

# Recent Changes to Family Law Rules in Ontario

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On September 1, 2019, changes came into effect in the *Family Law Rules* (See: O. Reg. 250/19, s. 1) relating to **special parties and child parties** and **expert opinion evidence**.

With respect to child parties, advocates should note that changes were made to Rules 2(1), 4(2), 4(3), 4(3.1), 7(5.1), 7(5.2), 12(2), 17(19), 18(12), 20(6), 23(15), 25.1(14), 25.1(16), and 42(5),

Under **Rule 2.1** the previous definition of "special party" was changed as follows:

"special party" means a party ~~who is a child or, other than a child party,~~ who is or appears to be mentally incapable for the purposes of the *Substitute Decisions Act, 1992* in respect of an issue in the case and who, as a result, requires legal representation, ~~but does not include a child in a custody, access, child protection, adoption or child support case~~ ("partie spéciale").

The main changes include as follows:

- The terms "child party" were added to the *Rules* as a separate party from a "special party". See for example **Rules 4(2), 12(2), 17(19), 18(12), 20(6), 23(15), 25.1(14), 25.1(16), and 42(5)**.
- Pursuant to the changes to **Rule 4(3.1)**, the court *shall* consider whether any representation is required for a "child party" and the court *may* appoint the Children's Lawyer to act as a representative for a child party pursuant to **Rule 4(3)**.
- Pursuant to **Rule 5.1**, a child who is the subject of a custody, access, child protection, adoption or child support case cannot be added as a party without the court's permission.
- In a case involving a child party in which a claim is made for support, a court *shall* add any parties that may be obligated to support a child to a case (**Rule 5.2**).

With respect to expert evidence, advocates should note that changes were made to the following *Rules*: **Rule 17(8) (a.0.1), Rule 20.1, Rule 23(23)-(27)**

The main changes include:

- The *Family Law Rules* now distinguish between four types of experts, namely "joint litigation experts", "litigation experts", "participant experts" and "court appointed experts". (**Rules 20.2(1) and 20.3**)
- The content that must be included in an expert's report is expanded under the new *Rules*. In particular, the expert is required to disclose in detail the information he or she relied on in forming the opinion and copies of any written statement of facts and/or documents on which the expert relied are to be provided to the other party, concurrent with the delivery of the report. (**Rule 20.2(2) and (5)**).
- **Rule 20.2(8)** provides that, unless the court orders otherwise, only a joint litigation expert may present litigation expert opinion evidence concerning custody and access claims under the *Divorce Act* and the *CLRA*.
- **Rule 20.2(13)** provides that where a joint litigation expert provides opinion evidence on an issue for a party, no other litigation expert may present evidence on that issue for that party, unless the court orders otherwise.
- The timing for the delivery of expert's reports, including written opinions from participant experts, has changed and must now be delivered six days prior to the settlement conference. (**Rule 20.2(2) and 20.2(14)**).
- **Rule 20.2(15)** stipulates that Rule 20.2 applies to the use of expert reports on interim and summary judgement motions under Rules 14 and 16 respectively, with necessary modifications.
- **Rule 20.3** governs court-appointed experts and is largely a consolidation of the prior Rule 20.1(3)-(10), except that:
- the court is empowered to make any further orders it deems necessary to enable the expert to complete his or her duty, including orders for the inspection of property and the conduct of medical examinations under section 105 of the *CJA*. **Rule 20.3(5)**; and
- Although these rules do not apply to section 30 assessments under the *CLRA*, a section 30 report must contain, at a minimum, the information set out in paragraphs 1-6 of Rule 20.2(2), unless the court orders otherwise. (**Rules 20.3(9) and (10)**).
- The amended rules also now require the court to consider whether a preliminary examination of expert opinion evidence intended to be given on a motion in child protection cases is required to determine its admissibility. (**Rule 33(9)**).

The amended rules can be found at the following

link: <https://www.ontario.ca/laws/regulation/990114/v45>.