

FAMILY CROWN SERVICES OPERATIONAL MANUAL

SOLICITOR-CLIENT RELATIONSHIP	New	Office of the Attorney General / Family Crown Services	Policy 7
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SOLICITOR-CLIENT RELATIONSHIP

1.1 Introduction

As an Officer of the Court, the overriding role of Family Crown Counsel is to ensure that the administration of justice is not placed in disrepute. To this end, Family Crown Counsel must guard against frivolous or vexatious proceedings as well as proceedings in which there is insufficient admissible and reliable evidence to support the client’s application.

As described in Policy 3 - Organization and mandate, Family Crown Counsel is an employee and agent of the Attorney General and derives his authority and mandate from the Attorney General.

Family Crown Counsel is a government lawyer representing government interests and is not authorized to represent private parties. As such, Family Crown Counsel is exempt from carrying liability insurance under subsection 83(3) of the *General Rules under the Law Society Act, 1996*, S.N.B. 1996, c.89.

As such, within the mandate established by the Attorney General, the Family Crown Counsel operates within a solicitor-client relationship with both the Minister of Social Development and the Director of Support Enforcement.

This document establishes how Family Crown Counsel can manage the solicitor-client relationship while respecting his duties as officer of the court and as agent of the Attorney General.

1.2 Family Crown Counsel in a solicitor-client relationship

At all times, Family Crown Counsel remains the agent of the Attorney General operating within the civil domain of Family Law.

Within that mandate, Family Crown Counsel will engage in a solicitor-client relationship with both the Minister of Social Development and the Director of Support Enforcement. This solicitor-client relationship differs somewhat from the solicitor-client relationship in private practice.

In private practice, a solicitor may refuse to accept a client and the client may choose another lawyer. In government practice, Family Crown Counsel is mandated to represent both the Minister of Social

Development and the Director of Support Enforcement who are required by law to use the services of the mandated government lawyer.

Subsection 3(4) of *An Act Respecting the Role of the Attorney General* provides that:

No person other than a person who is employed as a law officer of the Office of the Attorney General or who has otherwise been appointed by the Attorney General as a law officer shall provide legal advice or legal services to the Executive Council or to government departments.

Ad hoc counsel receives his power to carry out the mandate of Family Crown Counsel Services by virtue of subsection 3(3) of *An Act Respecting the Role of the Attorney General*:

The Attorney General may appoint a law officer from private practice as *ad hoc* counsel to serve as the agent of the Attorney General.

The Minister of Social Development and the Director of Support Enforcement are captive clients who cannot litigate their cases without the assistance of a lawyer provided by the Attorney General. Litigation by the Minister and the Director deals primarily with the most vulnerable members of society, namely abused and neglected children, mentally incompetent adults who are either abused or neglected and children whose non-custodial parent has failed to respect the legal and parental obligation to provide child support.

For the above-noted reasons, Family Crown Counsel must be judicious in screening files. Unless there is a potential abuse of process, Family Crown Counsel will normally ultimately accommodate the directions of the client within the boundaries of the designated mandate and within the provisions of the law.

1.3 Abuse of process

1.3.1 Definition of Abuse of Process

Abuse of process is narrowly defined to include:

- action of a representative of the Minister of Social Development or the Director of Support Enforcement based on improper motive (frivolous or vexatious action);
- insufficient admissible and reliable evidence to support an application; and/or
- inadequate grounds of fact and/or law to support an appeal.

It should be noted that abuse of process, including insufficiency of admissible and reliable evidence to support the relief sought, allows Family Crown Counsel to countermand a proposed application or course of action.

1.3.2 Procedure when Abuse of Process is Suspected

Where an abuse of process is suspected, Family Crown Counsel shall immediately notify the Assistant Deputy Attorney General of Family Crown Counsel Services as well as the client. 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 front-line representative of the client and Family Crown Counsel, the front-line representative of the client shall consult his supervisor and Family Crown Counsel shall consult the Assistant Deputy Attorney General of Family Crown Counsel Services.

