

FAMILY CROWN SERVICES OPERATIONAL MANUAL

THIRD PARTY PROCEEDINGS	New	Office of the Attorney General / Family Crown Services	Policy 29
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THIRD PARTY PROCEEDINGS

1. Introduction

The Minister of Social Development is often called upon to intervene in third party proceedings to which they are not a party. This can occur in the following circumstances:

- (a) private family court matters concerning parenting time / decision-making responsibility (custody) and contact (access);
- (b) motions seeking a variation of support obligations and arrears where the Department of Social Development (HRD) is a beneficiary of some or all of support;
- (c) criminal matters;

2. Statement of the Policy

Family Crown Counsel shall only provide legal services to the Minister of Social Development in third party proceedings in accordance with this policy, unless directed otherwise by the Assistant Deputy Attorney General of Family Crown Services. For more detailed information, Family Crown Counsel shall refer to an Inter-office memo dated February 9, 2015 from Bill Innes to all program Delivery Managers at Social Development (see Appendix A)

3. Role of the Minister of Social Development in private family court matters

Pursuant to section 2 of the *Family Law Act*, the Minister of Social Development must be advised by the court of any proceeding where the parenting time / decision-making responsibility (custody) and contact (access) of a child is at stake:

- 2. In any proceeding concerning the exercise of parenting time, decision-making responsibility or contact in respect of a child under this Act, the Court shall, if the Minister of Social Development is not a party to the proceeding, advise the Minister of Social Development of the proceeding,

in which case the Minister of Social Development may intervene in the proceeding and may take whatever steps the Minister of Social Development considers necessary to ensure that the interests and concerns of the child are properly represented separate from those of any other person, including the appointment of a lawyer or a responsible spokesperson to assist in the representation of the interests and concerns of the child.

Family Crown Counsel shall represent the Minister and attend such hearings. An affidavit of one or more social worker(s) should be prepared and filed with the court prior to any hearing. Any affidavits should outline the Minister's involvement and any concerns with respect to any party to the proceedings as to the security and development of a child who is the subject of such proceedings.

The test established by the Minister of Social Development with respect to intervening pursuant to subsection 2 is as follows:

Would the Minister be required by statutory obligation to place a child under protective care if the court granted parenting time / decision-making responsibility (custody) and contact (access) to any party to the proceedings?

4. Private Parenting time / decision-making responsibility (custody) and contact (access) proceedings where the Minister has not intervened

The Minister of Social Development is frequently called upon to provide information / testimony in private family matters for which they have opted not to intervene pursuant to section 2 of the *Family Law Act*.

If an employee of Social Development receives a Summons to Witness they are required to attend the proceedings. Under no circumstances will an affidavit be filed on behalf of the Minister of Social Development.

Social workers are directed to consult with their supervisor immediately upon being served with a Summons to witness in order to discuss how to proceed and to determine which documents should be taken to the hearing if such documents are requested in the Summons to Witness.

Upon request Family Crown Counsel may be consulted by a social worker to explain court procedures and respond to any concerns, including concerns relating to his / her testimony, or with respect to disclosure.

Where the Minister is not named as a party to a proceeding, Family Crown Counsel has no standing before the court and he / she shall not attend the hearing unless the following occurs:

- (a) the Minister is named as a party and child protection concerns exist which if known before would have triggered a request to intervene pursuant to section 2 of the *Family Law Act*;
- (b) Family Crown Counsel has filed a Motion to remove the Minister as a party to a proceeding in cases where the Minister does not believe that there are any concerns which would merit the Minister's involvement; or
- (c) Family Crown Counsel has filed a Motion to add the Minister as a party.

In such circumstances as described above, Family Crown Counsel shall provide legal services / advice and attend hearings related thereto in order to represent the interests of the Minister of Social Development.

5. Support variation proceedings where the Department of Social Development is beneficiary

Motions seeking a variation of support obligations and / or arrears are often filed with the court where the Department of Social Development (HRD) is not named as a party. In such proceedings Family Crown Counsel will review the pleadings and provide legal advice to the Department of Social Development as to whether or not a Motion to intervene is warranted to maintain or recover a portion or all of the support and / or arrears.

Upon instructions from the Department of Social Development, Family Crown Counsel shall file a Notice of Motion (Form 37A) and seek leave from the court to intervene as an added party pursuant to Rule 15.02(1) of the *Rules of Court*.

6. Criminal proceedings

The Minister of Social Development is also frequently called upon to provide information / testimony in criminal proceedings. When served with a Subpoena, an employee of the Minister shall attend the criminal proceedings and bring whatever documents are listed in the Subpoena. Employees are directed to consult with their supervisor immediately upon being served with a Subpoena in order to discuss how to proceed and to determine which documents should be taken to the criminal proceedings if such documents are listed in the Subpoena.

Family Crown Counsel shall not attend criminal proceedings or provide legal advice / services to the Minister of Social Development in criminal proceedings. Any employee of the Minister who has concerns or requires information should be directed to their local public prosecutions office and should ask to speak to the criminal Crown Prosecutor assigned to the specific case they wish to discuss.

7. Related documents

Family Law Act, S.N.B. 2020, c. 23

New Brunswick Rules of Court

Policy 3 - Organization and mandate

Appendix A – Memo dated February 9, 2015