

FAMILY CROWN SERVICES OPERATIONAL MANUAL

PARTIES UNDER DISABILITY	New	Office of the Attorney General / Family Crown Services	Policy 20
Policy Title	New or Amended	Division / Branch / Section	Policy #

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PARTIES UNDER DISABILITY

1. Introduction

Minors, persons who are mentally incompetent or incapable of managing their affairs and persons declared to be an absentee under the *Presumption of Death Act* are parties under disability and do not have the ability in and by themselves to commence, continue or defend legal actions.

Rule 7 of the *New Brunswick Rules of Court* sets out the procedure to be followed in these cases.

2. Scope of the policy

This policy applies to situations, other than Adult Protection applications which will be treated separately, where the capacity of a person to commence, continue or defend a legal action is raised before or during litigation to which that person will be or is a party.

3. Procedure

3.1 Minors

Where either the Minister of Social Development or the Director of Support Enforcement is commencing an action against a minor, the representative of the Minister or the Director shall prepare and file with the court a Request for Appointment of a Litigation Guardian (Form 7A) pursuant to Rule 7.03(2) and an affidavit of a proposed Litigation Guardian pursuant to Rule 7.03(4). Proof of age much be provided either by attaching the birth certificate of the minor or in the form of confirmation of the minor's date of birth by the parent.

Family Crown Counsel shall review these documents in accordance with Policy 10 - Initiating court proceedings and document review.

3.2 Persons who are mentally incompetent or incapable of managing their affairs

Where either the Minister of Social Development or the Director of Support Enforcement is commencing an action against a person who is mentally incompetent or incapable of managing his or her affairs, and where no committee has been named under the *Mental Health Act*, the representative of the Minister or the Director shall prepare and file with the court a Request for Appointment of a Litigation Guardian (Form 7A) pursuant to Rule 7.03(2) and an affidavit of a proposed Litigation Guardian pursuant to Rule 7.03(4) and shall provide the report(s) of one or more medical practitioners attesting to the person's mental incompetence or incapacity to manage his or her affairs.

The Minister or the Director shall bear the responsibility to arrange and pay for the assessment by the medical practitioner and the preparation of the required report.

Family Crown Counsel shall review these documents in accordance with Policy 10 - Initiating court proceedings and document review.

3.3 Person presumed dead under the *Presumption of Death Act*

Where either the Minister of Social Development or the Director of Support Enforcement is commencing an action against a person who has been presumed dead and where no committee has been named under the *Mental Health Act*, the representative of the Minister or the Director shall prepare and file with the court a Request for Appointment of a Litigation Guardian (Form 7A) pursuant to Rule 7.03(2) and an affidavit of the proposed Litigation Guardian pursuant to Rule 7.03(4) and shall provide the declaration of death made pursuant to *Presumption of Death Act*.

The Minister or the Director shall bear the responsibility to arrange and pay for the declaration of death.

Family Crown Counsel shall review these documents in accordance with Policy 10 - Initiating court proceedings and document review.

3.4 Where the issue of minor status, mental incompetence, inability to manage affairs or presumption of death arises following the commencement of court proceedings

Where the issue minor status, mental incompetence, inability to manage affairs or presumption of death arises after the commencement of court proceedings, Family Crown Counsel shall bring the issue to the attention of presiding judge and shall follow the procedure identified in 3.1, 3.2 or 3.3 above.

4. Related documents

New Brunswick Rules of Court
Judicature Act, S.N.B. 1973, c. J-2
Policy 10 - Initiating court proceedings and document review