

FAMILY CROWN SERVICES OPERATIONAL MANUAL

REPRESENTATION OF CHILDREN	New	Office of the Attorney General / Family Crown Services	Policy 21
Policy Title	New or Amended	Division / Branch / Section	Policy #

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REPRESENTATION OF CHILDREN

1. Introduction

Where the Minister of Social Development is a party to a proceeding involving the custody of a child, the court has the authority to appoint either a responsible spokesperson or counsel to assist in the representation of the child's interests and concerns pursuant to subsection 7(b) of the *Family Services Act*.

7 In any proceeding with respect to the custody of a child, whether under this or any other Act, the court shall

- (b) where the Minister is a party to the proceeding and the court is of the opinion that the interests and concerns of the child should be represented by counsel or by a responsible spokesman, advise the Attorney-General that in his opinion counsel or a responsible spokesman should be made available to assist in the representation of the child's interests and concerns.

Subsection 7.1(1) and 7.1(2) of the Act read as follows:

7.1(1) The court shall consider the following in order to determine whether counsel should be made available under paragraph 7(b):

- (a) whether the child is 12 years of age or older;
- (b) whether the child's wishes, where they can be expressed and where the child is capable of understanding the nature of any choices that may be available to him or her, have been given consideration in determining his or her interests and concerns;
- (c) whether the Minister has been able to identify the child's interests and concerns;
- (d) whether the interests and concerns of the child and those of the Minister differ;
- (e) whether counsel is better able to identify the child's interests and concerns; and
- (f) any other factors the court considers relevant.

2. Statement of the policy

Family Crown Counsel shall not take a position with respect to the appointment of counsel for a child in a child protection proceeding. However, Family Crown Counsel may point out the following preamble under the Family Services Act:

“WHEREAS children have basic rights and fundamental freedoms no less than those of adults; a right to special safeguards and assistance in the preservation of those rights and freedoms and in the application of the principles stated in the Canadian Bill of Rights and elsewhere; and a right to be heard in the course of, and to participate in, the processes that lead to decisions that affect them and that they are capable of understanding;”

In order to assist the court, the Minister of Social Development may file an affidavit outlining the following information:

- (a) the age of the child;
- (b) any known intellectual disability regarding the child if applicable;
- (c) whether the child is able to express his / her interests and concerns;
- (d) whether the Minister is able to identify the child’s interests and concerns;
- (e) whether the interests and concerns of the child and those of the minister differ; and
- (f) any other relevant information which could assist the court in determining whether or not to appoint representation for a child.

3. Disclosure

Upon appointment, a counsel for a child must make a request for disclosure in accordance with Policy 22 – Disclosure. Upon receiving such request Family Crown Counsel shall provide disclosure as stipulated in such policy.

4. Role of solicitor for a child

The New Brunswick Court of Appeal in *S.H. v. Minister of Social Development and C.H.*, 2021 NBCA 56, stated that the role of the solicitor for a child is not the same as the traditional role of representing a client in a child protection proceeding. Children’s counsel should ensure the hearing judge has all relevant information concerning the children, so that a fulsome analysis of the best interests of the child can be undertaken. Children’s counsel should not offer a personal opinion on the very issue the court is tasked to decide. The best interests assessment is that of the application judge. Furthermore, children’s counsel should not render an opinion that supports or opposes any order.

5. Related documents

Family Services Act, S.N.B. 1980, c. F-2.2
Policy 22 – Disclosure