

TO: Family Law Rules Committee  
FROM: Family Lawyers Association  
RE: Representation of Children under the Family Law Rules

---

---

## **Consultation Questions:**

### **1. Should a child require a litigation guardian?**

The Family Law Rules provides for a comprehensive code for the conduct of family law cases in Ontario. A “child” is defined in Rule 2(1) as a person under the age of 18 or in the case of the Divorce Act, as a child of the marriage. A Party is not defined in the Rules but is the person bringing a claim before the Court or responding to a claim before the Court. In those circumstances where a child as defined by the Rules commences an Application to the Court, it is the position of the Family Lawyers Association that the child does not require a litigation guardian to advance his or her case as the Representation Rules pursuant to (4(1) defines how a litigant may be represented.

### **2. If no litigation guardian is required, then**

#### **a) Should a child always, or presumptively, require representation by a lawyer?**

Ideally all litigants before our Family Courts should be represented by a lawyer. It is the position of the Family Lawyers Association that there are circumstances where a child always requires representation by a lawyer. Such a case is where a minor parent is the respondent before our Child Protection Courts. It is our position that the Office of the Children’s Lawyer should continue to represent minor parents as they have the developed expertise and the resources to provide the most effective representation of minor parents before the Child Protection Courts. Representation of a minor parent by the Office of the Children’s Lawyer is mandated by Section 38(5) of the Child and Family Services Act. In such cases the child executes the Answer and Plan, swears Affidavits and instructs his or her counsel. The stakes are high for these minor parents.

The Family Law Act at Section 33(2) provides that dependants, which is defined at Section 29, presumes that dependant children may seek support from one or both parents subject to 31(2) of the Family Law Act. In such a case it would be ideal but not mandatory for the child to always, or presumptively require representation by a lawyer. In such a case the child may choose to represent him or herself. Funds from Legal Aid Ontario should be available to assist the child in obtaining legal representation before the Court in all cases except in the case of

minor parents before our Child Protection Courts.

*Page 2*

Along with minor parent proceedings and proceedings where the child is claiming support from a parent, we can envision other circumstances where a child may be an applicant before the Court. Under Section 21(1) of the Children's Law Reform Act, a child may apply to the Court for access to a sibling or the other parent. The Section reads "A parent of a child or any other person...." Any other person is not defined and it is our submission it may be a child who is being prevented from seeing a sibling or the other parent and wishes contact with that sibling or parent.

In case where the child wants to commence a Court Application for support or access to a sibling or the other parent, there is no mechanism in the governing legislation (save and except minor parents) which requires a litigant to a proceeding to be always or presumptively be represented by a lawyer. Children have limited financial resources and, therefore, funds should be made available through Legal Aid Ontario to children who wish to advance such cases in the Courts and, therefore, have counsel from the outset. As with any other litigant before our Family Courts a child (while not preferable) may choose to represent themselves or seek to have an agent (with leave of the Court) to advance their cases.

**b) Should Legal Representation be at the Courts Discretion?**

In the case of minor parents, the Child and Family Services Act, mandates legal representation for these litigants through the Office of the Children's Lawyer. Such a provision should not be changed. In the case where a child commences a support application or where the child is seeking access to a parent or a sibling, Rule 4(1) should be amended to provide where the Court deems appropriate that the child should be provided with legal representation in the matter before the Court. This would be in the case where the child litigant has come to Court unrepresented and the Court deems it necessary that counsel should be appointed for the child. Where the Court makes such a determination, the child should be represented by the Office of the Children's Lawyer. Despite this provision, children who are commencing such applications should be eligible to obtain legal representation by retaining counsel through the Legal Aid Plan from the outset of the file and prior to filing the Application with the Court.

**c) Should the regular representation Rule 4(1) apply?** Yes but with the amendment noted above.

**d) Other.**

**3. Definition of Special Party?** No.

**4. Any other comments**

If you require any more information please direct those queries to the Chair of the Family Lawyers Association, namely, Katharine Janczaruk, [kjanczaruk@sympatico.ca](mailto:kjanczaruk@sympatico.ca).