



March 7, 2017

BY E-MAIL

Ministry of the Attorney General

The Honourable Yasir Naqvi
Attorney General of Ontario
McMurtry-Scott Building
720 Bay Street, 11th Floor
Toronto, ON M7A 2S9

Dear Minister Naqvi,

Re: Child Support for Adults with Disabilities

On behalf of the Family Law Section of the Ontario Bar Association (the “OBA”), I am writing to express our members’ support for harmonizing the definition of “child” in the *Family Law Act* (“FLA”) with the definition in the federal *Divorce Act* for child support purposes.

This amendment would expand child support eligibility for adult children who are unable to support themselves due to “illness, disability or other cause,” bringing provincial entitlements in line with those available under the *Divorce Act* and closing a clear gap in the legislation.

Child Support Obligations

As you are aware, separated and divorced parents have a legal obligation to provide support for their children, including their adult children, under the FLA and the *Divorce Act*. Unlike the FLA, however, the *Divorce Act* – which applies only in situations where the parents are divorced or divorcing – extends important protection for children beyond the age of majority who are unable to support themselves “by reason of illness, disability or other cause.”

In contrast, the FLA – which applies in situations where the parents are either unmarried or married but not divorcing – makes no explicit reference to disability. The support obligations for adult children in the FLA are limited to individuals who are enrolled in school full time. The unbalanced result is that adult children with a disability may be entitled to support where their parents are divorced or divorcing, but not where their parents are unmarried or married but separated.

In the OBA's view, this discrepancy has serious discriminatory effects and constitutional implications. All children should be equally entitled to support, no matter the spousal status of their parents. As you may be aware, the relevant provisions in the FLA are the subject of a constitutional challenge in the Ontario Court of Justice proceeding this month.

Request

The OBA has long supported broadening the definition of "child" in the FLA for the purpose of child support to harmonize with the more expansive entitlements under the *Divorce Act*. There does not appear to be any principled reason to exclude some children from financial support simply because their parents cannot, or choose not to, apply for divorce. It should be noted that many other Canadian jurisdictions – including British Columbia, Saskatchewan, Manitoba, and New Brunswick – have already amended the definition of "child" to create support obligations mirroring those in the *Divorce Act*. It is time for Ontario to do the same.

We thank you for considering this letter and the important initiative it advocates. We would welcome the opportunity to meet with you or your staff with a view to moving the issue forward.

Kind regards,