca)

# Right To Counsel

Once young persons become involved in the justice system there is an obligation to make sure that their rights are fully protected. The right to retain and instruct counsel is one of the most important rights. The young person is given this right, whether the matter will be dealt with through court proceedings, or extrajudicial measures.

## WHO MUST INFORM THE YOUNG PERSON?

Arresting officers and officers in charge have the obligation to inform the young person of their right to a lawyer without delay. The young person's rights must be explained by the police in language that the young person can understand, and the young person is to be given a reasonable opportunity to obtain a lawyer.

Courts and review boards also have a duty to inform young persons of their right to a lawyer at various stages in the court proceedings. When a young person is not represented at a hearing, the judge or review board must advise the young person of the right to hire a lawyer. The young person must be given a reasonable opportunity to hire one.

A judge or review board must also inform the young person about the availability of legal aid if the young person has been unable to find a lawyer.

If the young person appears in court without a lawyer, the judge or review board may allow a suitable adult to assist the young person with the court proceedings.

## RIGHT TO REMAIN SILENT

When stopped or questioned by police, a young person has the same right as an adult to remain silent and not make a statement. The young person does not have to say anything, but should identify himself or herself if asked. The young person does not have to talk to the police or answer any questions. Young persons stopped while driving must show the police their license, automobile insurance and proof of ownership.

The right to a lawyer becomes especially important if the young person decides to make a statement. For such a statement to be admissible in court as evidence, the young person must have given the statement voluntarily. Also, before giving the statement, the young person must have been told that they're under no obligation to make a statement, and that

the statement may be used as evidence against them. The young person must have been advised of the right to consult with a lawyer and a parent. They must also be given a reasonable opportunity to exercise that right. Young persons have the right to make as many inquiries as needed to find a lawyer, speak to their lawyer, parents or guardian in private, and have their lawyer present if they decide to make a statement. Such a statement must be made in the presence of their lawyer or other persons consulted by the young person. If the young person waives the right to counsel, the waiver must be acknowledged on videotape, audiotape, or in writing.

### **THE YOUNG PERSON'S RIGHT**

The right to retain and instruct a lawyer is the right of the young person, not the young person's parent or guardian. The young person has a right to a lawyer that will represent their best interests and follow their instructions. Lawyers are to provide advice based on their experience and knowledge, but the young person's instructions must be followed.

If a judge decides that the interests of the parent or guardian and the young person conflict, or that the best interests of the young person are not being properly served, the judge shall make sure that the young person is represented by a lawyer independent of the parent or guardian.

### **WHEN NOT REPRESENTED**

If a young person is not represented and enters a plea, then the court has additional obligations. The court must make sure that the charge is clearly explained and understood by the young person. The consequences of making such a plea must also be explained. The court must explain to the young person that they may plead guilty or not guilty, and also discuss the different hearing options, if applicable.

If the young person is pleading guilty to an offence that may result in an adult sentence, the court must explain the procedure for applying for a youth sentence.

If the court is not satisfied that the young person understands the charge and their options, then the court must direct that the young person be represented by a lawyer.

### **SPEAKING TO A LAWYER**

Statements made to a lawyer are confidential and they cannot be disclosed without the young person's permission. This is so that an individual can speak freely to a lawyer and provide the lawyer with all of the important facts. The lawyer will be better prepared to defend the young person if they are aware of all of the relevant facts.

---

*Community Legal Education Association gratefully acknowledges Youth Justice Policy, Department of Justice Canada, for funding this project.*

*Written by: Jennifer Dunik, Community Legal Education Association*  
© 2014