

Family Division Department of Justice New Brunswick	Adult and Child Protection and International Child Abduction	DPP Guideline 39 March 10, 2003
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Introduction

Purpose

As adult and child protection matters are of such serious and overriding concern, Attorney's General in New Brunswick have traditionally authorized the services of their agents to protect the broad public interest in such civil proceedings. The ***purpose*** of this guideline is to delineate the limited scope of the Crown Attorney to operate in civil proceedings in the Family Division of the Court of Queen's Bench of New Brunswick.

The Public Prosecutions Branch of the Office of the Attorney General provides Crown Attorneys to represent the interests of the Minister of Family and Community Services in adult and child protection proceedings and appeals under Parts III and IV of the *Family Services Act*. Also, with specific written direction from the Coordinator of Family Cases, the Crown Attorney may be authorized on occasion to represent the Minister of Family and Community Services in certain proceedings in which he is named as third party.

The Branch also provides Crown Attorneys to act as designate of the Central Authority under the *International Abduction of Children Act*.

Exclusion

The Crown Attorney has no authority to operate in civil matters outside the limited scope described in this guideline.

The role of the Crown Attorney is to provide legal advice, research and representation to the Minister of Family and Community Services. As such, the Crown Attorney shall not participate in any investigative process or in any social or substantive decisions with respect to protective care, adult care or child care status. The Crown Attorney shall not attend any ministerial meetings such as Permanency Planning Committee meetings, senior management meetings, case conferences and team meetings.

Where advice sought from the Crown Attorney is not case specific and is rather of general application requiring a departmental policy directive, the Crown Attorney shall refer the protection worker to Legal Services.

Nature of Relationship

Adult and Child Protection

The relationship between the Crown Attorney and the Minister of Family and Community Services is that of solicitor and client. In order to best benefit from the experience and knowledge of his legal advisor, the Minister of Family and Community Services is strongly encouraged to seek and accept the legal counsel of the Crown Attorney prior to filing a protection application and throughout the litigation process. Short of a potential abuse of process or conflict of interest, the Crown Attorney shall ultimately accommodate the directions of the Minister of Family and Community Services.

Abuse of process is narrowly defined to include

- Action by a protection worker based on improper motive
- Insufficient and/or inadmissible evidence to support the application
- Inadequate grounds of fact and/or law to support an appeal.

Where an abuse of process is suspected, the Crown Attorney shall immediately notify the Coordinator of Family Cases as well as the Minister of Family and Community Services. Any verbal notification shall be followed by written confirmation setting out the details of the suspected abuse of process.

In the event of any unresolved disagreement between the protection worker and the Crown Attorney with respect to the commencement of protection proceedings, the protection worker shall consult his/her supervisor and the Crown Attorney shall consult the Coordinator of Family Cases. If, as a result of this consultation, the disagreement

persists, the Coordinator of Family Cases shall consult with the protection supervisor to affect a resolution.

DPP Guidelines – Code of Conduct

New Brunswick Professional Conduct Handbook

Canadian Bar Association Code of Professional Conduct

International Child Abduction

The Crown Attorney acts as the designate of the Central Authority for the Province of New Brunswick under the Hague Convention and does not operate under a solicitor-client relationship with the out-of-country custodial parent.

New Brunswick Child Abduction Protocols

Role of the Crown Attorney

General

The Crown Attorney shall be available, to the extent possible, to protection workers to provide legal advice at all stages of adult and child protection proceedings.

The Crown Attorney shall respond to all inquiries from counsel for the children as well as counsel for the Respondents and any Third Parties.

Court Modules

Protocol between the Office of the Attorney General and the Department of Family and Community Services

Investigation Stage

The role of the Crown Attorney at the investigation stage is limited to providing legal advice and representation as required to the Minister of Family and Community Services, including legal advice with respect to

- Obtaining *ex parte* authorizations to investigate or remove a child from the care of his/her parents and place the child in protective care
- Obtaining *ex parte* authorizations to investigate and remove an abused or neglected adult from a residence and place him/her in protective care

- Proper interview techniques with children to avoid tainting evidence through leading questions or the appearance of coaching

Protective Care Stage

The role of the Crown Attorney at the protective care stage is limited to providing legal advice to the Minister of Family and Community Services with respect to evidentiary issues and to responding to inquiries from counsel for the children and counsel for the potential Respondents.

Application, Pre-Hearing and Hearing Stage

The role of the Crown Attorney at the Application, Pre-Hearing and Hearing Stage is to provide legal advice and representation to the Minister of Family and Community Services, including legal advice with respect to

- Admissibility, sufficiency and weight of documentary, electronic and *viva voce* evidence
- Reasonable preparation of witnesses for court
- Disclosure requirements
- Desirability of appointment of counsel for a child pursuant to section 7(b) of the *Family Services Act*
- Desirability of appointment of counsel for an adult under section 39(8) of the *Family Services Act*
- Requirements for the appointment of a litigation guardian and solicitor pursuant to Rule 7 of the *Rules of Court*
- Need for medical, psychological, psychiatric, social or other assessments pursuant to section 8 of the *Family Services Act* and section 11.4 of the *Judicature Act*
- Waiver of any requirement that the child appear before the court
- Waiver of any requirement that the abused or neglected adult appear before the court
- Waiver of service on any potential Respondent pursuant to section 52(6) of the *Family Services Act*
- Desirability of consulting with a child in camera
- Any request that the hearing be held in camera.

Post Hearing and Appeal Stage

If requested by the Minister of Family and Community Services, the Crown Attorney shall provide a legal opinion with respect to the viability of an appeal with respect to judgments rendered in adult and child protection proceedings.

The Crown Attorney shall obtain written instructions from the Minister of Family and Community Services prior to commencing an appeal in any protection matter.

The Crown Attorney shall advise the Coordinator of Family Cases as well as any Appeal Coordinator in the Office of the Attorney General of any appeal instituted by or against the Minister of Family and Community Services.

International Child Abduction

As designate of the Central Authority of the Province of New Brunswick, the Crown Attorney is mandated to

- Screen and process applications received from foreign contracting states with respect to children wrongfully removed to or detained in New Brunswick
- Prepare and process standardized applications and supporting documents with respect to the return to New Brunswick of children wrongfully removed to or detained in a foreign contracting state
- Act as liaison with the foreign Central Authority on all procedural matters.

New Brunswick Child Abduction Protocols