If, as a result of this consultation, the disagreement persists, the Assistant Deputy Attorney General of Family Crown Services shall contact his counterpart in the Department of Social Development or the Director of Support Enforcement, depending on the nature of the situation to affect a resolution.

1.4 Respecting the distinct roles of solicitor and client

1.4.1 Investigative Responsibilities of the Client

Investigation remains the responsibility of the Minister of Social Development and of the Director of Support Enforcement in their respective domains. Family Crown Counsel is not an investigator.

1.4.2 Clinical Responsibilities of the Minister of Social Development

Family Crown Counsel shall respect the role of the Social Worker in making clinical and social decisions and will not interfere with these decisions unless they offend the *Canadian Charter of Rights and Freedoms* or other federal or provincial law or unless they are contrary to the public interest.

Family Crown Counsel will respect the role of the Permanency Planning Committee (PPC) and the Immediate Response Committee (IRC) which are administrative bodies under the direction of the Minister of Social Development which determine the clinical course of action that the Minister wishes to take in protecting the security and development of children in care.

Neither the PPC nor the IRC are creations of statute and therefore do not have any legal status. They simply provide internal administrative and clinical guidance to the employees of the Minister of Social Development.

The decisions of the PPC and of the IRC are not binding on either Family Crown Counsel or the judiciary. In fact, they have absolutely no impact on the litigation of child protection cases.

Family Crown Counsel cannot base legal decisions on clinical data. Family Crown Counsel must base legal decisions on current common law concepts, statutory provisions and jurisprudence. Family Crown Counsel will apply these legal tools when evaluating the clinical data and other factual information provided by the client in support of proposed court applications.

1.4.3 Financial Responsibilities of the Director of Support Enforcement

The Director of Support Enforcement is responsible for maintaining acceptable and accurate bookkeeping and accounting techniques to track monies received pursuant to support agreements and orders as well as arrears in payment of mandated support.

The representatives of the Director will provide proper financial documentation and testimony, as needed, at judicial support enforcement proceedings.

Family Crown Counsel is neither a bookkeeper nor an accountant.

Family Crown Counsel will apply the available legal tools such as the Child Support Guidelines to the available financial data provided by the Director of Support Enforcement when making submissions and recommendations to the court.

1.5 Conflict between mandate and directions from the client

When the directions of the client conflict with the mandate established by the Attorney General, Family Crown Counsel must adhere to the boundaries of the mandate. Family Crown Counsel has no authority to operate in civil matters outside the scope described in the mandate established by the Attorney General.

As previously stated, Family Crown Counsel is exempt from carrying professional liability insurance under subsection 83(3)(b) of the *General Rules under the Law Society Act*, 1996 SNB, c.89 in that he is a member of the Law Society who is employed by a government department, namely the Office of the Attorney General, and in that he does not practice outside the mandate of that employment.

Operating outside of mandate could result in disciplinary action by the Attorney General and/or the Law Society of New Brunswick.

1.6 Code of Professional Conduct

The *Code of Professional Conduct* governs all members of the Law Society of New Brunswick, including Family Crown Counsel.

While Family Crown Counsel should be aware of the contents of the complete *Code of Professional Conduct*, special attention should be paid to the chapters relating to integrity, competence, quality of service, advising clients, confidentiality, the client as advocate and colleagues.

Although Family Crown Counsel is a government lawyer representing government interests, the government client is entitled to the same respect, courtesy and quality of service as a private client expects from a private practitioner.

1.7 Related documents

Policy 3 Organization and mandate

General Rules under the Law Society Act, 1996, S.N.B. 1996, c.89

Family Services Act, S.N.B. 1980, c.F-2.2

An Act Respecting the Role of the Attorney General, S.N.B. 2011, c.116

Law Society of New Brunswick, "Code of Professional Conduct" (January 1, 2020)