

FAMILY CROWN SERVICES OPERATIONAL MANUAL

LEGAL ADVICE TO THE CLIENT	New	Office of the Attorney General / Family Crown Services	Policy 9
Policy Title	New or Amended	Division / Branch / Section	Policy #

SLT		June 1, 2022	June 1, 2025
Approved by	This policy was approved on:	This version takes effect on:	This policy will be reviewed by:

LEGAL ADVICE TO THE CLIENT

1. Introduction

Family Crown Counsel provide legal advice to the Minister of Social Development regarding matters under Parts III, IV, VI of the *Family Services Act*, S.N.B. 1980, c.F-2.2, section 2 of the *Family Law Act* and to the Director of Support Enforcement under the *Support Enforcement Act*, S.N.B. 2005, c.S-15.5. Family Crown Counsel will also provide legal advice to these clients on matters corollary to the above, whether regarding the *Rules of Court* or other pertinent legislation.

Legal Services also provides legal advice to the Minister of Social Development and the Director of Support Enforcement regarding matters not covered by the mandate of Family Crown Services. For additional information, please refer to the document entitled *Legal Opinions Regarding Disclosure and Release of Information: Mandated Areas of Family Crown Services and Legal Services*.

2. Responsibility for investigations

The conduct of any investigation is the sole responsibility of the client. The client does not require authorization from Family Crown Counsel before commencing an investigation, nor can Family Crown Counsel direct or discontinue an investigation.

The involvement of Family Crown Counsel during the investigative stage is, with few exceptions, not required as a matter of law. Yet, in practice, given the complexity of the simultaneous application of family, evidentiary and constitutional law frequently involved in investigations, timely and effective consultation between the client and Family Crown Counsel is necessary to ensure the proper administration of justice.

3. Consultation and advice

The Minister of Social Development can request case-specific legal advice regarding ongoing cases directly from regional Family Crown Counsel.

By virtue of the internal policy of the Department of Social Development, social workers must contact their central office to request general legal opinions or legal opinions which could have a provincial impact.

Please refer to the document entitled Legal Opinions Regarding Disclosure and Release of Information: Mandated Areas of Family Crown Services and Legal Services dated July 2, 2015 for the contact information of the Social Development contact person. The Social Development contact person will then contact the Assistant Deputy Attorney General of Family Crown Services in writing to make the formal request for the legal opinion. In turn, the Assistant Deputy Attorney General may assign Family Crown Counsel to prepare the legal opinion.

4. Best practice

Family Crown Counsel will often be consulted by representatives of the Minister of Social Development or by representatives of the Director of Support Enforcement regarding the interpretation of applicable statutes. Such routine consultations need not necessarily be in writing. Similarly, some straightforward fact-based inquiries need not necessarily be in writing either. In some instances, it is important that the clients have timely access to advice and direction from Family Crown Counsel. However, in other cases the complexity of the factual situation requires a written request for legal advice. In those instances, Family Crown Counsel should exercise judicious discretion and may insist on a written request for legal advice providing as much detail as possible as to the factual situation at hand. Should complex situations arise, fact-based or otherwise, Family Crown Counsel should consult with other colleagues and/or the Assistant Deputy Attorney General.

The following guidelines apply with respect to requests for legal advice:

- (a) ask the client whether he or she has consulted another Family Crown Counsel or Legal Services with respect to the matter, and if so, discourage the practice of obtaining advice from multiple Family Crowns.
- (b) Ask the client whether he or she has consulted with their Provincial Consultant;
- (c) refrain from providing legal advice where the representative of the Minister of Social Development or of the Director of Support Enforcement is seeking legal advice for the benefit of third parties.
- (d) Where the complexity of a request for legal advice or legal opinion requires that all pertinent facts and questions be addressed prior to giving such legal advice or legal opinion, Family Crown Counsel should obtain such information in writing.
- (e) obtain the name of the court file or ministerial file or the names of the persons to whom the legal advice or legal opinion will relate.
- (f) where the questions relate to a legal document such as a Power of Attorney or a private order regarding issues of parenting time (custody), decision-making responsibility or contact (access), request a copy of the document before providing any legal advice or legal opinion.
- (g) if an urgent oral request for legal advice or a legal opinion must be addressed immediately, take note of the facts and questions provided by the client. After providing oral legal advice or a legal opinion, send an e-mail to the client setting out the facts provided by the client and confirming the legal advice or legal opinion that was provided orally.
- (h) unless there is already an open file for the case, and in complex fact-based requests, consider opening a Family Crown Services file and inserting the information and questions received from the client as well as the e-mail confirming the facts and questions received and the legal advice or legal opinion rendered.
- (i) where the advice cannot be readily provided or has province-wide implications, the request should be referred to the Assistant Deputy Attorney General of Family Crown Services for consideration or referral to an appropriate Family Crown Counsel. Formal legal advice should be rendered using Appendix A: Legal advice to clients.

5. Preliminary opinions

Where the client requests a preliminary legal advice or legal opinion regarding the viability of a proposed application, Family Crown Counsel should clearly advise the client that the advice provided does not constitute an approval to initiate court proceedings. Such decisions are based on the information available at the time court documents are submitted for review and is re-assessed as ongoing disclosure becomes available. Please refer to Policy 10 - Initiating court proceedings and document review.

6. Related documents

Legal Opinions Regarding Disclosure and Release of Information: Mandated Areas of Family Crown Services and Legal Services dated July 2, 2015

Policy 10 - Initiating court proceedings and document review

Appendix A: Legal advice to clients

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

Family Law Act, S.N.B. 2000, c. 23



Department of Justice and Public Safety
Ministère de la justice et de la sécurité publique

APPENDIX A

LEGAL ADVICE TO CLIENTS

Privileged & Confidential

Family Crown Counsel:

Person Requesting Legal Advice:

Department / Position:

Phone Number:

E-mail Address / Courriel:

- Telephone Call E-Mail / Courriel other _____
 Teams / Zoom Office Visit

Date Request Received:

Date Advice Provided:

Name of File / Nom du dossier:

Has client sought advice from any other Crown? Yes No

If so, from whom?

Nature of Advice Sought

Advice Given
Follow-Up

FAMILY CROWN COUNSEL: _____

DATE: _____



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