

**Talking Together: An Alternative Approach to the
Mainstream Adversarial Child Welfare System**

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*“This Program empowers families that are in crisis because it allows them
to have a say in what the final solution will be.”*

– Celina Reitberger, B.A., B.Ed., LL.B

Nishnawbe-Aski Legal Services Corporation’s (“NALSC”) Talking Together Program is a child welfare protection mediation program that assists parents and families with their child welfare issues involving Tikinagan Child and Family Services (“Tikinagan”), Dilico Anishinabek Family Care (“Dilico”), and other Children Aid’s Societies. The Program works as an alternative to the court process (that frequently results in children being removed from their home community) by bringing people together to discuss the family problems in a non-judgmental way.

Celina Reitberger, Lawyer and previous Special Projects Manager at NALSC was instrumental, along with other stakeholders, in getting this Program up and running. The Talking Together Program first started as a pilot project funded by Legal Aid Ontario for the communities of Mishkeegogamang, Wahgoshig and Timmins. The Program is now fully funded by the Ministry of Child and Youth Services and is available throughout all the NAN communities, as well as in Sioux Lookout, Timmins, Thunder Bay and surrounding regions.

As of November 30, 2006, mandated child and family services (Children Aid’s Societies) are obliged under section 20.2 of the *Child and Family Services Act* to consider whether alternative dispute resolution, such as the Talking Together Program could assist any issue relating to a child who may be in need of protection, and with respect to a native child, to consult with the child’s band or community to determine whether an alternative dispute resolution process established by the band, or native community, will assist in resolving the issue.

CHILD AND FAMILY SERVICES ACT
Resolution of issues by prescribed method of alternative dispute resolution

20.2 (1) If a child is or may be in need of protection under this Act, a society shall consider whether a prescribed method of alternative dispute resolution could assist in resolving any issue related to the child or a plan for the child's care. 2006, c. 5, s. 5.

Where child is Indian or native person

(2) If the issue referred to in subsection (1) relates to a child who is an Indian or native person, the society shall consult with the child's band or native community to determine whether an alternative dispute resolution process established by that band or native community or another prescribed process will assist in resolving the issue. 2006, c. 5, s. 5.

Children's Lawyer

(3) If a society or a person, including a child, who is receiving child welfare services proposes that a prescribed method of alternative dispute resolution be undertaken to assist in resolving an issue relating to a child or a plan for the child's care, the Children's Lawyer may provide legal representation to the child if in the opinion of the Children's Lawyer such legal representation is appropriate. 2006, c. 5, s. 5.

Notice to band, native community

(4) If a society makes or receives a proposal that a prescribed method of alternative dispute resolution be undertaken under subsection (3) in a matter involving a child who is an Indian or native person, the society shall give the child's band or native community notice of the proposal. 2006, c. 5, s. 5

Child and Family Services Act, R.S.O., Chapter C. 11,

The Talking Together Program utilizes the circle process to deal with child welfare matters. The Program allows families, no matter how troubled they are, an opportunity to have a voice in how the problems can be fixed for the best interest of the child(ren) and the harmony of the family. The process is inclusive and provides a safe place for all, including children. What is said in the circle, stays in the circle.

HOW THE TALKING TOGETHER PROGRAM WORKS

Referral Process:

1. A referral is made to the Talking Together Program through the Thunder Bay Office.

Note – The referral can be made by anyone, including the child and family services agency, the community or by the family /parent etc.

The Program Manager in Thunder Bay will review the referral to ensure that it is an appropriate matter that can be handled under the Program.

If the matter is appropriate for the Program, the Program Manager will forward the Referral, within 2 days to the appropriate regional Talking Together Facilitator.

2. If the matter is not appropriate for the Program, the Referent will be contacted by the

Program Manager and advised accordingly.

Note – The Program is specific for child welfare matters and does not offer mediation services for straight custody matters not involving child protection concerns.

3. The Talking Together Facilitator will contact the participants within 5 days of the Referral being received to get more information and begin work on setting up a first circle.

Circle Facilitation:

4. Once the Facilitator establishes contact with the parties (ie. Parents, child and family services worker), an initial circle will be scheduled within 15 working days from the date of the Referral.

5. After the Talking Together circle has taken place, the Talking Together Facilitator will provide a copy of the Circle Report to all participants within 5 working days.

Post Circle:

6. Following the initial circle, the Facilitator is responsible for contacting all participants within (15) working days to provide support to participants, to ensure that the Circle Agreement is being followed and to establish a date for a follow-up Circle.

All Talking Together participants, including the child and family services' representatives, will be informed of the confidentiality and the sacredness of the circle, and will be required to sign an "Oath of Confidentiality" prior to participating in the circle.

A referral into the Talking Together Program can happen at any time in a child welfare matter- including, preapprehension or post apprehension. The Program can work proactively with the families before they become involved with the child welfare agency, or the Program will also assist before an apprehension or protection issues are raised. The Program also assists after a matter has become involved with the court system and even after there has been a finding that a child is in need of protection.

The Referral needs to be signed by the parents, indicating that they are agreeing to participate in the Program, which is a voluntary process and does not take away from the parents' legal rights. Further, the Talking Together Facilitator is obligated to advise the parents/families that the process is voluntary and they have a right to seek independent legal advice from a lawyer regarding their child welfare matters, including on issues of customary care and voluntary care agreements, as well as circle agreements.

The Talking Together Facilitator works for NALSC; however, the Facilitator is a neutral party and does not represent or advocate for either side. – parents/family or the child and family services agency. NALSC is committed to ensuring the neutrality of the Facilitator and the process.

At the heart of the process, is the circle. The Talking Together Facilitator works to bring together the family, elders (or ministers), child and family services' representatives (ie. Tikinagan, Dilico) and other support workers, to discuss the issue(s) the family is facing. If an agreement is reached at a circle, it can form the basis of a Plan of Care for matters already before the Courts or a Customary Care Agreement.

An agreement may not be reached until after many circles, if at all, however the process allows parents the possibility of having their child welfare matters addressed outside of the court system in a culturally appropriate milieu.

The Talking Together Program with its less intrusive method of dealing with family problems and protection issues, can alleviate the need for the often costly and adversarial family law court system