

**Ministry of the
Attorney General**

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Mr. Dave Mollica
Director of Policy and Professional Development
The Advocates Society
david@advocates.ca

Dear Mr. Mollica:

I am writing in regards to a proposal that the Ministry of the Attorney General has received to expand the definition of “child” in the *Children’s Law Reform Act*.

The current definition of “child” can be found in Part III of the *Children’s Law Reform Act*:

Child

18(2) A reference in this Part to a child is a reference to the child while a minor.

It has been proposed that this definition of “child” be amended to align with the federal definition of child in the *Divorce Act*, to ensure equal treatment for children of married and unmarried spouses. Like the *Children’s Law Reform Act*, the *Divorce Act* also deals with custody and access of a child; while the provincial *Children’s Law Reform Act* applies to unmarried spouses or married spouses who are not divorcing, the federal *Divorce Act* applies to married spouses who are divorcing.

Subsection 2(1) of the *Divorce Act* defines “child of the marriage” as follows:

child of the marriage means a child of two spouses or former spouses who, at the material time,

- (a) is under the age of majority and who has not withdrawn from their charge, or
- (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life;

The “age of majority” is defined in subsection 2(1) of the *Divorce Act* as:

age of majority, in respect of a child, means the age of majority as determined by the laws of the province where the child ordinarily resides, or, if the child ordinarily resides outside of Canada, eighteen years of age;

This change in definition would give Ontario courts jurisdiction to make custody and access orders in respect of adults with disabilities or medical conditions or who, for other reasons, remain in their parents’ or other caregiver’s charge. Such orders could include decision making responsibility for contact with non-custodial parents, residence, education, health care, culture, language, religion and extra-curricular activities.

Currently, the *Substitute Decisions Act* governs decision making for adults who are unable to make their own decisions in the areas of property management, shelter, health care, hygiene, safety, nutrition, and clothing. If the definition of child is expanded as proposed, consideration would need to be given as to how the overlap between the *Children’s Law Reform Act* and the *Substitute Decisions Act* could be reconciled.

We are interested in hearing your views about whether the definition of “child” in the *Children’s Law Reform Act* should be amended to include a person who is the age of majority or over and remains in the charge of their parents or other caregiver because of disability, medical condition or other reasons that make them unable to obtain the necessities of life.

We would appreciate receiving your views in writing, to sunny.kwon@ontario.ca, no later than January 8, 2021. If you require additional information or disability-related accommodation to participate in this consultation process, please let us know.

We look forward to hearing from you.

Yours truly,

Jane Mallen
Assistant Deputy Attorney General

cc: Sunny Kwon, Counsel, Policy Division