

# Letter To The Ministry Of The Attorney General

## Regarding

### A Proposal To Amend The Definition Of "Child" Under The Children's Law Reform Act

From: **Paula Boutis** <[paula.boutis@gmail.com](mailto:paula.boutis@gmail.com)>  
Date: Fri, 8 Jan 2021  
Subject: Re: Consultation on definition of child in CLRA  
To: <[sunny.kwon@ontario.ca](mailto:sunny.kwon@ontario.ca)>

Dear Ms. Kwon,

I am the President of Integration Action for Inclusion (<https://www.inclusionontario.ca/>). Integration Action for Inclusion is a charity with over 30 years' history supporting educational inclusion and living in the community for all persons with disabilities who may require additional support. We work tirelessly to combat segregation in the school community and wider community for persons with disabilities. We seek to eradicate all forms of ableism, including stereotypes that would presume persons with disabilities, especially those with intellectual disabilities, to be incapable of making decisions.

Quite recently, we received a copy of the below consultation letter, which you sent to Autistics for Autistics.

Given the short time frame we had to understand this proposal and the issues, we reached out to Pooran Law lawyers to review and understand the matter, as the consultation letter was unfortunately quite unclear as to exactly the issue and "overlap" might have been that you sought to address. From our perspective, receiving financial support or assistance with care from or through parents does not equate to a person being incapable of making decisions in either of those spheres. They are different legal tests and no policy reform should occur which would conflate support (care or financial) for adult dependent children with their capacity to make decisions. The proposal as outlined would seem to do so.

We have now reviewed the following blog written by Pooran Law. It is thorough and captures the main issues of concern to us and offers a better path forward.

[https://pooranlaw.com/ontario-considers-expanding-definition-of-child-in-childrens-law-reform-act-to-include-adult-children-with-disabilities/?fbclid=IwAR12iwvLI9h4XNrJbagU4e\\_PXwmUZq3e5rLg6bTSCIX8YvpjGZAIU2Bmfl](https://pooranlaw.com/ontario-considers-expanding-definition-of-child-in-childrens-law-reform-act-to-include-adult-children-with-disabilities/?fbclid=IwAR12iwvLI9h4XNrJbagU4e_PXwmUZq3e5rLg6bTSCIX8YvpjGZAIU2Bmfl)

We would be pleased to answer any questions you may have and to provide further comments on legislative reforms to address the policy goals articulated.

To that end, please include us in your consultations. You may send invitations for consultation to the following email: [inclusionontario@gmail.com](mailto:inclusionontario@gmail.com) to the attention of the Administrator. Our full contact information, including mailing address, is available on the website.

Thank you for considering these comments and the submission.

Paula Boutis  
President  
Integration Action for Inclusion

———— Forwarded message ————

From: **Mallen, Jane (MAG)**  
Date: Wed, Dec 9, 2020  
Subject: Consultation on definition of child in CLRA  
To: [a4aontario@gmail.com](mailto:a4aontario@gmail.com)  
Cc: Kwon, Sunny (MAG) <[Sunny.Kwon@ontario.ca](mailto:Sunny.Kwon@ontario.ca)>

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December 9, 2020

Ms. Anne Borden  
Autistics for Autistics Ontario  
[a4aontario@gmail.com](mailto:a4aontario@gmail.com)

Dear Ms. Borden:

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 necessaries 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](mailto: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,  
*Original signed by*

Jane Mallen  
Assistant Deputy Attorney General

cc: Sunny Kwon, Counsel, Policy Division